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Mental Health Act 1983

1983 CHAPTER 20

PART I

APPLICATION OF ACT

1 Application of Act: "mental disorder".

(1) The provisions of this Act shall have effect with respect to the reception, care and treatment of mentally disordered patients, the management of their property and other related matters.

(2) In this Act—

"mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind and "mentally disordered" shall be construed accordingly;

"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 and "severely mentally impaired" shall be construed accordingly;

"mental impairment" means a state of arrested or incomplete development of mind (not amounting 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 and "mentally impaired" shall be construed accordingly;

"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;

and other expressions shall have the meanings assigned to them in section 145 below.

(3) Nothing in subsection (2) above shall be construed as implying that a person may be dealt with under this Act as suffering from mental disorder, or from any form of mental

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disorder described in this section, by reason only of promiscuity or other immoral conduct, sexual deviancy or dependence on alcohol or drugs.

PART II

COMPULSORY ADMISSION TO HOSPITAL AND GUARDIANSHIP

Modifications etc. (not altering text)

C1 Pt. II (ss. 2–34) modified by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), **ss. 17(2)**, 78(2)

C2 Part II (ss. 2-34) modified (E.W.) (1.1.1992) by Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25, SIF 39:1), s. 5(1), **Sch. 1 para.3** (with saving in s. 8); S.I. 1991/2488, **art. 2**

Procedure for hospital admission

2 Admission for assessment.

(1) A patient may be admitted to a hospital and detained there for the period allowed by subsection (4) below in pursuance of an application (in this Act referred to as "an application for admission for assessment") made in accordance with subsections (2) and (3) below.

(2) An application for admission for assessment may be made in respect of a patient on the grounds that—

(a) he is suffering from mental disorder of a nature or degree which warrants the detention of the patient in a hospital for assessment (or for assessment followed by medical treatment) for at least a limited period; and

(b) he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons.

(3) An application for admission for assessment shall be founded on the written recommendations in the prescribed form of two registered medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in subsection (2) above are complied with.

(4) Subject to the provisions of section 29(4) below, a patient admitted to hospital in pursuance of an application for admission for assessment may be detained for a period not exceeding 28 days beginning with the day on which he is admitted, but shall not be detained after the expiration of that period unless before it has expired he has become liable to be detained by virtue of a subsequent application, order or direction under the following provisions of this Act.

3 Admission for treatment.

(1) A patient may be admitted to a hospital and detained there for the period allowed by the following provisions of this Act in pursuance of an application (in this Act referred to as "an application for admission for treatment") made in accordance with this section.

(2) An application for admission for treatment may be made in respect of a patient on the grounds that—

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(a) he is suffering from mental illness, severe mental impairment, psychopathic disorder or mental impairment and his mental disorder is 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, such treatment is likely to alleviate or prevent a deterioration of his condition; and

(c) 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 it cannot be provided unless he is detained under this section.

(3) An application for admission for treatment shall be founded on the written recommendations in the prescribed form of two registered medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in subsection (2) above 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 paragraphs (a) and (b) of that subsection; and

(b) a statement of the reasons for that opinion so far as it relates to the conditions set out in paragraph (c) of that subsection, specifying whether other methods of dealing with the patient are available and, if so, why they are not appropriate.

4 Admission for assessment in cases of emergency.

(1) In any case of urgent necessity, an application for admission for assessment may be made in respect of a patient in accordance with the following provisions of this section, and any application so made is in this Act referred to as “an emergency application”.

(2) An emergency application may be made either by an approved social worker or by the nearest relative of the patient; and every such application shall include a statement that it is of urgent necessity for the patient to be admitted and detained under section 2 above, and that compliance with the provisions of this Part of this Act relating to applications under that section would involve undesirable delay.

(3) An emergency application shall be sufficient in the first instance if founded on one of the medical recommendations required by section 2 above, given, if practicable, by a practitioner who has previous acquaintance with the patient and otherwise complying with the requirements of section 12 below so far as applicable to a single recommendation, and verifying the statement referred to in subsection (2) above.

(4) An emergency application shall cease to have effect on the expiration of a period of 72 hours from the time when the patient is admitted to the hospital unless—

(a) the second medical recommendation required by section 2 above is given and received by the managers within that period; and

(b) that recommendation and the recommendation referred to in subsection (3) above together comply with all the requirements of section 12 below (other than the requirement as to the time of signature of the second recommendation).

(5) In relation to an emergency application, section 11 below shall have effect as if in subsection (5) of that section for the words “the period of 14 days ending with the date of the application” there were substituted the words “the previous 24 hours”.

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5 Application in respect of patient already in hospital.

(1) An application for the admission of a patient to a hospital may be made under this Part of this Act notwithstanding that the patient is already an in-patient in that hospital or, in the case of an application for admission for treatment that the patient is for the time being liable to be detained in the hospital in pursuance of an application for admission for assessment; and where an application is so made the patient shall be treated for the purposes of this Part of this Act as if he had been admitted to the hospital at the time when that application was received by the managers.

(2) If, in the case of a patient who is an in-patient in a hospital, it appears to the registered medical practitioner in charge of the treatment of the patient that an application ought to be made under this Part of this Act for the admission of the patient to hospital, he may furnish to the managers a report in writing to that effect; and in any such case the patient may be detained in the hospital for a period of 72 hours from the time when the report is so furnished.

(3) The registered medical practitioner in charge of the treatment of a patient in a hospital may nominate one (but not more than one) other registered medical practitioner on the staff of that hospital to act for him under subsection (2) above 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, 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) above,

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) above 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) above shall begin at the time when it is made.

(6) The reference in subsection (1) above to an in-patient does not include an in-patient who is liable to be detained in pursuance of an application under this Part of this Act and the references in subsections (2) and (4) above do not include an in-patient who is liable to be detained in a hospital under this Part of this Act.

(7) In subsection (4) above "prescribed" means prescribed by an order made by the Secretary of State.

6 Effect of application for admission.

(1) An application for the admission of a patient to a hospital under this Part of this Act, duly completed in accordance with the provisions of this Part of this Act, shall be sufficient authority for the applicant, or any person authorised by the applicant, to take the patient and convey him to the hospital at any time within the following period, that is to say—

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(a) in the case of an application other than an emergency application, the period of 14 days beginning with the date on which the patient was last examined by a registered medical practitioner before giving a medical recommendation for the purposes of the application;

(b) in the case of an emergency application, the period of 24 hours beginning at the time when the patient was examined by the practitioner giving the medical recommendation which is referred to in section 4(3) above, or at the time when the application is made, whichever is the earlier.

(2) Where a patient is admitted within the said period to the hospital specified in such an application as is mentioned in subsection (1) above, or, being within that hospital, is treated by virtue of section 5 above as if he had been so admitted, the application shall be sufficient authority for the managers to detain the patient in the hospital in accordance with the provisions of this Act.

(3) Any application for the admission of a patient under this Part of this Act which appears to be duly made and to be founded on the necessary medical recommendations may be acted upon without further proof of the signature or qualification of the person by whom the application or any such medical recommendation is made or given or of any matter of fact or opinion stated in it.

(4) Where a patient is admitted to a hospital in pursuance of an application for admission for treatment, any previous application under this part of this Act by virtue of which he was liable to be detained in a hospital or subject to guardianship shall cease to have effect.

Guardianship

7 Application for guardianship.

(1) A patient who has attained the age of 16 years may be received into guardianship, for the period allowed by the following provisions of this Act, in pursuance of an application (in this Act referred to as "a guardianship application") made in accordance with this section.

(2) A guardianship application may be made in respect of a patient on the grounds that—

(a) he is suffering from mental disorder, being mental illness, severe mental impairment, psychopathic disorder or mental impairment and his mental disorder is of a nature or degree which warrants his reception into guardianship under this section; and

(b) it is necessary in the interests of the welfare of the patient or for the protection of other persons that the patient should be so received.

(3) A guardianship application shall be founded on the written recommendations in the prescribed form of two registered medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in subsection (2) above 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 paragraph (a) of that subsection; and

(b) a statement of the reasons for that opinion so far as it relates to the conditions set out in paragraph (b) of that subsection.

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(4) 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 16 years.

(5) The person named as guardian in a guardianship application may be either a local social services authority or any other person (including the applicant himself); but a guardianship application in which a person other than a local social services authority is named as guardian shall be of no effect unless it is accepted on behalf of that person by the local social services authority for the area in which he resides, and shall be accompanied by a statement in writing by that person that he is willing to act as guardian.

8 Effect of guardianship application, etc.

(1) Where a guardianship application, duly made under the provisions of this Part of this Act and forwarded to the local social services authority within the period allowed by subsection (2) below is accepted by that authority, the application shall, subject to regulations made by the Secretary of State, confer on the authority or person named in the application as guardian, to the exclusion of any other person—

(a) the power to require the patient to reside at a place specified by the authority or person named as guardian;

(b) the power to require the patient to attend at places and times so specified for the purpose of medical treatment, occupation, education or training;

(c) the power to require access to the patient to be given, at any place where the patient is residing, to any registered medical practitioner, approved social worker or other person so specified.

(2) The period within which a guardianship application is required for the purposes of this section to be forwarded to the local social services authority is the period of 14 days beginning with the date on which the patient was last examined by a registered medical practitioner before giving a medical recommendation for the purposes of the application.

(3) A guardianship application which appears to be duly made and to be founded on the necessary medical recommendations may be acted upon without further proof of the signature or qualification of the person by whom the application or any such medical recommendation is made or given, or of any matter of fact or opinion stated in the application.

(4) If within the period of 14 days beginning with the day on which a guardianship application has been accepted by the local social services authority the application, or any medical recommendation given for the purposes of the application, is found to be in any respect incorrect or defective, the application or recommendation may, within that period and with the consent of that authority, be amended by the person by whom it was signed; and upon such amendment being made the application or recommendation shall have effect and shall be deemed to have had effect as if it had been originally made as so amended.

(5) Where a patient is received into guardianship in pursuance of a guardianship application, any previous application under this Part of this Act by virtue of which he was subject to guardianship or liable to be detained in a hospital shall cease to have effect.

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9 Regulations as to guardianship.

(1) Subject to the provisions of this Part of this Act, the Secretary of State may make regulations—

(a) for regulating the exercise by the guardians of patients received into guardianship under this Part of this Act of their powers as such; and

(b) for imposing on such guardians, and upon local social services authorities in the case of patients under the guardianship of persons other than local social services authorities, such duties as he considers necessary or expedient in the interests of the patients.

(2) Regulations under this section may in particular make provision for requiring the patients to be visited, on such occasions or at such intervals as may be prescribed by the regulations, on behalf of such local social services authorities as may be so prescribed, and shall provide for the appointment, in the case of every patient subject to the guardianship of a person other than a local social services authority, of a registered medical practitioner to act as the nominated medical attendant of the patient.

10 Transfer of guardianship in case of death, incapacity, etc., of guardian.

(1) If any person (other than a local social services authority) who is the guardian of a patient received into guardianship under this Part of this Act—

(a) dies; or

(b) gives notice in writing to the local social services authority that he desires to relinquish the functions of guardian,

the guardianship of the patient shall thereupon vest in the local social services authority, but without prejudice to any power to transfer the patient into the guardianship of another person in pursuance of regulations under section 19 below.

(2) If any such person, not having given notice under subsection (1)(b) above, is incapacitated by illness or any other cause from performing the functions of guardian of the patient, those functions may, during his incapacity, be performed on his behalf by the local social services authority or by any other person approved for the purposes by that authority.

(3) If it appears to the county court, upon application made by an approved social worker, that any person other than a local social services authority having the guardianship of a patient received into guardianship under this Part of this Act has performed his functions negligently or in a manner contrary to the interests of the welfare of the patient, the court may order that the guardianship of the patient be transferred to the local social services authority or to any other person approved for the purpose by that authority.

(4) Where the guardianship of a patient is transferred to a local social services authority or other person by or under this section, subsection (2)(c) of section 19 below shall apply as if the patient had been transferred into the guardianship of that authority or person in pursuance of regulations under that section.

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General provisions as to applications and recommendations

11 General provisions as to applications.

(1) Subject to the provisions of this section, an application for admission for assessment, an application for admission for treatment and a guardianship application may be made either by the nearest relative of the patient or by an approved social worker; and every such application shall specify the qualification of the applicant to make the application.

(2) Every application for admission shall be addressed to the managers of the hospital to which admission is sought and every guardianship application shall be forwarded to the local social services authority named in the application as guardian, or, as the case may be, to the local social services authority for the area in which the person so named resides.

(3) Before or within a reasonable time after an application for the admission of a patient for assessment is made by an approved social worker, that social worker 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 23(2)(a) below.

(4) Neither an application for admission for treatment nor a guardianship application shall be made by an approved social worker if the nearest relative of the patient has notified that social worker, or the local social services authority by whom that social worker is appointed, that he objects to the application being made and, without prejudice to the foregoing provision, no such application shall be made by such a social worker except after consultation with the person (if any) appearing to be the nearest relative of the patient unless it appears to that social worker that in the circumstances such consultation is not reasonably practicable or would involve unreasonable delay.

(5) None of the applications mentioned in subsection (1) above shall be made by any person in respect of a patient unless that person has personally seen the patient within the period of 14 days ending with the date of the application.

(6) An application for admission for treatment or a guardianship application, and any recommendation given for the purposes of such an application, may describe the patient as suffering from more than one of the following forms of mental disorder, namely mental illness, severe mental impairment, psychopathic disorder or mental impairment; but the application shall be of no effect unless the patient is described in each of the recommendations as suffering from the same form of mental disorder, whether or not he is also described in either of those recommendations as suffering from another form.

(7) Each of the applications mentioned in subsection (1) above shall be sufficient if the recommendations on which it is founded are given either as separate recommendations, each signed by a registered medical practitioner, or as a joint recommendation signed by two such practitioners.

12 General provisions as to medical recommendations.

(1) The recommendations required for the purposes of an application for the admission of a patient under this Part of this Act (in this Act referred to as “medical recommendations”) shall be signed on or before the date of the application, and shall be given by practitioners who have personally examined the patient either together or

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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.

(2) Of the medical recommendations given for the purposes of any such application, one shall be given by a practitioner approved for the purposes of this section by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder; and unless that practitioner has previous acquaintance with the patient, the other such recommendation shall, if practicable, be given by a registered medical practitioner who has such previous acquaintance.

(3) Subject to subsection (4) below, where the application is for the admission of the patient to a hospital which is not a **[**[F1]registered establishment**]**, one (but not more than one) of the medical recommendations may be given by a practitioner on the staff of that hospital, except where the patient is proposed to be accommodated under **[**[F2]section 21(4) or 44(6) of the National Health Service Act 2006, paragraph 15 of Schedule 2 to, or paragraph 11 of Schedule 6 to, that Act, or paragraph 15 of Schedule 2 to, or paragraph 11 of Schedule 5 to, the National Health Service (Wales) Act 2006**]**(which relate to accommodation for private patients) **[**[F3]or otherwise to be accommodated, by virtue of an undertaking to pay in respect of the accommodation, in a hospital vested in an NHS foundation trust**]** .

(4) Subsection (3) above 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.

(5) A medical recommendation for the purposes of an application for the admission of a patient under this Part of this Act shall not be given by—
   (a) the applicant;
   (b) a partner of the applicant or of a practitioner by whom another medical recommendation is given for the purposes of the same application;
   (c) a person employed as an assistant by the applicant or by any such practitioner;
   (d) a person who receives or has an interest in the receipt of any payments made on account of the maintenance of the patient; or
   (e) except as provided by subsection (3) or (4) above, a practitioner on the staff of the hospital to which the patient is to be admitted,

   or by the husband, wife **[**[F4], civil partner**]** , father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister or sister-in-law of the patient, or of any person mentioned in paragraphs (a) to (e) above, or of a practitioner by whom another medical recommendation is given for the purposes of the same application.

(6) 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.

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(7) Subsections (1), (2) and (5) above shall apply to applications for guardianship as they apply to applications for admission but with the substitution for paragraph (e) of subsection (5) above of the following paragraph—

"(e) the person named as guardian in the application.".

Textual Amendments

F1 Words in s. 12(3) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(2)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **art. 3(3)(d)** (subject to transitional provisions in Schs. 1-3 and with art. 3(4)-(10))

F2 Words in s. 12(3) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 63** (with Sch. 3 Pt. 1)

F3 Words in s. 12(3) inserted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 34, 199, **Sch. 4 para. 51**; S.I. 2004/759, **art. 2**

F4 Words in s. 12(5) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 26(1), 263, **Sch. 27 para. 86(a)**; S.I. 2005/3175, **art. 2(2)**

Modifications etc. (not altering text)

C3 S. 12(2): certain functions not to be exercisable by a Primary Care Trust (E.) (1.4.2002) by virtue of 2000/695, reg. 4(1), Sch. 4 (as amended by S.I. 2002/555, **reg. 6(3)**)

C4 S. 12(2): transfer of functions (E.) (1.4.2001) by S.I. 2001/747, regs. 2(1), 3, 4, **Sch. 1**

VALID FROM 01/04/2008

[F5 12A Conflicts of interest

(1) The appropriate national authority may make regulations as to the circumstances in which there would be a potential conflict of interest such that—

(a) an approved mental health professional shall not make an application mentioned in section 11(1) above;

(b) a registered medical practitioner shall not give a recommendation for the purposes of an application mentioned in section 12(1) above.

(2) Regulations under subsection (1) above may make—

(a) provision for the prohibitions in paragraphs (a) and (b) of that subsection to be subject to specified exceptions;

(b) different provision for different cases; and

(c) transitional, consequential, incidental or supplemental provision.

(3) In subsection (1) above, "the appropriate national authority" means—

(a) in relation to applications in which admission is sought to a hospital in England or to guardianship applications in respect of which the area of the relevant local social services authority is in England, the Secretary of State;

(b) in relation to applications in which admission is sought to a hospital in Wales or to guardianship applications in respect of which the area of the relevant local social services authority is in Wales, the Welsh Ministers.

(4) References in this section to the relevant local social services authority, in relation to a guardianship application, are references to the local social services authority

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named in the application as guardian or (as the case may be) the local social services authority for the area in which the person so named resides.**]**

Textual Amendments

F5 S. 12A inserted (1.4.2008) by Mental Health Act 2007 (c. 12), **ss. 22(5)**, 56 (with Sch. 10); S.I. 2008/745, **art. 3(c)**

13 Duty of approved social workers to make applications for admission or guardianship.

(1) It shall be the duty of an approved social worker to make an application for admission to hospital or a guardianship application in respect of a patient within the area of the local social services authority by which that officer is appointed in any case where he is satisfied that such an application ought to be made and is of the opinion, having regard to any wishes expressed by relatives of the patient or any other relevant circumstances, that it is necessary or proper for the application to be made by him.

(2) Before making an application for the admission of a patient to hospital an approved social worker 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.

(3) An application under this section by an approved social worker may be made outside the area of the local social services authority by which he is appointed.

(4) 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 an approved social worker as soon as practicable to take the patient's case into consideration under subsection (1) above with a view to making an application for his admission to hospital; and if in any such case that approved social worker decides not to make an application he shall inform the nearest relative of his reasons in writing.

(5) Nothing in this section shall be construed as authorising or requiring an application to be made by an approved social worker in contravention of the provisions of section 11(4) above, or as restricting the power of an approved social worker to make any application under this Act.

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Where a patient is admitted to a hospital in pursuance of an application (other than an emergency application) made under this Part of this Act by his nearest relative, the managers of the hospital shall as soon as practicable give notice of that 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 [F6]. . . to interview the patient and provide the managers with a report on his social circumstances.

Textual Amendments

F6 Words in s. 14 repealed (1.4.2005 for E. and 1.4.2006 for W.) by Children Act 2004 (c. 31), ss. 64, 67, **Sch. 5 Pt. 4**; S.I. 2005/394, **art. 2(2)(g)**; S.I. 2006/885, **art. 2(2)(h)**

Status: *Point in time view as at 01/03/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Mental Health Act 1983 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

15 Rectification of applications and recommendations.

(1) If within the period of 14 days beginning with the day on which a patient has been admitted to a hospital in pursuance of an application for admission for assessment or for treatment the application, or any medical recommendation given for the purposes of the application, is found to be in any respect incorrect or defective, the application or recommendation may, within that period and with the consent of the managers of the hospital, be amended by the person by whom it was signed; and upon such amendment being made the application or recommendation shall have effect and shall be deemed to have had effect as if it had been originally made as so amended.

(2) Without prejudice to subsection (1) above, if within the period mentioned in that subsection it appears to the managers of the hospital that one of the two medical recommendations on which an application for the admission of a patient is founded is insufficient to warrant the detention of the patient in pursuance of the application, they may, within that period, give notice in writing to that effect to the applicant; and where any such notice is given in respect of a medical recommendation, that recommendation shall be disregarded, but the application shall be, and shall be deemed always to have been, sufficient if—

(a) a fresh medical recommendation complying with the relevant provisions of this Part of this Act (other than the provisions relating to the time of signature and the interval between examinations) is furnished to the managers within that period; and

(b) that recommendation, and the other recommendation on which the application is founded, together comply with those provisions.

(3) Where the medical recommendations upon which an application for admission is founded are, taken together, insufficient to warrant the detention of the patient in pursuance of the application, a notice under subsection (2) above may be given in respect of either of those recommendations; but this subsection shall not apply in a case where the application is of no effect by virtue of section 11(6) above.

(4) Nothing in this section shall be construed as authorising the giving of notice in respect of an application made as an emergency application, or the detention of a patient admitted in pursuance of such an application, after the period of 72 hours referred to in section 4(4) above, unless the conditions set out in paragraphs (a) and (b) of that section are complied with or would be complied with apart from any error or defect to which this section applies.

Position of patients subject to detention or guardianship

16 Reclassification of patients.

(1) If in the case of a patient who is for the time being detained in a hospital in pursuance of an application for admission for treatment, or subject to guardianship in pursuance of a guardianship application, it appears to the appropriate medical officer that the patient is suffering from a form of mental disorder other than the form or forms specified in the application, he may furnish to the managers of the hospital, or to the guardian, as the case may be, a report to that effect; and where a report is so furnished, the application shall have effect as if that other form of mental disorder were specified in it.

(2) Where a report under subsection (1) above in respect of a patient detained in a hospital is to the effect that he is suffering from psychopathic disorder or mental impairment but

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not from mental illness or severe mental impairment the appropriate 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.

(3) Before furnishing a report under subsection (1) above the appropriate medical officer shall consult one or more other persons who have been professionally concerned with the patient's medical treatment.

(4) Where a report is furnished under this section in respect of a patient, the managers or guardian shall cause the patient and the nearest relative to be informed.

(5) In this section "appropriate medical officer" means—
   (a) in the case of a patient who is subject to the guardianship of a person other than a local social services authority, the nominated medical attendant of the patient; and
   (b) in any other case, the responsible medical officer.

17 Leave of absence from hospital.

(1) The responsible medical officer may grant to any patient who is for the time being liable to be detained in a hospital under this Part of this Act leave to be absent from the hospital subject to such conditions (if any) as that officer considers necessary in the interests of the patient or for the protection of other persons.

(2) Leave of absence may be granted to a patient under this section either indefinitely or on specified occasions or for any specified period; and where leave is so granted for a specified period, that period may be extended by further leave granted in the absence of the patient.

(3) Where it appears to the responsible medical officer that it is necessary so to do in the interests of the patient or for the protection of other persons, he may, upon granting leave of absence under this section, direct that the patient remain in custody during his absence; and where leave of absence is so granted the patient may be kept in the custody of any officer on the staff of the hospital, or of any other person authorised in writing by the managers of the hospital 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.

(4) In any case where a patient is absent from a hospital in pursuance of leave of absence granted under this section, and it appears to the responsible medical officer that it is necessary so to do in the interests of the patient's health or safety or for the protection of other persons, that officer may, subject to subsection (5) below, by notice in writing given to the patient or to the person for the time being in charge of the patient, revoke the leave of absence and recall the patient to the hospital.

(5) A patient to whom leave of absence is granted under this section shall not be recalled under subsection (4) above after he has ceased to be liable to be detained under this Part of this Act;[F7]. . .

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Textual Amendments

F7 Words in s. 17(5) omitted (1.4.1996 with application as mentioned in s. 3(3) of the omitting Act)) by virtue of 1995 c. 52, **ss. 3(1)(3)**, 7(2)

VALID FROM 03/11/2008

[F8 17A Community treatment orders

(1) The responsible clinician may by order in writing discharge a detained patient from hospital subject to his being liable to recall in accordance with section 17E below.

(2) A detained patient is a patient who is liable to be detained in a hospital in pursuance of an application for admission for treatment.

(3) An order under subsection (1) above is referred to in this Act as a "community treatment order".

(4) The responsible clinician may not make a community treatment order unless—
- (a) in his opinion, the relevant criteria are met; and
- (b) an approved mental health professional states in writing—
  - (i) that he agrees with that opinion; and
  - (ii) that it is appropriate to make the order.

(5) The relevant criteria are—
- (a) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment;
- (b) it is necessary for his health or safety or for the protection of other persons that he should receive such treatment;
- (c) subject to his being liable to be recalled as mentioned in paragraph (d) below, such treatment can be provided without his continuing to be detained in a hospital;
- (d) it is necessary that the responsible clinician should be able to exercise the power under section 17E(1) below to recall the patient to hospital; and
- (e) appropriate medical treatment is available for him.

(6) In determining whether the criterion in subsection (5)(d) above is met, the responsible clinician shall, in particular, consider, having regard to the patient's history of mental disorder and any other relevant factors, what risk there would be of a deterioration of the patient's condition if he were not detained in a hospital (as a result, for example, of his refusing or neglecting to receive the medical treatment he requires for his mental disorder).

(7) In this Act—

"community patient" means a patient in respect of whom a community treatment order is in force;

"the community treatment order", in relation to such a patient, means the community treatment order in force in respect of him; and

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"the responsible hospital", in relation to such a patient, means the hospital in which he was liable to be detained immediately before the community treatment order was made, subject to section 19A below.

Textual Amendments

F8 Ss. 17A-17G inserted (1.4.2008 s. 17F for certain purposes, otherwise 3.11.2008) by Mental Health Act 2007 (c. 12), **ss. 32(2)**, 56 (with Sch. 10); S.I. 2008/745, **art. 2(c)(i)**; S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)

Modifications etc. (not altering text)

C5 S. 17A modified (3.11.2008) by The Mental Health Act 2007 (Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions) Order 2008 (S.I. 2008/1210), **art. 6(b)**

C6 S. 17A(7) modified (3.11.2008) by The Mental Health Act 2007 (Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions) Order 2008 (S.I. 2008/1210), **art. 11(a)**

VALID FROM 03/11/2008

17B Conditions

(1) A community treatment order shall specify conditions to which the patient is to be subject while the order remains in force.

(2) But, subject to subsection (3) below, the order may specify conditions only if the responsible clinician, with the agreement of the approved mental health professional mentioned in section 17A(4)(b) above, thinks them necessary or appropriate for one or more of the following purposes—

(a) ensuring that the patient receives medical treatment;

(b) preventing risk of harm to the patient's health or safety;

(c) protecting other persons.

(3) The order shall specify—

(a) a condition that the patient make himself available for examination under section 20A below; and

(b) a condition that, if it is proposed to give a certificate under Part 4A of this Act in his case, he make himself available for examination so as to enable the certificate to be given.

(4) The responsible clinician may from time to time by order in writing vary the conditions specified in a community treatment order.

(5) He may also suspend any conditions specified in a community treatment order.

(6) If a community patient fails to comply with a condition specified in the community treatment order by virtue of subsection (2) above, that fact may be taken into account for the purposes of exercising the power of recall under section 17E(1) below.

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(7) But nothing in this section restricts the exercise of that power to cases where there is such a failure.

Textual Amendments

F8 Ss. 17A-17G inserted (1.4.2008 s. 17F for certain purposes, otherwise 3.11.2008) by Mental Health Act 2007 (c. 12), **ss. 32(2)**, 56 (with Sch. 10); S.I. 2008/745, **art. 2(c)(i)**; S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)

Modifications etc. (not altering text)

C7 S. 17B(2) modified (3.11.2008) by The Mental Health Act 2007 (Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions) Order 2008 (S.I. 2008/1210), **art. 6(c)**

VALID FROM 03/11/2008

17C Duration of community treatment order

A community treatment order shall remain in force until—

(a) the period mentioned in section 20A(1) below (as extended under any provision of this Act) expires, but this is subject to sections 21 and 22 below;

(b) the patient is discharged in pursuance of an order under section 23 below or a direction under section 72 below;

(c) the application for admission for treatment in respect of the patient otherwise ceases to have effect; or

(d) the order is revoked under section 17F below,

whichever occurs first.

Textual Amendments

F8 Ss. 17A-17G inserted (1.4.2008 s. 17F for certain purposes, otherwise 3.11.2008) by Mental Health Act 2007 (c. 12), **ss. 32(2)**, 56 (with Sch. 10); S.I. 2008/745, **art. 2(c)(i)**; S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)

Modifications etc. (not altering text)

C8 S. 17C modified (3.11.2008) by The Mental Health Act 2007 (Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions) Order 2008 (S.I. 2008/1210), **art. 11(b)**

VALID FROM 03/11/2008

17D Effect of community treatment order

(1) The application for admission for treatment in respect of a patient shall not cease to have effect by virtue of his becoming a community patient.

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(2) But while he remains a community patient—

(a) the authority of the managers to detain him under section 6(2) above in pursuance of that application shall be suspended; and

(b) reference (however expressed) in this or any other Act, or in any subordinate legislation (within the meaning of the Interpretation Act 1978), to patients liable to be detained, or detained, under this Act shall not include him.

(3) And section 20 below shall not apply to him while he remains a community patient.

(4) Accordingly, authority for his detention shall not expire during any period in which that authority is suspended by virtue of subsection (2)(a) above.

Textual Amendments

F8 Ss. 17A-17G inserted (1.4.2008 s. 17F for certain purposes, otherwise 3.11.2008) by Mental Health Act 2007 (c. 12), **ss. 32(2)**, 56 (with Sch. 10); S.I. 2008/745, **art. 2(c)(i)**; S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)

Modifications etc. (not altering text)

C9 S. 17D modified (3.11.2008) by The Mental Health Act 2007 (Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions) Order 2008 (S.I. 2008/1210), **art. 11(c)**

VALID FROM 03/11/2008

17E Power to recall to hospital

(1) The responsible clinician may recall a community patient to hospital if in his opinion—

(a) the patient requires medical treatment in hospital for his mental disorder; and

(b) there would be a risk of harm to the health or safety of the patient or to other persons if the patient were not recalled to hospital for that purpose.

(2) The responsible clinician may also recall a community patient to hospital if the patient fails to comply with a condition specified under section 17B(3) above.

(3) The hospital to which a patient is recalled need not be the responsible hospital.

(4) Nothing in this section prevents a patient from being recalled to a hospital even though he is already in the hospital at the time when the power of recall is exercised; references to recalling him shall be construed accordingly.

(5) The power of recall under subsections (1) and (2) above shall be exercisable by notice in writing to the patient.

(6) A notice under this section recalling a patient to hospital shall be sufficient authority for the managers of that hospital to detain the patient there in accordance with the provisions of this Act.

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Textual Amendments

F8 Ss. 17A-17G inserted (1.4.2008 s. 17F for certain purposes, otherwise 3.11.2008) by Mental Health Act 2007 (c. 12), **ss. 32(2)**, 56 (with Sch. 10); S.I. 2008/745, **art. 2(c)(i)**; S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)

VALID FROM 01/04/2008

17F Powers in respect of recalled patients

(1) This section applies to a community patient who is detained in a hospital by virtue of a notice recalling him there under section 17E above.

(2) The patient may be transferred to another hospital in such circumstances and subject to such conditions as may be prescribed in regulations made by the Secretary of State (if the hospital in which the patient is detained is in England) or the Welsh Ministers (if that hospital is in Wales).

(3) If he is so transferred to another hospital, he shall be treated for the purposes of this section (and section 17E above) as if the notice under that section were a notice recalling him to that other hospital and as if he had been detained there from the time when his detention in hospital by virtue of the notice first began.

(4) The responsible clinician may by order in writing revoke the community treatment order if—

(a) in his opinion, the conditions mentioned in section 3(2) above are satisfied in respect of the patient; and

(b) an approved mental health professional states in writing—

(i) that he agrees with that opinion; and

(ii) that it is appropriate to revoke the order.

(5) The responsible clinician may at any time release the patient under this section, but not after the community treatment order has been revoked.

(6) If the patient has not been released, nor the community treatment order revoked, by the end of the period of 72 hours, he shall then be released.

(7) But a patient who is released under this section remains subject to the community treatment order.

(8) In this section—

(a) "the period of 72 hours" means the period of 72 hours beginning with the time when the patient's detention in hospital by virtue of the notice under section 17E above begins; and

(b) references to being released shall be construed as references to being released from that detention (and accordingly from being recalled to hospital).

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Textual Amendments

F8 Ss. 17A-17G inserted (1.4.2008 s. 17F for certain purposes, otherwise 3.11.2008) by Mental Health Act 2007 (c. 12), **ss. 32(2)**, 56 (with Sch. 10); S.I. 2008/745, **art. 2(c)(i)**; S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)

VALID FROM 03/11/2008

17G Effect of revoking community treatment order

(1) This section applies if a community treatment order is revoked under section 17F above in respect of a patient.

(2) Section 6(2) above shall have effect as if the patient had never been discharged from hospital by virtue of the community treatment order.

(3) The provisions of this or any other Act relating to patients liable to be detained (or detained) in pursuance of an application for admission for treatment shall apply to the patient as they did before the community treatment order was made, unless otherwise provided.

(4) If, when the order is revoked, the patient is being detained in a hospital other than the responsible hospital, the provisions of this Part of this Act shall have effect as if—

(a) the application for admission for treatment in respect of him were an application for admission to that other hospital; and

(b) he had been admitted to that other hospital at the time when he was originally admitted in pursuance of the application.

(5) But, in any case, section 20 below shall have effect as if the patient had been admitted to hospital in pursuance of the application for admission for treatment on the day on which the order is revoked.**]**

Textual Amendments

F8 Ss. 17A-17G inserted (1.4.2008 s. 17F for certain purposes, otherwise 3.11.2008) by Mental Health Act 2007 (c. 12), **ss. 32(2)**, 56 (with Sch. 10); S.I. 2008/745, **art. 2(c)(i)**; S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)

Modifications etc. (not altering text)

C10 S. 17G modified (3.11.2008) by The Mental Health Act 2007 (Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions) Order 2008 (S.I. 2008/1210), **art. 11(d)**

18 Return and readmission of patients absent without leave.

(1) Where a patient who is for the time being liable to be detained under this Part of this Act in a hospital—

(a) absents himself from the hospital without leave granted under section 17 above; or

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(b) fails to return to the hospital on any occasion on which, or at the expiration of any period for which, leave of absence was granted to him under that section, or upon being recalled under that section; or

(c) absents himself without permission from any place where he is required to reside in accordance with conditions imposed on the grant of leave of absence under that section,

he may, subject to the provisions of this section, be taken into custody and returned to the hospital or place by any approved social worker, by any officer on the staff of the hospital, by any constable, or by any person authorised in writing by the managers of the hospital.

(2) Where the place referred to in paragraph (c) of subsection (1) above 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.

(3) Where a patient who is for the time being subject to guardianship under this Part of this Act absents himself without the leave of the guardian from the place at which he is required by the guardian to reside, he may, subject to the provisions of this section, be taken into custody and returned to that place by any officer on the staff of a local social services authority, by any constable, or by any person authorised in writing by the guardian or a local social services authority.

[[F9](4) A patient shall not be taken into custody under this section after the later of—

(a) the end of the period of six months beginning with the first day of his absence without leave; and

(b) the end of the period for which (apart from section 21 below) he is liable to be detained or subject to guardianship ;

and, in determining for the purposes of paragraph (b) above or any other provision of this Act whether a person who is or has been absent without leave is at any time liable to be detained or subject to guardianship, a report furnished under section 20 or 21B below before the first day of his absence without leave shall not be taken to have renewed the authority for his detention or guardianship unless the period of renewal began before that day.**]**

(5) 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 2(4), 4(4) or 5(2) or (4) above and that period has expired.

(6) In this Act "absent without leave" means absent from any hospital or other place and liable to be taken into custody and returned under this section, and related expressions shall be construed accordingly.

Extent Information

E1 For extent of s. 18 see 146, 147

Textual Amendments

F9 S. 18(4) substituted (1.4.1996) by 1995 c. 52, **ss. 2(1)**, 7(2)

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19 Regulations as to transfer of patients.

(1) In such circumstances and subject to such conditions as may be prescribed by regulations made by the Secretary of State—

(a) a patient who is for the time being liable to be detained in a hospital by virtue of an application under this Part of this Act may be transferred to another hospital or into the guardianship of a local social services authority or of any person approved by such an authority;

(b) a patient who is for the time being subject to the guardianship of a local social services authority or other person by virtue of an application under this Part of this Act may be transferred into the guardianship of another local social services authority or person, or be transferred to a hospital.

(2) Where a patient is transferred in pursuance of regulations under this section, the provisions of this Part of this Act (including this subsection) shall apply to him as follows, that is to say—

(a) in the case of a patient who is liable to be detained in a hospital by virtue of an application for admission for assessment or for treatment and is transferred to another hospital, as if the application were an application for admission to that other hospital and as if the patient had been admitted to that other hospital at the time when he was originally admitted in pursuance of the application;

(b) in the case of a patient who is liable to be detained in a hospital by virtue of such an application and is transferred into guardianship, as if the application were a guardianship application duly accepted at the said time;

(c) in the case of a patient who is subject to guardianship by virtue of a guardianship application and is transferred into the guardianship of another authority or person, as if the application were for his reception into the guardianship of that authority or person and had been accepted at the time when it was originally accepted;

(d) in the case of a patient who is subject to guardianship by virtue of a guardianship application and is transferred to a hospital, as if the guardianship application were an application for admission to that hospital for treatment and as if the patient had been admitted to the hospital at the time when the application was originally accepted.

(3) Without prejudice to subsections (1) and (2) above, any patient, who is for the time being liable to be detained under this Part of this Act in a hospital vested in the Secretary of State for the purposes of his functions under the **[**[F10]National Health Service Act 2006, in a hospital vested in the Welsh Ministers for the purposes of their functions under the National Health Service (Wales) Act 2006, in any accommodation used under either of those Acts**]** by the managers of such a hospital **[**[F11]or in a hospital vested in a National Health Service trust **][**[F12], NHS foundation trust**][**[F13]or Primary Care Trust**]**, may at any time be removed to any other such hospital or accommodation **[**[F14]which is managed by the managers of, or is vested in the National Health Service trust **[**[F12], NHS foundation trust**][**[F13]or Primary Care Trust**]** for, the first-mentioned hospital**]**; and paragraph (a) of subsection (2) above shall apply in relation to a patient so removed as it applies in relation to a patient transferred in pursuance of regulations made under this section.

(4) Regulations made under this section may make provision for regulating the conveyance to their destination of patients authorised to be transferred or removed in pursuance of the regulations or under subsection (3) above.

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Textual Amendments

F10 Words in s. 19(3) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 64** (with Sch. 3 Pt. 1)

F11 Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 24(2)**

F12 Words in s.19(3) inserted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 34, 199, **Sch. 4 para. 52**; S.I. 2004/759, **art. 2**

F13 Words in s. 19(3) inserted (8.2.2000) by S.I. 2000/90, art. 3(1), **Sch. 1 para. 16(3)** (with art. 2(5))

F14 Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 24(2)**

VALID FROM 01/04/2008

[F15 19A Regulations as to assignment of responsibility for community patients

(1) Responsibility for a community patient may be assigned to another hospital in such circumstances and subject to such conditions as may be prescribed by regulations made by the Secretary of State (if the responsible hospital is in England) or the Welsh Ministers (if that hospital is in Wales).

(2) If responsibility for a community patient is assigned to another hospital—

(a) the application for admission for treatment in respect of the patient shall have effect (subject to section 17D above) as if it had always specified that other hospital;

(b) the patient shall be treated as if he had been admitted to that other hospital at the time when he was originally admitted in pursuance of the application (and as if he had subsequently been discharged under section 17A above from there); and

(c) that other hospital shall become "the responsible hospital" in relation to the patient for the purposes of this Act.**]**

Textual Amendments

F15 S. 19A inserted (1.4.2008 for certain purposes, otherwise 3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 4** (with Sch. 10); S.I. 2008/745, **art. 2(c)(ii)**; S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)

Duration of detention or guardianship and discharge

20 Duration of authority.

(1) Subject to the following provisions of this Part of this Act, a patient admitted to hospital in pursuance of an application for admission for treatment, and a patient placed under guardianship in pursuance of a guardianship application, may be detained in a hospital or kept under guardianship for a period not exceeding six months beginning with the day on which he was so admitted, or the day on which the guardianship application was accepted, as the case may be, but shall not be so detained

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or kept for any longer period unless the authority for his detention or guardianship is renewed under this section.

(2) Authority for the detention or guardianship of a patient may, unless the patient has previously been discharged, be renewed—
   (a) from the expiration of the period referred to in subsection (1) above, for a further period of six months;
   (b) from the expiration of any period of renewal under paragraph (a) above, for a further period of one year,

   and so on for periods of one year at a time.

(3) Within the period of two months ending on the day on which a patient who is liable to be detained in pursuance of an application for admission for treatment would cease under this section to be so liable in default of the renewal of the authority for his detention, it shall be the duty of the responsible medical officer—
   (a) to examine the patient; and
   (b) if it appears to him that the conditions set out in subsection (4) below are satisfied, to furnish to the managers of the hospital where the patient is detained a report to that effect in the prescribed form;

   and where such a report is furnished in respect of a patient the managers shall, unless they discharge the patient, cause him to be informed.

(4) The conditions referred to in subsection (3) above are that—
   (a) the patient is suffering from mental illness, severe mental impairment, psychopathic disorder or mental impairment, and his mental disorder is of a nature or degree which makes it appropriate for him to receive medical treatment in a hospital; and
   (b) such treatment is likely to alleviate or prevent a deterioration of his condition; and
   (c) 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) above 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.

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

(6) Within the period of two months ending with the day on which a patient who is subject to guardianship under this Part of this Act would cease under this section to be so liable in default of the renewal of the authority for his guardianship, it shall be the duty of the appropriate medical officer—
   (a) to examine the patient; and
   (b) if it appears to him that the conditions set out in subsection (7) below are satisfied, to furnish to the guardian and, where the guardian is a person other than a local social services authority, to the responsible local social services authority a report to that effect in the prescribed form;

   and where such a report is furnished in respect of a patient, the local social services authority shall, unless they discharge the patient, cause him to be informed.

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(7) The conditions referred to in subsection (6) above are that—

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

(b) 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.

(8) Where a report is duly furnished under subsection (3) or (6) above, the authority for the detention or guardianship of the patient shall be thereby renewed for the period prescribed in that case by subsection (2) above.

(9) Where the form of mental disorder specified in a report furnished under subsection (3) or (6) above 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 the appropriate medical officer need not on that occasion furnish a report under section 16 above.

(10) In this section "appropriate medical officer" has the same meaning as in section 16(5) above.

VALID FROM 03/11/2008

[F16 20A Community treatment period

(1) Subject to the provisions of this Part of this Act, a community treatment order shall cease to be in force on expiry of the period of six months beginning with the day on which it was made.

(2) That period is referred to in this Act as "the community treatment period".

(3) The community treatment period may, unless the order has previously ceased to be in force, be extended—

(a) from its expiration for a period of six months;

(b) from the expiration of any period of extension under paragraph (a) above for a further period of one year,

and so on for periods of one year at a time.

(4) Within the period of two months ending on the day on which the order would cease to be in force in default of an extension under this section, it shall be the duty of the responsible clinician—

(a) to examine the patient; and

(b) if it appears to him that the conditions set out in subsection (6) below are satisfied and if a statement under subsection (8) below is made, to furnish to the managers of the responsible hospital a report to that effect in the prescribed form.

(5) Where such a report is furnished in respect of the patient, the managers shall, unless they discharge him under section 23 below, cause him to be informed.

(6) The conditions referred to in subsection (4) above are that—

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(a) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment;

(b) it is necessary for his health or safety or for the protection of other persons that he should receive such treatment;

(c) subject to his continuing to be liable to be recalled as mentioned in paragraph (d) below, such treatment can be provided without his being detained in a hospital;

(d) it is necessary that the responsible clinician should continue to be able to exercise the power under section 17E(1) above to recall the patient to hospital; and

(e) appropriate medical treatment is available for him.

(7) In determining whether the criterion in subsection (6)(d) above is met, the responsible clinician shall, in particular, consider, having regard to the patient's history of mental disorder and any other relevant factors, what risk there would be of a deterioration of the patient's condition if he were to continue not to be detained in a hospital (as a result, for example, of his refusing or neglecting to receive the medical treatment he requires for his mental disorder).

(8) The statement referred to in subsection (4) above is a statement in writing by an approved mental health professional—

(a) that it appears to him that the conditions set out in subsection (6) above are satisfied; and

(b) that it is appropriate to extend the community treatment period.

(9) Before furnishing a report under subsection (4) above the responsible clinician shall consult one or more other persons who have been professionally concerned with the patient's medical treatment.

(10) Where a report is duly furnished under subsection (4) above, the community treatment period shall be thereby extended for the period prescribed in that case by subsection (3) above.

Textual Amendments

F16 Ss. 20A, 20B inserted (3.11.2008) by Mental Health Act 2007 (c. 12), **ss. 32(3)**, 56 (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)

VALID FROM 03/11/2008

20B Effect of expiry of community treatment order

(1) A community patient shall be deemed to be discharged absolutely from liability to recall under this Part of this Act, and the application for admission for treatment cease to have effect, on expiry of the community treatment order, if the order has not previously ceased to be in force.

(2) For the purposes of subsection (1) above, a community treatment order expires on expiry of the community treatment period as extended under this Part of this Act, but this is subject to sections 21 and 22 below.**]**

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Textual Amendments

F16 Ss. 20A, 20B inserted (3.11.2008) by Mental Health Act 2007 (c. 12), **ss. 32(3)**, 56 (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)

Modifications etc. (not altering text)

C11 S. 20B(1) modified (3.11.2008) by The Mental Health Act 2007 (Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions) Order 2008 (S.I. 2008/1210), arts. 1(1)(b), **11(e)**

[F17 21 Special provisions as to patients absent without leave.

(1) Where a patient is absent without leave—

(a) on the day on which (apart from this section) he would cease to be liable to be detained or subject to guardianship under this Part of this Act; or

(b) within the period of one week ending with that day,

he shall not cease to be so liable or subject until the relevant time.

(2) For the purposes of subsection (1) above the relevant time—

(a) where the patient is taken into custody under section 18 above, is the end of the period of one week beginning with the day on which he is returned to the hospital or place where he ought to be;

(b) where the patient returns himself to the hospital or place where he ought to be within the period during which he can be taken into custody under section 18 above, is the end of the period of one week beginning with the day on which he so returns himself; and

(c) otherwise, is the end of the period during which he can be taken into custody under section 18 above.**]**

Textual Amendments

F17 Ss. 21, 21A, 21B substituted (1.4.1996) for s. 21 by 1995 c. 52, **ss. 2(2)**, 7(2)

21A Patients who are taken into custody or return within 28 days.

(1) This section applies where a patient who is absent without leave is taken into custody under section 18 above, or returns himself to the hospital or place where he ought to be, not later than the end of the period of 28 days beginning with the first day of his absence without leave.

(2) Where the period for which the patient is liable to be detained or subject to guardianship is extended by section 21 above, any examination and report to be made and furnished in respect of the patient under section 20(3) or (6) above may be made and furnished within the period as so extended.

(3) Where the authority for the detention or guardianship of the patient is renewed by virtue of subsection (2) above after the day on which (apart from section 21 above) that authority would have expired, the renewal shall take effect as from that day.

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21B Patients who are taken into custody or return after more than 28 days.

(1) This section applies where a patient who is absent without leave is taken into custody under section 18 above, or returns himself to the hospital or place where he ought to be, later than the end of the period of 28 days beginning with the first day of his absence without leave.

(2) It shall be the duty of the appropriate medical officer, within the period of one week beginning with the day on which the patient is returned or returns himself to the hospital or place where he ought to be—
   (a) to examine the patient; and
   (b) if it appears to him that the relevant conditions are satisfied, to furnish to the appropriate body a report to that effect in the prescribed form;

   and where such a report is furnished in respect of the patient the appropriate body shall cause him to be informed.

(3) Where the patient is liable to be detained (as opposed to subject to guardianship), the appropriate medical officer shall, before furnishing a report under subsection (2) above, consult—
   (a) one or more other persons who have been professionally concerned with the patient's medical treatment; and
   (b) an approved social worker.

(4) Where the patient would (apart from any renewal of the authority for his detention or guardianship on or after the day on which he is returned or returns himself to the hospital or place where he ought to be) be liable to be detained or subject to guardianship after the end of the period of one week beginning with that day, he shall cease to be so liable or subject at the end of that period unless a report is duly furnished in respect of him under subsection (2) above.

(5) Where the patient would (apart from section 21 above) have ceased to be liable to be detained or subject to guardianship on or before the day on which a report is duly furnished in respect of him under subsection (2) above, the report shall renew the authority for his detention or guardianship for the period prescribed in that case by section 20(2) above.

(6) Where the authority for the detention or guardianship of the patient is renewed by virtue of subsection (5) above—
   (a) the renewal shall take effect as from the day on which (apart from section 21 above and that subsection) the authority would have expired; and
   (b) if (apart from this paragraph) the renewed authority would expire on or before the day on which the report is furnished, the report shall further renew the authority, as from the day on which it would expire, for the period prescribed in that case by section 20(2) above.

(7) Where the authority for the detention or guardianship of the patient would expire within the period of two months beginning with the day on which a report is duly furnished in respect of him under subsection (2) above, the report shall, if it so provides, have effect also as a report duly furnished under section 20(3) or (6) above; and the reference in this subsection to authority includes any authority renewed under subsection (5) above by the report.

(8) Where the form of mental disorder specified in a report furnished under subsection (2) above is a form of disorder other than that specified in the application for admission for

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treatment or guardianship application concerned (and the report does not have effect as a report furnished under section 20(3) or (6) above), that application shall have effect as if that other form of mental disorder were specified in it.

(9) Where on any occasion a report specifying such a form of mental disorder is furnished under subsection (2) above the appropriate medical officer need not on that occasion furnish a report under section 16 above.

(10) In this section—

"appropriate medical officer" has the same meaning as in section 16(5) above;

"the appropriate body" means—

(a) in relation to a patient who is liable to be detained in a hospital, the managers of the hospital; and

(b) in relation to a patient who is subject to guardianship, the responsible local social services authority; and

"the relevant conditions" means—

(a) in relation to a patient who is liable to be detained in a hospital, the conditions set out in subsection (4) of section 20 above; and

(b) in relation to a patient who is subject to guardianship, the conditions set out in subsection (7) of that section.

22 Special provisions as to patients sentenced to imprisonment, etc.

(1) Where a patient who is liable to be detained by virtue of an application for admission for treatment or is subject to guardianship by virtue of a guardianship application is detained in custody in pursuance of any sentence or order passed or made by a court in the United Kingdom (including an order committing or remanding him in custody), and is so detained for a period exceeding, or for successive periods exceeding in the aggregate, six months, the application shall cease to have effect at the expiration of that period.

(2) Where any such patient is so detained in custody but the application does not cease to have effect under subsection (1) above, then—

(a) if apart from this subsection the patient would have ceased to be liable to be so detained or subject to guardianship on or before the day on which he is discharged from custody, he shall not cease and shall be deemed not to have ceased to be so liable or subject until the end of that day; and

(b) in any case, sections 18 **[**[F18], 21 and 21A**]** above shall apply in relation to the patient as if he had absented himself without leave on that day.

[[F19](3) In its application by virtue of subsection (2) above section 18(4) above shall have effect with the substitution of the words "end of the period of 28 days beginning with the first day of his absence without leave." for the words from "later of" onwards.**]**

Extent Information

E2 For extent of s. 22 see ss. 146, 147

Textual Amendments

F18 Words in s. 22(2)(b) substituted (1.4.1996) by 1995 c. 52, **ss. 2(3)(a)**, 7(2)

F19 S. 22(3) inserted (1.4.1996) by 1995 c. 52, **ss. 2(3)(b)**, 7(2)

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23 Discharge of patients.

(1) Subject to the provisions of this section and section 25 below, a patient who is for the time being liable to be detained or subject to guardianship under this Part of this Act shall cease to be so liable or subject if an order in writing discharging him from detention or guardianship (in this Act referred to as "an order for discharge" is made in accordance with this section.

(2) An order for discharge may be made in respect of a patient—

(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;

(b) where the patient is subject to guardianship, by the responsible medical officer, by the responsible local social services authority or by the nearest relative of the patient.

(3) Where the patient is liable to be detained in a **[**[F20]registered establishment**]** in pursuance of an application for admission for assessment or for treatment, an order for his discharge may, without prejudice to subsection (2) above, be made by the Secretary of State and, if the patient is maintained under a contract with a **[**[F21]National Health Service trust **][**[F22], **[**[F23]NHS foundation trust,**][**[F24]Health Authority, Special Health Authority or Primary Care Trust**]**, by that National Health Service trust, **[**[F23]NHS foundation trust,**][**[F24]Health Authority, Special Health Authority or Primary Care Trust**]**.**]**.

(4) The powers conferred by this section on any authority **[**[F25]trust **][**[F26](other than an NHS foundation trust)**]** or body of persons may be exercised **[**[F25]subject to subsection (5) below**]** by any three or more members of that authority **[**[F25]trust**]** or body authorised by them in that behalf or by three or more members of a committee or sub-committee of that authority **[**[F25]trust**]** or body which has been authorised by them in that behalf.

[[F27](5) The reference in subsection (4) above to the members of an authority, trust or body or the members of a committee or sub-committee of an authority, trust or body,—

(a) in the case of **[**[F28]a **[**[F29]Health Authority, Special Health Authority or Primary Care Trust**]]** or a committee or sub-committee of **[**[F28]a **[**[F29]Health Authority, Special Health Authority or Primary Care Trust**]]**, is a reference only to the chairman of the authority **[**[F30]or trust**]**and such members (of the authority **[**[F30], trust**]**, committee or sub-committee, as the case may be) as are not also officers of the authority **[**[F30]or trust**]**, within the meaning of **[**[F31]the National Health Service Act 2006 or the National Health Service (Wales) Act 2006**]** ; and

(b) in the case of a National Health Service trust or a committee or sub-committee of such a trust, is a reference only to the chairman of the trust and such directors or (in the case of a committee or sub-committee) members as are not also employees of the trust.**]**

[[F32](6) The powers conferred by this section on any NHS foundation trust may be exercised by any three or more non-executive directors of the board of the trust authorised by the board in that behalf.**]**

Textual Amendments

F20 Words in s. 23(3) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(2)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **art. 3(3)(d)** (subject to transitional provisions in Schs. 1-3 and art. 3(4)-(10))

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F21 Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 24(3)(a)**

F22 Words in s. 23(3) substituted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8, **Sch. 1 Pt. III**, para. 107(2)(a)

F23 Words in s. 23(3) inserted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 34, 199, **Sch. 4 para. 53(a)**; S.I. 2004/759, {art. 2}

F24 Words in s. 23(3) substituted (8.2.2000) by S.I. 2000/90, art. 3(1), **Sch. 1 para. 16(4)(a)** (with art. 2(5))

F25 Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 24(3)(b)**

F26 Words in s. 23(4) inserted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 34, 199, **Sch. 4 para. 53(b)**; S.I. 2004/759, **art. 2**

F27 S.23(5) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 24(3)(c)**

F28 Words in s. 23(5)(a) substituted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8, **Sch. 1 Pt. III**, para. 107(2)(b)

F29 Words in s. 23(5)(a) substituted (8.2.2000) by S.I. 2000/90, art. 3(1), **Sch. 1 para. 16(4)(b)(i)** (with art. 2(5))

F30 Words in s. 23(5)(a) inserted (8.2.2000) by S.I. 2000/90, art. 3(1), **Sch. 1 para. 16(4)(b)(ii)(iii)** (with art. 2(5))

F31 Words in s. 23(5)(a) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 65** (with Sch. 3 Pt. 1)

F32 S. 23(6) inserted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 34, 199, **Sch. 4 para. 53(c)**; S.I. 2004/759, **art. 2**

24 Visiting and examination of patients.

(1) For the purpose of advising as to the exercise by the nearest relative of a patient who is liable to be detained or subject to guardianship under this Part of this Act of any power to order his discharge, any registered medical practitioner authorised by or on behalf of the nearest relative of the patient may, at any reasonable time, visit the patient and examine him in private.

(2) Any registered medical practitioner authorised for the purposes of subsection (1) above 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 **[**[F33]or to any after-care services provided for the patient under section 117 below.**]**.

(3) Where application is made by the Secretary of State or a **[**[F34]Health Authority, Special Health Authority **[**[F35], Primary Care Trust **]][**[F36], National Health Service trust or NHS foundation trust**]** to exercise, in respect of a patient liable to be detained in a **[**[F37]registered establishment**]**, any power to make an order for his discharge, the following persons, that is to say—

(a) any registered medical practitioner authorised by the Secretary of State or, as the case may be, that **[**[F34]Health Authority, Special Health Authority **[**[F35], Primary Care Trust**][**[F36], National Health Service trust or NHS foundation trust**]]**; and

(b) any other person (whether a registered medical practitioner or not) authorised under **[**[F38]Part II of the Care Standards Act 2000**]** to inspect the home,

may at any reasonable time visit the patient and interview him in private.

(4) Any person authorised for the purposes of subsection (3) above to visit a patient may require the production of and inspect any documents constituting or alleged to

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constitute the authority for the detention of the patient under this Part of this Act; and any person so authorised, who is a registered medical practitioner, may examine the patient in private, and may require the production of and inspect any other records relating to the treatment of the patient in the home **[**[F33]or to any after-care services provided for the patient under section 117 below.**]**.

Textual Amendments

F33 Words in s. 24(2)(4) inserted (1.4.1996) by 1995 c .52, ss. 1(2), 7(2), Sch. 1, para. 1

F34 Words in s. 24(3) substituted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, s. 2(1), **Sch. 1**, Pt. III, para. 107(3) (with ss. 2(3), 8)

F35 Words in s. 24(3) inserted (8.2.2000) by S.I. 2000/90, art. 3(1), **Sch. 1 para. 16(5)** (with art. 2(5))

F36 Words in s. 24(3) substituted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 34, 199, **Sch. 4 para. 54**; S.I. 2004/759, **art.2**

F37 Words in s. 24(3) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(2)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **art. 3(3)(d)** (subject to transitional provisions in Schs. 1-3 and art. 3(4)-(10))

F38 Words in s. 24(3) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(3)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **art. 3(3)(d)** (with transitional provisions in Schs. 1-3 and art. 3(4)-(10))

25 Restrictions on discharge by nearest relative.

(1) An order for the discharge of a patient who is liable to be detained in a hospital shall not be made by his nearest relative except after giving not less than 72 hours' notice in writing to the managers of the hospital; and if, within 72 hours after such notice has been given, the responsible medical officer furnishes to the managers a report certifying that in the opinion of that officer the patient, if discharged, would be likely to act in a manner dangerous to other persons or to himself—

(a) any order for the discharge of the patient made by that relative in pursuance of the notice shall be of no effect; and

(b) no further order for the discharge of the patient shall be made by that relative during the period of six months beginning with the date of the report.

(2) In any case where a report under subsection (1) above is furnished in respect of a patient who is liable to be detained in pursuance of an application for admission for treatment the managers shall cause the nearest relative of the patient to be informed.

[**[F39] *After-care under supervision]**

Textual Amendments

F39 Ss. 25A-25J inserted (1.4.1996) by 1995 c. 52, **ss. 1(1)**, 7(2)

[[F39]25A Application for supervision.

(1) Where a patient—

(a) is liable to be detained in a hospital in pursuance of an application for admission for treatment; and

(b) has attained the age of 16 years,

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an application may be made for him to be supervised after he leaves hospital, for the period allowed by the following provisions of this Act, with a view to securing that he receives the after-care services provided for him under section 117 below.

(2) In this Act an application for a patient to be so supervised is referred to as a "supervision application"; and where a supervision application has been duly made and accepted under this Part of this Act in respect of a patient and he has left hospital, he is for the purposes of this Act "subject to after-care under supervision" (until he ceases to be so subject in accordance with the provisions of this Act).

(3) A supervision application shall be made in accordance with this section and sections 25B and 25C below.

(4) A supervision application may be made in respect of a patient only on the grounds that—
   (a) he is suffering from mental disorder, being mental illness, severe mental impairment, psychopathic disorder or mental impairment;
   (b) there would be a substantial risk of serious harm to the health or safety of the patient or the safety of other persons, or of the patient being seriously exploited, if he were not to receive the after-care services to be provided for him under section 117 below after he leaves hospital; and
   (c) his being subject to after-care under supervision is likely to help to secure that he receives the after-care services to be so provided.

(5) A supervision application may be made only by the responsible medical officer.

(6) A supervision application in respect of a patient shall be addressed to the **[**[F40]Primary Care Trust or**]** Health Authority which will have the duty under section 117 below to provide after-care services for the patient after he leaves hospital.

(7) Before accepting a supervision application in respect of a patient a **[**[F40]Primary Care Trust or**]**Health Authority shall consult the local social services authority which will also have that duty.

(8) Where a **[**[F40]Primary Care Trust or**]**Health Authority accept a supervision application in respect of a patient the **[**[F40]Primary Care Trust or**]** Health Authority shall—
   (a) inform the patient both orally and in writing—
      (i) that the supervision application has been accepted; and
      (ii) of the effect in his case of the provisions of this Act relating to a patient subject to after-care under supervision (including, in particular, what rights of applying to a Mental Health Review Tribunal are available);
   (b) inform any person whose name is stated in the supervision application in accordance with sub-paragraph (i) of paragraph (e) of section 25B(5) below that the supervision application has been accepted; and
   (c) inform in writing any person whose name is so stated in accordance with sub-paragraph (ii) of that paragraph that the supervision application has been accepted.

(9) Where a patient in respect of whom a supervision application is made is granted leave of absence from a hospital under section 17 above (whether before or after the supervision application is made), references in—
   (a) this section and the following provisions of this Part of this Act; and
   (b) Part V of this Act,

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to his leaving hospital shall be construed as references to his period of leave expiring (otherwise than on his return to the hospital or transfer to another hospital).**]**

Textual Amendments

F40 Words in s. 25A inserted (1.10.2002) by 2002 c. 17, s. 2(5), **Sch. 2 Pt. 2 para. 43**; S.I. 2002/2478, **art. 3(1)(d)** (with saving in art. 3(3) and transitional provision in art. 4)

Modifications etc. (not altering text)

C12 S. 25A applied (with modifications) (1.4.1996) by S.I. 1996/295, reg. 2, **Sch.**

C13 S. 25A(6)-(8): functions of local authority may be responsibility of an executive of the authority (1.4.2000) by virtue of S.I. 2000/695, reg. 3(2)(b), **Sch. 2**

[F39 25B Making of supervision application.

(1) The responsible medical officer shall not make a supervision application unless—

(a) subsection (2) below is complied with; and

(b) the responsible medical officer has considered the matters specified in subsection (4) below.

(2) This subsection is complied with if—

(a) the following persons have been consulted about the making of the supervision application—

(i) the patient;

(ii) one or more persons who have been professionally concerned with the patient's medical treatment in hospital;

(iii) one or more persons who will be professionally concerned with the after-care services to be provided for the patient under section 117 below; and

(iv) any person who the responsible medical officer believes will play a substantial part in the care of the patient after he leaves hospital but will not be professionally concerned with any of the after-care services to be so provided;

(b) such steps as are practicable have been taken to consult the person (if any) appearing to be the nearest relative of the patient about the making of the supervision application; and

(c) the responsible medical officer has taken into account any views expressed by the persons consulted.

(3) Where the patient has requested that paragraph (b) of subsection (2) above should not apply, that paragraph shall not apply unless—

(a) the patient has a propensity to violent or dangerous behaviour towards others; and

(b) the responsible medical officer considers that it is appropriate for steps such as are mentioned in that paragraph to be taken.

(4) The matters referred to in subsection (1)(b) above are—

(a) the after-care services to be provided for the patient under section 117 below; and

(b) any requirements to be imposed on him under section 25D below.

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(5) A supervision application shall state—

(a) that the patient is liable to be detained in a hospital in pursuance of an application for admission for treatment;

(b) the age of the patient or, if his exact age is not known to the applicant, that the patient is believed to have attained the age of 16 years;

(c) that in the opinion of the applicant (having regard in particular to the patient's history) all of the conditions set out in section 25A(4) above are complied with;

(d) the name of the person who is to be the community responsible medical officer, and of the person who is to be the supervisor, in relation to the patient after he leaves hospital; and

(e) the name of—

(i) any person who has been consulted under paragraph (a)(iv) of subsection (2) above; and

(ii) any person who has been consulted under paragraph (b) of that subsection.

(6) A supervision application shall be accompanied by—

(a) the written recommendation in the prescribed form of a registered medical practitioner who will be professionally concerned with the patient's medical treatment after he leaves hospital or, if no such practitioner other than the responsible medical officer will be so concerned, of any registered medical practitioner; and

(b) the written recommendation in the prescribed form of an approved social worker.

(7) A recommendation under subsection (6)(a) above shall include a statement that in the opinion of the medical practitioner (having regard in particular to the patient's history) all of the conditions set out in section 25A(4) above are complied with.

(8) A recommendation under subsection (6)(b) above shall include a statement that in the opinion of the social worker (having regard in particular to the patient's history) both of the conditions set out in section 25A(4)(b) and (c) above are complied with.

(9) A supervision application shall also be accompanied by—

(a) a statement in writing by the person who is to be the community responsible medical officer in relation to the patient after he leaves hospital that he is to be in charge of the medical treatment provided for the patient as part of the after-care services provided for him under section 117 below;

(b) a statement in writing by the person who is to be the supervisor in relation to the patient after he leaves hospital that he is to supervise the patient with a view to securing that he receives the after-care services so provided;

(c) details of the after-care services to be provided for the patient under section 117 below; and

(d) details of any requirements to be imposed on him under section 25D below.

(10) On making a supervision application in respect of a patient the responsible medical officer shall—

(a) inform the patient both orally and in writing;

(b) inform any person who has been consulted under paragraph (a)(iv) of subsection (2) above; and

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(c) inform in writing any person who has been consulted under paragraph (b) of that subsection,

of the matters specified in subsection (11) below.

(11) The matters referred to in subsection (10) above are—

(a) that the application is being made;

(b) the after-care services to be provided for the patient under section 117 below;

(c) any requirements to be imposed on him under section 25D below; and

(d) the name of the person who is to be the community responsible medical officer, and of the person who is to be the supervisor, in relation to the patient after he leaves hospital.**]**

Modifications etc. (not altering text)

C14 S. 25B applied (with modifications) (1.4.1996) by S.I. 1996/295, reg. 2, **Sch.**

[[F39]25C Supervision applications: supplementary.

(1) Subject to subsection (2) below, a supervision application, and the recommendation under section 25B(6)(a) above accompanying it, may describe the patient as suffering from more than one of the following forms of mental disorder, namely, mental illness, severe mental impairment, psychopathic disorder and mental impairment.

(2) A supervision application shall be of no effect unless the patient is described in the application and the recommendation under section 25B(6)(a) above accompanying it as suffering from the same form of mental disorder, whether or not he is also described in the application or the recommendation as suffering from another form.

(3) A registered medical practitioner may at any reasonable time visit a patient and examine him in private for the purpose of deciding whether to make a recommendation under section 25B(6)(a) above.

(4) An approved social worker may at any reasonable time visit and interview a patient for the purpose of deciding whether to make a recommendation under section 25B(6)(b) above.

(5) For the purpose of deciding whether to make a recommendation under section 25B(6) above in respect of a patient, a registered medical practitioner or an approved social worker may require the production of and inspect any records relating to the detention or treatment of the patient in any hospital or to any after-care services provided for the patient under section 117 below.

(6) If, within the period of 14 days beginning with the day on which a supervision application has been accepted, the application, or any recommendation accompanying it, is found to be in any respect incorrect or defective, the application or recommendation may, within that period and with the consent of the **[**[F41]Primary Care Trust or**]**Health Authority which accepted the application, be amended by the person by whom it was made or given.

(7) Where an application or recommendation is amended in accordance with subsection (6) above it shall have effect, and shall be deemed to have had effect, as if it had been originally made or given as so amended.

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(8) A supervision application which appears to be duly made and to be accompanied by recommendations under section 25B(6) above may be acted upon without further proof of—

(a) the signature or qualification of the person by whom the application or any such recommendation was made or given; or

(b) any matter of fact or opinion stated in the application or recommendation.

(9) A recommendation under section 25B(6) above accompanying a supervision application in respect of a patient shall not be given by—

(a) the responsible medical officer;

(b) a person who receives or has an interest in the receipt of any payments made on account of the maintenance of the patient; or

(c) a close relative of the patient, of any person mentioned in paragraph (a) or (b) above or of a person by whom the other recommendation is given under section 25B(6) above for the purposes of the application.

(10) In subsection (9)(c) above "close relative" means husband, wife **[**[F42], civil partner**]** , father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister or sister-in-law.**]**

Textual Amendments

F41 Words in s. 25C(6) inserted (1.10.2002) by 2002 c. 17, s. 2(5), **Sch. 2 Pt. 2 para. 44**; S.I. 2002/2478, **art. 3(1)(d)** (with saving in art. 3(3) and transitional provision in art. 4)

F42 Words in s. 25C(10) inserted (5.12.2005) by Civil Partnership Act 2004 (c.. 33), ss. 26(1), 263, {Sch. 27 para. 86(b)}; S.I. 2005/3175, **art. 2(2)**

Modifications etc. (not altering text)

C15 S. 25C applied (with modifications) (1.4.1996) by S.I. 1996/295, reg. 2, **Sch.**

C16 S. 25C(6): functions of local authority may be responsibility of an executive of the authority (1.4.2000) by virtue of S.I. 2000/695, reg. 3(2)(b), **Sch. 2**

[[F39]**25D Requirements to secure receipt of after-care under supervision.**

(1) Where a patient is subject to after-care under supervision (or, if he has not yet left hospital, is to be so subject after he leaves hospital), the responsible after-care bodies have power to impose any of the requirements specified in subsection (3) below for the purpose of securing that the patient receives the after-care services provided for him under section 117 below.

(2) In this Act "the responsible after-care bodies", in relation to a patient, means the bodies which have (or will have) the duty under section 117 below to provide after-care services for the patient.

(3) The requirements referred to in subsection (1) above are—

(a) that the patient reside at a specified place;

(b) that the patient attend at specified places and times for the purpose of medical treatment, occupation, education or training; and

(c) that access to the patient be given, at any place where the patient is residing, to the supervisor, any registered medical practitioner or any approved social worker or to any other person authorised by the supervisor.

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(4) A patient subject to after-care under supervision may be taken and conveyed by, or by any person authorised by, the supervisor to any place where the patient is required to reside or to attend for the purpose of medical treatment, occupation, education or training.

(5) A person who demands—

(a) to be given access to a patient in whose case a requirement has been imposed under subsection (3)(c) above; or

(b) to take and convey a patient in pursuance of subsection (4) above,

shall, if asked to do so, produce some duly authenticated document to show that he is a person entitled to be given access to, or to take and convey, the patient.**]**

Modifications etc. (not altering text)

C17 S. 25D applied (with modifications) (1.4.1996) by S.I. 1996/295, reg. 2, **Sch.**

C18 S. 25D(1): functions of local authority may be responsibility of an executive of the authority (1.4.2000) by virtue S.I. 2000/695, reg. 3(2)(b), **Sch. 2**

[F39 25E Review of after-care under supervision etc.

(1) The after-care services provided (or to be provided) under section 117 below for a patient who is (or is to be) subject to after-care under supervision, and any requirements imposed on him under section 25D above, shall be kept under review, and (where appropriate) modified, by the responsible after-care bodies.

(2) This subsection applies in relation to a patient who is subject to after-care under supervision where he refuses or neglects—

(a) to receive any or all of the after-care services provided for him under section 117 below; or

(b) to comply with any or all of any requirements imposed on him under section 25D above.

(3) Where subsection (2) above applies in relation to a patient, the responsible after-care bodies shall review, and (where appropriate) modify—

(a) the after-care services provided for him under section 117 below; and

(b) any requirements imposed on him under section 25D above.

(4) Where subsection (2) above applies in relation to a patient, the responsible after-care bodies shall also—

(a) consider whether it might be appropriate for him to cease to be subject to after-care under supervision and, if they conclude that it might be, inform the community responsible medical officer; and

(b) consider whether it might be appropriate for him to be admitted to a hospital for treatment and, if they conclude that it might be, inform an approved social worker.

(5) The responsible after-care bodies shall not modify—

(a) the after-care services provided (or to be provided) under section 117 below for a patient who is (or is to be) subject to after-care under supervision; or

(b) any requirements imposed on him under section 25D above,

unless subsection (6) below is complied with.

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(6) This subsection is complied with if—

(a) the patient has been consulted about the modifications;

(b) any person who the responsible after-care bodies believe plays (or will play) a substantial part in the care of the patient but is not (or will not be) professionally concerned with the after-care services provided for the patient under section 117 below has been consulted about the modifications;

(c) such steps as are practicable have been taken to consult the person (if any) appearing to be the nearest relative of the patient about the modifications; and

(d) the responsible after-care bodies have taken into account any views expressed by the persons consulted.

(7) Where the patient has requested that paragraph (c) of subsection (6) above should not apply, that paragraph shall not apply unless—

(a) the patient has a propensity to violent or dangerous behaviour towards others; and

(b) the community responsible medical officer (or the person who is to be the community responsible medical officer) considers that it is appropriate for steps such as are mentioned in that paragraph to be taken.

(8) Where the responsible after-care bodies modify the after-care services provided (or to be provided) for the patient under section 117 below or any requirements imposed on him under section 25D above, they shall—

(a) inform the patient both orally and in writing;

(b) inform any person who has been consulted under paragraph (b) of subsection (6) above; and

(c) inform in writing any person who has been consulted under paragraph (c) of that subsection,

that the modifications have been made.

(9) Where—

(a) a person other than the person named in the supervision application becomes the community responsible medical officer when the patient leaves hospital; or

(b) when the patient is subject to after-care under supervision, one person ceases to be, and another becomes, the community responsible medical officer,

the responsible after-care bodies shall comply with subsection (11) below.

(10) Where—

(a) a person other than the person named in the supervision application becomes the supervisor when the patient leaves hospital; or

(b) when the patient is subject to after-care under supervision, one person ceases to be, and another becomes, the supervisor,

the responsible after-care bodies shall comply with subsection (11) below.

(11) The responsible after-care bodies comply with this subsection if they—

(a) inform the patient both orally and in writing;

(b) inform any person who they believe plays a substantial part in the care of the patient but is not professionally concerned with the after-care services provided for the patient under section 117 below; and

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(c) unless the patient otherwise requests, take such steps as are practicable to inform in writing the person (if any) appearing to be the nearest relative of the patient,

of the name of the person who becomes the community responsible medical officer or the supervisor.**]**

Modifications etc. (not altering text)

C19 S. 25E: functions of local authority may be responsibility of an executive of the authority (1.4.2000) by virtue of S.I. 2000/695, reg. 3(2)(b), **Sch. 2**

[[F39]25F Reclassification of patient subject to after-care under supervision.

(1) If it appears to the community responsible medical officer that a patient subject to after-care under supervision is suffering from a form of mental disorder other than the form or forms specified in the supervision application made in respect of the patient, he may furnish a report to that effect to the **[**[F43]Primary Care Trust or**]** Health Authority which have the duty under section 117 below to provide after-care services for the patient.

(2) Where a report is so furnished the supervision application shall have effect as if that other form of mental disorder were specified in it.

(3) Unless no-one other than the community responsible medical officer is professionally concerned with the patient's medical treatment, he shall consult one or more persons who are so concerned before furnishing a report under subsection (1) above.

(4) Where a report is furnished under subsection (1) above in respect of a patient, the responsible after-care bodies shall—

(a) inform the patient both orally and in writing; and

(b) unless the patient otherwise requests, take such steps as are practicable to inform in writing the person (if any) appearing to be the nearest relative of the patient,

that the report has been furnished.**]**

Textual Amendments

F43 Words in s. 25F(1) inserted (1.10.2002) by 2002 c. 17, s. 2(5), **Sch. 2 Pt. 2 para. 45**; S.I. 2002/2478, **art. 3(1)(d)** (with saving in art. 3(3) and transitional provision in art. 4)

Modifications etc. (not altering text)

C20 S. 25F(1)(4): functions of local authority may be responsibility of an executive of the authority (1.4.2000) by virtue of S.I. 2000/695, reg. 3(2)(b), **Sch. 2**

[[F39]25G Duration and renewal of after-care under supervision.

(1) Subject to sections 25H and 25I below, a patient subject to after-care under supervision shall be so subject for the period—

(a) beginning when he leaves hospital; and

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(b) ending with the period of six months beginning with the day on which the supervision application was accepted,

but shall not be so subject for any longer period except in accordance with the following provisions of this section.

(2) A patient already subject to after-care under supervision may be made so subject—

(a) from the end of the period referred to in subsection (1) above, for a further period of six months; and

(b) from the end of any period of renewal under paragraph (a) above, for a further period of one year,

and so on for periods of one year at a time.

(3) Within the period of two months ending on the day on which a patient who is subject to after-care under supervision would (in default of the operation of subsection (7) below) cease to be so subject, it shall be the duty of the community responsible medical officer—

(a) to examine the patient; and

(b) if it appears to him that the conditions set out in subsection (4) below are complied with, to furnish to the responsible after-care bodies a report to that effect in the prescribed form.

(4) The conditions referred to in subsection (3) above are that—

(a) the patient is suffering from mental disorder, being mental illness, severe mental impairment, psychopathic disorder or mental impairment;

(b) there would be a substantial risk of serious harm to the health or safety of the patient or the safety of other persons, or of the patient being seriously exploited, if he were not to receive the after-care services provided for him under section 117 below;

(c) his being subject to after-care under supervision is likely to help to secure that he receives the after-care services so provided.

(5) The community responsible medical officer shall not consider whether the conditions set out in subsection (4) above are complied with unless—

(a) the following persons have been consulted—

(i) the patient;

(ii) the supervisor;

(iii) unless no-one other than the community responsible medical officer is professionally concerned with the patient's medical treatment, one or more persons who are so concerned;

(iv) one or more persons who are professionally concerned with the after-care services (other than medical treatment) provided for the patient under section 117 below; and

(v) any person who the community responsible medical officer believes plays a substantial part in the care of the patient but is not professionally concerned with the after-care services so provided;

(b) such steps as are practicable have been taken to consult the person (if any) appearing to be the nearest relative of the patient; and

(c) the community responsible medical officer has taken into account any relevant views expressed by the persons consulted.

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(6) Where the patient has requested that paragraph (b) of subsection (5) above should not apply, that paragraph shall not apply unless—
  (a) the patient has a propensity to violent or dangerous behaviour towards others; and
  (b) the community responsible medical officer considers that it is appropriate for steps such as are mentioned in that paragraph to be taken.

(7) Where a report is duly furnished under subsection (3) above, the patient shall be thereby made subject to after-care under supervision for the further period prescribed in that case by subsection (2) above.

(8) Where a report is furnished under subsection (3) above, the responsible after-care bodies shall—
  (a) inform the patient both orally and in writing—
    (i) that the report has been furnished; and
    (ii) of the effect in his case of the provisions of this Act relating to making a patient subject to after-care under supervision for a further period (including, in particular, what rights of applying to a Mental Health Review Tribunal are available);
  (b) inform any person who has been consulted under paragraph (a)(v) of subsection (5) above that the report has been furnished; and
  (c) inform in writing any person who has been consulted under paragraph (b) of that subsection that the report has been furnished.

(9) Where the form of mental disorder specified in a report furnished under subsection (3) above is a form of disorder other than that specified in the supervision application, that application shall have effect as if that other form of mental disorder were specified in it.

(10) Where on any occasion a report specifying such a form of mental disorder is furnished under subsection (3) above the community responsible medical officer need not on that occasion furnish a report under section 25F above.**]**

Modifications etc. (not altering text)
C21 S. 25G applied (with modifications) (1.4.1996) by S.I. 1996/295, reg. 2, **Sch.**
C22 S. 25G(3)(8): functions of local authority may be responsibility of an executive of the authority (1.4.2000) by virtue of S.I. 2000/695, reg. 3(2)(b), **Sch. 2**

[[F39]25H Ending of after-care under supervision.

(1) The community responsible medical officer may at any time direct that a patient subject to after-care under supervision shall cease to be so subject.

(2) The community responsible medical officer shall not give a direction under subsection (1) above unless subsection (3) below is complied with.

(3) This subsection is complied with if—
  (a) the following persons have been consulted about the giving of the direction—
    (i) the patient;
    (ii) the supervisor;

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(ii) unless no-one other than the community responsible medical officer is professionally concerned with the patient's medical treatment, one or more persons who are so concerned;

(iv) one or more persons who are professionally concerned with the after-care services (other than medical treatment) provided for the patient under section 117 below; and

(v) any person who the community responsible medical officer believes plays a substantial part in the care of the patient but is not professionally concerned with the after-care services so provided;

(b) such steps as are practicable have been taken to consult the person (if any) appearing to be the nearest relative of the patient about the giving of the direction; and

(c) the community responsible medical officer has taken into account any views expressed by the persons consulted.

(4) Where the patient has requested that paragraph (b) of subsection (3) above should not apply, that paragraph shall not apply unless—

(a) the patient has a propensity to violent or dangerous behaviour towards others; and

(b) the community responsible medical officer considers that it is appropriate for steps such as are mentioned in that paragraph to be taken.

(5) A patient subject to after-care under supervision shall cease to be so subject if he—

(a) is admitted to a hospital in pursuance of an application for admission for treatment; or

(b) is received into guardianship.

(6) Where a patient (for any reason) ceases to be subject to after-care under supervision the responsible after-care bodies shall—

(a) inform the patient both orally and in writing;

(b) inform any person who they believe plays a substantial part in the care of the patient but is not professionally concerned with the after-care services provided for the patient under section 117 below; and

(c) take such steps as are practicable to inform in writing the person (if any) appearing to be the nearest relative of the patient,

that the patient has ceased to be so subject.

(7) Where the patient has requested that paragraph (c) of subsection (6) above should not apply, that paragraph shall not apply unless subsection (3)(b) above applied in his case by virtue of subsection (4) above.**]**

Modifications etc. (not altering text)

C23 S. 25H(6): functions of local authority may be responsibility of an executive of the authority (1.4.2000) by virtue of S.I. 2000/695, reg. 3(2)(b), **Sch. 2**

[F39 25I Special provisions as to patients sentenced to imprisonment etc.

(1) This section applies where a patient who is subject to after-care under supervision—

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(a) is detained in custody in pursuance of any sentence or order passed or made by a court in the United Kingdom (including an order committing or remanding him in custody); or

(b) is detained in hospital in pursuance of an application for admission for assessment.

(2) At any time when the patient is detained as mentioned in subsection (1)(a) or (b) above he is not required—

(a) to receive any after-care services provided for him under section 117 below; or

(b) to comply with any requirements imposed on him under section 25D above.

(3) If the patient is detained as mentioned in paragraph (a) of subsection (1) above for a period of, or successive periods amounting in the aggregate to, six months or less, or is detained as mentioned in paragraph (b) of that subsection, and, apart from this subsection, he—

(a) would have ceased to be subject to after-care under supervision during the period for which he is so detained; or

(b) would cease to be so subject during the period of 28 days beginning with the day on which he ceases to be so detained,

he shall be deemed not to have ceased, and shall not cease, to be so subject until the end of that period of 28 days.

(4) Where the period for which the patient is subject to after-care under supervision is extended by subsection (3) above, any examination and report to be made and furnished in respect of the patient under section 25G(3) above may be made and furnished within the period as so extended.

(5) Where, by virtue of subsection (4) above, the patient is made subject to after-care under supervision for a further period after the day on which (apart from subsection (3) above) he would have ceased to be so subject, the further period shall be deemed to have commenced with that day.**]**

[[F39]25J Patients moving from Scotland to England and Wales.

(1) [F44] . . . . . .

(2) Sections 25A to 25I above, section 117 below and any other provision of this Act relating to supervision applications or patients subject to after-care under supervision shall apply in relation to a patient in respect of whom a supervision application is or is to be made by virtue of this section subject to such modifications as the Secretary of State may by regulations prescribe.**]**

Textual Amendments

F44 S. 25J(1) repealed (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), art. 16, **Sch. 3**

Functions of relatives of patients

26 Definition of "relative" and "nearest relative".

(1) In this Part of this Act "relative" means any of the following persons:—

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(a) husband or wife;
(b) son or daughter;
(c) father or mother;
(d) brother or sister;
(e) grandparent;
(f) grandchild;
(g) uncle or aunt;
(h) nephew or niece.

(2) In deducing relationships for the purposes of this section, any relationship of the half-blood shall be treated as a relationship of the whole blood, and an illegitimate person shall be treated as the legitimate child of

[[F45](a) his mother, and
(b) if his father has parental responsibility for him within the meaning of section 3 of the Children Act 1989, his father.**]**

(3) In this Part of this Act, subject to the provisions of this section and to the following provisions of this Part of this Act, the "nearest relative" means the person first described in subsection (1) above who is for the time being surviving, relatives of the whole blood being preferred to relatives of the same description of the half-blood and the elder or eldest of two or more relatives described in any paragraph of that subsection being preferred to the other or others of those relatives, regardless of sex.

(4) 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) above.

(5) Where the person who, under subsection (3) or (4) above, would be the nearest relative of a patient—
(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
(b) is the husband or wife of the patient, but is permanently separated from the patient, either by agreement or under an order of a court, or has deserted or has been deserted by the patient for a period which has not come to an end; or
(c) is a person other than the husband, wife, father or mother of the patient, and is for the time being under 18 years of age; [F46] . . .

[F46](d) . . . . . .

the nearest relative of the patient shall be ascertained as if that person were dead.

(6) In this section "husband" and "wife" include a person who is living with the patient as the patient's husband or wife, as the case may be (or, if the patient is for the time being an in-patient in a hospital, was so living until the patient was admitted), and has been or had been so living for a period of not less than six months; but a person 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 (5) above.

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(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) above as if mentioned last in subsection (1) above; 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 (5) above.

Textual Amendments

F45 S. 26(2)(a)(b) substituted (14.10.1991) by S.I. 1991/1881 art.3

F46 In s. 26(5) the word "or" and paragraph (d) repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(7), **Sch. 15** (with Sch. 14 paras. 1(1), 27(4)); S.I. 1991/828, **art. 3(2)**

[F47 27 Children and young persons in care.

Where—

(a) a patient who is a child or young person is in the care of a local authority by virtue of a care order within the meaning of the Children Act 1989; or

(b) the rights and powers of a parent of a patient who is a child or young person are vested in a local authority by virtue of section 16 of the Social Work (Scotland) Act 1968,

the authority shall be deemed to be the nearest relative of the patient in preference to any person except the patient's husband or wife (if any).**]**

Textual Amendments

F47 S. 27 substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(5), **Sch. 13 para. 48(1)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**

28 Nearest relative of minor under guardianship, etc.

[F48(1) Where—

(a) a guardian has been appointed for a person who has not attained the age of eighteen years; or

(b) a residence order (as defined by section 8 of the Children Act 1989) is in force with respect to such a person,

the guardian (or guardians, where there is more than one) or the person named in the residence order shall, to the exclusion of any other person, be deemed to be his nearest relative.**]**

(2) Subsection (5) of section 26 above shall apply in relation to a person who is, or who is one of the persons, deemed to be the nearest relative of a patient by virtue of this section as it applies in relation to a person who would be the nearest relative under subsection (3) of that section.

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[[F49](3) In this section "guardian"**[**[F50]includes a special guardian (within the meaning of the Children Act 1989), but**]**does not include a guardian under this Part of this Act.**]**

(4) In this section "court" includes a court in Scotland or Northern Ireland, and "enactment" includes an enactment of the Parliament of Northern Ireland, a Measure of the Northern Ireland Assembly and an Order in Council under Schedule 1 of the [M1]Northern Ireland Act 1974.

Textual Amendments

F48 S. 28(1) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(5), **Sch. 13 para. 48(3)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**

F49 S. 28(3) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(5), **Sch. 13 para. 48(4)**; S.I. 1991/828, **art. 3(2)**

F50 Words in s. 28(3) inserted (30.12.2005) by 2002 c. 38, ss. 139, 148, Sch. 3 para. 41 (with Sch. 4 paras. 6-8); S.I. 2005/2213, **art. 2(o)**

Marginal Citations

M1 1974 c. 28.

29 Appointment by court of acting nearest relative.

(1) The county court may, upon application made in accordance with the provisions of this section in respect of a patient, by order direct that the functions of the nearest relative of the patient under this Part of this Act and sections 66 and 69 below shall, during the continuance in force of the order, be exercisable by the applicant, or by any other person specified in the application, being a person who, in the opinion of the court, is a proper person to act as the patient's nearest relative and is willing to do so.

(2) An order under this section may be made on the application of—

(a) any relative of the patient;

(b) any other person with whom the patient is residing (or, if the patient is then an in-patient in a hospital, was last residing before he was admitted); or

(c) an approved social worker;

but in relation to an application made by such a social worker, subsection (1) above shall have effect as if for the words "the applicant" there were substituted the words "the local social services authority".

(3) An application for an order under this section may be made upon any of the following grounds, that is to say—

(a) that the patient has no nearest relative within the meaning of this Act, or that it is not reasonably practicable to ascertain whether he has such a relative, or who that relative is;

(b) that the nearest relative of the patient is incapable of acting as such by reason of mental disorder or other illness;

(c) that the nearest relative of the patient unreasonably objects to the making of an application for admission for treatment or a guardianship application in respect of the patient; or

(d) that the nearest relative of the patient has exercised without due regard to the welfare of the patient or the interests of the public his power to discharge the

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patient from hospital or guardianship under this Part of this Act, or is likely to do so.

(4) If, immediately before the expiration of the period for which a patient is liable to be detained by virtue of an application for admission for assessment, an application under this section, which is an application made on the ground specified in subsection (3)(c) or (d) above, is pending in respect of the patient, that period shall be extended—

(a) in any case, until the application under this section has been finally disposed of; and

(b) if an order is made in pursuance of the application under this section, for a further period of seven days;

and for the purposes of this subsection an application under this section shall be deemed to have been finally disposed of at the expiration of the time allowed for appealing from the decision of the court or, if notice of appeal has been given within that time, when the appeal has been heard or withdrawn, and "pending" shall be construed accordingly.

(5) An order made on the ground specified in subsection (3)(a) or (b) above may specify a period for which it is to continue in force unless previously discharged under section 30 below.

(6) While an order made under this section is in force, the provisions of this Part of this Act (other than this section and section 30 below) and sections 66, 69, 132(4) and 133 below shall apply in relation to the patient as if for any reference to the nearest relative of the patient there were substituted a reference to the person having the functions of that relative and (without prejudice to section 30 below) shall so apply notwithstanding that the person who was the patient's nearest relative when the order was made is no longer his nearest relative; but this subsection shall not apply to section 66 below in the case mentioned in paragraph (h) of subsection (1) of that section.

30 Discharge and variation of orders under s. 29.

(1) An order made under section 29 above in respect of a patient may be discharged by the county court upon application made—

(a) in any case, by the person having the functions of the nearest relative of the patient by virtue of the order;

(b) where the order was made on the ground specified in paragraph (a) or paragraph (b) of section 29(3) above, or where the person who was the nearest relative of the patient when the order was made has ceased to be his nearest relative, on the application of the nearest relative of the patient.

(2) An order made under section 29 above in respect of a patient may be varied by the county court, on the application of the person having the functions of the nearest relative by virtue of the order or on the application of an approved social worker, by substituting for the first-mentioned person a local social services authority or any other person who in the opinion of the court is a proper person to exercise those functions, being an authority or person who is willing to do so.

(3) If the person having the functions of the nearest relative of a patient by virtue of an order under section 29 above dies—

(a) subsections (1) and (2) above shall apply as if for any reference to that person there were substituted a reference to any relative of the patient, and

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(b) until the order is discharged or varied under those provisions the functions of the nearest relative under this Part of this Act and sections 66 and 69 below shall not be exercisable by any person.

(4) An order under section 29 above shall, unless previously discharged under subsection (1) above, cease to have effect at the expiration of the period, if any, specified under subsection (5) of that section or, where no such period is specified—

(a) if the patient was on the date of the order liable to be detained in pursuance of an application for admission for treatment or by virtue of an order or direction under Part III of this Act (otherwise than under section 35, 36 or 38) or was subject to guardianship under this Part of this Act or by virtue of such an order or direction, or becomes so liable or subject within the period of three months beginning with that date, when he ceases to be so liable or subject (otherwise than on being transferred in pursuance of regulations under section 19 above);

(b) if the patient was not on the date of the order, and has not within the said period become, so liable or subject, at the expiration of that period.

(5) The discharge or variation under this section of an order made under section 29 above shall not affect the validity of anything previously done in pursuance of the order.

Supplemental

31 Procedure on applications to county court.

County court rules which relate to applications authorised by this Part of this Act to be made to a county court may make provision—

(a) for the hearing and determination of such applications otherwise than in open court;

(b) for the admission on the hearing of such applications of evidence of such descriptions as may be specified in the rules notwithstanding anything to the contrary in any enactment or rule of law relating to the admissibility of evidence;

(c) for the visiting and interviewing of patients in private by or under the directions of the court.

32 Regulations for purposes of Part II.

(1) The Secretary of State may make regulations for prescribing anything which, under this Part of this Act, is required or authorised to be prescribed, and otherwise for carrying this Part of this Act into full effect.

(2) Regulations under this section may in particular make provision—

(a) for prescribing the form of any application, recommendation, report, order, notice or other document to be made or given under this Part of this Act;

(b) for prescribing the manner in which any such application, recommendation, report, order, notice or other document may be proved, and for regulating the service of any such application, report, order or notice;

(c) for requiring **[**[F51]such bodies as may be prescribed by the regulations**]** to keep such registers or other records as may be **[**[F51]so prescribed**]** in respect of patients liable to be detained or subject to guardianship **[**[F52]or to after-care under supervision**]** under this Part of this Act, and to furnish or make available

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to those patients, and their relatives, such written statements of their rights and powers under this Act as may be so prescribed;

(d) for the determination in accordance with the regulations of the age of any person whose exact age cannot be ascertained by reference to the registers kept under the [M2]Births and Deaths Registration Act 1953; and

(e) for enabling the functions under this Part of this Act of the nearest relative of a patient to be performed, in such circumstances and subject to such conditions (if any) as may be prescribed by the regulations, by any person authorised in that behalf by that relative;

and for the purposes of this Part of this Act any application, report or notice the service of which is regulated under paragraph (b) above shall be deemed to have been received by or furnished to the authority or person to whom it is authorised or required to be furnished, addressed or given if it is duly served in accordance with the regulations.

(3) Without prejudice to subsections (1) and (2) above, but subject to section 23(4) above, regulations under this section may determine the manner in which functions under this Part of this Act of the managers of hospitals, local social services authorities, **[**[F53]Health Authorities, Special Health Authorities **[**[F54], Primary Care Trusts**][**[F55], National Health Service trusts or NHS foundation trusts**]]** are to be exercised, and such regulations may in particular specify the circumstances in which, and the conditions subject to which, any such functions may be performed by officers of or other persons acting on behalf of those managers **[**[F56]authorities and trusts**]**.

Textual Amendments

F51 Words in s. 32(2)(c) substituted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1 para. 2**

F52 Words in s. 32(2)(c) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1 para. 2(c)**

F53 Words in s. 32(3) substituted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, s. 2(1)(3), 8, **Sch. 1**, Pt. III, para. 107(4)

F54 Words in s. 32(3) inserted (8.2.2000) by S.I. 2000/90, art. 3(1), **Sch. 1 para. 16(6)** (with art. 2(5))

F55 Words in s. 32(3) substituted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 34, 199, **Sch. 4 para. 55**; S.I. 2004/759, **art.2**

F56 Words substituted by virtue of National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 24(5)**

Marginal Citations

M2 1953 c. 20.

33 Special provisions as to wards of court.

(1) An application for the admission to hospital of a minor who is a ward of court may be made under this Part of this Act with the leave of the court; and section 11(4) above shall not apply in relation to an application so made.

(2) Where a minor who is a ward of court is liable to be detained in a hospital by virtue of an application for admission under this Part of this Act, any power exercisable under this Part of this Act or under section 66 below in relation to the patient by his nearest relative shall be exercisable by or with the leave of the court.

(3) Nothing in this Part of this Act shall be construed as authorising the making of a guardianship application in respect of a minor who is a ward of court, or the transfer into guardianship of any such minor.

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[[F57](4) Where a supervision application has been made in respect of a minor who is a ward of court, the provisions of this Part of this Act relating to after-care under supervision have effect in relation to the minor subject to any order which the court may make in the exercise of its wardship jurisdiction.**]**

Textual Amendments

F57 S. 33(4) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 2**, para. 3

34 Interpretation of Part II.

(1) In this Part of this Act—

[[F58]"the community responsible medical officer", in relation to a patient subject to after-care under supervision, means the person who, in accordance with section 117(2A)(a) below, is in charge of medical treatment provided for him;**]**

"the nominated medical attendant", in relation to a patient who is subject to the guardianship of a person other than a local social services authority, means the person appointed in pursuance of regulations made under section 9(2) above to act as the medical attendant of the patient;

[[F59]"registered establishment" means an establishment—

(a) which would not, apart from subsection (2) below, be a hospital for the purposes of this Part; and

(b) in respect of which a person is registered under Part II of the Care Standards Act 2000 as an independent hospital in which treatment or nursing (or both) are provided for persons liable to be detained under this Act;**]**

"the responsible medical officer" means **[**[F60](except in the phrase "the community responsible medical officer")**]**—

(a) in relation to a patient **[**[F61]who is**]**liable to be detained by virtue of an application for admission for assessment or an application for admission for treatment **[**[F61]or who is to be subject to after-care under supervision after leaving hospital**]**, the registered medical practitioner in charge of the treatment of the patient;

(b) in relation to a patient subject to guardianship, the medical officer authorised by the local social services authority to act (either generally or in any particular case or for any particular purpose) as the responsible medical officer.

[[F62]"the supervisor", in relation to a patient subject to after-care under supervision, means the person who, in accordance with section 117(2A)(b) below, is supervising him.**]**

[[F63](1A) Nothing in this Act prevents the same person from acting as more than one of the following in relation to a patient, that is—

(a) the responsible medical officer;

(b) the community responsible medical officer; and

(c) the supervisor.**]**

(2) Except where otherwise expressly provided, this Part of this Act applies in relation to **[**[F64]a registered establishment**]**, as it applies in relation to a hospital, and references in

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this Part of this Act to a hospital, and any reference in this Act to a hospital to which this Part of this Act applies, shall be construed accordingly.

(3) In relation to a patient who is subject to guardianship in pursuance of a guardianship application, any reference in this Part of this Act to the responsible local social services authority is a reference—

(a) where the patient is subject to the guardianship of a local social services authority, to that authority;

(b) where the patient is subject to the guardianship of a person other than a local social services authority, to the local social services authority for the area in which that person resides.

Textual Amendments

F58 Definition in s. 34(1) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 2**, para. 4(2)

F59 S. 34(1): definition of "registered establishment" inserted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(4)(a)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **art. 3(3)(d)** (subject to transitional provisions in Schs. 1-3 and art. 3(4)-(10))

F60 Words in s. 34(1) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 4(3)(a)

F61 Words in s. 34(1)(a) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 4(3)(b)

F62 Definition inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 4(4)

F63 S. 34(1A) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 4(5)

F64 Words in s. 34(2) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(4)(b)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **art. 3(3)(d)** (subject to transitional provisions in Schs. 1-3 and art. 3(4)-(10))

PART III

PATIENTS CONCERNED IN CRIMINAL PROCEEDINGS OR UNDER SENTENCE

Modifications etc. (not altering text)

C24 Pt. III (ss. 35 - 55) certain defintions applied (E.W.) (1.1.1992) by Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25, SIF 39:1), **s. 6(2)**; S.I. 1991/2488, **art. 2**

Remands to hospital

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

(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 offence and has not yet been sentenced or otherwise dealt with for the offence on which he has been arraigned;

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(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 registered medical practitioner, that there is reason to suspect that the accused person is suffering from mental illness, psychopathic disorder, severe mental impairment or mental impairment; and

(b) the court is of the opinion that it would be impracticable for a report on his mental condition to be made if he were remanded on bail;

but those powers shall not be exercised by the Crown Court in respect of a person who has been convicted before the court if the sentence for the offence of which he has been convicted is fixed by law.

(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 registered 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 registered 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 28 days at a time or for more than 12 weeks in all; and the court may at any time terminate the remand if it appears to the court that it is appropriate to do so.

(8) An accused person remanded to hospital under this section shall be entitled to obtain at his own expense an independent report on his mental condition from a registered medical practitioner 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 hospital specified by the court within the period mentioned in subsection (4) above; and

(b) the managers of the hospital shall admit him within that period and thereafter detain him in accordance with the provisions of this section.

(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

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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.

Modifications etc. (not altering text)

C25 S. 35 modified (31.3.2005) by Army Act 1955 (c. 18), s. 116B(2)(a)(c) (as substituted by 2004 c. 28, ss. 26, 60, **Sch. 3 para. 1** (with Sch. 12 para. 8)); S.I. 2005/579, **art. 3(b)**
S. 35 modified (31.3.2005) by Airforce Act 1955 (c. 19), s. 116B(2)(a)(c), (as substituted by 2004 c. 28, ss. 26, 60, **Sch. 3 para. 1** (with Sch. 12 para. 8)); S.I. 2005/579, **art. 3(b)**
S. 35 modified (31.3.2005) by Naval Discipline Act 1957 (c. 53), s. 63B(2)(a)(c), (as substituted by 2004 c. 28, ss. 26, 60, **Sch. 3 para. 3** (with Sch. 12 para. 8)); S.I. 2005/579, **art. 3(b)**
S. 35 modified (28.3.2009 for certain purposes, otherwise 31.10.2009) by Armed Forces Act 2006 (c. 52), ss. 169, 383, **Sch. 4 para. 3**; S.I. 2009/812, **art. 3(a)** (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, **art. 4**

C26 S. 35 applied (1.10.1997) by 1996 c. 27, **ss. 48**, 67(2); S.I. 1997/1892, **art. 3(1)(a)**

C27 S. 35 applied (15.10.2001) by 1996 c. 52 s. 156(4); S.I. 2001/3164, **art. 2**

36 Remand of accused person to hospital for treatment.

(1) Subject to the provisions of this section, the Crown Court may, instead of remanding an accused person in custody, remand him to a hospital specified by the court if satisfied, on the written or oral evidence of two registered medical practitioners, that 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) 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 registered 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.

(4) Where a court has remanded an accused person under this section it may further remand him if it appears to the court, on the written or oral evidence of the responsible medical officer, that a further remand is warranted.

(5) The power of further remanding an accused person under this section may be exercised by the court without his being brought before the court if he is represented by counsel or a solicitor and his counsel or solicitor is given an opportunity of being heard.

(6) An accused person shall not be remanded or further remanded under this section for more than 28 days at a time or for more than 12 weeks in all; and the court may at any time terminate the remand if it appears to the court that it is appropriate to do so.

(7) An accused person remanded to hospital under this section shall be entitled to obtain at his own expense an independent report on his mental condition from a registered

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medical practitioner chosen by him and to apply to the court on the basis of it for his remand to be terminated under subsection (6) above.

(8) Subsections (9) and (10) of section 35 above shall have effect in relation to a remand under this section as they have effect in relation to a remand under that section.

Modifications etc. (not altering text)

C28 S. 36 modified (31.3.2005) by Army Act 1955 (c. 18), s. 116B(2)(b)(c), (as substituted by 2004 c. 28, ss. 26, 60, **Sch. 3 para.1** (with Sch. 12 para. 8)); S.I. 2005/579, **art. 3(b)**
S. 36 modified (31.3.2005) by Airforce Act 1955 (c. 19), s. 116B(2)(b)(c), (as substituted by 2004 c. 28, ss. 26, 60, **Sch. 3 para.1** (with Sch. 12 para. 8)); S.I. 2005/579, **art. 3(b)**
S. 36 modified (31.3.2005) by Naval Discipline Act 1957 (c. 53), s. 63B(2)(b)(c), (as substituted by 2004 c. 28, ss. 26, 60, **Sch. 3 para.3** (with Sch. 12 para. 8)); S.I. 2005/579, **art. 3(b)**
S. 36 modified (28.3.2009 for certain purposes, otherwise 31.10.2009) by Armed Forces Act 2006 (c. 52), ss. 169, 383, **Sch. 4 para. 4**; S.I. 2009/812, **art. 3(a)** (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, **art. 4**

Hospital and guardianship orders

37 Powers of courts to order hospital admission or guardianship.

(1) Where a person is convicted before the Crown Court of an offence punishable with imprisonment other than an offence the sentence for which is fixed by law,[F65]. . . , or is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment, and the conditions mentioned in subsection (2) below are satisfied, the court may by order authorise his admission to and detention in such hospital as may be specified in the order or, as the case may be, place him under the guardianship of a local social services authority or of such other person approved by a local social services authority as may be so specified.

[[F66](1A) In the case of an offence the sentence for which would otherwise fall to be imposed—

(a) under section 51A(2) of the Firearms Act 1968,

(b) under section 110(2) or 111(2) of the Powers of Criminal Courts (Sentencing) Act 2000, or

(c) under any of sections 225 to 228 of the Criminal Justice Act 2003,

nothing in those provisions shall prevent a court from making an order under subsection (1) above for the admission of the offender to a hospital.

(1B) References in subsection (1A) above to a sentence falling to be imposed under any of the provisions mentioned in that subsection are to be read in accordance with section 305(4) of the Criminal Justice Act 2003.**]**

(2) The conditions referred to in subsection (1) above are that—

(a) the court is satisfied, on the written or oral evidence of two registered medical practitioners, that the offender is suffering from mental illness, psychopathic disorder, severe mental impairment or mental impairment and that either—

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

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(ii) in the case of an offender who has attained the age of 16 years, the mental disorder is of a nature or degree which warrants his reception into guardianship under this Act; and

(b) the court is of the opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the offender, and to the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of an order under this section.

(3) Where a person is charged before a magistrates' court with any act or omission as an offence and the court would have power, on convicting him of that offence, to make an order under subsection (1) above in his case as being a person suffering from mental illness or severe mental impairment, then, if the court is satisfied that the accused did the act or made the omission charged, the court may, if it thinks fit, make such an order without convicting him.

(4) An order for the admission of an offender to a hospital (in this Act referred to as "a hospital order") shall not be made under this section unless the court is satisfied on the written or oral evidence of the registered 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[F67]. . . , and for his admission to it within the period of 28 days beginning with the date of the making of such an order; and the court may, pending his admission within that period, give such directions as it thinks fit for his conveyance to and detention in a place of safety.

(5) If within the said period of 28 days it appears to the Secretary of State that by reason of an emergency or other special circumstances it is not practicable for the patient to be received into the hospital specified in the order, he may give directions for the admission of the patient to such other hospital as appears to be appropriate instead of the hospital so specified; and where such directions are given—

(a) the Secretary of State shall cause the person having the custody of the patient to be informed, and

(b) the hospital order shall have effect as if the hospital specified in the directions were substituted for the hospital specified in the order.

(6) An order placing an offender under the guardianship of a local social services authority or of any other person (in this Act referred to as "a guardianship order") shall not be made under this section unless the court is satisfied that that authority or person is willing to receive the offender into guardianship.

(7) A hospital order or guardianship order shall specify the form or forms of mental disorder referred to in subsection (2)(a) above from which, upon the evidence taken into account under that subsection, the offender is found by the court to be suffering; and no such order shall be made unless the offender is described by each of the practitioners whose evidence is taken into account under that subsection as suffering from the same one of those forms of mental disorder, whether or not he is also described by either of them as suffering from another of them.

(8) Where an order is made under this section, the court **[**[F68]shall not—

(a) pass sentence of imprisonment or impose a fine or make a **[**[F69]community order (within the meaning of Part 12 of the Criminal Justice Act 2003)**]** in respect of the offence,

(b) if the order under this section is a hospital order, make a referral order (within the meaning of **[**[F70]the Powers of Criminal Courts (Sentencing) Act 2000**]**) in respect of the offence, or

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(c) make in respect of the offender **[**[F71]a supervision order (within the meaning of that Act) or an order under section 150 of that Act (binding over of parent or guardian)**]**,

but the court may make any other order which it**]** has power to make apart from this section; and for the purposes of this subsection "sentence of imprisonment" includes any sentence or order for detention.

Textual Amendments

F65 Words in s. 37(1) omitted (4.4.2005) by virtue of Criminal Justice Act 2003 (c. 44), ss. 304, 336, **Sch. 32 para. 38(a)**; S.I. 2005/950, **art. 2(1)**, Sch. 1 para. 42(18) (with art. 2(2), Sch. 2 (as amended by S.I. 2005/2122, art. 2))

F66 S. 37(1A)(1B) substituted (4.4.2005) by Criminal Justice Act 2003 (c. 44), ss. 304, 336, **Sch. 32 para. 38(b)**; S.I. 2005/950,art 2(1), Sch. 1 para. 42(18) (with art. 2(2), Sch. 2 (as amended by S.I. 2005/2122, art. 2))

F67 Words in s. 37(4) repealed (1.10.1997) by 1997 c. 43, s. 55, Sch. 4, para. 12(3), **Sch. 6**; S.I. 1997/2200, **art. 2(1)(o)(2)(f)**

F68 Words in s. 37(8) substituted (26.6.2000) by 1999 c. 23, s. 67(1), **Sch. 4 para. 11** (with Sch. 7 para. 3(3), para. 5(2)); S.I. 2000/1587, 2(b)

F69 Words in s. 37(8) substituted (4.4.2005) by Criminal Justice Act 2003 (c. 44), ss. 304, 336, **Sch. 32 para. 38(c)**; S.I. 2005/950, **art 2(1)**, Sch. 1 para. 42(18) (with art. 2(2), Sch. 2 (as amended by S.I. 2005/2122, art. 2))

F70 Words in s. 37(8) substituted (25.8.2000) by 2000 c. 6, ss. 165, 168(1), **Sch. 9 para. 90(1)(6)(a)**

F71 Words in s. 37(8) substituted (25.8.2000) by 2000 c. 6, ss. 165, 168(1), **Sch. 9 para. 90(1)(6)(b)**

Modifications etc. (not altering text)

C29 S. 37 modified (31.3.2005) by Criminal Procedure (Insanity) Act 1964 (c. 84), s. 5A(1) (as substituted by 2004 c. 28, **ss. 24(1)**, 60 (with Sch. 12 para. 8)); S.I. 2005/579, **art. 3(b)**
S. 37 modified (31.3.2005) by Army Act 1955 (c. 18), s. 116B(1) (as substituted by 2004 c. 28, ss. 26, 60, Sch. 3, para. 1 (with Sch. 12 para. 8)); S.I. 2005/579, **art. 3(b)**
S. 37 modified (31.3.2005) by Airforce Act 1955 (c. 19), s. 116B(1) (as substituted by 2004 c. 28, ss. 26, 60, **Sch. 3 para.1** (with Sch. 12 para. 8)); S.I. 2005/579, **art. 3(b)**
S. 37 modified (31.3.2005) by Naval Discipline Act 1957 (c. 53), s. 63B(1), (as substituted by 2004 c. 28, ss. 26, 60, **Sch. 3 para. 3** (with Sch. 12 para. 8)); S.I. 2005/579, **art. 3(b)**
S. 37 modified (28.3.2009 for certain purposes, otherwise 31.10.2009) by Armed Forces Act 2006 (c. 52), ss. 169, 383, **Sch. 4 para. 1**; S.I. 2009/812, **art. 3(a)** (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, **art. 4**

C30 S. 37(1) modified (1.1.1992) by Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25, SIF 39:1), **s. 5(2)**, (with saving in s. 8); S.I. 1991/2488, **art. 2**

C31 S. 37 extended (1.10.1997) by 1997 c. 43, **s. 47(1)(a)**; S.I. 1997/2200, **art. 2(1)(i)**

C32 S. 37 applied (1.10.1997) by 1996 c. 27, **s. 51**; S.I. 1997/1892, **art. 3(1)(a)**

38 Interim hospital orders.

(1) Where a person is convicted before the Crown Court of an offence punishable with imprisonment (other than an offence the sentence for which is fixed by law) or is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment and the court before or by which he is convicted is satisfied, on the written or oral evidence of two registered medical practitioners—

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

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(b) that there is reason to suppose that the mental disorder from which the offender is suffering is such that it may be appropriate for a hospital order to be made in his case,

the court may, before making a hospital order or dealing with him in some other way, make an order (in this Act referred to as "an interim hospital order") authorising his admission to such hospital as may be specified in the order and his detention there in accordance with this section.

(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) At least one of the registered medical practitioners whose evidence is taken into account under subsection (1) above shall be employed at the hospital which is to be specified in the order.

(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 registered 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 28 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 12 weeks, as the court may specify when making the order; but

(b) may be renewed for further periods of not more than 28 days at a time if it appears to the court, on the written or oral evidence of the responsible medical officer, that the continuation of the order is warranted;

but no such order shall continue in force for more than **[**[F72]twelve months**]** in all and the court shall terminate the order if it makes a hospital order in respect of the offender or decides after considering the written or oral evidence of the responsible 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) 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.

Textual Amendments

F72 Words in s. 38(5) substituted (1.10.1997) by 1997 c. 43, **s. 49(1)**; S.I. 1997/2200, **art. 2**

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Modifications etc. (not altering text)

C33 S. 38 modified (31.3.2005) by Army Act 1955 (c. 18), s. 116B(2)(d) (as substituted by 2004 c. 28, ss. 26, 60, **Sch. 3 para.1** (with Sch. 12 para. 8)); S.I. 2005/579, **art. 3(b)**
S. 38 modified (31.3.2005) by Naval Discipline Act 1957 (c. 53), s. 63B(2)(d) (as substituted by 2004 c. 28, ss. 26, 60, **Sch. 3 para. 3** (with Sch. 12 para. 8)); S.I. 2005/579, **art. 3(b)**
S. 38 modified (31.3.2005) by Airforce Act 1955 (c. 19), s. 116B(2)d) (as substituted by 2004 c. 28, ss. 26, 60, **Sch. 3 para.1** (with Sch. 12 para. 8)); S.I. 2005/579, **art. 3(b)**
S. 38 modified (28.3.2009 for certain purposes, otherwise 31.10.2009) by Armed Forces Act 2006 (c. 52), ss. 169, 383, **Sch. 4 para. 5**; S.I. 2009/812, **art. 3(a)** (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, **art. 4**

C34 S. 38 applied (1.10.1997) by 1996 c. 27, **s. 51**; S.I. 1997/1892, **art. 3(1)(a)**

C35 S. 38(7) modified (31.3.2005) by Courts-Martial (Appeals) Act 1968 (c. 20), s. 16(5)(b), (as substituted by 2004 c. 28, ss. 26, 60, **Sch. 3 para. 7** (with Sch. 12 para. 8)); S.I. 2005/579, **art. 3(b)**
S. 38(7) modified (31.3.2005) by Courts-Martial (Appeals) Act 1968 (c. 20), s. 23(5)(b), (as substituted by 2004 c. 28, ss. 26, 60, **Sch. 3 para. 10** (with Sch. 12 para. 8)); S.I. 2005/579, **art. 3(b)**
S. 38(7) modified (31.3.2005) by Courts-Martial (Appeals) Act 1968 (c. 20), s. 25B(3)(b), (as substituted by 2004 c. 28, ss. 26, 60, **Sch. 3 para. 13**, (with Sch. 12 para. 8)); S.I. 2005/579, **art. 3(b)**

39 Information as to hospitals.

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

(a) the **[**[F73]Primary Care Trust or**]**[[F74]Health Authority**]** for **[**[F74]the area**]** in which that person resides or last resided; or

(b) any other **[**[F73]Primary Care Trust or**]**[[F74]Health Authority**]** that appears to the court to be appropriate,

to furnish the court with such information as **[**[F74]that **[**[F73]Primary Care Trust or**]**Health Authority have**]** or can reasonably obtain with respect to the hospital or hospitals (if any) in **[**[F74]their area**]** or elsewhere at which arrangements could be made for the admission of that person in pursuance of the order, and **[**[F74]that **[**[F73]Primary Care Trust or**]** Health Authority shall**]** comply with any such request.

[F75](2) . . . . . .

Textual Amendments

F73 Words in s. 39(1) inserted (1.10.2002) by 2002 c. 17, s. 2(5), **Sch. 2 Pt. 2 para. 46**; S.I. 2002/2478, **art. 3(1)(d)** (with saving in art. 3(3) and transitional provision in art. 4)

F74 Words in s. 39(1) substituted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, s. 2(1)(3), 8, **Sch. 1**, Pt. III, para. 107(5)(a)

F75 S. 39(2) repealed (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 5(1), 8, Sch. 1, Pt. III, para. 107(5)(b), **Sch. 3** (with Sch. 2 para. 6)

[39A [F76]Information to facilitate guardianship orders.

Where a court is minded to make a guardianship order in respect of any offender, it may request the local social services authority for the area in which the offender resides or last resided, or any other local social services authority that appears to the court to be appropriate—

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(a) to inform the court whether it or any other person approved by it is willing to receive the offender into guardianship; and

(b) if so, to give such information as it reasonably can about how it or the other person could be expected to exercise in relation to the offender the powers conferred by section 40(2) below;

and that authority shall comply with any such request.**]**

Textual Amendments

F76 S. 39A inserted (E.W.) (1.10.1992)by Criminal Justice Act 1991 (c. 53, SIF 39:1), **s. 27(1)** (with saving in s. 28); S.I. 1992/333, art. 2(2), **Sch.2**.

40 Effect of hospital orders, guardianship orders and interim hospital orders.

(1) A hospital order shall be sufficient authority—

(a) for a constable, an approved social worker or any other person directed to do so by the court to convey the patient to the hospital specified in the order within a period of 28 days; and

(b) for the managers of the hospital to admit him at any time within that period and thereafter detain him in accordance with the provisions of this Act.

(2) A guardianship order shall confer on the authority or person named in the order as guardian the same powers as a guardianship application made and accepted under Part II of this Act.

(3) Where an interim hospital order is made in respect of an offender—

(a) a constable or any other person directed to do so by the court shall convey the offender to the hospital specified in the order within the period mentioned in section 38(4) above; and

(b) the managers of the hospital shall admit him within that period and thereafter detain him in accordance with the provisions of section 38 above.

(4) A patient who is admitted to a hospital in pursuance of a hospital order, or placed under guardianship by a guardianship order, shall, subject to the provisions of this subsection, be treated for the purposes of the provisions of this Act mentioned in Part I of Schedule 1 to this Act as if he had been so admitted or placed on the date of the order in pursuance of an application for admission for treatment or a guardianship application, as the case may be, duly made under Part II of this Act, but subject to any modifications of those provisions specified in that Part of that Schedule.

(5) Where a patient is admitted to a hospital in pursuance of a hospital order, or placed under guardianship by a guardianship order, any previous application, hospital order or guardianship order by virtue of which he was liable to be detained in a hospital or subject to guardianship shall cease to have effect; but if the first-mentioned order, or the conviction on which it was made, is quashed on appeal, this subsection shall not apply and section 22 above shall have effect as if during any period for which the patient was liable to be detained or subject to guardianship under the order, he had been detained in custody as mentioned in that section.

[[F77](6) Where—

(a) a patient admitted to a hospital in pursuance of a hospital order is absent without leave;

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(b) a warrant to arrest him has been issued under section 72 of the [M3]Criminal Justice Act 1967; and

(c) he is held pursuant to the warrant in any country or territory other than the United Kingdom, any of the Channel Islands and the Isle of Man,

he shall be treated as having been taken into custody under section 18 above on first being so held.**]**

Textual Amendments

F77 S. 40(6) inserted (1.4.1996) by 1995 c. 52, **ss. 2(4)**, 7(2)

Modifications etc. (not altering text)

C36 S. 40(5) modified (E.W.) (1.1.1992) by Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25, SIF 39:1), s. 5(1), **Sch. 1 para. 2(3)** (with saving in s. 8); S.I. 1991/2488, **art. 2**

Marginal Citations

M3 1967 c. 80.

Restriction orders

41 Power of higher courts to restrict discharge from hospital.

(1) Where a hospital order is made in respect of an offender by the Crown Court, and it appears to the court, having regard to the nature of the offence, the antecedents of the offender and the risk of his committing further offences if set at large, that it is necessary for the protection of the public from serious harm so to do, the court may, subject to the provisions of this section, further order that the offender shall be subject to the special restrictions set out in this section, either without limit of time or during such period as may be specified in the order; and an order under this section shall be known as "a restriction order".

(2) A restriction order shall not be made in the case of any person unless at least one of the registered medical practitioners whose evidence is taken into account by the court under section 37(2)(a) above has given evidence orally before the court.

(3) The special restrictions applicable to a patient in respect of whom a restriction order is in force are as follows—

(a) none of the provisions of Part II of this Act relating to the duration, renewal and expiration of authority for the detention of patients shall apply, and the patient shall continue to be liable to be detained by virtue of the relevant hospital order until he is duly discharged under the said Part II or absolutely discharged under section 42, 73, 74 or 75 below;

[[F78](aa) none of the provisions of Part II of this Act relating to after-care under supervision shall apply;**]**

(b) no application shall be made to a Mental Health Review Tribunal in respect of a patient under section 66 or 69(1) below;

(c) the following powers shall be exercisable only with the consent of the Secretary of State, namely—

(i) power to grant leave of absence to the patient under section 17 above;

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(ii) power to transfer the patient in pursuance of regulations under section 19 above **[**[F79]or in pursuance of subsection 3 of that section**]**; and

(iii) power to order the discharge of the patient under section 23 above;

and if leave of absence is granted under the said section 17 power to recall the patient under that section shall vest in the Secretary of State as well as the responsible medical officer; and

(d) the power of the Secretary of State to recall the patient under the said section 17 and power to take the patient into custody and return him under section 18 above may be exercised at any time;

and in relation to any such patient section 40(4) above shall have effect as if it referred to Part II of Schedule 1 to this Act instead of Part I of that Schedule.

(4) A hospital order shall not cease to have effect under section 40(5) above if a restriction order in respect of the patient is in force at the material time.

(5) Where a restriction order in respect of a patient ceases to have effect while the relevant hospital order continues in force, the provisions of section 40 above and Part I of Schedule 1 to this Act shall apply to the patient as if he had been admitted to the hospital in pursuance of a hospital order (without a restriction order) made on the date on which the restriction order ceased to have effect.

(6) While a person is subject to a restriction order 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.

Textual Amendments

F78 S. 41(3)(aa) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 5

F79 Words in s. 41(3)(c)(ii) inserted (1.10.1997) by 1997 c. 43, **s. 49(2)**; S.I.1997/2200, **art. 2**

Modifications etc. (not altering text)

C37 S. 41(1) modified (28.3.2009 for certain purposes, otherwise 31.10.2008) by Armed Forces Act 2006 (c. 52), ss. 169, 383, **Sch. 4 para. 2**; S.I. 2009/812, **art. 3(a)** (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, **art. 4**

42 Powers of Secretary of State in respect of patients subject to restriction orders.

(1) If the Secretary of State is satisfied that in the case of any patient a restriction order is no longer required for the protection of the public from serious harm, he may direct that the patient shall cease to be subject to the special restrictions set out in section 41(3) above; and where the Secretary of State so directs, the restriction order shall cease to have effect, and section 41(5) above shall apply accordingly.

(2) At any time while a restriction order is in force in respect of a patient, the Secretary of State may, if he thinks fit, by warrant discharge the patient from hospital, either absolutely or subject to conditions; and where a person is absolutely discharged under this subsection, he shall thereupon cease to be liable to be detained by virtue of the relevant hospital order, and the restriction order shall cease to have effect accordingly.

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(3) The Secretary of State may at any time during the continuance in force of a restriction order in respect of a patient who has been conditionally discharged under subsection (2) above by warrant recall the patient to such hospital as may be specified in the warrant.

(4) Where a patient is recalled as mentioned in subsection (3) above—

(a) if the hospital specified in the warrant is not the hospital from which the patient was conditionally discharged, the hospital order and the restriction order shall have effect as if the hospital specified in the warrant were substituted for the hospital specified in the hospital order;

(b) in any case, the patient shall be treated for the purposes of section 18 above as if he had absented himself without leave from the hospital specified in the warrant, and, if the restriction order was made for a specified period, that period shall not in any event expire until the patient returns to the hospital or is returned to the hospital under that section.

(5) If a restriction order in respect of a patient ceases to have effect after the patient has been conditionally discharged under this section, the patient shall, unless previously recalled under subsection (3) above, be deemed to be absolutely discharged on the date when the order ceases to have effect, and shall cease to be liable to be detained by virtue of the relevant hospital order accordingly.

(6) The Secretary of State may, if satisfied that the attendance at any place in Great Britain of a patient who is subject to a restriction order is desirable in the interests of justice or for the purposes of any public inquiry, direct him to be taken to that place; and where a patient is directed under this subsection to be taken to any place he shall, unless the Secretary of State otherwise directs, be kept in custody while being so taken, while at that place and while being taken back to the hospital in which he is liable to be detained.

43 Power of magistrates' courts to commit for restriction order.

(1) If in the case of a person of or over the age of 14 years who is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment—

(a) the conditions which under section 37(1) above are required to be satisfied for the making of a hospital order are satisfied in respect of the offender; but

(b) it appears to the court, having regard to the nature of the offence, the antecedents of the offender and the risk of his committing further offences if set at large, that if a hospital order is made a restriction order should also be made,

the court may, instead of making a hospital order or dealing with him in any other manner, commit him in custody to the Crown Court to be dealt with in respect of the offence.

(2) Where an offender is committed to the Crown Court under this section, the Crown Court shall inquire into the circumstances of the case and may—

(a) if that court would have power so to do under the foregoing provisions of this Part of this Act upon the conviction of the offender before that court of such an offence as is described in section 37(1) above, make a hospital order in his case, with or without a restriction order;

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(b) if the court does not make such an order, deal with the offender in any other manner in which the magistrates' court might have dealt with him.

(3) The Crown Court shall have the same power to make orders under sections 35, 36 and 38 above in the case of a person committed to the court under this section as the Crown Court has under those sections in the case of an accused person within the meaning of section 35 or 36 above or of a person convicted before that court as mentioned in section 38 above.

(4) The power of a magistrates' court under **[**[F80]section 3 of the [M4]Powers of Criminal Courts (Sentencing) Act 2000**]** (which enables such a court to commit an offender to the Crown Court where the court is of the opinion that greater punishment should be inflicted for the offence than the court has power to inflict) shall also be exercisable by a magistrates' court where it is of the opinion that greater punishment should be inflicted as aforesaid on the offender unless a hospital order is made in his case with a restriction order.

(5) The power of the Crown Court to make a hospital order, with or without a restriction order, in the case of a person convicted before that court of an offence may, in the same circumstances and subject to the same conditions, be exercised by such a court in the case of a person committed to the court under section 5 of the [M5]Vagrancy Act 1824 (which provides for the committal to the Crown Court of persons who are incorrigible rogues within the meaning of that section).

Textual Amendments

F80 Words in s. 43(4) substituted (25.8.2000) by 2000 c. 6, ss. 165, 168(1), **Sch. 9 para. 91**

Marginal Citations

M4 20000 c. 6.

M5 1824 c. 83.

44 Committal to hospital under s. 43.

(1) Where an offender is committed under section 43(1) above and the magistrates' court by which he is committed is satisfied on written or oral evidence that arrangements have been made for the admission of the offender to a hospital in the event of an order being made under this section, the court may, instead of committing him in custody, by order direct him to be admitted to that hospital, specifying it, and to be detained there until the case is disposed of by the Crown Court, and may give such directions as it thinks fit for this production from the hospital to attend the Crown Court by which his case is to be dealt with.

(2) The evidence required by subsection (1) above shall be given by the registered 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.

(3) The power to give directions under section 37(4) above, section 37(5) above and section 40(1) above shall apply in relation to an order under this section as they apply in relation to a hospital order, but as if references to the period of 28 days mentioned in section 40(1) above were omitted; and subject as aforesaid an order under this section shall, until the offender's case is disposed of by the Crown Court, have the same effect as a hospital order together with a restriction order, made without limitation of time.

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45 Appeals from magistrates' courts.

(1) Where on the trial of an information charging a person with an offence a magistrates' court makes a hospital order or guardianship order in respect of him without convicting him, he shall have the same right of appeal against the order as if it had been made on his conviction; and on any such appeal the Crown Court shall have the same powers as if the appeal had been against both conviction and sentence.

(2) An appeal by a child or young person with respect to whom any such order has been made, whether the appeal is against the order or against the finding upon which the order was made, may be brought by him or by his parent or guardian on his behalf.

[F81 Hospital and limitation directions]

Textual Amendments

F81 Ss. 45A, 45B inserted (1.10.1997) by 1997 c. 43, **ss. 46**; S.I. 1997/2200, **art. 2** (with saving in art. 5(1))

[F82 45A Power of higher courts to direct hospital admission.

(1) This section applies where, in the case of a person convicted before the Crown Court of an offence the sentence for which is not fixed by law—
   (a) the conditions mentioned in subsection (2) below are fulfilled; and
   (b) F83. . . , the court considers making a hospital order in respect of him before deciding to impose a sentence of imprisonment ("the relevant sentence") in respect of the offence.

(2) The conditions referred to in subsection (1) above are that the court is satisfied, on the written or oral evidence of two registered medical practitioners—
   (a) that the offender is suffering from psychopathic disorder;
   (b) that the mental disorder from which the offender is suffering is of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment; and
   (c) that such treatment is likely to alleviate or prevent a deterioration of his condition.

(3) The court may give both of the following directions, namely—
   (a) a direction that, instead of being removed to and detained in a prison, the offender be removed to and detained in such hospital as may be specified in the direction (in this Act referred to as a "hospital direction"); and
   (b) a direction that the offender be subject to the special restrictions set out in section 41 above (in this Act referred to as a "limitation direction").

(4) A hospital direction and a limitation direction shall not be given in relation to an offender unless at least one of the medical practitioners whose evidence is taken into account by the court under subsection (2) above has given evidence orally before the court.

(5) A hospital direction and a limitation direction shall not be given in relation to an offender unless the court is satisfied on the written or oral evidence of the registered

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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—

(a) for his admission to that hospital; and

(b) for his admission to it within the period of 28 days beginning with the day of the giving of such directions;

and the court may, pending his admission within that period, give such directions as it thinks fit for his conveyance to and detention in a place of safety.

(6) If within the said period of 28 days it appears to the Secretary of State that by reason of an emergency or other special circumstances it is not practicable for the patient to be received into the hospital specified in the hospital direction, he may give instructions for the admission of the patient to such other hospital as appears to be appropriate instead of the hospital so specified.

(7) Where such instructions are given—

(a) the Secretary of State shall cause the person having the custody of the patient to be informed, and

(b) the hospital direction shall have effect as if the hospital specified in the instructions were substituted for the hospital specified in the hospital direction.

(8) Section 38(1) and (5) and section 39 above shall have effect as if any reference to the making of a hospital order included a reference to the giving of a hospital direction and a limitation direction.

(9) A hospital direction and a limitation direction given in relation to an offender shall have effect not only as regards the relevant sentence but also (so far as applicable) as regards any other sentence of imprisonment imposed on the same or a previous occasion.

(10) The Secretary of State may by order provide that this section shall have effect as if the reference in subsection (2) above to psychopathic disorder included a reference to a mental disorder of such other description as may be specified in the order.

(11) An order made under this section may—

(a) apply generally, or in relation to such classes of offenders or offences as may be specified in the order;

(b) provide that any reference in this section to a sentence of imprisonment, or to a prison, shall include a reference to a custodial sentence, or to an institution, of such description as may be so specified; and

(c) include such supplementary, incidental or consequential provisions as appear to the Secretary of State to be necessary or expedient.**]**

Textual Amendments

F82 S. 45A inserted (1.10.1997) by 1997 c. 43, **s. 46**; S.I. 1997/2200, **art. 2** (with saving in art. 5(1))

F83 Words in s. 45A(1)(b) repealed (4.4.2005) by Criminal Justice Act 2003 (c. 44), ss. 304, 332, 336, Sch. 32 para. 39, **Sch. 37 Pt. 7**; S.I. 2005/950, **art 2(1)**, Sch. 1 paras. 42(18), 44(4)(g) (with art. 2(2), Sch. 2 (as amended by S.I. 2005/2122, art. 2))

Modifications etc. (not altering text)

C38 S. 45A extended (1.10.1997) by 1997 c. 43, **s. 47(1)(b)**; S.I. 1997/2200, **art. 2**

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[F84 45B Effect of hospital and limitation directions.

(1) A hospital direction and a limitation direction shall be sufficient authority—

(a) for a constable or any other person directed to do so by the court to convey the patient to the hospital specified in the hospital direction within a period of 28 days; and

(b) for the managers of the hospital to admit him at any time within that period and thereafter detain him in accordance with the provisions of this Act.

(2) With respect to any person—

(a) a hospital direction shall have effect as a transfer direction; and

(b) a limitation direction shall have effect as a restriction direction.

(3) While a person is subject to a hospital direction and a limitation 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.**]**

Textual Amendments

F84 S. 45B inserted (1.10.1997) by 1997 c. 43, **s. 46**; S.I. 1997/2200, **art. 2** (with saving in art. 5(1))

Detention during Her Majesty's pleasure

46 Persons ordered to be kept in custody during Her Majesty's pleasure. E+W

F85 . . . . . .

Textual Amendments

F85 S. 46 repealed (29.4.2005) by Armed Forces Act 1996 (c. 46), ss. 35(2), 36, Sch. 7 Pt. III: S.I. 2005/1119, **art. 2**

Transfer to hospital of prisoners, etc.

47 Removal to hospital of persons serving sentences of imprisonment, etc.

(1) If in the case of a person serving a sentence of imprisonment the Secretary of State is satisfied, by reports from at least two registered medical practitioners—

(a) that the said person is suffering from mental illness, psychopathic disorder, severe mental impairment or mental impairment; and

(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;

the Secretary of State may, if he is of the opinion having regard to the public interest and all the circumstances that it is expedient so to do, by warrant direct that that person

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be removed to and detained in such hospital[F86]. . . as may be specified in the direction; and a direction under this section shall be known as "a transfer direction".

(2) A transfer direction shall cease to have effect at the expiration of the period of 14 days beginning with the date on which it is given unless within that period the person with respect to whom it was given has been received into the hospital specified in the direction.

(3) A transfer direction with respect to any person shall have the same effect as a hospital order made in his case.

(4) A transfer direction shall specify the form or forms of mental disorder referred to in paragraph (a) of subsection (1) above from which, upon the reports taken into account under that subsection, the patient is found by the Secretary of State to be suffering; and no such direction shall be given unless the patient is described in each of those reports as suffering from the same form of disorder, whether or not he is also described in either of them as suffering from another form.

(5) References in this Part of this Act to a person serving a sentence of imprisonment include references—

(a) to a person detained in pursuance of any sentence or order for detention made by a court in criminal proceedings (other than an order **[**[F87]made in consequence of a finding of insanity or unfitness to stand trial**]**);

(b) to a person committed to custody under section 115(3) of the [M6]Magistrates' Courts Act 1980 (which relates to persons who fail to comply with an order to enter into recognisances to keep the peace or be of good behaviour); and

(c) to a person committed by a court to a prison or other institution to which the [M7]Prison Act 1952 applies in default of payment of any sum adjudged to be paid on his conviction.

Textual Amendments

F86 Words in s. 47(1) repealed (1.10.1997) by 1997 c. 43, ss. 49(3), 56(2), **Sch. 6**; S.I. 1997/ 2200, art. 2 (with saving in art. 5(6))

F87 Words in s. 47(5)(a) substituted (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(1), 60, **Sch. 10 para. 18** (with Sch. 12 para. 8); S.I. 2005/579, **art. 3(g)(k)**

Modifications etc. (not altering text)

C39 S. 47 excluded (E.W.) (1.1.1992) by Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25, SIF 39:1), s. 5(1), **Sch. 1 para. 2(4)** (with saving in s. 8); S.I. 1991/2488, **art. 2**

C40 S. 47 extended (1.10.1997) by 1997 c. 43, **s. 47(1)(c)**; S.I. 1997/2200, **art. 2**

Marginal Citations

M6 1980 c. 43.

M7 1952 c. 52.

48 Removal to hospital of other prisoners.

(1) If in the case of a person to whom this section applies the Secretary of State is satisfied by the same reports as are required for the purposes of section 47 above that that person 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 and that he is in urgent need of such treatment, the Secretary of State shall have the

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same power of giving a transfer direction in respect of him under that section as if he were serving a sentence of imprisonment.

(2) This section applies to the following persons, that is to say—

(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;

(b) persons remanded in custody by a magistrates' court;

(c) civil prisoners, that is to say, persons committed by a court to prison for a limited term [F88]. . . , who are not persons falling to be dealt with under section 47 above;

(d) persons detained under the [M8]Immigration Act 1971 **[**[F89]or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State)**]**.

(3) Subsections (2) to (4) of section 47 above shall apply for the purposes of this section and of any transfer direction given by virtue of this section as they apply for the purposes of that section and of any transfer direction under that section.

Textual Amendments

F88 Words in s. 48(2)(c) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), **ss. 1(1)**, {Sch. 1 Pt. 17 Group 8}

F89 Words in s. 48(2)(d) added (10.2.2003) by 2002 c. 41, ss. 62(10)(a), 162 (with s. 159); S.I. 2003/1, **art. 2**, Sch.

Marginal Citations

M8 1971 c. 77.

49 Restriction on discharge of prisoners removed to hospital.

(1) Where a transfer direction is given in respect of any person, the Secretary of State, if he thinks fit, may by warrant further direct that that person shall be subject to the special restrictions set out in section 41 above; and where the Secretary of State gives a transfer direction in respect of any such person as is described in paragraph (a) or (b) of section 48(2) above, he shall also give a direction under this section applying those restrictions to him.

(2) A direction under this section shall have the same effect as a restriction order made under section 41 above and shall be known as "a restriction direction".

(3) While a person is subject to 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.

50 Further provisions as to prisoners under sentence.

(1) Where a transfer direction and a restriction direction have been given in respect of a person serving a sentence of imprisonment and before **[**[F90]his release date**]** the Secretary of State is notified by the responsible medical officer, any other registered medical practitioner or a Mental Health Review Tribunal that that person no longer

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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, the Secretary of State may—

(a) by warrant direct that he be remitted to any 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; or

(b) exercise any power of releasing him on licence or discharging him under supervision which would have been exercisable if he had been remitted to such a prison or institution as aforesaid,

and on his arrival in the prison or other institution or, as the case may be, his release or discharge as aforesaid, the transfer direction and the restriction direction shall cease to have effect.

[[F91](2) A restriction direction in the case of a person serving a sentence of imprisonment shall cease to have effect, if it has not previously done so, on his release date.

(3) In this section, references to a person's release date are to the day (if any) on which he would be entitled to be released (whether unconditionally or on licence) from any prison or other institution in which he might have been detained if the transfer direction had not been given; and in determining that day there shall be disregarded—

(a) any powers that would be exercisable by the Parole Board if he were detained in such a prison or other institution, and

(b) any practice of the Secretary of State in relation to the early release under discretionary powers of persons detained in such a prison or other institution.**]**

(4) For the purposes of section 49(2) of the [M9]Prison Act 1952 (which provides for discounting from the sentences of certain prisoners periods while they are unlawfully at large) a patient who, having been transferred in pursuance of a transfer direction from any such institution as is referred to in that section, is at large in circumstances in which he is liable to be taken into custody under any provision of this Act, shall be treated as unlawfully at large and absent from that institution.

[[F92](5) The preceding provisions of this section shall have effect as if—

(a) the reference in subsection (1) to a transfer direction and a restriction direction having been given in respect of a person serving a sentence of imprisonment included a reference to a hospital direction and a limitation direction having been given in respect of a person sentenced to imprisonment;

(b) the reference in subsection (2) to a restriction direction included a reference to a limitation direction; and

(c) references in subsections (3) and (4) to a transfer direction included references to a hospital direction.**]**

Textual Amendments

F90 Words in s. 50(1) substituted (20.1.2004) by Criminal Justice Act 2003 (c. 44), **ss. 294(2)**, 336; S.I. 2004/81, **art. 2(2)(b)**

F91 S. 50(2)(3) substituted (20.1.2004) by Criminal Justice Act 2003 (c. 44), **ss. 294(3)**, 336; S.I. 2004/81, **art. 2(2)(b)**

F92 S. 50(5) added (1.10.1997) by 1997 c. 43, s. 55, **Sch. 4**, para 12(5); S.I. 1997/2200, **art. 2**

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M9 1952 c. 52.

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51 Further provisions as to detained persons.

(1) This section has effect where a transfer direction has been given in respect of any such person as is described in paragraph (a) of section 48(2) above and that person is in this section referred to as "the detainee".

(2) The transfer direction shall cease to have effect when the detainee's case is disposed of by the court having jurisdiction to try or otherwise deal with him, but without prejudice to any power of that court to make a hospital order or other order under this Part of this Act in his case.

(3) If the Secretary of State is notified by the responsible medical officer, any other registered medical practitioner or a Mental Health Review Tribunal at any time before the detainee's case is disposed of by that court—

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

(b) that no effective treatment for his disorder can be given at 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, there to be dealt with as if he had not been so removed, and on his arrival at the place to which he is so remitted the transfer direction shall cease to have effect.

(4) If (no direction having been given under subsection (3) above) the court having jurisdiction to try or otherwise deal with the detainee is satisfied on the written or oral evidence of the responsible medical officer—

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

(b) 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 is mentioned in subsection (3) above or **[**[F93], subject to section 25 of the Criminal Justice and Public Order Act 1994,**]** 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.

(5) If (no direction or order having been given or made under subsection (3) or (4) above) it appears to the court having jurisdiction to try or otherwise deal with the detainee—

(a) that it is impracticable or inappropriate to bring the detainee before the court; and

(b) that the conditions set out in subsection (6) below are satisfied,

the court may make a hospital order (with or without a restriction order) in his case in his absence and, in the case of a person awaiting trial, without convicting him.

(6) A hospital order may be made in respect of a person under subsection (5) above if the court—

(a) is satisfied, on the written or oral evidence of at least two registered medical practitioners, that the detainee is suffering from mental illness or severe mental impairment of a nature or degree which makes it appropriate for the patient to be detained in a hospital for medical treatment; and

(b) is of the opinion, after considering any depositions or other documents required to be sent to the proper officer of the court, that it is proper to make such an order.

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(7) Where a person committed to the Crown Court to be dealt with under section 43 above is admitted to a hospital in pursuance of an order under section 44 above, subsections (5) and (6) above shall apply as if he were a person subject to a transfer direction.

Textual Amendments

F93 Words in s. 51(4) inserted (10.4.1995) by 1994 c. 33, s. 168, **Sch. 10**, para. 51; S.I. 1995/721, art. 2, **Sch.** Appendix A

52 Further provisions as to persons remanded by magistrates' courts.

(1) This section has effect where a transfer direction has been given in respect of any such person as is described in paragraph (b) of section 48(2) above; 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 **[**[F94]sent**]** in custody to the Crown Court for trial or to be otherwise dealt with.

(3) Subject to subsection (4) below, the power of further remanding the accused under section 128 of the [M10]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 **[**[F95]sent**]** to the Crown Court as mentioned in subsection (2) above.

(6) If the accused is **[**[F96]sent**]** 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 51 above 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, **[**[F97]send him to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998**]** if—

(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) [F98]. . . the accused is represented by counsel or a solicitor.

Textual Amendments

F94 Word in s. 52(2) substituted (9.5.2005 for certain purposes and otherwise prosp.) by Criminal Justice Act 2003 (c. 44) , ss. 41 , 336 , **Sch. 3 para. 55(3)(a)** ; S.I. 2005/1267 , **art. 2** , Sch. Pt. 1 para. 1(1)(k)

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F95 Word in s. 52(5) substituted (9.5.2005 for specified purposes, 18.6.2012 for specified purposes, 5.11.2012 for specified purposes) by Criminal Justice Act 2003 (c. 44) , s. 336(3)(4) , **Sch. 3 para. 55(3)(b)** ; S.I. 2005/1267 , art. 2(1)(2)(a) , Sch. Pt. 1 para. 1(1)(k) ; S.I. 2012/1320 , art. 4(1)(c) (2) (3) (with art. 5 and S.I. 2012/2574, art. 4(2)); S.I. 2012/2574, art. 2(1)(c)(2)(3), Sch. (as amended (4.11.2012) by S.I. 2012/2761, art. 2) (with arts. 3, 4 of said S.I. 2012/2574 and S.I. 2013/1103, art. 4)

F96 Word in s. 52(6) substituted (9.5.2005 for specified purposes, 18.6.2012 for specified purposes, 5.11.2012 for specified purposes) by Criminal Justice Act 2003 (c. 44) , s. 336(3)(4) , **Sch. 3 para. 55(3)(c)** ; S.I. 2005/1267 , art. 2(1)(2)(a) , Sch. Pt. 1 para. 1(1)(k) ; S.I. 2012/1320 , art. 4(1)(c) (2) (3) (with art. 5 and S.I. 2012/2574, art. 4(2)); S.I. 2012/2574, art. 2(1)(c)(2)(3), Sch. (as amended (4.11.2012) by S.I. 2012/2761, art. 2) (with arts. 3, 4 of said S.I. 2012/2574 and S.I. 2013/1103, art. 4)

F97 Word in s. 52(7) substituted (9.5.2005 for specified purposes, 18.6.2012 for specified purposes, 5.11.2012 for specified purposes) by Criminal Justice Act 2003 (c. 44) , s. 336(3)(4) , **Sch. 3 para. 55(3)(d)** ; S.I. 2005/1267 , art. 2(1)(2)(a) , Sch. Pt. 1 para. 1(1)(k) ; S.I. 2012/1320 , art. 4(1)(c) (2) (3) (with art. 5 and S.I. 2012/2574, art. 4(2)); S.I. 2012/2574, art. 2(1)(c)(2)(3), Sch. (as amended (4.11.2012) by S.I. 2012/2761, art. 2) (with arts. 3, 4 of said S.I. 2012/2574 and S.I. 2013/1103, art. 4)

F98 Words in s. 52(7)(b) repealed (9.5.2005 for specified purposes, 18.6.2012 for specified purposes, 5.11.2012 for specified purposes) by Criminal Justice Act 2003 (c. 44) , s. 336(3)(4) , **Sch. 3 para. 55(3)(d)**, Sch. 37 Pt. 4; S.I. 2005/1267 , art. 2(1)(2)(a) , Sch. Pt. 1 para. 1(1)(k) ; S.I. 2012/1320 , art. 4(1)(c) (2) (3) (with art. 5 and S.I. 2012/2574, art. 4(2)); S.I. 2012/2574, art. 2(1)(c)(2)(3), Sch. (as amended (4.11.2012) by S.I. 2012/2761, art. 2) (with arts. 3, 4 of said S.I. 2012/2574 and S.I. 2013/1103, art. 4)

Marginal Citations

M10 1980 c. 43 .

53 Further provisions as to civil prisoners and persons detained under [F99the Immigration Acts].

(1) Subject to subsection (2) below, a transfer direction given in respect of any such person as is described in paragraph (c) or (d) of section 48(2) above 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.

(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 registered 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.

Textual Amendments

F99 S. 53: words in heading substituted (10.2.2003) by virtue of 2002 c. 41, ss. 62(10)(b), 162 (with s. 129); S.I. 2003/1, **art. 2**, Sch

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Supplemental

54 Requirements as to medical evidence.

(1) The registered medical practitioner whose evidence is taken into account under section 35(3)(a) above and at least one of the registered medical practitioners whose evidence is taken into account under sections 36(1), 37(2)(a), 38(1) **[**[F100]45A(2)**]** and 51(6)(a) above and whose reports are taken into account under sections 47(1) and 48(1) above shall be a practitioner approved for the purposes of section 12 above by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder.

(2) For the purposes of any provision of this Part of this Act under which a court may act on the written evidence of—

(a) a registered medical practitioner or a registered 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 registered medical practitioner or a registered 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.

(3) Where, in pursuance of a direction of the court, any such report is tendered in evidence otherwise than by or on behalf of the person who is the subject of the report, then—

(a) if that person is represented by counsel or a solicitor, a copy of the report shall be given to his counsel or solicitor;

(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.

Textual Amendments

F100 Words in s. 54 inserted (1.10.1997) by 1997 c. 43, s. 55, **Sch. 4**, para. 12(6); S.I. 1997/2200, **art. 2**

Modifications etc. (not altering text)

C41 S. 54(2)(3) extended (30.9.1998) by 1969 c. 54, **s. 12B(3)** (as inserted by 1998 c. 37, ss. 106, **Sch. 7**, para. 5(3)); S.I. 1998/2327, **art. 2(1)(w)** (as amended by S.I. 1998/2412, **art. 2** and S.I. 1998/2906, **art. 2**)

C42 S. 54(2)(3) extended (E.W.) (1.1.1992) by Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25, SIF 39:1), **s. 1(2)** (with saving in s. 8); S.I. 1991/2488, **art. 2**
S. 54(2)(3) applied (25.8.2000) by 2000 c. 6, ss. 42, 168(1), **Sch. 2 para. 5(9)**
S. 54(2)(3) extended (E.W.) (1.1.1992) by Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25, SIF 39:1), s. 5(3), **Sch. 2 para. 2(3)** (with saving in s. 8); S.I. 1991/2488, **art. 2**

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S. 54(2)(3) extended (1.10.1992) by Powers of Criminal Courts Act 1973 (c. 62, SIF 39:1), s. 3(3), **Sch. 1A para. 5(9)** (as inserted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 8(3), 9(2), 101(1), Sch. 1 Pt. II, **Sch. 12 para. 1**; S.I. 1992/333, art. 2(2), **Sch. 2**.

[54A [F101]Reduction of period for making hospital orders.

(1) The Secretary of State may by order reduce the length of the periods mentioned in sections 37(4) and (5) and 38(4) above.

(2) An order under subsection (1) above may make such consequential amendments of sections 40(1) and 44(3) above as appear to the Secretary of State to be necessary or expedient.**]**

Textual Amendments

F101 S. 54A inserted (E.W.) (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), **s. 27(2)** (with saving in s. 28); S.I. 1992/333, art. 2(2), **Sch.2**.

55 Interpretation of Part III.

(1) In this Part of this Act—

"child" and "young person" have the same meaning as in the [M11]Children and Young Persons Act 1933;

"civil prisoner" has the meaning given to it by section 48(2)(c) above;

"guardian", in relation to a child or young person, has the same meaning as in the Children and Young Persons Act 1933;

"place of safety", in relation to a person who is not a child or young person, means any police station, prison or remand centre, or any hospital the managers of which are willing temporarily to receive him, and in relation to a child or young person has the same meaning as in the Children and Young Persons Act 1933;

"responsible medical officer", in relation to a person liable to be detained in a hospital within the meaning of Part II of this Act, means the registered medical practitioner in charge of the treatment of the patient.

(2) Any reference in this Part of this Act to an offence punishable on summary conviction with imprisonment shall be construed without regard to any prohibition or restriction imposed by or under any enactment relating to the imprisonment of young offenders.

(3) Where a patient who is liable to be detained in a hospital in pursuance of an order or direction under this Part of this Act is treated by virtue of any provision of this Part of this Act as if he had been admitted to the hospital in pursuance of a subsequent order or direction under this Part of this Act or a subsequent application for admission for treatment under Part II of this Act, he shall be treated as if the subsequent order, direction or application had described him as suffering from the form or forms of mental disorder specified in the earlier order or direction or, where he is treated as if he had been so admitted by virtue of a direction under section 42(1) above, such form of mental disorder as may be specified in the direction under that section.

(4) Any reference to a hospital order, a guardianship order or a restriction order in section 40(2), (4) or (5), section 41(3) to (5), or section 42 above or section 69(1) below shall be construed as including a reference to any order or direction under this

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Part of this Act having the same effect as the first-mentioned order; and the exceptions and modifications set out in Schedule 1 to this Act in respect of the provisions of this Act described in that Schedule accordingly include those which are consequential on the provisions of this subsection.

(5) Section 34(2) above shall apply for the purposes of this Part of this Act as it applies for the purposes of Part II of this Act.

(6) References in this Part of this Act to persons serving a sentence of imprisonment shall be construed in accordance with section 47(5) above.

(7) Section 99 of the [M12]Children and Young Persons Act 1933 (which relates to the presumption and determination of age) shall apply for the purposes of this Part of this Act as it applies for the purposes of that Act.

Marginal Citations

M11 1933 c. 12.

M12 1933 c. 12.

PART IV

CONSENT TO TREATMENT

56 Patients to whom Part IV applies.

(1) This Part of this Act applies to any patient liable to be detained under 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 4(4)(a) above has not been given and received;

(b) a patient who is liable to be detained by virtue of section 5(2) or (4) or 35 above or section 135 or 136 below or by virtue of a direction under section 37(4) above; and

(c) a patient who has been conditionally discharged under section 42(2) above or section 73 or 74 below and has not been recalled to hospital.

(2) Section 57 and, so far as relevant to that section, sections 59, 60 and 62 below, apply also to any patient who is not liable to be detained under this Act.

57 Treatment requiring consent and a second opinion.

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

(a) any surgical operation for destroying brain tissue or for destroying the functioning of brain tissue; and

(b) such other forms of treatment as may be specified for the purposes of this section by regulations made by the Secretary of State.

(2) Subject to section 62 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 registered medical practitioner appointed for the purposes of this Part of this Act by the Secretary of State (not being the responsible medical officer)

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and two other persons appointed for the purposes of this paragraph by the Secretary of State (not being registered 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 registered 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 registered 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 registered medical practitioner.

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

58 Treatment requiring consent or a second opinion.

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

(a) such forms of treatment as may be specified for the purposes of this section by regulations made by the Secretary of State;

(b) the administration of medicine to a patient by any means (not being a form of treatment specified under paragraph (a) above or section 57 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 62 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 registered medical practitioner appointed for the purposes of this Part of this Act by the Secretary of State has certified in writing that the patient is capable of understanding its nature, purpose and likely effects and has consented to it; or

(b) a registered 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 registered 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 registered 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.

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VALID FROM 03/11/2008

[F102 58A Electro-convulsive therapy, etc.

(1) This section applies to the following forms of medical treatment for mental disorder—
  (a) electro-convulsive therapy; and
  (b) such other forms of treatment as may be specified for the purposes of this section by regulations made by the appropriate national authority.

(2) Subject to section 62 below, a patient shall be not be given any form of treatment to which this section applies unless he falls within subsection (3), (4) or (5) below.

(3) A patient falls within this subsection if—
  (a) he has attained the age of 18 years;
  (b) he has consented to the treatment in question; and
  (c) either the approved clinician in charge of it or a registered medical practitioner appointed as mentioned in section 58(3) above has certified in writing that the patient is capable of understanding the nature, purpose and likely effects of the treatment and has consented to it.

(4) A patient falls within this subsection if—
  (a) he has not attained the age of 18 years; but
  (b) he has consented to the treatment in question; and
  (c) a registered medical practitioner appointed as aforesaid (not being the approved clinician in charge of the treatment) has certified in writing—
    (i) that the patient is capable of understanding the nature, purpose and likely effects of the treatment and has consented to it; and
    (ii) that it is appropriate for the treatment to be given.

(5) A patient falls within this subsection if a registered medical practitioner appointed as aforesaid (not being the responsible clinician (if there is one) or the approved clinician in charge of the treatment in question) has certified in writing—
  (a) that the patient is not capable of understanding the nature, purpose and likely effects of the treatment; but
  (b) that it is appropriate for the treatment to be given; and
  (c) that giving him the treatment would not conflict with—
    (i) an advance decision which the registered medical practitioner concerned is satisfied is valid and applicable; or
    (ii) a decision made by a donee or deputy or by the Court of Protection.

(6) Before giving a certificate under subsection (5) above the registered medical practitioner concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment but, of those persons—
  (a) one shall be a nurse and the other shall be neither a nurse nor a registered medical practitioner; and
  (b) neither shall be the responsible clinician (if there is one) or the approved clinician in charge of the treatment in question.

(7) This section shall not by itself confer sufficient authority for a patient who falls within section 56(5) above to be given a form of treatment to which this section applies if he

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is not capable of understanding the nature, purpose and likely effects of the treatment (and cannot therefore consent to it).

(8) Before making any regulations for the purposes of this section, the appropriate national authority shall consult such bodies as appear to it to be concerned.

(9) In this section—

(a) a reference to an advance decision is to an advance decision (within the meaning of the Mental Capacity Act 2005) made by the patient;

(b) "valid and applicable", in relation to such a decision, means valid and applicable to the treatment in question in accordance with section 25 of that Act;

(c) a reference to a donee is to a donee of a lasting power of attorney (within the meaning of section 9 of that Act) created by the patient, where the donee is acting within the scope of his authority and in accordance with that Act; and

(d) a reference to a deputy is to a deputy appointed for the patient by the Court of Protection under section 16 of that Act, where the deputy is acting within the scope of his authority and in accordance with that Act.

(10) In this section, "the appropriate national authority" means—

(a) in a case where the treatment in question would, if given, be given in England, the Secretary of State;

(b) in a case where the treatment in question would, if given, be given in Wales, the Welsh Ministers.**]**

Textual Amendments

F102 S. 58A inserted (3.11.2008) by Mental Health Act 2007 (c. 12), **ss. 27**, 56 (with Sch. 10); S.I. 2008/1900, **art. 2(g)** (with art. 3, Sch.)

Modifications etc. (not altering text)

C43 S. 58A excluded (W.) (3.11.2008) by The Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) Regulations 2008 (S.I. 2008/2439), regs. 1, **38(3)**

59 Plans of treatment.

Any consent or certificate under section 57 or 58 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.

60 Withdrawal of consent.

(1) Where the consent of a patient to any treatment has been given for the purposes of section 57 or 58 above, the patient may, subject to section 62 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 the plan of treatment to which a patient has consented, a patient who has consented to such a plan may, subject to section 62 below, at any time withdraw his consent to further treatment, or to further treatment of any description, under the plan.

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61 Review of treatment.

(1) Where a patient is given treatment in accordance with section 57(2) or 58(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 **[**[F103]under section 20(3) or 21B(2) above renewing the authority for the detention of the patient**]**; and

(b) at any other time if so required by the Secretary of State.

(2) In relation to a patient who is subject to a restriction order **[**[F104], limitation direction**]**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 41(6) **[**[F105], 45B(3)**]** or 49(3) above.

(3) The Secretary of State may at any time give notice to the responsible medical officer directing that, subject to section 62 below, a certificate given in respect of a patient under subsection 57(2) or 58(3)(b) above shall not apply to treatment given to him after a date specified in the notice and sections 57 and 58 above shall then apply to any such treatment as if that certificate has not been given.

Textual Amendments

F103 Words in s. 61(1)(a) substituted (1.4.1996) by 1995 c. 52, **ss. 2(5)**, 7(2)

F104 Words in s. 61(2) inserted (1.10.1997) by 1997 c. 43, s. 55, **Sch. 4 para. 12(7)(a)**; S.I. 1997/2200, **art. 2**

F105 Words in s. 61(2) inserted (1.10.1997) by 1997 c. 43, s. 55, **Sch. 4 para. 12(7)(b)**; S.I. 1997/2200, **art. 2**

62 Urgent treatment.

(1) Sections 57 and 58 above shall not apply to any treatment—

(a) which is immediately necessary to save the patient's life;

(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 60 and 61(3) above shall not preclude the continuation of any treatment or of treatment under any plan pending compliance with section 57 or 58 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.

Status: *Point in time view as at 01/03/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Mental Health Act 1983 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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.

VALID FROM 03/11/2008

[F106 62A Treatment on recall of community patient or revocation of order

(1) This section applies where—
  (a) a community patient is recalled to hospital under section 17E above; or
  (b) a patient is liable to be detained under this Act following the revocation of a community treatment order under section 17F above in respect of him.

(2) For the purposes of section 58(1)(b) above, the patient is to be treated as if he had remained liable to be detained since the making of the community treatment order.

(3) But section 58 above does not apply to treatment given to the patient if—
  (a) the certificate requirement is met for the purposes of section 64C or 64E below; or
  (b) as a result of section 64B(4) or 64E(4) below, the certificate requirement would not apply (were the patient a community patient not recalled to hospital under section 17E above).

(4) Section 58A above does not apply to treatment given to the patient if there is authority to give the treatment, and the certificate requirement is met, for the purposes of section 64C or 64E below.

(5) In a case where this section applies, the certificate requirement is met only in so far as—
  (a) the Part 4A certificate expressly provides that it is appropriate for one or more specified forms of treatment to be given to the patient in that case (subject to such conditions as may be specified); or
  (b) a notice having been given under subsection (5) of section 64H below, treatment is authorised by virtue of subsection (8) of that section.

(6) Subsection (5)(a) above shall not preclude the continuation of any treatment, or of treatment under any plan, pending compliance with section 58 or 58A above if the approved clinician in charge of the treatment considers that the discontinuance of the treatment, or of the treatment under the plan, would cause serious suffering to the patient.

(7) In a case where subsection (1)(b) above applies, subsection (3) above only applies pending compliance with section 58 above.

(8) In subsection (5) above—

"Part 4A certificate" has the meaning given in section 64H below; and

"specified", in relation to a Part 4A certificate, means specified in the certificate.**]**

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Textual Amendments

F106 S. 62A inserted (3.11.3008) by Mental Health Act 2007 (c. 12), **ss. 34(4)**, 56 (with Sch. 10); S.I. 2008/1900, **art. 2(j)** (with art. 3, Sch.)

63 Treatment not requiring consent.

The consent of a patient shall not be required for any medical treatment given to him for the mental disorder from which he is suffering, not being treatment falling within section 57 or 58 above, if the treatment is given by or under the direction of the responsible medical officer.

64 Supplementary provisions for Part IV.

(1) In this Part of this Act "the responsible medical officer" means the registered medical practitioner in charge of the treatment of the patient in question and "hospital" includes a **[**[F107]registered establishment**]**.

(2) 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.

Textual Amendments

F107 Words in s. 64(1) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(2)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **art. 3(3)(d)** (with transitional provisions in Schs. 1-3 and art. 3(4)-(10))

VALID FROM 01/04/2008

[[F108]PART 4A

TREATMENT OF COMMUNITY PATIENTS NOT RECALLED TO HOSPITAL

Textual Amendments

F108 Pt. 4A (ss. 64A-64K) inserted (1.4.2008 for s. 64H for certain purposes, otherwise 3.11.2008 for ss. 64A-64K) by Mental Health Act 2007 (c. 12) , **ss. 35(1)** , 56 (with Sch. 10); S.I. 2008/745 , arts. 2(d), 3(e); S.I. 2008/1900 , **art. 2(k)** (with art. 3, Sch.)

VALID FROM 03/11/2008

[[F109]64A Meaning of "relevant treatment"

In this Part of this Act "relevant treatment", in relation to a patient, means medical treatment which—

(a) is for the mental disorder from which the patient is suffering; and

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(b) is not a form of treatment to which section 57 above applies.**]**

Textual Amendments

F109 Pt. 4A (ss. 64A-64K) inserted (1.4.2008 for s. 64H for certain purposes, otherwise 3.11.2008 for ss. 64A-64K) by Mental Health Act 2007 (c. 12), **ss. 35(1)**, 56 (with Sch. 10); S.I. 2008/745, {arts. 2(d), 3(e)}; S.I. 2008/1900, **art. 2(k)** (with art. 3, Sch.)

VALID FROM 03/11/2008

[F110 64B Adult community patients

(1) This section applies to the giving of relevant treatment to a community patient who—

(a) is not recalled to hospital under section 17E above; and

(b) has attained the age of 16 years.

(2) The treatment may not be given to the patient unless—

(a) there is authority to give it to him; and

(b) if it is section 58 type treatment or section 58A type treatment, the certificate requirement is met.

(3) But the certificate requirement does not apply if—

(a) giving the treatment to the patient is authorised in accordance with section 64G below; or

(b) the treatment is immediately necessary and—

(i) the patient has capacity to consent to it and does consent to it; or

(ii) a donee or deputy or the Court of Protection consents to the treatment on the patient's behalf.

(4) Nor does the certificate requirement apply in so far as the administration of medicine to the patient at any time during the period of one month beginning with the day on which the community treatment order is made is section 58 type treatment.

(5) The reference in subsection (4) above to the administration of medicine does not include any form of treatment specified under section 58(1)(a) above.**]**

Textual Amendments

F110 Pt. 4A (ss. 64A-64K) inserted (1.4.2008 for s. 64H for certain purposes, otherwise 3.11.2008for ss. 64A-64K) by Mental Health Act 2007 (c. 12), **ss. 35(1)**, 56 (with Sch. 10); S.I. 2008/745, {arts. 2(d), 3(e)}; S.I. 2008/1900, **art. 2(k)** (with art. 3, Sch.)

Status: *Point in time view as at 01/03/2007. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 03/11/2008

[F111 64C Section 64B: supplemental

(1) This section has effect for the purposes of section 64B above.

(2) There is authority to give treatment to a patient if—
- (a) he has capacity to consent to it and does consent to it;
- (b) a donee or deputy or the Court of Protection consents to it on his behalf; or
- (c) giving it to him is authorised in accordance with section 64D or 64G below.

(3) Relevant treatment is section 58 type treatment or section 58A type treatment if, at the time when it is given to the patient, section 58 or 58A above (respectively) would have applied to it, had the patient remained liable to be detained at that time (rather than being a community patient).

(4) The certificate requirement is met in respect of treatment to be given to a patient if—
- (a) a registered medical practitioner appointed for the purposes of Part 4 of this Act (not being the responsible clinician or the person in charge of the treatment) has certified in writing that it is appropriate for the treatment to be given or for the treatment to be given subject to such conditions as may be specified in the certificate; and
- (b) if conditions are so specified, the conditions are satisfied.

(5) In a case where the treatment is section 58 type treatment, treatment is immediately necessary if—
- (a) it is immediately necessary to save the patient's life; or
- (b) it is immediately necessary to prevent a serious deterioration of the patient's condition and is not irreversible; or
- (c) it is immediately necessary to alleviate serious suffering by the patient and is not irreversible or hazardous; or
- (d) it is immediately necessary, represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or others and is not irreversible or hazardous.

(6) In a case where the treatment is section 58A type treatment by virtue of subsection (1)(a) of that section, treatment is immediately necessary if it falls within paragraph (a) or (b) of subsection (5) above.

(7) In a case where the treatment is section 58A type treatment by virtue of subsection (1)(b) of that section, treatment is immediately necessary if it falls within such of paragraphs (a) to (d) of subsection (5) above as may be specified in regulations under that section.

(8) For the purposes of subsection (7) above, the regulations—
- (a) may make different provision for different cases (and may, in particular, make different provision for different forms of treatment);
- (b) may make provision which applies subject to specified exceptions; and
- (c) may include transitional, consequential, incidental or supplemental provision.

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(9) Subsection (3) of section 62 above applies for the purposes of this section as it applies for the purposes of that section.**]**

Textual Amendments

F111 Pt. 4A (ss. 64A-64K) inserted (1.4.2008 for s. 64H for certain purposes, otherwise 3.11.2008 for ss. 64A-64K) by Mental Health Act 2007 (c. 12), **ss. 35(1)**, 56 (with Sch. 10); S.I. 2008/745, {arts. 2(d), 3(e)}; S.I. 2008/1900, **art. 2(k)** (with art. 3, Sch.)

VALID FROM 03/11/2008

[F112 64D Adult community patients lacking capacity

(1) A person is authorised to give relevant treatment to a patient as mentioned in section 64C(2)(c) above if the conditions in subsections (2) to (6) below are met.

(2) The first condition is that, before giving the treatment, the person takes reasonable steps to establish whether the patient lacks capacity to consent to the treatment.

(3) The second condition is that, when giving the treatment, he reasonably believes that the patient lacks capacity to consent to it.

(4) The third condition is that—

(a) he has no reason to believe that the patient objects to being given the treatment; or

(b) he does have reason to believe that the patient so objects, but it is not necessary to use force against the patient in order to give the treatment.

(5) The fourth condition is that—

(a) he is the person in charge of the treatment and an approved clinician; or

(b) the treatment is given under the direction of that clinician.

(6) The fifth condition is that giving the treatment does not conflict with—

(a) an advance decision which he is satisfied is valid and applicable; or

(b) a decision made by a donee or deputy or the Court of Protection.

(7) In this section—

(a) reference to an advance decision is to an advance decision (within the meaning of the Mental Capacity Act 2005) made by the patient; and

(b) "valid and applicable", in relation to such a decision, means valid and applicable to the treatment in question in accordance with section 25 of that Act.**]**

Textual Amendments

F112 Pt. 4A (ss. 64A-64K) inserted (1.4.2008 for s. 64H for certain purposes, otherwise 3.11.2008 for ss. 64A-64K) by Mental Health Act 2007 (c. 12), **ss. 35(1)**, 56 (with Sch. 10); S.I. 2008/745, {arts. 2(d), 3(e)}; S.I. 2008/1900, **art. 2(k)** (with art. 3, Sch.)

Status: *Point in time view as at 01/03/2007. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 03/11/2008

[F113 64E Child community patients

(1) This section applies to the giving of relevant treatment to a community patient who—

(a) is not recalled to hospital under section 17E above; and

(b) has not attained the age of 16 years.

(2) The treatment may not be given to the patient unless—

(a) there is authority to give it to him; and

(b) if it is section 58 type treatment or section 58A type treatment, the certificate requirement is met.

(3) But the certificate requirement does not apply if—

(a) giving the treatment to the patient is authorised in accordance with section 64G below; or

(b) in a case where the patient is competent to consent to the treatment and does consent to it, the treatment is immediately necessary.

(4) Nor does the certificate requirement apply in so far as the administration of medicine to the patient at any time during the period of one month beginning with the day on which the community treatment order is made is section 58 type treatment.

(5) The reference in subsection (4) above to the administration of medicine does not include any form of treatment specified under section 58(1)(a) above.

(6) For the purposes of subsection (2)(a) above, there is authority to give treatment to a patient if—

(a) he is competent to consent to it and he does consent to it; or

(b) giving it to him is authorised in accordance with section 64F or 64G below.

(7) Subsections (3) to (9) of section 64C above have effect for the purposes of this section as they have effect for the purposes of section 64B above.

(8) Regulations made by virtue of section 32(2)(d) above apply for the purposes of this section as they apply for the purposes of Part 2 of this Act.**]**

Textual Amendments

F113 Pt. 4A (ss. 64A-64K) inserted (1.4.2008 for s. 64H for certain purposes, otherwise 3.11.2008 for ss. 64A-64K) by Mental Health Act 2007 (c. 12), **ss. 35(1)**, 56 (with Sch. 10); S.I. 2008/745, {arts. 2(d), 3(e)}; S.I. 2008/1900, **art. 2(k)** (with art. 3, Sch.)

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VALID FROM 03/11/2008

[F114 64F Child community patients lacking competence

(1) A person is authorised to give relevant treatment to a patient as mentioned in section 64E(6)(b) above if the conditions in subsections (2) to (5) below are met.

(2) The first condition is that, before giving the treatment, the person takes reasonable steps to establish whether the patient is competent to consent to the treatment.

(3) The second condition is that, when giving the treatment, he reasonably believes that the patient is not competent to consent to it.

(4) The third condition is that—

(a) he has no reason to believe that the patient objects to being given the treatment; or

(b) he does have reason to believe that the patient so objects, but it is not necessary to use force against the patient in order to give the treatment.

(5) The fourth condition is that—

(a) he is the person in charge of the treatment and an approved clinician; or

(b) the treatment is given under the direction of that clinician.**]**

Textual Amendments

F114 Pt. 4A (ss. 64A-64K) inserted (1.4.2008 for s. 64H for certain purposes, otherwise 3.11.2008 for ss. 64A-64K) by Mental Health Act 2007 (c. 12), **ss. 35(1)**, 56 (with Sch. 10); S.I. 2008/745, {arts. 2(d), 3(e)}; S.I. 2008/1900, **art. 2(k)** (with art. 3, Sch.)

VALID FROM 03/11/2008

[F115 64G Emergency treatment for patients lacking capacity or competence

(1) A person is also authorised to give relevant treatment to a patient as mentioned in section 64C(2)(c) or 64E(6)(b) above if the conditions in subsections (2) to (4) below are met.

(2) The first condition is that, when giving the treatment, the person reasonably believes that the patient lacks capacity to consent to it or, as the case may be, is not competent to consent to it.

(3) The second condition is that the treatment is immediately necessary.

(4) The third condition is that if it is necessary to use force against the patient in order to give the treatment—

(a) the treatment needs to be given in order to prevent harm to the patient; and

(b) the use of such force is a proportionate response to the likelihood of the patient's suffering harm, and to the seriousness of that harm.

(5) Subject to subsections (6) to (8) below, treatment is immediately necessary if—

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(a) it is immediately necessary to save the patient's life; or
(b) it is immediately necessary to prevent a serious deterioration of the patient's condition and is not irreversible; or
(c) it is immediately necessary to alleviate serious suffering by the patient and is not irreversible or hazardous; or
(d) it is immediately necessary, represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or others and is not irreversible or hazardous.

(6) Where the treatment is section 58A type treatment by virtue of subsection (1)(a) of that section, treatment is immediately necessary if it falls within paragraph (a) or (b) of subsection (5) above.

(7) Where the treatment is section 58A type treatment by virtue of subsection (1)(b) of that section, treatment is immediately necessary if it falls within such of paragraphs (a) to (d) of subsection (5) above as may be specified in regulations under section 58A above.

(8) For the purposes of subsection (7) above, the regulations—
(a) may make different provision for different cases (and may, in particular, make different provision for different forms of treatment);
(b) may make provision which applies subject to specified exceptions; and
(c) may include transitional, consequential, incidental or supplemental provision.

(9) Subsection (3) of section 62 above applies for the purposes of this section as it applies for the purposes of that section.**]**

Textual Amendments

F115 Pt. 4A (ss. 64A-64K) inserted (1.4.2008 for s. 64H for certain purposes, otherwise 3.11.2008 for ss. 64A-64K) by Mental Health Act 2007 (c. 12), **ss. 35(1)**, 56 (with Sch. 10); S.I. 2008/745, {arts. 2(d), 3(e)}; S.I. 2008/1900, **art. 2(k)** (with art. 3, Sch.)

64H Certificates: supplementary provisions

(1) A certificate under section 64B(2)(b) or 64E(2)(b) above (a "Part 4A certificate") 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 forms of section 58 type treatment or section 58A type treatment.

(2) A Part 4A certificate shall be in such form as may be prescribed by regulations made by the appropriate national authority.

(3) Before giving a Part 4A certificate, the registered medical practitioner concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment but, of those persons—
(a) at least one shall be a person who is not a registered medical practitioner; and
(b) neither shall be the patient's responsible clinician or the person in charge of the treatment in question.

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(4) Where a patient is given treatment in accordance with a Part 4A certificate, a report on the treatment and the patient's condition shall be given by the person in charge of the treatment to the appropriate national authority if required by that authority.

(5) The appropriate national authority may at any time give notice directing that a Part 4A certificate shall not apply to treatment given to a patient after a date specified in the notice, and the relevant section shall then apply to any such treatment as if that certificate had not been given.

(6) The relevant section is—

(a) if the patient is not recalled to hospital in accordance with section 17E above, section 64B or 64E above;

(b) if the patient is so recalled or is liable to be detained under this Act following revocation of the community treatment order under section 17F above—

(i) section 58 above, in the case of section 58 type treatment;

(ii) section 58A above, in the case of section 58A type treatment;

(subject to section 62A(2) above).

(7) The notice under subsection (5) above shall be given to the person in charge of the treatment in question.

(8) Subsection (5) above shall not preclude the continuation of any treatment or of treatment under any plan pending compliance with the relevant section if the person in charge of the treatment considers that the discontinuance of the treatment or of treatment under the plan would cause serious suffering to the patient.

(9) In this section, "the appropriate national authority" means—

(a) in relation to community patients in respect of whom the responsible hospital is in England, the Secretary of State;

(b) in relation to community patients in respect of whom the responsible hospital is in Wales, the Welsh Ministers.

VALID FROM 03/11/2008

[F116 64I Liability for negligence

Nothing in section 64D, 64F or 64G above excludes a person's civil liability for loss or damage, or his criminal liability, resulting from his negligence in doing anything authorised to be done by that section.**]**

Textual Amendments

F116 Pt. 4A (ss. 64A-64K) inserted (1.4.2008 for s. 64H for certain purposes, otherwise 3.11.2008 for ss. 64A-64K) by Mental Health Act 2007 (c. 12), **ss. 35(1)**, 56 (with Sch. 10); S.I. 2008/745, {arts. 2(d), 3(e)}; S.I. 2008/1900, **art. 2(k)** (with art. 3, Sch.)

Status: *Point in time view as at 01/03/2007. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 03/11/2008

[F117 64J Factors to be considered in determining whether patient objects to treatment

(1) In assessing for the purposes of this Part whether he has reason to believe that a patient objects to treatment, a person shall consider all the circumstances so far as they are reasonably ascertainable, including the patient's behaviour, wishes, feelings, views, beliefs and values.

(2) But circumstances from the past shall be considered only so far as it is still appropriate to consider them.**]**

Textual Amendments

F117 Pt. 4A (ss. 64A-64K) inserted (1.4.2008 for s. 64H for certain purposes, otherwise 3.11.2008 for ss. 64A-64K) by Mental Health Act 2007 (c. 12), **ss. 35(1)**, 56 (with Sch. 10); S.I. 2008/745, {arts. 2(d), 3(e)}; S.I. 2008/1900, **art. 2(k)** (with art. 3, Sch.)

VALID FROM 03/11/2008

[F118 64K Interpretation of Part 4A

(1) This Part of this Act is to be construed as follows.

(2) References to a patient who lacks capacity are to a patient who lacks capacity within the meaning of the Mental Capacity Act 2005.

(3) References to a patient who has capacity are to be read accordingly.

(4) References to a donee are to a donee of a lasting power of attorney (within the meaning of section 9 of the Mental Capacity Act 2005) created by the patient, where the donee is acting within the scope of his authority and in accordance with that Act.

(5) References to a deputy are to a deputy appointed for the patient by the Court of Protection under section 16 of the Mental Capacity Act 2005, where the deputy is acting within the scope of his authority and in accordance with that Act.

(6) Reference to the responsible clinician shall be construed as a reference to the responsible clinician within the meaning of Part 2 of this Act.

(7) References to a hospital include a registered establishment.

(8) Section 64(3) above applies for the purposes of this Part of this Act as it applies for the purposes of Part 4 of this Act.**]]**

Status: *Point in time view as at 01/03/2007. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F118 Pt. 4A (ss. 64A-64K) inserted (1.4.2008 for s. 64H for certain purposes, otherwise 3.11.2008 for ss. 64A-64K) by Mental Health Act 2007 (c. 12), **ss. 35(1)**, 56 (with Sch. 10); S.I. 2008/745, {arts. 2(d), 3(e)}; S.I. 2008/1900, **art. 2(k)** (with art. 3, Sch.)

PART V

MENTAL HEALTH REVIEW TRIBUNALS

Constitution etc.

65 Mental Health Review Tribunals.

[[F119](1) There shall be tribunals, known as Mental Health Review Tribunals, for the purpose of dealing with applications and references by and in respect of patients under the provisions of this Act.

(1A) There shall be—

(a) one tribunal for each region of England, and

(b) one tribunal for Wales.

(1B) The Secretary of State—

(a) shall by order determine regions for the purpose of subsection (1A)(a) above; and

(b) may by order vary a region determined for that purpose;

and the Secretary of State shall act under this subsection so as to secure that the regions together comprise the whole of England.

(1C) Any order made under subsection (1B) above may make such transitional, consequential, incidental or supplemental provision as the Secretary of State considers appropriate.**]**

(2) The provisions of Schedule 2 to this Act shall have effect with respect to the constitution of Mental Health Review Tribunals.

(3) Subject to the provisions of Schedule 2 to this Act, and to rules made by the Lord Chancellor under this Act, the jurisdiction of a Mental Health Review Tribunal may be exercised by any three or more of its members, and references in this Act to a Mental Health Review Tribunal shall be construed accordingly.

(4) The Secretary of State may pay to the members of Mental Health Review Tribunals such remuneration and allowances as he may with the consent of the Treasury determine, and defray the expenses of such tribunals to such amount as he may with the consent of the Treasury determine, and may provide for each such tribunal such officers and servants, and such accommodation, as the tribunal may require.

Status: *Point in time view as at 01/03/2007. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F119 S. 65(1)(1A)(1B)(1C) substituted for s. 65(1) (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, s. 2(1)(3), 8, **Sch. 1**, Pt. III, para. 107(6)

Modifications etc. (not altering text)

C44 S. 65(1A)(a): functions transferred (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), **art. 3(1)**, 4, 5, {Sch. 1 Table 1} (with Sch. 4)

Applications and references concerning Part II patients

66 Applications to tribunals.

(1) Where—

(a) a patient is admitted to a hospital in pursuance of an application for admission for assessment; or

(b) a patient is admitted to a hospital in pursuance of an application for admission for treatment; or

(c) a patient is received into guardianship in pursuance of a guardianship application; or

(d) a report is furnished under section 16 above in respect of a patient; or

(e) a patient is transferred from guardianship to a hospital in pursuance of regulations made under section 19 above; or

(f) a report is furnished under section 20 above in respect of a patient and the patient is not discharged; or

[[F120](fa) a report is furnished under subsection (2) of section 21B above in respect of a patient and subsection (5) of that section applies (or subsections (5) and (6)(b) of that section apply) in the case of the report; or

(fb) a report is furnished under subsection (2) of section 21B above in respect of a patient and subsection (8) of that section applies in the case of the report; or**]**

(g) a report is furnished under section 25 above in respect of a patient who is detained in pursuance of an application for admission for treatment; or

[[F121](ga) a supervision application is accepted in respect of a patient; or

(gb) a report is furnished under section 25F above in respect of a patient; or

(gc) a report is furnished under section 25G above in respect of a patient; or**]**

(h) an order is made under section 29 above in respect of a patient who is or subsequently becomes liable to be detained or subject to guardianship under Part II of this Act,

an application may be made to a Mental Health Review Tribunal within the relevant period—

(i) by the patient (except in the cases mentioned in paragraphs (g) and (h) above) or, in the **[**[F122]cases mentioned in paragraphs (d), (ga), (gb) and (gc), by his nearest relative if he has been (or was entitled to be) informed under this Act of the report or acceptance**]**, and

(ii) in the cases mentioned in paragraphs (g) and (h) above, by his nearest relative.

(2) In subsection (1) above "the relevant period" means—

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(a) in the case mentioned in paragraph (a) of that subsection, 14 days beginning with the day on which the patient is admitted as so mentioned;

(b) in the case mentioned in paragraph (b) of that subsection, six months beginning with the day on which the patient is admitted as so mentioned;

(c) in the **[**[F123]cases mentioned in paragraphs (c) and (ga)**]** of that subsection, six months beginning with the day on which the application is accepted;

(d) in the cases mentioned in paragraphs (d) **[**[F124], (fb)**][**[F125], (g) and (gb)**]** of that subsection, 28 days beginning with the day on which the applicant is informed that the report has been furnished;

(e) in the case mentioned in paragraph (e) of that subsection, six months beginning with the day on which the patient is transferred;

(f) in the case mentioned in paragraph (f) **[**[F126]or (fa) of that subsection, the period or periods**]** for which authority for the patient's detention or guardianship is renewed by virtue of the report;

[[F127](fa) in the case mentioned in paragraph (gc) of that subsection, the further period for which the patient is made subject to after-care under supervision by virtue of the report;**]**

(g) in the case mentioned in paragraph (h) of that subsection, 12 months beginning with the date of the order, and in any subsequent period of 12 months during which the order continues in force.

(3) Section 32 above shall apply for the purposes of this section as it applies for the purposes of Part II of this Act.

Textual Amendments

F120 S. 66(1)(fa)(fb) inserted (1.4.1996) by 1995 c. 52, **ss. 2(6)(a)**, 7(2)
F121 S. 66(1)(ga)-(gc) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 7(2)
F122 Words in s. 66(1)(i) substituted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 7(3)
F123 Words in s. 66(2)(c) substituted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 7(4)(a)
F124 Words in s. 66(2)(d) inserted (1.4.1996) by 1995 c. 52, **ss. 2(6)(b)**, 7(2)
F125 Words in s. 66(2)(d) substituted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 7(4)(b)
F126 Words in s. 66(2)(f) substituted (1.4.1996) by 1995 c. 52, **ss. 2(6)(b)**, 7(2),
F127 S. 66(2)(fa) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 7(4)(c)

67 References to tribunals by Secretary of State concerning Part II patients.

(1) The Secretary of State may, if he thinks fit, at any time refer to a Mental Health Review Tribunal the case of any patient who is liable to be detained or subject to guardianship **[**[F128]or to after-care under supervision**]** under Part II of this Act.

(2) For the purpose of furnishing information for the purposes of a reference under subsection (1) above any registered 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 **[**[F129]or to any after-care services provided for the patient under section 117 below**]**.

(3) Section 32 above shall apply for the purposes of this section as it applies for the purposes of Part II of this Act.

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Textual Amendments

F128 Words in s. 67(1) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 8(2)

F129 Words in s. 67(2) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 8(3)

68 Duty of managers of hospitals to refer cases to tribunal.

(1) Where a patient who is admitted to a hospital in pursuance of an application for admission for treatment or a patient who is transferred from guardianship to hospital does not exercise his right to apply to a Mental Health Review Tribunal under section 66(1) above by virtue of his case falling within paragraph (b) or, as the case may be, paragraph (e) of that section, 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 66(1) above by virtue of his case falling within paragraph (d), (g) or (h) of that section or under section 67(1) above.

(2) If the authority for the detention of a patient in a hospital is renewed under section 20 **[**[F130]or 21B**]** above 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 registered 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 **[**[F131]or to any after-care services provided for the patient under section 117 below**]**.

(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 the patient's case as soon as possible after that date.

Textual Amendments

F130 Words in s. 68(2) inserted (1.4.1996) by 1995 c. 52, **ss. 2(7)**, 7(2),

F131 Words in s. 68(3) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 9

VALID FROM 03/11/2008

[[F132]68A Power to reduce periods under section 68

(1) The appropriate national authority may from time to time by order amend subsection (2) or (6) of section 68 above so as to substitute for a period mentioned there such shorter period as is specified in the order.

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(2) The order may include such transitional, consequential, incidental or supplemental provision as the appropriate national authority thinks fit.

(3) The order may, in particular, make provision for a case where—

(a) a patient in respect of whom subsection (1) of section 68 above applies is, or is about to be, transferred from England to Wales or from Wales to England; and

(b) the period by reference to which subsection (2) or (6) of that section operates for the purposes of the patient's case is not the same in one territory as it is in the other.

(4) A patient is transferred from one territory to the other if—

(a) he is transferred from a hospital, or from guardianship, in one territory to a hospital in the other in pursuance of regulations made under section 19 above;

(b) he is removed under subsection (3) of that section from a hospital or accommodation in one territory to a hospital or accommodation in the other;

(c) he is a community patient responsibility for whom is assigned from a hospital in one territory to a hospital in the other in pursuance of regulations made under section 19A above;

(d) on the revocation of a community treatment order in respect of him under section 17F above he is detained in a hospital in the territory other than the one in which the responsible hospital was situated; or

(e) he is transferred or removed under section 123 below from a hospital in one territory to a hospital in the other.

(5) Provision made by virtue of subsection (3) above may require or authorise the managers of a hospital determined in accordance with the order to refer the patient's case to **[**[F133]the appropriate tribunal**]**.

(6) In so far as making provision by virtue of subsection (3) above, the order—

(a) may make different provision for different cases;

(b) may make provision which applies subject to specified exceptions.

(7) Where the appropriate national authority for one territory makes an order under subsection (1) above, the appropriate national authority for the other territory may by order make such provision in consequence of the order as it thinks fit.

(8) An order made under subsection (7) above may, in particular, make provision for a case within subsection (3) above (and subsections (4) to (6) above shall apply accordingly).

(9) In this section, "the appropriate national authority" means—

(a) in relation to a hospital in England, the Secretary of State;

(b) in relation to a hospital in Wales, the Welsh Ministers.**]**

Textual Amendments

F132 Ss. 68, 68A substituted (3.11.2008) for s. 68 by Mental Health Act 2007 (c. 12), **ss. 37(3)**, 56 (with Sch. 10); S.I. 2008/1900, **art. 2(l)** (with art. 3, Sch.)

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F133 Words in s. 68A(5) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 6, **Sch. 3 para. 49**

Applications and references concerning Part III patients

69 Applications to tribunals concerning patients subject to hospital and guardianship orders.

(1) Without prejudice to any provision of section 66(1) above as applied by section 40(4) above, an application to a Mental Health Review Tribunal may also be made—

(a) in respect of a patient admitted to a hospital in pursuance of a hospital order, by the nearest relative of the patient in the period between the expiration of six months and the expiration of 12 months beginning with the date of the order and in any subsequent period of 12 months; and

(b) in respect of a patient placed under guardianship by a guardianship order—

(i) by the patient, within the period of six months beginning with the date of the order;

(ii) by the nearest relative of the patient, within the period of 12 months beginning with the date of the order and in any subsequent period of 12 months.

(2) Where a person detained in a hospital—

(a) is treated as subject to a hospital order or transfer direction by virtue of section 41(5) above, 82(2) or 85(2) **[**[F134]below or**]** , **[**[F135]article 2(2) of the Mental Health (Care and Treatment)(Scotland) Act 2003 (Consequential Provisions) Order 2005**]**[F136]. . . ; or

(b) is subject to a direction having the same effect as a hospital order by virtue of section **[**[F137]45B(2)**]** 46(3), 47(3) or 48(3) above,

then, without prejudice to any provision of Part II of this Act as applied by section 40 above, 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.

Textual Amendments

F134 Words in s. 69(2)(a) substituted (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(1), 60, **Sch. 10 para. 19(a)** (with Sch. 12 para. 8); S.I. 2005/579, **art. 3(g)(k)**

F135 Words in s. 69(2)(a) substituted (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), art.15, **Sch. 1 para. 2(2)**

F136 Words in s. 69(2)(a) repealed (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58, 60, Sch. 10 para. 19(b), **Sch. 11** (with Sch. 12 para. 8); S.I. 2005/579, **art. 3(g)(i)(vi)(k)**

F137 Words in s. 69(2)(b) inserted (1.10.1997) by 1997 c. 43, s. 55, **Sch. 4 para. 12(8)**; S.I. 1997/2200, **art. 2**

70 Applications to tribunals concerning restricted patients.

A patient who is a restricted patient within the meaning of section 79 below and is detained in a hospital may apply to a Mental Health Review Tribunal—

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(a) in the period between the expiration of six months and the expiration of 12 months beginning with the date of the relevant hospital order **[**[F138], hospital direction**]** or transfer direction; and

(b) in any subsequent period of 12 months.

Textual Amendments

F138 Words in s. 70(a) inserted (1.10.1997) by 1997 c. 43, s. 55, **Sch. 4 para. 12(9)**; S.I 1997/2200, art. 2

71 References by Secretary of State concerning restricted patients.

(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 subsection (2) above.

(4) Any reference under subsection (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.

(5) [F139] . . . . . .

(6) [F139] . . . . . .

Textual Amendments

F139 S. 71(5)(6) repealed (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58, 60, Sch. 10 para. 20, **Sch. 11** (with Sch. 12 para. 8); S.I. 2005/579, **art. 3(g)(i)(vi)(k)**

Discharge of patients

72 Powers of tribunals.

[[F140](1) Where application is made to a Mental Health Review Tribunal by or in respect of a patient who is liable to be detained under this Act, the tribunal may in any case direct that the patient be discharged, and—

(a) the tribunal shall direct the discharge of a patient liable to be detained under section 2 above if they are not satisfied—

(i) that he is 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 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 2 above if they are not satisfied—

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(i) that he is then suffering from mental illness, psychopathic disorder, severe mental impairment or 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 necessary for the health of 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 by virtue of paragraph (g) of section 66(1) above, that the patient, if released, would be likely to act in a manner dangerous to other persons or to himself.**]**

(2) In determining whether to direct the discharge of a patient detained otherwise than under section 2 above in a case not falling within paragraph (b) of subsection (1) above, 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 case he needs or to guard himself against serious exploitation.

(3) A tribunal may under subsection (1) above 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.

[[F141](3A) Where, in the case of an application to a tribunal by or in respect of a patient who is liable to be detained in pursuance of an application for admission for treatment or by virtue of an order or direction for his admission or removal to hospital under Part III of this Act, the tribunal do not direct the discharge of the patient under subsection (1) above, the tribunal may—

(a) recommend that the responsible medical officer consider whether to make a supervision application in respect of the patient; and

(b) further consider his case in the event of no such application being made.**]**

(4) Where application is made to a Mental Health Review Tribunal by or in respect of a patient who is subject to guardianship under this Act, the tribunal may in any case direct that the patient be discharged, and shall so direct if they are satisfied—

(a) that he is not then suffering from mental illness, psychopathic disorder, severe mental impairment or mental impairment; or

(b) that it is not necessary in the interests of the welfare of the patient, or for the protection of other persons, that the patient should remain under such guardianship.

[[F142](4A) Where application is made to a Mental Health Review Tribunal by or in respect of a patient who is subject to after-care under supervision (or, if he has not yet left hospital, is to be so subject after he leaves hospital), the tribunal may in any case direct that the patient shall cease to be so subject (or not become so subject), and shall so direct if they are satisfied—

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(a) in a case where the patient has not yet left hospital, that the conditions set out in section 25A(4) above are not complied with; or

(b) in any other case, that the conditions set out in section 25G(4) above are not complied with.**]**

(5) Where application is made to a Mental Health Review Tribunal under any provision of this Act by or in respect of a patient and the tribunal do not direct that the patient be discharged **[**[F143]or, if he is (or is to be) subject to after-care under supervision, that he cease to be so subject (or not become so subject)**]**, the tribunal may, if satisfied that the patient is suffering from a form of mental disorder other than the form specified in the application, order or direction relating to him, direct that that application, order or direction be amended by substituting for the form of mental disorder specified in it such other form of mental disorder as appears to the tribunal to be appropriate.

(6) Subsections (1) to (5) above apply in relation to references to a Mental Health Review Tribunal as they apply in relation to applications made to such a tribunal by or in respect of a patient.

(7) Subsection (1) above shall not apply in the case of a restricted patient except as provided in sections 73 and 74 below.

Textual Amendments

F140 S. 72(1) substituted (26.11.2001) by S.I. 2001/3712, **art. 3**

F141 S. 72(3A) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 10(2)

F142 S. 72(4A) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 10(3)

F143 Words in s. 72(5) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 10(4)

Modifications etc. (not altering text)

C45 S. 72 applied (with modifications) (1.4.1996) by S.I. 1996/295, reg. 2, **Sch.**

73 Power to discharge restricted patients.

[[F144](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—

(a) the tribunal are not satisfied as to the matters mentioned in paragraph (b)(i) or (ii) of section 72(1) above; and

(b) the tribunal are satisfied 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 subsection (1) above—

(a) paragraph (a) of that subsection applies; but

(b) paragraph (b) of that subsection does not apply,

the tribunal shall direct the conditional discharge of the patient.**]**

(3) Where a patient is absolutely discharged under this section 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 section—

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(a) he may be recalled by the Secretary of State under subsection (3) of section 42 above 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 subsection (4) above.

(6) Where a restriction order in respect of a patient ceases to have effect after he has been conditionally discharged under this section 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 section can be given.

(8) This section is without prejudice to section 42 above.

Textual Amendments

F144 S. 73(1)(2) substituted (26.11.2001) by S.I. 2001/3712, **art. 4**

74 Restricted patients subject to restriction directions.

(1) Where an application to a Mental Health Review Tribunal is made by a restricted patient who is subject to **[**[F145]a limitation direction or**]** 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 section 73 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 section he should continue to be detained in hospital.

(2) If in the case of a patient not falling within subsection (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 90 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 subsection (2)(b) above because the Secretary of State has not

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given the notice there mentioned, the managers of the hospital shall, unless the tribunal have made a recommendation under subsection (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 48 above, 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 subsection (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 subsection (3) or (4) above **[**[F146]the relevant hospital direction and the limitation direction or, as the casemay be,**]** the relevant transfer direction and the restriction direction shall cease to have effect on his arrival in the prison or other institution.

[[F147](5A) Where the tribunal have made a recommendation under subsection (1)(b) above in the case of a patient who is subject to a restriction direction or a limitation direction—

(a) the fact that the restriction direction or limitation direction remains in force does not prevent the making of any application or reference to the Parole Board by or in respect of him or the exercise by him of any power to require the Secretary of State to refer his case to the Parole Board, and

(b) if the Parole Board make a direction or recommendation by virtue of which the patient would become entitled to be released (whether unconditionally or on licence) from any prison or other institution in which he might have been detained if he had not been removed to hospital, the restriction direction or limitation direction shall cease to have effect at the time when he would become entitled to be so released.**]**

(6) Subsections (3) to (8) of section 73 above shall have effect in relation to this section as they have effect in relation to that section, taking references to the relevant hospital order and the restriction order as references to **[**[F148]the hospital direction and the limitation direction or, as the case may be, to**]** the transfer direction and the restriction direction.

(7) This section is without prejudice to sections 50 to 53 above in their application to patients who are not discharged under this section.

Textual Amendments

F145 Words in s. 74(1) inserted (1.10.1997) by 1997 c. 43, s. 55, **Sch. 4 para. 12(10)**; S.I. 1997/2200, **art. 2**

F146 Words in s. 74(5) inserted (1.10.1997) by 1997 c. 43, s. 55, **Sch. 4 para. 12(11)**; S.I. 1997/2200, **art. 2**

F147 S. 74(5A) inserted (20.1.2004) by Criminal Justice Act 2003 (c. 44), **ss. 295**, 336; S.I. 2004/81, **art. 2(b)**

F148 Words in s. 74(6) inserted (1.10.1997) by 1997 c. 43, s. 55, **Sch. 4 para. 12(12)**; S.I. 1997/2200, **art. 2**

75 Applications and references concerning conditionally discharged restricted patients.

(1) Where a restricted patient has been conditionally discharged under section 42(2), 73 or 74 above and is subsequently recalled to hospital—

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(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) section 70 above shall apply to the patient as if the relevant hospital order **[**[F149], hospital direction**]** 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 12 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) Sections 73 and 74 above shall not apply to an application under subsection (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.

Textual Amendments

F149 Words in s. 75(1)(b) inserted (1.10.1997) by 1997 c. 43, s. 55, **Sch. 4 para. 12(13)**; S.I. 1997/2200, **art. 2**

General

76 Visiting and examination of patients.

(1) For the purpose of advising whether an application to a Mental Health Review Tribunal should be made by or in respect of a patient who is liable to be detained or subject to guardianship **[**[F150]or to after-care under supervision (or, if he has not yet left hospital, is to be subject to after-care under supervision after he leaves hospital)**]** under Part II of this Act or of furnishing information as to the condition of a patient for the purposes of such an application, any registered medical practitioner authorised by or on behalf of the patient or other person who is entitled to make or has made the application—

(a) may at any reasonable time visit the patient and examine him in private, and

(b) may require the production of and inspect any records relating to the detention or treatment of the patient in any hospital **[**[F151]or to any after-care services provided for the patient under section 117 below.**]**.

(2) Section 32 above shall apply for the purposes of this section as it applies for the purposes of Part II of this Act.

Textual Amendments

F150 Words in s. 76(1) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 11(a)

F151 Words in s. 76(1)(b) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 11(b)

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Modifications etc. (not altering text)
C46 S. 76 applied (with modifications) (1.4.1996) by S.I. 1996/295, reg. 2, **Sch.**

77 General provisions concerning tribunal applications.

(1) No application shall be made to a Mental Health Review Tribunal by or in respect of a patient except in such cases and at such times as are expressly provided by this Act.

(2) Where under this Act any person is authorised to make an application to a Mental Health Review Tribunal within a specified period, not more than one such application shall be made by that person within that period but for that purpose there shall be disregarded any application which is withdrawn in accordance with rules made under section 78 below.

(3) Subject to subsection (4) below an application to a Mental Health Review Tribunal authorised to be made by or in respect of a patient under this Act shall be made by notice in writing addressed to the tribunal for the area in which the hospital in which the patient is detained is situated or in which the patient is residing under guardianship **[**[F152]or when subject to after-care under supervision (or in which he is to reside on becoming so subject after leaving hospital)**]** as the case may be.

(4) Any application under section 75(2) above shall be made to the tribunal for the area in which the patient resides.

Textual Amendments
F152 Words in s. 77(3) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 12

78 Procedure of tribunals.

(1) The Lord Chancellor may make rules with respect to the making of applications to Mental Health Review Tribunals and with respect to the proceedings of such tribunals and matters incidental to or consequential on such proceedings.

(2) Rules made under this section may in particular make provision—
- (a) for enabling a tribunal, or the chairman of a tribunal, to postpone the consideration of any application by or in respect of a patient, or of any such application of any specified class, until the expiration of such period (not exceeding 12 months) as may be specified in the rules from the date on which an application by or in respect of the same patient was last considered and determined by that or any other tribunal under this Act;
- (b) for the transfer of proceedings from one tribunal to another in any case where, after the making of the application, the patient is removed out of the area of the tribunal to which it was made;
- (c) for restricting the persons qualified to serve as members of a tribunal for the consideration of any application, or of an application of any specified class;
- (d) for enabling a tribunal to dispose of an application without a formal hearing where such a hearing is not requested by the applicant or it appears to the tribunal that such a hearing would be detrimental to the health of the patient;
- (e) for enabling a tribunal to exclude members of the public, or any specified class of members of the public, from any proceedings of the tribunal, or to

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prohibit the publication of reports of any such proceedings or the names of any persons concerned in such proceedings;

(f) for regulating the circumstances in which, and the persons by whom, applicants and patients in respect of whom applications are made to a tribunal may, if not desiring to conduct their own case, be represented for the purposes of those applications;

(g) for regulating the methods by which information relevant to an application may be obtained by or furnished to the tribunal, and in particular for authorising the members of a tribunal, or any one or more of them, to visit and interview in private any patient by or in respect of whom an application has been made;

(h) for making available to any applicant, and to any patient in respect of whom an application is made to a tribunal, copies of any documents obtained by or furnished to the tribunal in connection with the application, and a statement of the substance of any oral information so obtained or furnished except where the tribunal considers it undesirable in the interests of the patient or for other special reasons;

(i) for requiring a tribunal, if so requested in accordance with the rules, to furnish such statements of the reasons for any decision given by the tribunal as may be prescribed by the rules, subject to any provision made by the rules for withholding such a statement from a patient or any other person in cases where the tribunal considers that furnishing it would be undesirable in the interests of the patient or for other special reasons;

(j) for conferring on the tribunals such ancillary powers as the Lord Chancellor thinks necessary for the purposes of the exercise of their functions under this Act;

(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.

(3) Subsections (1) and (2) above apply in relation to references to Mental Health Review Tribunals as they apply in relation to applications to such tribunals by or in respect of patients.

(4) Rules under this section 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 an 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 section 71(4) or 77(4) above, the patient ceases to reside in the area of the tribunal to which the reference or application was made.

(5) Rules under this section may be so framed as to apply to all applications or references or to applications or references of any specified class and may make different provision in relation to different cases.

(6) Any functions conferred on the chairman of a Mental Health Review Tribunal by rules under this section 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

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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.

(8) A Mental Health Review Tribunal may, and if so required by the High Court shall, state in the form of a special case for determination by the High Court any question of law which may arise before them.

(9) **[**[F153]Part I of the Arbitration Act 1996**]** shall not apply to any proceedings before a Mental Health Review Tribunal except so far as any provisions of that Act may be applied, with or without modifications, by rules made under this section.

Textual Amendments

F153 Words in s. 78(9) substituted (31.1.1997) by 1996 c. 23, s. 107(1), **Sch. 3**, para. 40; S.I. 1996/3146, **art. 3** (subject to savings in art. 4, Sch. 2)

VALID FROM 03/11/2008

[[F154]**78A Appeal from the Mental Health Review Tribunal for Wales to the Upper Tribunal**

(1) A party to any proceedings before the Mental Health Review Tribunal for Wales may appeal to the Upper Tribunal on any point of law arising from a decision made by the Mental Health Review Tribunal for Wales in those proceedings.

(2) An appeal may be brought under subsection (1) above only if, on an application made by the party concerned, the Mental Health Review Tribunal for Wales or the Upper Tribunal has given its permission for the appeal to be brought.

(3) Section 12 of the Tribunals, Courts and Enforcement Act 2007 (proceedings on appeal to the Upper Tribunal) applies in relation to appeals to the Upper Tribunal under this section as it applies in relation to appeals to it under section 11 of that Act, but as if references to the First-tier Tribunal were references to the Mental Health Review Tribunal for Wales.**]**

Textual Amendments

F154 S. 78A inserted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 6, **Sch. 3 para. 60**

79 Interpretation of Part V.

(1) In this Part of this Act "restricted patient" means a patient who is subject to a restriction order **[**[F155], limitation direction**]**or restriction direction and this Part of this Act shall, subject to the provisions of this section, have effect in relation to any person who—

[[F156](a) is treated by virtue of any enactment as subject to a hospital order and a restriction order; or**]**

(b) [F157] . . . . . .

(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 82(2) or 85(2) below

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or **[**[F158]article 2(2) of the Mental Health (Care and Treatment)(Scotland) Act 2003 (Consequential Provisions) Order 2005**]** ,

as it has effect in relation to a restricted patient.

(2) Subject to the following provisions of this section, in this Part of this Act "the relevant hospital order"**[**[F159], "the relevant hospital direction"**]**and "the relevant transfer direction", in relation to a restricted patient, mean the hospital order **[**[F159], the hospital direction**]**or transfer direction by virtue of which he is liable to be detained in a hospital.

(3) In the case of a person within paragraph (a) of subsection (1) above, references in this Part of this Act 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 subsection (1) above, references in this Part of this Act to the relevant hospital order or restriction order shall be construed as references to the order under the provisions mentioned in that paragraph.

(5) In the case of a person within paragraph (c) of subsection (1) above, references in this Part of this Act to the relevant hospital order, the relevant transfer direction, the restriction order or the restriction direction or to a transfer direction under section 48 above 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.

(6) In this Part of this Act, unless the context otherwise requires, "hospital" means a hospital **[**[F160], and "the responsible medical officer" means the responsible medical officer,**]**within the meaning of Part II of this Act.

[[F161](7) In this Part of this Act any reference to the area of a tribunal is—

(a) in relation to a tribunal for a region of England, a reference to that region; and

(b) in relation to the tribunal for Wales, a reference to Wales.**]**

Textual Amendments

F155 Words in s. 79(1) inserted (1.10.1997) by 1997 c. 43, s. 55, **Sch. 4**, para. 12(14); S.I. 1997/2200, **art. 2**

F156 S. 79(1)(a) substituted (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(1), 60, **Sch. 10 para. 21(a)** (with Sch. 12 para. 8); S.I. 2005/579, **art. 3(g)(k)**

F157 S. 79(1)(b) repealed (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58, 60, Sch. 10 para. 19(b), **Sch. 11** (with Sch. 12 para. 8); S.I. 2005/579, **art. 3(g)(i)(vi)(k)**

F158 Words in s. 79(1)(c) substituted (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), art. 15, **Sch. 1 para. 2(3)**

F159 Words in s. 79(2) inserted (1.10.1997) by 1997 c. 43, s. 55(2), **Sch. 4**, para. 12(15)(a)(b);S.I. 1997/2200, **art. 2**

F160 Words in s. 79(6) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para, 13

F161 S. 79(7) inserted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8, **Sch. 1**, Pt. III para. 107(7)

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PART VI

REMOVAL AND RETURN OF PATIENTS WITHIN UNITED KINGDOM, ETC.

Removal to Scotland

80 Removal of patients to Scotland.

(1) 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 this Act (otherwise than by virtue of section 35, 36 or 38 above), that it is in the interests of the patient to remove him to Scotland, and that arrangements have been made for admitting him to a hospital or, as the case may be, for receiving him into guardianship there, **[**[F162]or, where he is not to be admitted to a hospital, for his detention in hospital to be authorised by virtue of the Mental Health (Care and Treatment)(Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995**]** the Secretary of State may authorise his removal to Scotland and may give any necessary directions for his conveyance to his destination.

(2) **No commentary item could be found for this reference c18648661**. . . . . .

(3) **No commentary item could be found for this reference c18648661**. . . . . .

(4) **No commentary item could be found for this reference c18648661**. . . . . .

(5) **No commentary item could be found for this reference c18648661**. . . . . .

(6) **[**[F163]Where a person removed under this section was immediately before his removal subject to a restriction order or restriction direction of limited duration, **[**[F164]the restriction order or restriction direction [F165]. . . shall expire on the date on which the first-mentioned order or direction would have expired if he had not been so removed.**]]**

(7) In this section "hospital" has the same meaning as in the **[**[F166]Mental Health (Care and Treatment)(Scotland) Act 2003**]** .

[[F167](8) Reference in this section to a patient's detention in hospital being authorised by virtue of the Mental Health (Care and Treatment)(Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995 shall be read as including references to a patient in respect of whom a certificate under one of the provisions listed in section 290(7)(a) of the Act of 2003 is in operation.**]**

Textual Amendments

F162 Words in s. 80(1) inserted (E.W.) (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), art. 15, **Sch. 1 para. 2(4)(a)**

F163 S. 80(6) repealed (E.W.) (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order (S.I. 2005/2078), art. 16, {Sch. 3}

F164 Words substituted by virtue of Mental Health (Amendment) (Scotland) Act 1983 (c. 39), s. 41(2), Sch. 1 para 2, **Sch. 2 para. 1**(*b*) and Mental Health (Scotland) Act 1984 (c. 36, SIF 85), **s. 126(2)**(*d*)

F165 Words in s. 80(6) repealed (S.) (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 3, **Sch. 2**

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F166 Words in s. 80(7) substituted (S.) (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 2, **Sch. 1 para. 13(2)** and words in s. 80(7) substituted (E.W.) (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (S.I. 2005/2078), art. 15, **Sch. 1 para. 2(4)(b)**

F167 S. 80(8) inserted (E.W.) (5.10.05) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), art. 15, **Sch. 1 para. 2(4)(c)**

VALID FROM 03/11/2008

[F168 80ZA Transfer of responsibility for community patients to Scotland

(1) If it appears to the appropriate national authority, in the case of a community patient, that the conditions mentioned in subsection (2) below are met, the authority may authorise the transfer of responsibility for him to Scotland.

(2) The conditions are—

(a) a transfer under this section is in the patient's interests; and

(b) arrangements have been made for dealing with him under enactments in force in Scotland corresponding or similar to those relating to community patients in this Act.

(3) The appropriate national authority may not act under subsection (1) above while the patient is recalled to hospital under section 17E above.

(4) In this section, "the appropriate national authority" means—

(a) in relation to a community patient in respect of whom the responsible hospital is in England, the Secretary of State;

(b) in relation to a community patient in respect of whom the responsible hospital is in Wales, the Welsh Ministers.**]**

Textual Amendments

F168 S. 80ZA inserted (E.W.) (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 39, 56, **Sch. 5 para. 3** (with Sch. 10); S.I. 2008/1900, **art. 2(n)** (with art. 3, Sch.)

[F169 80A Transfer of responsibility for patients to Scotland.

(1) If it appears to the Secretary of State, in the case of a patient who—

(a) is subject to a restriction order under section 41 above; and

(b) has been conditionally discharged under section 42 or 73 above,

that a transfer under this section would be in the interests of the patient, the Secretary of State may, with the consent of the Minister exercising corresponding functions in Scotland, transfer responsibility for the patient to that Minister.

(2) F170 . . . . . .

(3) F170 . . . . . .**]**

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Textual Amendments

F169 S. 80A inserted (E.W.S.) (1.10.1997) by 1997 c. 43, s. 48, **Sch. 3 para. 1**; S.I. 1997/2200, **art. 2**

F170 S. 80A(2)(3) repealed (S.) (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 3, **Sch. 2**

VALID FROM 03/11/2008

[F171 80B Removal of detained patients from Scotland

(1) This section applies to a patient if—

(a) he is removed to England and Wales under regulations made under section 290(1)(a) of the Mental Health (Care and Treatment) (Scotland) Act 2003 ("the 2003 Act");

(b) immediately before his removal, his detention in hospital was authorised by virtue of that Act or the Criminal Procedure (Scotland) Act 1995; and

(c) on his removal, he is admitted to a hospital in England or Wales.

(2) He shall be treated as if, on the date of his admission to the hospital, he had been so admitted in pursuance of an application made, or an order or direction made or given, on that date under the enactment in force in England and Wales which most closely corresponds to the enactment by virtue of which his detention in hospital was authorised immediately before his removal.

(3) If, immediately before his removal, he was subject to a measure under any enactment in force in Scotland restricting his discharge, he shall be treated as if he were subject to an order or direction under the enactment in force in England and Wales which most closely corresponds to that enactment.

(4) If, immediately before his removal, the patient was liable to be detained under the 2003 Act by virtue of a transfer for treatment direction, given while he was serving a sentence of imprisonment (within the meaning of section 136(9) of that Act) imposed by a court in Scotland, he shall be treated as if the sentence had been imposed by a court in England and Wales.

(5) If, immediately before his removal, the patient was subject to a hospital direction or transfer for treatment direction, the restriction direction to which he is subject by virtue of subsection (3) above shall expire on the date on which that hospital direction or transfer for treatment direction (as the case may be) would have expired if he had not been so removed.

(6) If, immediately before his removal, the patient was liable to be detained under the 2003 Act by virtue of a hospital direction, he shall be treated as if any sentence of imprisonment passed at the time when that hospital direction was made had been imposed by a court in England and Wales.

(7) Any directions given by the Scottish Ministers under regulations made under section 290 of the 2003 Act as to the removal of a patient to which this section applies shall have effect as if they were given under this Act.

(8) Subsection (8) of section 80 above applies to a reference in this section as it applies to one in that section.

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(9) In this section—

"hospital direction" means a direction made under section 59A of the Criminal Procedure (Scotland) Act 1995; and

"transfer for treatment direction" has the meaning given by section 136 of the 2003 Act.**]**

Textual Amendments

F171 S. 80B inserted (E.W.) (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 39, 56, **Sch. 5 para. 4** (with Sch. 10); S.I. 2008/1900, **art. 2(n)** (with art. 3, Sch.)

VALID FROM 03/11/2008

[F172 80C Removal of patients subject to compulsion in the community from Scotland

(1) This section applies to a patient if—

(a) he is subject to an enactment in force in Scotland by virtue of which regulations under section 289(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 apply to him; and

(b) he is removed to England and Wales under those regulations.

(2) He shall be treated as if on the date of his arrival at the place where he is to reside in England or Wales—

(a) he had been admitted to a hospital in England or Wales in pursuance of an application or order made on that date under the corresponding enactment; and

(b) a community treatment order had then been made discharging him from the hospital.

(3) For these purposes—

(a) if the enactment to which the patient was subject in Scotland was an enactment contained in the Mental Health (Care and Treatment) (Scotland) Act 2003, the corresponding enactment is section 3 of this Act;

(b) if the enactment to which he was subject in Scotland was an enactment contained in the Criminal Procedure (Scotland) Act 1995, the corresponding enactment is section 37 of this Act.

(4) "The responsible hospital, in the case of a patient in respect of whom a community treatment order is in force by virtue of subsection (2) above, means the hospital to which he is treated as having been admitted by virtue of that subsection, subject to section 19A above.

(5) As soon as practicable after the patient's arrival at the place where he is to reside in England or Wales, the responsible clinician shall specify the conditions to which he is to be subject for the purposes of section 17B(1) above, and the conditions shall be deemed to be specified in the community treatment order.

(6) But the responsible clinician may only specify conditions under subsection (5) above which an approved mental health professional agrees should be specified.**]**

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Textual Amendments

F172 S. 80C inserted (E.W.) (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 39, 56, **Sch. 5 para. 4** (with Sch. 10); S.I. 2008/1900, **art. 2(n)** (with art. 3, Sch.)

VALID FROM 01/10/2007

[F173 80D Transfer of conditionally discharged patients from Scotland

(1) This section applies to a patient who is subject to—
  (a) a restriction order under section 59 of the Criminal Procedure (Scotland) Act 1995; and
  (b) a conditional discharge under section 193(7) of the Mental Health (Care and Treatment) (Scotland) Act 2003 ("the 2003 Act").

(2) A transfer of the patient to England and Wales under regulations made under section 290 of the 2003 Act shall have effect only if the Secretary of State has consented to the transfer.

(3) If a transfer under those regulations has effect, the patient shall be treated as if—
  (a) on the date of the transfer he had been conditionally discharged under section 42 or 73 above; and
  (b) he were subject to a hospital order under section 37 above and a restriction order under section 41 above.

(4) If the restriction order to which the patient was subject immediately before the transfer was of limited duration, the restriction order to which he is subject by virtue of subsection (3) above shall expire on the date on which the first-mentioned order would have expired if the transfer had not been made.**]**

Textual Amendments

F173 S. 80D inserted (E.W.) (1.10.2007) by Mental Health Act 2007 (c. 12), ss. 39, 56, **Sch. 5 para. 4** (with Sch. 10); S.I. 2007/2798, **art. 2(c)(i)**

Removal to and from Northern Ireland

81 Removal of patients to Northern Ireland.

(1) 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 this Act (otherwise than by virtue of section 35, 36 or 38 above), that it is in the interests of the patient to remove him to Northern Ireland, 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 Northern Ireland and may give any necessary directions for his conveyance to his destination.

(2) Subject to the provisions of subsections (4) and (5) below, where a patient liable to be detained under this Act by virtue of an application, order or direction under any

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enactment in force in England and Wales is removed under this section and admitted to a hospital in Northern Ireland, 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 in force in Northern Ireland, and, where he is subject to a restriction order or restriction direction under any enactment in this Act, as if he were subject to **[**[F174]a restriction order or a restriction direction**]** under the corresponding enactment in force in Northern Ireland.

(3) Where a patient subject to guardianship under this Act by virtue of an application, order or direction under any enactment in force in England and Wales is removed under this section and received into guardianship in Northern Ireland, 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 in force in Northern Ireland, 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 a person removed under this section was immediately before his removal liable to be detained by virtue of an application for admission for assessment under this Act, he shall, on his admission to a hospital in Northern Ireland, be treated as if he had been admitted to the hospital in pursuance of an application **[**[F175]for assessment under Article 4 of the Mental Health (Northern Ireland) Order 1986**]** made on the date of his admission.

(5) Where a person removed under this section was immediately before his removal liable to be detained by virtue of an application for admission for treatment under this Act, he shall, on his admission to a hospital in Northern Ireland, be treated as if **[**[F176]he were detained for treatment under Part II of the Mental Health (Northern Ireland) Order 1986 by virtue of a report under Article 12(1) of that Order made on the date of his admission**]**

(6) Where a patient removed under this section was immediately before his removal liable to be detained under this Act by virtue of a transfer direction given while he was serving a sentence of imprisonment (within the meaning of section 47(5) above) imposed by a court in England and Wales, he shall be treated as if the sentence had been imposed by a court in Northern Ireland.

(7) Where a person removed under this section was immediately before his removal subject to a restriction order or restriction direction of limited duration, **[**[F177]the restriction order or restriction direction**]** to which he is subject by virtue of subsection (2) above shall expire on the date on which **[**[F177]the first-mentioned restriction order**]** or restriction direction would have expired if he had not been so removed.

(8) In this section "hospital" has the same meaning as in the Mental Health **[**[F178](Northern Ireland) Order 1986**]**.

Textual Amendments

F174 Words substituted by S.I. 1986/596, **art. 2(2)**
F175 Words substituted by S.I. 1986/596, **art. 2(3)**
F176 Paragraphs(*a*)and (*b*) substituted by S.I. 1986/596, **art. 2(4)**
F177 Words substituted by S.I. 1986/596, **art. 2(5)**
F178 Words substituted by S.I. 1986/596, **art. 2(6)**

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VALID FROM 03/11/2008

[F179 81ZA Removal of community patients to Northern Ireland

(1) Section 81 above shall apply in the case of a community patient as it applies in the case of a patient who is for the time being liable to be detained under this Act, as if the community patient were so liable.

(2) Any reference in that section to the application, order or direction by virtue of which a patient is liable to be detained under this Act shall be construed, for these purposes, as a reference to the application, order or direction under this Act in respect of the patient.]

Textual Amendments

F179 S. 81ZA inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 39, 56, **Sch. 5 para. 6** (with Sch. 10); S.I. 2008/1900, **art. 2(n)** (with art. 3, Sch.)

[F180F180 81A Transfer of responsibility for patients to Northern Ireland.

(1) If it appears to the Secretary of State, in the case of a patient who—
   (a) is subject to a restriction order or restriction direction under section 41 or 49 above; and
   (b) has been conditionally discharged under section 42 or 73 above,

   that a transfer under this section would be in the interests of the patient, the Secretary of State may, with the consent of the Minister exercising corresponding functions in Northern Ireland, transfer responsibility for the patient to that Minister.

(2) Where responsibility for such a patient is transferred under this section, the patient shall be treated—
   (a) as if on the date of the transfer he had been conditionally discharged under the corresponding enactment in force in Northern Ireland; and
   (b) as if he were subject to a restriction order or restriction direction under the corresponding enactment in force in Northern Ireland.

(3) Where a patient responsibility for whom is transferred under this section was immediately before the transfer subject to a restriction order or restriction 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 the transfer had not been made.]

Textual Amendments

F180 S. 81A inserted (1.10.1997) by 1997 c. 43, s. 48, **Sch. 3**, para. 2; S.I. 1997/2200, **art. 2**

82 Removal to England and Wales of patients from Northern Ireland.

(1) If it appears to the responsible authority, in the case of a patient who is for the time being liable to be detained or subject to guardianship under the Mental Health

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[[F181](Northern Ireland) Order 1986 (otherwise than by virtue of Article 42, 43 or 45 of that Order)**]**, that it is in the interests of the patient to remove him to England and Wales, 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 responsible authority may authorise his removal to England and Wales and may give any necessary directions for his conveyance to his destination.

(2) Subject to the provisions of **[**[F182]subsections (4) and (4A)**]** below, where a patient who is liable to be detained under the **[**[F182]Mental Health (Northern Ireland) Order 1986**]** by virtue of an application, order or direction under any enactment in force in Northern Ireland is removed under this section and 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 in force in England and Wales and, where he is **[**[F182]subject to a restriction order or restriction direction under any enactment in that Order, as if he were subject to a restriction order or restriction direction under the corresponding enactment in force in England and Wales.**]**.

(3) Where a patient subject to guardianship under the **[**[F183]Mental Health (Northern Ireland) Order 1986**]** by virtue of an application, order or direction under any enactment in force in Northern Ireland is removed under this section and 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 in force in England and Wales 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.

[[F184](4) Where a person removed under this section was immediately before his removal liable to be detained for treatment by virtue of a report under Article 12(1) or 13 of the Mental Health (Northern Ireland) Order 1986, he shall be treated, on his admission to a hospital in England and Wales, as if he had been admitted to the hospital in pursuance of an application for admission for treatment made on the date of his admission.

(4A) Where a person removed under this section was immediately before his removal liable to be detained by virtue of an application for assessment under Article 4 of the Mental Health (Northern Ireland) Order 1986, he shall be treated, on his admission to a hospital in England and Wales, as if he had been admitted to the hospital in pursuance of an application for admission for assessment made on the date of his admission.**]**

(5) Where a patient removed under this section was immediately before his removal liable to be detained under the **[**[F185]Mental Health (Northern Ireland) Order 1986**]** by virtue of a transfer direction given while he was serving a sentence of imprisonment (within the meaning of **[**[F185]Article 53(5) of that Order**]**) imposed by a court in Northern Ireland, he shall be treated as if the sentence had been imposed by a court in England and Wales.

(6) Where a person removed under this section was immediately before his removal subject to **[**[F186]a restriction order or restriction 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 **[**[F186]first-mentioned restriction order or restriction direction**]** would have expired if he had not been so removed.

(7) In this section "the responsible authority" means the Department of Health and Social Services for Northern Ireland or, in relation to a patient who is subject to **[**[F187]a restriction order or restriction direction**]**, the Secretary of State.

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Textual Amendments

F181 Words substituted by S.I. 1986/596, **art. 2(7)**
F182 Words substituted by S.I. 1986/596, **art. 2(8)**
F183 Words substituted by S.I. 1986/596, **art. 2(9)**
F184 S. 82(4)(4A) substituted for s. 82(4) by S.I. 1986/596, **art. 2(10)**
F185 Words substituted by S.I. 1986/596, **art. 2(11)**
F186 Words substituted by S.I. 1986/596, **art. 2(12)**
F187 Words substituted by S.I. 1986/596, **art. 2(13)**

[[F188]82A Transfer of responsibility for patients to England and Wales from Northern Ireland.

(1) If it appears to the relevant Minister, in the case of a patient who—

(a) is subject to a restriction order or restriction direction under Article 47(1) or 55(1) of the [M13]Mental Health (Northern Ireland) Order 1986; and

(b) has been conditionally discharged under Article 48(2) or 78(2) of that Order,

that a transfer under this section would be in the interests of the patient, that Minister may, with the consent of the Secretary of State, transfer responsibility for the patient to the Secretary of State.

(2) Where responsibility for such a patient is transferred under this section, the patient shall be treated—

(a) as if on the date of the transfer he had been conditionally discharged under section 42 or 73 above; and

(b) as if he were subject to a restriction order or restriction direction under section 41 or 49 above.

(3) Where a patient responsibility for whom is transferred under this section was immediately before the transfer subject to a restriction order or restriction 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 the transfer had not been made.

(4) In this section "the relevant Minister" means the Minister exercising in Northern Ireland functions corresponding to those of the Secretary of State.**]**

Textual Amendments

F188 S. 82A inserted (E.W.N.I) (1.10.1997) by 1997 c. 43, s. 48, **Sch. 3**, para. 3; S.I. 1997/2200, **art. 2**

Marginal Citations

M13 S.I. 1986/596 (N.I.4).

Removal to and from Channel Islands and Isle of Man

83 Removal of patients to Channel Islands or Isle of Man.

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 this Act (otherwise than by virtue

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of section 35, 36 or 38 above), 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.

VALID FROM 03/11/2008

[F189 83ZA Removal or transfer of community patients to Channel Islands or Isle of Man

(1) Section 83 above shall apply in the case of a community patient as it applies in the case of a patient who is for the time being liable to be detained under this Act, as if the community patient were so liable.

(2) But if there are in force in any of the Channel Islands or the Isle of Man enactments ("relevant enactments") corresponding or similar to those relating to community patients in this Act—
  (a) subsection (1) above shall not apply as regards that island; and
  (b) subsections (3) to (6) below shall apply instead.

(3) If it appears to the appropriate national authority, in the case of a community patient, that the conditions mentioned in subsection (4) below are met, the authority may authorise the transfer of responsibility for him to the island in question.

(4) The conditions are—
  (a) a transfer under subsection (3) above is in the patient's interests; and
  (b) arrangements have been made for dealing with him under the relevant enactments.

(5) But the authority may not act under subsection (3) above while the patient is recalled to hospital under section 17E above.

(6) In this section, "the appropriate national authority" means—
  (a) in relation to a community patient in respect of whom the responsible hospital is in England, the Secretary of State;
  (b) in relation to a community patient in respect of whom the responsible hospital is in Wales, the Welsh Ministers.**]**

Textual Amendments

F189 S. 83ZA inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 39, 56, **Sch. 5 para. 10** (with Sch. 10); S.I. 2008/1900, **art. 2(n)** (with art. 3, Sch.)

[F190F190 83A Transfer of responsibility for patients to Channel Islands or Isle of Man.

If it appears to the Secretary of State, in the case of a patient who—
  (a) is subject to a restriction order or restriction direction under section 41 or 49 above; and
  (b) has been conditionally discharged under section 42 or 73 above,

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that a transfer under this section would be in the interests of the patient, the Secretary of State may, with the consent of the authority exercising corresponding functions in any of the Channel Islands or in the Isle of Man, transfer responsibility for the patient to that authority.**]**

Textual Amendments

F190 S. 83A inserted (1.10.1997) by 1997 c. 43, s. 48, **Sch. 3**, para. 4; S.I. 1997/2200, **art. 2**

84 Removal to England and Wales of offenders found insane in Channel Islands and Isle of Man.

(1) The Secretary of State may by warrant direct that any offender found by a court in any of the Channel Islands or in the Isle of Man to be insane or to have been insane at the time of the alleged offence, and ordered to be detained during Her Majesty's pleasure, be removed to a hospital in England and Wales.

(2) A patient removed under subsection (1) above shall, on his reception into the hospital in England and Wales, be treated as if he **[**[F191]were subject to a hospital order together with a restriction order, made without limitation of time**]** .

(3) The Secretary of State may by warrant direct that any patient removed under this section from any of the Channel Islands or from the Isle of Man be returned to the island from which he was so removed, there to be dealt with according to law in all respects as if he had not been removed under this section.

Textual Amendments

F191 Words in s. 84(2) substituted (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(1), 60, **Sch. 10 para. 22**; S.I. 2005/579, **art. 3(g)**

85 Patients removed from Channel Islands or Isle of Man.

(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 83 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 this Act (other than section 35, 36 or 38 above).

(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 this 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 this 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.

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(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 138 below shall apply to him as if he were in legal custody by virtue of section 137 below.

(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).

VALID FROM 03/11/2008

[F192 85ZA Responsibility for community patients transferred from Channel Islands or Isle of Man

(1) This section shall have effect if there are in force in any of the Channel Islands or the Isle of Man enactments ("relevant enactments") corresponding or similar to those relating to community patients in this Act.

(2) If responsibility for a patient is transferred to England and Wales under a provision corresponding to section 83ZA(3) above, he shall be treated as if on the date of his arrival at the place where he is to reside in England or Wales—

(a) he had been admitted to the hospital in pursuance of an application made, or an order or direction made or given, on that date under the enactment in force in England and Wales which most closely corresponds to the relevant enactments; and

(b) a community treatment order had then been made discharging him from the hospital.

(3) "The responsible hospital", in his case, means the hospital to which he is treated as having been admitted by virtue of subsection (2) above, subject to section 19A above.

(4) As soon as practicable after the patient's arrival at the place where he is to reside in England or Wales, the responsible clinician shall specify the conditions to which he is to be subject for the purposes of section 17B(1) above, and the conditions shall be deemed to be specified in the community treatment order.

(5) But the responsible clinician may only specify conditions under subsection (4) above which an approved mental health professional agrees should be specified.**]**

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Textual Amendments

F192 S. 85ZA inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 39, 56, **Sch. 5 para. 12** (with Sch. 10); S.I. 2008/1900, **art. 2(n)** (with art. 3, Sch.)

[F193 85A Responsibility for patients transferred from Channel Islands or Isle of Man.

(1) This section applies to any patient responsibility for whom is transferred to the Secretary of State by the authority exercising corresponding functions in any of the Channel Islands or the Isle of Man under a provision corresponding to section 83A above.

(2) The patient shall be treated—
  (a) as if on the date of the transfer he had been conditionally discharged under section 42 or 73 above; and
  (b) as if he were subject to a restriction order or restriction direction under section 41 or 49 above.

(3) Where the patient was immediately before the transfer 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 the transfer had not been made.**]**

Textual Amendments

F193 S. 85A inserted (1.10.1997) by 1997 c. 43, s. 48, **Sch. 3**, para. 5; S.I. 1997/2200, **art. 2**

Removal of aliens

86 Removal of alien patients.

(1) This section applies to any patient who is neither a British citizen nor a Commonwealth citizen having the right of abode in the United Kingdom by virtue of section 2(1)(*b*) of the M14Immigration Act 1971, being a patient who is receiving treatment for mental illness as an in-patient in a hospital in England and Wales or a hospital within the meaning of the M15Mental Health **[**F194(Northern Ireland) Order 1986**]** and is detained pursuant to—
  (a) an application for admission for treatment or **[**F194a report under Article 12(1) or 13 of that Order**]**;
  (b) a hospital order under section 37 above or **[**F194Article 44 of that Order**]**; or
  (c) an order or direction under this Act (other than under section 35, 36 or 38 above) or **[**F194under that Order (other than under Article 42, 43 or 45 of that Order)**]** .

(2) If it appears to the Secretary of State that proper arrangements have been made for the removal of a patient to whom this section applies to a country or territory outside the United Kingdom, the Isle of Man and the Channel Islands and for his care or treatment there and that it is in the interests of the patient to remove him, the Secretary of State may, subject to subsection (3) below—

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(a) by warrant authorise the removal of the patient from the place where he is receiving treatment as mentioned in subsection (1) above, and

(b) give such directions as the Secretary of State thinks fit for the conveyance of the patient to his destination in that country or territory and for his detention in any place or on board any ship or aircraft until his arrival at any specified port or place in any such country or territory.

(3) The Secretary of State shall not exercise his powers under subsection (2) above 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.

Textual Amendments

F194 Words substituted by S.I. 1986/596, **art. 2(14)**

Modifications etc. (not altering text)

C47 S. 86: certain functions transferred (10.7.2008) by The Welsh Ministers (Transfer of Functions) Order 2008 (S.I. 2008/1786), art. {2(a)}

Marginal Citations

M14 1971 c. 77. (**62**)

M15 1986/595 (N.I.4).

Return of patients absent without leave

87 Patients absent from hospitals in Northern Ireland.

(1) Any person who—

(a) under **[**[F195]Article 29 or 132 of the Mental Health (Northern Ireland) Order 1986**]** (which provide, respectively, for the retaking of patients absent without leave and for the retaking of patients escaping from custody); or

(b) under the said **[**[F195]Article 29 as applied by Article 31 of the said Order**]**(which makes special provision as to persons sentenced to imprisonment),

may be taken into custody in Northern Ireland, may be taken into custody in, and returned to Northern Ireland from, England and Wales by an approved social worker, by any constable or by any person authorised by or by virtue of the **[**[F195]said Order**]** to take him into custody.

(2) This section does not apply to any person who is subject to guardianship.

Textual Amendments

F195 Words substituted by S.I. 1986/596, **art. 2(15)**

88 Patients absent from hospitals in England and Wales.

(1) Subject to the provisions of this section, any person who, under section 18 above or section 138 below or under the said section 18 as applied by section 22 above, may be taken into custody in England and Wales may be taken into custody in, and returned

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to England and Wales from, any other part of the United Kingdom or the Channel Islands or the Isle of Man.

(2) For the purposes of the enactments referred to in subsection (1) above, in their application by virtue of this section to Scotland, Northern Ireland, the Channel Islands or the Isle of Man, the expression "constable" includes a Scottish constable, an officer or constable of the Royal Ulster Constabulary, a member of the police in Jersey, an officer of police within the meaning of section 43 of the Larceny (Guernsey) Ltd 1958 or any corresponding law for the time being in force, or a constable in the Isle of Man, as the case may be.

(3) For the purposes of the said enactments in their application by virtue of this section to Scotland or Northern Ireland, any reference to an approved social worker shall be construed as including a reference—

(a) in Scotland, to any mental health officer within the meaning of the **[**[F196]Mental Health (Care and Treatment)(Scotland) Act 2003**]** ;

(b) in Northern Ireland, to any **[**[F197]approved social worker within the meaning of the Mental Health (Northern Ireland) Order 1986**]**.

(4) This section does not apply to any person who is subject to guardianship.

Textual Amendments

F196 Words in s. 88(3)(a) substituted (S.) (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 2, **Sch. 1 para. 13(3)** and words in s. 80(3)(a) substituted (E.W.) (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), art. 15, **Sch. 1 para. 2(5)**

F197 Words substituted by S.I. 1986/596, **art. 2(16)**

89 Patients absent from hospitals in the Channel Islands or Isle of Man.

(1) Any person who under any provision corresponding to section 18 above or 138 below 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 an approved social worker or a constable.

(2) This section does not apply to any person who is subject to guardianship.

General

90 Regulations for purposes of Part VI.

Section 32 above shall have effect as if references in that section to Part II of this Act included references to this Part of this Act and to **[**[F198]regulations made under section 290 of the Mental Health (Care and Treatment)(Scotland) Act 2003 and articles 2, 3 and 10 of the Mental Health (Care and Treatment)(Scotland) Act 2003 (Consequential Provisions) Order 2005**]** , so far as **[**[F199]that Part or those regulations or articles**]** apply to patients removed to England and Wales thereunder.

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Textual Amendments

F198 Words in s. 90 substituted (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), art. 15, **Sch. 1 para. 2(6)(a)**

F199 Words in s. 90 substituted (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), art. 15, **Sch. 1 para. 2(6)(b)**

91 General provisions as to patients removed from England and Wales.

(1) Subject to subsection (2) below, where a patient liable to be detained or subject to guardianship by virtue of an application, order or direction under Part II or III of this Act (other than section 35, 36 or 38 above) is removed from England and Wales in pursuance of arrangements under this Part of this Act, the application, order or direction shall cease to have effect when he is duly received into a hospital or other institution, or placed under guardianship **[**[F200]or, where he is not received into a hospital but his detention in hospital is authorised by virtue of the Mental Health (Care and Treatment)(Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995**]** , in pursuance of those arrangements.

(2) Where the Secretary of State exercises his powers under section 86(2) above in respect of a patient who is detained pursuant to a hospital order under section 37 above and in respect of whom a restriction order is in force, those orders shall 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.

[[F201](3) Reference in this section to a patient's detention in hospital being authorised by virtue of the Mental Health (Care and Treatment)(Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995 shall be read as including references to a patient in respect of whom a certificate under one of the provisions listed in section 290(7)(a) of the Act of 2003 is in operation.**]**

Textual Amendments

F200 Words in s. 91(1) inserted (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), art. 15, **Sch. 1 para. 2(7)(a)**

F201 S. 91(3) inserted (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), art. 15, **Sch. 1 para. 2(7)(b)**

92 Interpretation of Part VI.

(1) References in this Part of this Act to a hospital, being a hospital in England and Wales, shall be construed as references to a hospital within the meaning of Part II of this Act.

(2) Where a patient is treated by virtue of this Part of this Act as if he had been removed to a hospital in England and Wales in pursuance of a direction under Part III of this Act, that direction shall be deemed to have been given on the date of his reception into the hospital.

(3) A patient removed to England and Wales under this Part of this Act or under **[**[F202]the Mental Health (Care and Treatment)(Scotland) Act 2003 (Consequential Provisions) Order 2005 and regulations made under section 290 of the Mental Health (Care and Treatment)(Scotland) Act 2003**]** shall be treated for the purposes of this Act

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as suffering from such form of mental disorder as may be recorded in his case in pursuance of regulations made by virtue of section 90 above, and references in this Act to the form or forms of mental disorder specified in the relevant application, order or direction shall be construed as including references to the form or forms of mental disorder so recorded.

[[F203](4) Sections 80 to 85A above shall have effect as if—

(a) any hospital direction under section 45A above were a transfer direction under section 47 above; and

(b) any limitation direction under section 45A above were a restriction direction under section 49 above.

(5) Sections 80(5), 81(6) and 85(4) above shall have effect as if any reference to a transfer direction given while a patient was serving a sentence of imprisonment imposed by a court included a reference to a hospital direction given by a court after imposing a sentence of imprisonment on a patient.**]**

Textual Amendments

F202 Words in s. 92(3) substituted (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), art. 15, **Sch. 1 para. 2(8)**

F203 S. 92(4)(5) inserted (1.10.1997) by 1997 c. 43, s. 55, **Sch. 4 para. 12(16)**; S.I. 1997/2200, **art. 2**

PART VII

MANAGEMENT OF PROPERTY AND AFFAIRS OF PATIENTS

Modifications etc. (not altering text)

C48 Pt. VII (ss. 93–113) extended with modifications by Enduring Powers of Attorney Act 1985 (c. 29, SIF 1), **s. 10(1)**

93 Judicial authorities and Court of Protection.

(1) The **[**[F204]Lord Chief Justice shall, after consulting the Lord Chancellor,**]** shall from time to time nominate one or more judges of the Supreme Court (in this Act referred to as "nominated judges") to act for the purposes of this Part of this Act.

(2) There shall continue to be an office of the Supreme Court, called the Court of Protection, for the protection and management, as provided by this Part of this Act, of the property and affairs of persons under disability; and there shall continue to be a Master of the Court of Protection appointed by **[**[F205]Her Majesty**]** under section 89 of the [M16]Supreme Court Act 1981.

(3) The Master of the Court of Protection shall take the oath of allegiance and judicial oath in the presence of the **[**[F206]Lord Chief Justice**]** ; and the [M17]Promissory Oaths Act 1868 shall have effect as if the officers named in the Second Part of the Schedule to that Act included the Master of the Court of Protection.

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(4) The Lord Chancellor may **[**[F207], with the concurrence of the Lord Chief Justice,**]** nominate other officers of the Court of Protection (in this Part of this Act referred to as "nominated officers") to act for the purposes of this Part of this Act.

[[F208](5) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under subsection (1), (3) or (4).**]**

Textual Amendments

F204 Words in s. 93(1) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 4 para. 151(2)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 11(q)

F205 Words in s. 93(2) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 14, 148, **Sch. 3 para. 4**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 9

F206 Words in s. 93(3) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 4 para. 151(3)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 11(q)

F207 Words in s. 93(4) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 4 para. 151(4)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 11(q)

F208 S. 93(5) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 4 para. 151(5)**; S.I. 2006/1014, art. 2(a), Sch. 1 para. para. 11(q)

Marginal Citations

M16 1981 c. 54.

M17 1868 c. 72.

94 Exercise of the judge's functions: "the patient".

(1) **[**[F209]Subject to sub-section (1A) below**]** the functions expressed to be conferred by this Part of this Act on the judge shall be exercisable [F210]. . . by any nominated judge, and shall also be exercisable by the Master of the Court of Protection **[**[F211],by the Public Trustee**]** or by any nominated officer, but—

(a) in the case of the Master **[**[F212]the Public Trustee**]** or any nominated officer, subject to any express provision to the contrary in this Part of this Act or any rules made under this Part of this Act,

[[F213](aa) in the case of the Public Trustee, subject to any directions of the Master and so far only as may be provided by any rules made under this Part of this Act or (subject to any such rules) by directions of the Master,**]**

(b) in the case of any nominated officer, subject to any directions of the Master and so far only as may be provided by the instrument by which he is nominated;

and references in this Part of this Act to the judge shall be construed accordingly.

[[F214](1A) In such cases or circumstances as may be prescribed by any rules under this Part of this Act or (subject to any such rules) by directions of the Master, the functions of the judge under this Part of this Act shall be exercised by the Public Trustee (but subject to any directions of the Master as to their exercise)**]**

(2) The functions of the judge under this Part of this Act shall be exercisable where, after considering medical evidence, he is satisfied that a person is incapable, by reason of mental disorder, of managing and administering his property and affairs; and a person as to whom the judge is so satisfied is referred to in this Part of this Act as a patient.

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Textual Amendments

F209 Words inserted (E.W.) at the beginning of s. 94(1) by Public Trustee and Administration of Funds Act 1986 (c. 57, SIF 57), **s.2(2)**(*a*)

F210 Words in s. 94(1) repealed (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 146, 148, Sch. 4 para. 152, **Sch. 18 Pt. 2**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 paras. 11(q), 30(b)

F211 Words inserted (E.W.) by Public Trustee and Administration of Funds Act 1986 (c. 57, SIF 57), **s.2(2)**(*a*)

F212 Words inserted (E.W.) by Public Trustee and Administration of Funds Act 1986 (c. 57, SIF 57), **s.2(2)**(*b*)

F213 S. 94(1)(*aa*) inserted (E.W.) by Public Trustee and Administration of Funds Act 1986 (c. 57, SIF 57), **s.2(2)**(*b*)

F214 S. 94(1A) inserted (E.W.) by Public Trustee and Administration of Funds Act 1986 (c. 57, SIF 57), **s. 2(2)**(*c*)

95 General functions of the judge with respect to property and affairs of patient.

(1) The judge may, with respect to the property and affairs of a patient, do or secure the doing of all such things as appear necessary or expedient—

(a) for the maintenance or other benefit of the patient,

(b) for the maintenance or other benefit of members of the patient's family,

(c) for making provision for other persons or purposes for whom or which the patient might be expected to provide if he were not mentally disordered, or

(d) otherwise for administering the patient's affairs.

(2) In the exercise of the powers conferred by this section regard shall be had first of all to the requirements of the patient, and the rules of law which restricted the enforcement by a creditor of rights against property under the control of the judge in lunacy shall apply to property under the control of the judge; but, subject to the foregoing provisions of this subsection, the judge shall, in administering a patient's affairs, have regard to the interests of creditors and also to the desirability of making provision for obligations of the patient notwithstanding that they may not be legally enforceable.

96 Powers of the judge as to patient's property and affairs.

(1) Without prejudice to the generality of section 95 above, the judge shall have power to make such orders and give such directions and authorities as he thinks fit for the purposes of that section and in particular may for those purposes make orders or give directions or authorities for—

(a) the control (with or without the transfer or vesting of property or the payment into or lodgment in the Supreme Court of money or securities) and management of any property of the patient;

(b) the sale, exchange, charging or other disposition of or dealing with any property of the patient;

(c) the acquisition of any property in the name or on behalf of the patient;

(d) the settlement of any property of the patient, or the gift of any property of the patient to any such persons or for any such purposes as are mentioned in paragraphs (b) and (c) of section 95(1) above;

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(e) the execution for the patient of a will making any provision (whether by way of disposing of property or exercising a power or otherwise) which could be made by a will executed by the patient if he were not mentally disordered;

(f) the carrying on by a suitable person of any profession, trade or business of the patient;

(g) the dissolution of a partnership of which the patient is a member;

(h) the carrying out of any contract entered into by the patient;

(i) the conduct of legal proceedings in the name of the patient or on his behalf;

(j) the reimbursement out of the property of the patient, with or without interest, of money applied by any person either in payment of the patient's debts (whether legally enforceable or not) or for the maintenance or other benefit of the patient or members of his family or in making provision for other persons or purposes for whom or which he might be expected to provide if he were not mentally disordered;

(k) the exercise of any power (including a power to consent) vested in the patient, whether beneficially, or as guardian or trustee, or otherwise.

(2) If under subsection (1) above provision is made for the settlement of any property of a patient, or the exercise of a power vested in a patient of appointing trustees or retiring from a trust, the judge may also make as respects the property settled or trust property such consequential vesting or other orders as the case may require, including (in the case of the exercise of such a power) any order which could have been made in such a case under Part IV of the [M18]Trustee Act 1925.

(3) Where under this section a settlement has been made of any property of a patient, and [F215]. . . a nominated judge is satisfied, at any time before the death of the patient, that any material fact was not disclosed when the settlement was made, or that there has been any substantial change in circumstances, he may by order vary the settlement in such manner as he thinks fit, and give any consequential directions.

(4) The power of the judge to make or give an order, direction or authority for the execution of a will for a patient—

(a) shall not be exercisable at any time when the patient is a minor, and

(b) shall not be exercised unless the judge has reason to believe that the patient is incapable of making a valid will for himself.

(5) The powers of a patient as patron of a benefice shall be exercisable by the Lord Chancellor only.

Textual Amendments

F215 Words in s. 96(3) repealed (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 146, 148, Sch. 4 para. 153, **Sch. 18 Pt.2**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 paras. 11(q), 30(b)

Marginal Citations

M18 1925 c. 19.

97 Supplementary provisions as to wills executed under s. 96.

(1) Where under section 96(1) above the judge makes or gives an order, direction or authority requiring or authorising a person (in this section referred to as "the authorised person") to execute a will for a patient, any will executed in pursuance of that order,

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direction or authority shall be expressed to be signed by the patient acting by the authorised person, and shall be—

(a) signed by the authorised person with the name of the patient, and with his own name, in the presence of two or more witnesses present at the same time, and

(b) attested and subscribed by those witnesses in the presence of the authorised person, and

(c) sealed with the official seal of the Court of Protection.

(2) The [M19]Wills Act 1837 shall have effect in relation to any such will as if it were signed by the patient by his own hand, except that in relation to any such will—

(a) section 9 of that Act (which makes provision as to the signing and attestation of wills) shall not apply, and

(b) in the subsequent provisions of that Act any reference to execution in the manner required by the previous provisions of that Act shall be construed as a reference to execution in the manner required by subsection (1) above.

(3) Subject to the following provisions of this section, any such will executed in accordance with subsection (1) above shall have the same effect for all purposes as if the patient were capable of making a valid will and the will had been executed by him in the manner required by the [M20]Wills Act 1837.

(4) So much of subsection (3) above as provides for such a will to have effect as if the patient were capable of making a valid will—

(a) shall not have effect in relation to such a will in so far as it disposes of any immovable property, other than immovable property in England or Wales, and

(b) where at the time when such a will is executed the patient is domiciled in Scotland or Northern Ireland or in a country or territory outside the United Kingdom, shall not have effect in relation to that will in so far as it relates to any other property or matter, except any property or matter in respect of which, under the law of his domicile, any question of his testamentary capacity would fall to be determined in accordance with the law of England and Wales.

Marginal Citations

M19 1837 c. 26.

M20 1837 c. 26.

98 Judge's powers in cases of emergency.

Where it is represented to the judge, and he has reason to believe, that a person may be incapable, by reason of mental disorder, of managing and administering his property and affairs, and the judge is of the opinion that it is necessary to make immediate provision for any of the matters referred to in section 95 above, then pending the determination of the question whether that person is so incapable the judge may exercise in relation to the property and affairs of that person any of the powers conferred on him in relation to the property and affairs of a patient by this Part of this Act so far as is requisite for enabling that provision to be made.

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99 Power to appoint receiver.

(1) The judge may by order appoint as receiver for a patient a person specified in the order or the holder for the time being of an office so specified.

(2) A person appointed as receiver for a patient shall do all such things in relation to the property and affairs of the patient as the judge, in the exercise of the powers conferred on him by sections 95 and 96 above, orders or directs him to do and may do any such thing in relation to the property and affairs of the patient as the judge, in the exercise of those powers, authorises him to do.

(3) A receiver appointed for any person shall be discharged by order of the judge on the judge being satisfied that that person has become capable of managing and administering his property and affairs, and may be discharged by order of the judge at any time if the judge considers it expedient to do so; and a receiver shall be discharged (without any order) on the death of the patient.

100 Vesting of stock in curator appointed outside England and Wales.

(1) Where the judge is satisfied—

(a) that under the law prevailing in a place outside England and Wales a person has been appointed to exercise powers with respect to the property or affairs of any other person on the ground (however formulated) that that other person is incapable, by reason of mental disorder, of managing and administering his property and affairs, and

(b) that having regard to the nature of the appointment and to the circumstances of the case it is expedient that the judge should exercise his powers under this section,

the judge may direct any stock standing in the name of the said other person or the right to receive the dividends from the stock to be transferred into the name of the person so appointed or otherwise dealt with as requested by that person, and may give such directions as the judge thinks fit for dealing with accrued dividends from the stock.

(2) In this section "stock" includes shares and also any fund, annuity or security transferable in the books kept by any body corporate or unincorporated company or society, or by an instrument of transfer either alone or accompanied by other formalities, and "dividends" shall be construed accordingly.

101 Preservation of interests in patient's property.

(1) Where any property of a person has been disposed of under this Part of this Act, and under his will or his intestacy, or by any gift perfected or nomination taking effect on his death, any other person would have taken an interest in the property but for the disposal—

(a) he shall take the same interest, if and so far as circumstances allow, in any property belonging to the estate of the deceased which represents the property disposed of; and

(b) if the property disposed of was real property any property representing it shall so long as it remains part of his estate be treated as if it were real property.

(2) The judge, in ordering, directing or authorising under this Part of this Act any disposal of property which apart from this section would result in the conversion of personal property into real property, may direct that the property representing the property

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disposed of shall, so long as it remains the property of the patient or forms part of his estate, be treated as if it were personal property.

(3) References in subsections (1) and (2) above to the disposal of property are references to—
   (a) the sale, exchange, charging or other dealing (otherwise than by will) with property other than money,
   (b) the removal of property from one place to another,
   (c) the application of money in acquiring property, or
   (d) the transfer of money from one account to another;

   and references to property representing property disposed of shall be construed accordingly and as including the result of successive disposals.

(4) The judge may give such directions as appear to him necessary or expedient for the purpose of facilitating the operation of subsection (1) above, including the carrying of money to a separate account and the transfer of property other than money.

(5) Where the judge has ordered, directed or authorised the expenditure of money for the carrying out of permanent improvements on, or otherwise for the permanent benefit of, any property of the patient, he may order that the whole or any part of the money expended or to be expended shall be a charge upon the property, whether without interest or with interest at a specified rate; and an order under this subsection may provide for excluding or restricting the operation of subsection (1) above.

(6) A charge under subsection (5) above may be made in favour of such person as may be just, and in particular, where the money charged is paid out of the patient's general estate, may be made in favour of a person as trustee for the patient; but no charge under that subsection shall confer any right of sale or foreclosure during the lifetime of the patient.

102 Lord Chancellor's Visitors.

(1) There shall continue to be the following panels of Lord Chancellor's Visitors of patients constituted in accordance with this section, namely—
   (a) a panel of Medical Visitors;
   (b) a panel of Legal Visitors; and
   (c) a panel of General Visitors (being Visitors who are not required by this section to possess either a medical or legal qualification for appointment).

(2) Each panel shall consist of persons appointed to it by the Lord Chancellor, the appointment of each person being for such term and subject to such conditions as the Lord Chancellor may determine.

(3) A person shall not be qualified to be appointed—
   (a) to the panel of Medical Visitors unless he is a registered medical practitioner who appears to the Lord Chancellor to have special knowledge and experience of cases of mental disorder;
   (b) to the panel of Legal Visitors unless **[**[F216]he has a 10 year general qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990.**]**

(4) If the Lord Chancellor so determines in the case of any Visitor appointed under this section, he shall be paid out of money provided by Parliament such remuneration

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and allowances as the Lord Chancellor may, with the concurrence of the Treasury, determine.

Textual Amendments

F216 Words substituted by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. 71(2), **Sch. 10 para. 51**

103 Functions of Visitors.

(1) Patients shall be visited by Lord Chancellor's Visitors in such circumstances, and in such manner, as may be prescribed by directions of a standing nature given by the Master of the Court of Protection with the concurrence of the Lord Chancellor.

(2) Where it appears to the judge in the case of any patient that a visit by a Lord Chancellor's Visitor is necessary for the purpose of investigating any particular matter or matters relating to the capacity of the patient to manage and administer his property and affairs, or otherwise relating to the exercise in relation to him of the functions of the judge under this Part of this Act, the judge may order that the patient shall be visited for that purpose.

(3) Every visit falling to be made under subsection (1) or (2) above shall be made by a General Visitor unless, in a case where it appears to the judge that it is in the circumstances essential for the visit to be made by a Visitor with medical or legal qualifications, the judge directs that the visit shall be made by a Medical or a Legal Visitor.

(4) A Visitor making a visit under this section shall make such report on the visit as the judge may direct.

(5) A Visitor making a visit under this section may interview the patient in private.

(6) A Medical Visitor making a visit under this section may carry out in private a medical examination of the patient and may require the production of and inspect any medical records relating to the patient.

(7) The Master of the Court of Protection may visit any patient for the purpose mentioned in subsection (2) above and may interview the patient in private.

(8) A report made by a Visitor under this section, and information contained in such a report, shall not be disclosed except to the judge and any person authorised by the judge to receive the disclosure.

(9) If any person discloses any report or information in contravention of subsection (8) above, he shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 3 on the standard scale or both.

(10) In this section references to patients include references to persons alleged to be incapable, by reason of mental disorder, of managing and administering their property and affairs.

104 General powers of the judge with respect to proceedings.

(1) For the purposes of any proceedings before him with respect to persons suffering or alleged to be suffering from mental disorder, the judge shall have the same powers as

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are vested in the High Court in respect of securing the attendance of witnesses and the production of documents.

(2) Subject to the provisions of this section, any act or omission in the course of such proceedings which, if occurring in the course of proceedings in the High Court would have been a contempt of the Court, shall be punishable by the judge in any manner in which it could have been punished by the High Court.

(3) Subsection (2) above shall not authorise the Master, or any other officer of the Court of Protection to exercise any power of attachment or committal, but the Master or officer may certify any such act or omission to [F217]. . . a nominated judge, and [F217]. . . judge may upon such certification inquire into the alleged act or omission and take any such action in relation to it as he could have taken if the proceedings had been before him.

(4) Subsections (1) to (4) of section 36 of the [M21]Supreme Court Act 1981 (which provides a special procedure for the issue of writs of subpoena ad testificandum and duces tecum so as to be enforceable throughout the United Kingdom) shall apply in relation to proceedings under this Part of this Act with the substitution for references to the High Court of references to the judge and for references to such writs of references to such document as may be prescribed by rules under this Part of this Act for issue by the judge for securing the attendance of witnesses or the production of documents.

Textual Amendments

F217 Words in s. 104(3) repealed (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 146, 148, Sch. 4 para. 154, **Sch. 18 Pt. 2**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 paras. 11(q), 30(b)

Marginal Citations

M21 1981 c. 54.

105 Appeals.

(1) Subject to and in accordance with rules under this Part of this Act, an appeal shall lie to a nominated judge from any decision of the Master of the Court of Protection or any nominated officer.

(2) The Court of Appeal shall continue to have the same jurisdiction as to appeals from any decision of the Lord Chancellor or from any decision of a nominated judge, whether given in the exercise of his original jurisdiction or on the hearing of an appeal under subsection (1) above, as they had immediately before the coming into operation of Part VIII of the [M22]Mental Health Act 1959 as to appeals [F218]. . . any other person having jurisdiction in lunacy.

Textual Amendments

F218 Words in s. 105(2) repealed (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 146, 148, Sch. 4 para. 155, **Sch. 18 Pt. 2**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 paras. 11(q), 30(b)

Marginal Citations

M22 1959 c. 72.

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106 Rules of procedure.

(1) Proceedings before the judge with respect to persons suffering or alleged to be suffering from mental disorder (in this section referred to as "proceedings") shall be conducted in accordance with the provisions of rules made under this Part of this Act.

(2) Rules under this Part of this Act may make provision as to—
- (a) the carrying out of preliminary or incidental inquiries;
- (b) the persons by whom and manner in which proceedings may be instituted and carried on;
- (c) the persons who are to be entitled to be notified of, to attend, or to take part in proceedings;
- (d) the evidence which may be authorised or required to be given in proceedings and the manner (whether on oath or otherwise and whether orally or in writing) in which it is to be given;
- (e) the administration of oaths and taking of affidavits for the purposes of proceedings; and
- (f) the enforcement of orders made and directions given in proceedings.

(3) Without prejudice to the provisions of section 104(1) above, rules under this Part of this Act may make provision for authorising or requiring the attendance and examination of persons suffering or alleged to be suffering from mental disorder, the furnishing of information and the production of documents.

(4) Rules under this Part of this Act may make provision as to the termination of proceedings, whether on the death or recovery of the person to whom the proceedings relate or otherwise, and for the exercise, pending the termination of the proceedings, of powers exercisable under this Part of this Act in relation to the property or affairs of a patient.

(5) Rules under this Part of this Act made with the consent of the Treasury may—
- (a) make provision as to the scale of costs, fees and percentages payable in relation to proceedings, and as to the manner in which and funds out of which such costs, fees and percentages are to be paid;
- (b) contain provision for charging any percentage upon the estate of the person to whom the proceedings relate and for the payment of costs, fees and percentages within such time after the death of the person to whom the proceedings relate or the termination of the proceedings as may be provided by the rules; and
- (c) provide for the remission of fees and percentages.

(6) A charge upon the estate of a person created by virtue of subsection (5) above shall not cause any interest of that person in any property to fail or determine or to be prevented from recommencing.

(7) Rules under this Part of this Act may authorise the making of orders for the payment of costs to or by persons attending, as well as persons taking part in, proceedings.

107 Security and accounts.

(1) Rules under this Part of this Act may make provision as to the giving of security by a receiver and as to the enforcement and discharge of the security.

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(2) It shall be the duty of a receiver to render accounts in accordance with the requirements of rules under this Part of this Act, as well after his discharge as during his receivership; and rules under this Part of this Act may make provision for the rendering of accounts by persons other than receivers who are ordered, directed or authorised under this Part of this Act to carry out any transaction.

108 General provisions as to rules under Part VII.

[[F219](1) Rules under section 106(5) are to be made by the Lord Chancellor after consulting the Lord Chief Justice.**]**

[[F220](1A) Rules under any other provision of this Part of this Act are to be made in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005.**]**

(2) Rules under this Part of this Act may contain such incidental and supplemental provisions as appear requisite for the purposes of the rules.

[[F221](3) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.**]**

Textual Amendments

F219 S. 108(1) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 4 para. 156(2)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 11(q)

F220 S. 108(1A) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 12, 148, **Sch.1 para. 15**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 7

F221 S. 108(3) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 4 para. 156(3)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 11(q)

109 Effect and proof of orders, etc.

(1) Section 204 of the [M23]Law of Property Act 1925 (by which orders of the High Court are made conclusive in favour of purchasers) shall apply in relation to orders made and directions and authorities given by the judge as it applies in relation to orders of the High Court.

(2) Office copies of orders made, directions or authorities given or other instruments issued by the judge and sealed with the official seal of the Court of Protection shall be admissible in all legal proceedings as evidence of the originals without any further proof.

Marginal Citations

M23 1925 c. 20.

110 Reciprocal arrangements in relation to Scotland and Northern Ireland as to exercise of powers.

(1) This Part of this Act shall apply in relation to the property and affairs in Scotland or Northern Ireland of a patient in relation to whom powers have been exercised under

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this Part of this Act, or a person as to whom powers are exercisable and have been exercised under section 98 above as it applies in relation to his property and affairs in England and Wales **[**[F222]unless—**]**

[[F222](a) in Scotland, a[F223]. . . judicial factor has been appointed for him; or

(b) in Northern Ireland, he is a patient in relation to whom powers have been exercised under Part VIII of the Mental Health (Northern Ireland) Order 1986, or a person as to whom powers are exercisable and have been exercised under Article 97(2) of that Order.**]**

(2) Where under the law in force in Scotland . . . [F224] with respect to the property and affairs of persons suffering from mental disorder a[F223]. . . judicial factor has been appointed for any person, the provisions of that law shall apply in relation to that person's property and affairs in England and Wales unless he is a patient in relation to whom powers have been exercised under this Part of this Act, or a person as to whom powers are exercisable and have been exercised under section 98 above.

[[F225](2A) Part VIII of the Mental Health (Northern Ireland) Order 1986 shall apply in relation to the property and affairs in England and Wales of a patient in relation to whom powers have been exercised under that Part, or a person as to whom powers are exercisible and have been exercised under Article 97(2) of that Order as it applies in relation to his property and affairs in Northern Ireland unless he is a patient in relation to whom powers have been exercised under this Part of this Act, or a person as to whom powers are exercisable and have been exercised under section 98 above.**]**

(3) Nothing in this section shall affect any power to execute a will under section 96(1)(e) above **[**[F226]or Article 99(1)(*e*) of the Mental Health (Northern Ireland) Order 1986**]** or the effect of any will executed in the exercise of such a power.

(4) In this section references to property do not include references to land or interests in land but this subsection shall not prevent the receipt of rent or other income arising from land or interests in land.

Textual Amendments

F222 S. 110(1)(a)(b) and word substituted by S.I. 1986/596, **art. 2(17)**

F223 Words in s. 110(1)(2) repealed (S.) (1.4.2002) by 2000 asp 4, s. 88, **Sch. 6**; S.S.I. 2001/81, art. 3, **Sch. 2**

F224 Words repealed by S.I. 1986/596, **art. 2(18)**

F225 S. 110(2A) inserted by S.I. 1986/596, **art. 2(19)**

F226 Words inserted by S.I. 1986/596, **art. 2(20)**

111 Construction of references in other Acts to judge or authority having jurisdiction under Part VII.

(1) The functions expressed to be conferred by any enactment not contained in this Part of this Act on the judge having jurisdiction under this Part of this Act shall be exercisable [F227]. . . by a nominated judge.

(2) Subject to subsection (3) **[**[F228]and (3A)**]** below, the functions expressed to be conferred by any such enactment on the authority having jurisdiction under this Part of this Act shall, subject to any express provision to the contrary, be exercisable by [F229]. . . a nominated judge, the Master of the Court of Protection or a nominated officer.

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[[F230](2A) The exercise of the functions referred to in subsection (2) above by the Public Trustee shall be subject to any directions of the Master and they shall be excercisable so far only as may be provided by any rules made under this Part of this Act or (subject to any such rules) by directions of the Master.**]**

(3) The exercise of the functions referred to in subsection (2) above by a nominated officer shall be subject to any directions of the Master and they shall be exercisable so far only as may be provided by the instrument by which the officer is nominated.

[[F231](3A) In such cases or circumstances as may be prescribed by any rules under this Part of this Act or (subject to any such rules) by directions of the Master, the functions referred to in subsection (2) above shall be exercised by the Public Trustee (but subject to any directions of the Master as to their exercise).**]**

(4) Subject to the foregoing provisions of this section—

(a) references in any enactment not contained in this Part of this Act to the judge having jurisdiction under this Part of this Act shall be construed as references to [F232]. . . a nominated judge, and

(b) references in any such enactment to the authority having jurisdiction under this Part of this Act shall be construed as references to [F233]. . . a nominated judge, the Master of the Court of Protection or a nominated officer.

Textual Amendments

F227 Words in s. 111(1) repealed (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 146, 148, Sch. 4 para. 157(2), **Sch. 18 Pt. 2**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 paras. 11(q), 30(b)

F228 Words inserted (E.W.) by Public Trustee and Administration of Funds Act 1986 (c. 57, SIF 57), **s.2(3)**(*a*)

F229 Words in s. 111(2) repealed (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 146, 148, Sch. 4 para. 157(2), **Sch. 18 Pt. 2**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 paras. 11(q), 30(b)

F230 S. 111(2A) inserted (E.W.) by Public Trustee and Administration of Funds Act 1986 (c. 57, SIF 57), **s.2(3)**(*b*)

F231 S. 112(3A) inserted (E.W.) by Public Trustee and Administration of Funds Act 1986 (c. 57, SIF 57), **s.2(3)**(*c*)

F232 Words in s. 111(4)(a) repealed (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 146, 148, Sch. 4 para. 157(4)(a), **Sch. 18 Pt. 2**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 paras. 11(q), 30(b)

F233 Words in s. 111(4)(b) repealed (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 146, 148, Sch. 4 para. 157(4)(b), **Sch. 18 Pt. 2**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 paras. 11(q), 30(b)

112 Interpretation of Part VII.

In this Part of this Act, unless the context otherwise requires—

"nominated judge" means a judge nominated in pursuance of subsection (1) of section 93 above;

"nominated officer" means an officer nominated in pursuance of subsection (4) of that section;

"patient" has the meaning assigned to it by section 94 above;

"property" includes any thing in action, and any interest in real or personal property;

"the judge" shall be construed in accordance with section 94 above;

"will" includes a codicil.

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113 Disapplication of certain enactments in relation to persons within the jurisdiction of the judge.

The provisions of the Acts described in Schedule 3 to this Act which are specified in the third column of that Schedule, so far as they make special provision for persons suffering from mental disorder, shall not have effect in relation to patients and to persons as to whom powers are exercisable and have been exercised under section 98 above.

PART VIII

MISCELLANEOUS FUNCTIONS OF LOCAL AUTHORITIES AND THE SECRETARY OF STATE

Approved social workers

114 Appointment of approved social workers.

(1) A local social services authority shall appoint a sufficient number of approved social workers for the purpose of discharging the functions conferred on them by this Act.

(2) No person shall be appointed by a local social services authority 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.

VALID FROM 01/10/2007

[F234 114A Approval of courses etc for approved mental health professionals

(1) The relevant Council may, in accordance with rules made by it, approve courses for persons who are or wish to become approved mental health professionals.

(2) For that purpose—
- (a) subsections (2) to (4)(a) and (7) of section 63 of the Care Standards Act 2000 apply as they apply to approvals given, rules made and courses approved under that section; and
- (b) sections 66 and 71 of that Act apply accordingly.

(3) In subsection (1), "the relevant Council" means—
- (a) in relation to persons who are or wish to become approved to act as approved mental health professionals by a local social services authority whose area is in England, the General Social Care Council;
- (b) in relation to persons who are or wish to become approved to act as approved mental health professionals by a local social services authority whose area is in Wales, the Care Council for Wales.

(4) The functions of an approved mental health professional shall not be considered to be relevant social work for the purposes of Part 4 of the Care Standards Act 2000.

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(5) The General Social Care Council and the Care Council for Wales may also carry out, or assist other persons in carrying out, research into matters relevant to training for approved mental health professionals.**]**

Textual Amendments

F234 S. 114A inserted (1.10.2007) by Mental Health Act 2007 (c. 12), **ss. 19**, 56 (with Sch. 10); S.I. 2007/2798, **art. 2(a)**

115 Powers of entry and inspection.

An approved social worker of a local social services authority may at all reasonable times after producing, if asked to do so, some duly authenticated document showing that he is such a social worker, enter and inspect any premises (not being a hospital) in the area of that authority in which a mentally disordered patient is living, if he has reasonable cause to believe that the patient is not under proper care.

Visiting patients

116 Welfare of certain hospital patients.

(1) Where a patient to whom this section applies is admitted to a hospital **[**[F235]independent hospital or care home**]** in England and Wales (whether for treatment for mental disorder or for any other reason) then, without prejudice to their duties in relation to the patient apart from the provisions of this section, the authority shall arrange for visits to be made to him on behalf of the authority, and shall take such other steps in relation to the patient while in the hospital or nursing home as would be expected to be taken by his parents.

(2) This section applies to-

[[F236](a) a child or young person—

(i) who is in the care of a local authority by virtue of a care order within the meaning of the [M24] Children Act 1989, or

(ii) in respect of whom the rights and powers of a parent are vested in a local authority by virtue of section 16 of the [M25]Social Work (Scotland) Act 1968;**]**

(b) a person who is subject to the guardianship of a local social services authority under the provisions of this Act [F237]. . . ; or

(c) a person the functions of whose nearest relative under this Act [F237]. . . are for the time being transferred to a local social services authority.

Textual Amendments

F235 Words in s. 116(1) substituted (1.4.2002 for E.W and otherwise (prosp.)) by 2000 c. 14, s. 116, **Sch. 4 para. 9(5)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **art. 3(3)(d)** (with transitional provisions in Schs. 1-3 and art. 3(4)-(10))

F236 S. 116(2)(a) substituted (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 116, **Sch. 16 para. 42**; S.I. 1991/1883, art. 3, **Sch.**

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F237 Words in s. 116(2)(b)(c) repealed (S.) (27.9.2005) by virtue of The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.I. 2005/465), art. 3, **Sch. 2** and words in s. 116(2)(b)(c) repealed (E.W.) (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions Order) 2005 (S.I. 2005/2078), art. 16, **Sch. 3**

Marginal Citations

M24 1989 c.41 (**20**).

M25 1968 c.49 (**81:3**).

After-care

117 After-care.

(1) This section applies to persons who are detained under section 3 above, or admitted to a hospital in pursuance of a hospital order made under section 37 above, or transferred to a hospital in pursuance of **[**[F238]a hospital direction made under section 45A above or**]** a transfer direction made under section 47 or 48 above, and then cease to be detained and **[**[F239](whether or not immediately after so ceasing)**]** leave hospital.

(2) It shall be the duty of the **[**[F240]Primary Care Trust or**]**[[F241]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 until such time as the **[**[F240]Primary Care Trust or**]**[[F241]Health Authority**]** and the local social services authority are satisfied that the person concerned is no longer in need of such services **[**[F242]; but they shall not be so satisfied in the case of a patient who is subject to after-care under supervision at any time while he remains so subject.**]**

[[F243](2A) It shall be the duty of the **[**[F240]Primary Care Trust or**]** Health Authority to secure that at all times while a patient is subject to after-care under supervision—

(a) a person who is a registered medical practitioner approved for the purposes of section 12 above by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder is in charge of the medical treatment provided for the patient as part of the after-care services provided for him under this section; and

(b) a person professionally concerned with any of the after-care services so provided is supervising him with a view to securing that he receives the after-care services so provided.

(2B) Section 32 above shall apply for the purposes of this section as it applies for the purposes of Part II of this Act.**]**

(3) In this **[**[F244]section " the **[**[F240]Primary Care Trust or**]** Health Authority"means the **[**[F240]Primary Care Trust or**]** Health Authority, 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.

Textual Amendments

F238 Words in s. 117(1) inserted (1.10.1997) by 1997 c. 43, s. 55, **Sch. 4**, para. 12(17); S.I.1997/2200, **art. 2(2)**

F239 Words in s. 117(1) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 15(2)

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F240 Words in s. 117(2)(2A)(3) inserted (1.10.2002) by 2002 c. 17, s. 2(5), **Sch. 2 Pt. 2 para. 47**; S.I. 2002/2478, **art. 3(1)(d)** (with saving in art. 3(3) and transitional provision in art. 4)

F241 Words in s. 117(2) substituted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, s by 1995 c. 17, ss. 2(1), 9(3), **Sch. 1**, Pt. III, para. 107(8)(a) (with ss. 2(3), 8)

F242 Words in s. 117(2) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 15(3)

F243 S. 117(2A)-(2B) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 15(4)

F244 Words in s. 117(3) substituted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, ss. 2(1), 9(3), Sch. 1, Pt. III, para. 107(8)(b) (with ss. 2(3), 8)

Modifications etc. (not altering text)

C49 S. 117(2)(2A): functions of local authority may be responsibility of an executive of the authority (1.4.2000) by virtue of S.I. 2000/695, reg. 3(2)(b), **Sch. 2**

Functions of the Secretary of State

118 Code of practice.

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

(a) for the guidance of registered medical practitioners, managers and staff of hospitals **[**[F245], independent hospitals and care homes**]** and approved social workers in relation to the admission of patients to hospitals **[**[F246]and registered establishments**]** under this Act **[**[F247]and to guardianship and after-care under supervision under this Act**]**; and

(b) for the guidance of registered 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 57 above which in the opinion of the Secretary of State give rise to special concern and which should accordingly not be given by a registered 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 registered 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 40 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.

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Textual Amendments

F245 Words in s. 118(1) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(6)(a)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **art. 3(3)(d)** (subject to transitional provisions in Schs. 1-3 and art. 3(4)-(10))

F246 Words in s. 118(1) substituted (1.4.2002) by 2000 c. 14, ss. 116, 122, **Sch. 4 para. 9(6)(b)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **art. 3(3)(d)** (subject to transitional provisions in Schs. 1-3 and art. 3(4)-(10))

F247 Words in s. 118(1)(a) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 16

119 Practitioners approved for Part IV and s. 118.

(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 registered medical practitioners appointed by him for the purposes of Part IV of this Act and section 118 above and to or in respect of other persons appointed for the purposes of section 57(2)(a) above.

(2) A registered 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 registered medical practitioner, examine in private any patient detained in a **[**[F248]registered establishment**]**; and

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

Textual Amendments

F248 Words in s. 119(2) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(2)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **art. 3(3)(d)** (with transitional provisions in Schs. 1-3 and art. 3(4)-(10))

120 General protection of detained patients.

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

(a) to visit and interview in private patients detained under this Act in hospitals and **[**[F249]registered establishments**]**; and

(b) to investigate—

(i) any complaint made by a person in respect of a matter that occurred while he was detained under this Act in a hospital or **[**[F249]registered establishment**]** and which he considers has not been satisfactorily dealt with by the managers of that hospital or **[**[F249]registered establishment**]**; and

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

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(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 registered medical practitioner, examine in private any patient in a **[**[F249]registered establishment**]**; 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 **[**[F249]registered establishment**]**.

(5) . . . . . [F250]

(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 VII of this Act.

Textual Amendments

F249 Words in s. 120(1)(4) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(2)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **reg. 3(3)(d)** (subject to transitional provisions in Schs. 1-3 and art. 3(4)-(10))

F250 S. 120(5) repealed by Registered Homes Act 1984 (c. 23, SIF 113:3), s. 57, **Sch. 3**

VALID FROM 01/04/2009

[[F251]**120A Investigation reports**

(1) The regulatory authority may publish a report of a review or investigation carried out by it under section 120(1).

(2) The Secretary of State may by regulations make provision as to the procedure to be followed in respect of the making of representations to the Care Quality Commission before the publication of a report by the Commission under subsection (1).

(3) The Secretary of State must consult the Care Quality Commission before making any such regulations.

Status: *Point in time view as at 01/03/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Mental Health Act 1983 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) The Welsh Ministers may by regulations make provision as to the procedure to be followed in respect of the making of representations to them before the publication of a report by them under subsection (1).

Textual Amendments

F251 Ss. 120A-120D inserted (1.4.2009) by Health and Social Care Act 2008 (c. 14), ss. 52, 170, **Sch. 3 para. 9**; S.I. 2009/462, **art. 1(1)(b)**, 2, Sch. 1 para. 33

VALID FROM 01/04/2009

120B Action statements

(1) The regulatory authority may direct a person mentioned in subsection (2) to publish a statement as to the action the person proposes to take as a result of a review or investigation under section 120(1).

(2) The persons are—
- (a) the managers of a hospital within the meaning of Part 2 of this Act;
- (b) a local social services authority;
- (c) persons of any other description prescribed in regulations.

(3) Regulations may make further provision about the content and publication of statements under this section.

(4) "Regulations" means regulations made—
- (a) by the Secretary of State, in relation to England;
- (b) by the Welsh Ministers, in relation to Wales.

Textual Amendments

F251 Ss. 120A-120D inserted (1.4.2009) by Health and Social Care Act 2008 (c. 14), ss. 52, 170, **Sch. 3 para. 9**; S.I. 2009/462, **art. 1(1)(b)**, 2, Sch. 1 para. 33

VALID FROM 01/04/2009

120C Provision of information

(1) This section applies to the following persons—
- (a) the managers of a hospital within the meaning of Part 2 of this Act;
- (b) a local social services authority;
- (c) persons of any other description prescribed in regulations.

(2) A person to whom this section applies must provide the regulatory authority with such information as the authority may reasonably request for or in connection with the exercise of its functions under section 120.

Status: *Point in time view as at 01/03/2007. This version of this Act contains provisions that are not valid for this point in time.*
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(3) A person to whom this section applies must provide a person authorised under section 120 with such information as the person so authorised may reasonably request for or in connection with the exercise of functions under arrangements made under that section.

(4) This section is in addition to the requirements of section 120(7)(c).

(5) "Information" includes documents and records.

(6) "Regulations" means regulations made—
- (a) by the Secretary of State, in relation to England;
- (b) by the Welsh Ministers, in relation to Wales.

Textual Amendments

F251 Ss. 120A-120D inserted (1.4.2009) by Health and Social Care Act 2008 (c. 14), ss. 52, 170, **Sch. 3 para. 9**; S.I. 2009/462, **art. 1(1)(b)**, 2, Sch. 1 para. 33

VALID FROM 01/04/2009

120D Annual reports

(1) The regulatory authority must publish an annual report on its activities in the exercise of its functions under this Act.

(2) The report must be published as soon as possible after the end of each financial year.

(3) The Care Quality Commission must send a copy of its annual report to the Secretary of State who must lay the copy before Parliament.

(4) The Welsh Ministers must lay a copy of their annual report before the National Assembly for Wales.

(5) In this section "financial year" means—
- (a) the period beginning with the date on which section 52 of the Health and Social Care Act 2008 comes into force and ending with the next 31 March following that date, and
- (b) each successive period of 12 months ending with 31 March.**]**

Textual Amendments

F251 Ss. 120A-120D inserted (1.4.2009) by Health and Social Care Act 2008 (c. 14), ss. 52, 170, **Sch. 3 para. 9**; S.I. 2009/462, **art. 1(1)(b)**, 2, Sch. 1 para. 33

121 Mental Health Act Commission.

(1) Without prejudice to **[**[F252]section 273(1) of the National Health Service Act 2006, or section 204(1) of the National Health Service (Wales) Act 2006**]**(power to vary or revoke orders or directions) there shall continue to be a **[**[F253]Special Health Authority**]** known as the Mental Health Act Commission established under section 11 of that Act.

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(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 registered medical practitioners for the purposes of Part IV of this Act and section 118 above and of appointing other persons for the purposes of section 57(2)(a) above; and
   (b) the functions of the Secretary of State under sections 61 and 120(1) and (4) above.

(3) The registered 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 **[**[F254], independent hospitals and care homes**]** of patients who are not liable to be detained under 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 registered medical practitioner, examine in private any patient in **[**[F255]an independent hospital or a care 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 **[**[F255]an independent hospital or a care 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 (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 134 below 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.

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(11) **[**[F256]Paragraph 2 of Schedule 6 to the National Health Service Act 2006, and paragraph 2 of Schedule 5 to the National Health Service (Wales) Act 2006**]**(pay and allowances for chairmen and members of **[**[F257]Special Health Authorities**]**) shall have effect in relation to the Mental Health Act Commission as if references in sub-paragraphs (1) and (2) to the chairman included references to any member and as if **[**[F258]the reference to a member in subparagraph (4) included a reference to the chairman**]**.

Textual Amendments

F252 Words in s. 121(1) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 66(a)** (with Sch. 3 Pt. 1)

F253 Words in s. 121(1) substituted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8, **Sch. 1 Pt. III para. 107(9)**

F254 Words in s. 121(4) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(7)(a)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **art. 3(3)(d)** (subject to transitional provisions in Sch. 1-3 and art. 3(4)-(10))

F255 Words in s. 121(5)(a)(b) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(7)(b)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **art. 3(3)(d)** (subject to transitional provisions in Schs. 1-3 and art. 3(4)-(10))

F256 Words in s. 121(11) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 66(b)** (with Sch. 3 Pt. 1)

F257 Words in s. 121(11) substituted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8, **Sch. 1 Pt. III**, para. 107(9)

F258 Words substituted by Health and Social Security Act 1984 (c. 48, SIF 113:1), **s. 6(4)**

122 Provision of pocket money for in-patients in hospital.

(1) The Secretary of State may pay to persons who are receiving treatment as in-patients (whether liable to be detained or not) in **[**[F259] special hospitals or other hospitals, being hospitals**]**wholly or mainly used for the treatment of persons suffering from mental disorder, such amounts as he thinks fit in respect of their occasional personal expenses where it appears to him that they would otherwise be without resources to meet those expenses.

(2) For the purposes of the **[**[F260]National Health Service Act 2006 and the National Health Service (Wales) Act 2006**]** , the making of payments under this section to persons for whom hospital services are provided under **[**[F261]either of those Acts**]** shall be treated as included among those services.

Textual Amendments

F259 Words in s. 122(1) repealed (1.4.2000 for E.W.) by 1999 c. 8, s. 65, Sch. 4 para. 66, **Sch. 5**; S.I. 1999/2793, art. 2(3)(a), **Sch. 3**

F260 Words in s. 122(2) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 67(a)** (with Sch. 3 Pt. 1)

F261 Words in s. 122(2) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 67(b)** (with Sch. 3 Pt. 1)

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123 Transfers to and from special hospitals.

(1) Without prejudice to any other provisions of this Act with respect to the transfer of patients, any patient who is for the time being liable to be detained[F262]. . . under this Act (other than under section 35, 36 or 38 above) **[**[F263]in a hospital at which high security psychiatric services are provided**]** may, upon the directions of the Secretary of State, at any time be removed into any **[**[F264]other hospital at which those services are provided**]**.

(2) Without prejudice to any such provision, the Secretary of State may give directions for the transfer of any patient who is for the time being liable to be so detained into a hospital **[**[F265]at which those services are not provided**]**.

(3) Subsections (2) and (4) of section 19 above shall apply in relation to the transfer or removal of a patient under this section as they apply in relation to the transfer or removal of a patient from one hospital to another under that section.

Textual Amendments

F262 Words in s. 123(1) repealed (1.4.2000) by 1999 c. 8, s. 65, Sch. 4 para. 67(a), **Sch. 5**; S.I. 1999/2793, art. 2(3), **Sch. 3**

F263 Words in s. 123(1) inserted (1.4.2000) by 1999 c. 8, s. 65(1), **Sch. 4 para. 67(a)**; S.I. 1999/2793, art. 2(3), **Sch. 3**

F264 Words in s. 123(1) substituted (1.4.2000) by 1999 c. 8, s. 65(1), **Sch. 4 para. 67(a)**; S.I. 1999/2793, art. 2(3), **Sch. 3**

F265 Words in s. 123(2) substituted (1.4.2000) by 1999 c. 8, s. 65(1), **Sch. 4 para. 67(b)**; S.I 1999/2793, art. 2(3), Sch. 3

[F266]124 . . . . . .

Textual Amendments

F266 S. 124 repealed (1.4.1993) by National Health Service and Community Care Act 1990 (c. 19), s. 66(2), **Sch. 10**; S.I. 1992/2975, **art. 2(2)**,Sch.

125 Inquiries.

[F267] . . . . . .

Textual Amendments

F267 S. 125 repealed (7.6.2005) by Inquiries Act 2005 (c. 12), ss. 48, 49, 51, Sch. 2 para. 9, **Sch. 3** (with ss. 44, 50); S.I. 2005/1432, **art. 2**

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PART IX

OFFENCES

126 Forgery, false statements, etc.

(1) Any person who without lawful authority or excuse has in his custody or under his control any document to which this subsection applies, which is, and which he knows or believes to be, false within the meaning of Part I of the [M26]Forgery and Counterfeiting Act 1981, shall be guilty of an offence.

(2) Any person who without lawful authority or excuse makes or has in his custody or under his control, any document so closely resembling a document to which subsection (1) above applies as to be calculated to deceive shall be guilty of an offence.

(3) The documents to which subsection (1) above applies are any documents purporting to be—

(a) an application under Part II of this Act;

(b) a medical **[**[F268]or other**]** recommendation or report under this Act; and

(c) any other document required or authorised to be made for any of the purposes of this Act.

(4) Any person who—

(a) wilfully makes a false entry or statement in any application, recommendation, report, record or other document required or authorised to be made for any of the purposes of this Act; or

(b) with intent to deceive, makes use of any such entry or statement which he knows to be false,

shall be guilty of an offence.

(5) Any person guilty of an offence under this section shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine of any amount, or to both.

Textual Amendments

F268 Words in s. 126(3)(b) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 17

Marginal Citations

M26 1981 c. 45.

127 Ill-treatment of patients.

(1) It shall be an offence for any person who is an officer on the staff of or otherwise employed in, or who is one of the managers of, a hospital **[**[F269], independent hospital or care home**]**—

(a) to ill-treat or wilfully to neglect a patient for the time being receiving treatment for mental disorder as an in-patient in that hospital or home; or

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(b) to ill-treat or wilfully to neglect, on the premises of which the hospital or home forms part, a patient for the time being receiving such treatment there as an out-patient.

(2) It shall be an offence for any individual to ill-treat or wilfully to neglect a mentally disordered patient who is for the time being subject to his guardianship under this Act or otherwise in his custody or care (whether by virtue of any legal or moral obligation or otherwise).

[[F270](2A) It shall be an offence for any individual to ill-treat or wilfully to neglect a mentally disordered patient who is for the time being subject to after-care under supervision.**]**

(3) Any person guilty of an offence under this section shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine of any amount, or to both.

(4) No proceedings shall be instituted for an offence under this section except by or with the consent of the Director of Public Prosecutions.

Textual Amendments

F269 Words in s. 127(1) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(8)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **art. 3(3)(d)** (subject to transitional provisions in Schs. 1-3 and art. 3(4)-(10))

F270 S. 127(2A) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 18

128 Assisting patients to absent themselves without leave, etc.

(1) Where any person induces or knowingly assists another person who is liable to be detained in a hospital within the meaning of Part II of this Act or is subject to guardianship under this Act to absent himself without leave he shall be guilty of an offence.

(2) Where any person induces or knowingly assists another person who is in legal custody by virtue of section 137 below to escape from such custody he shall be guilty of an offence.

(3) Where any person knowingly harbours a patient who is absent without leave or is otherwise at large and liable to be retaken under this Act or gives him any assistance with intent to prevent, hinder or interfere with his being taken into custody or returned to the hospital or other place where he ought to be he shall be guilty of an offence.

(4) Any person guilty of an offence under this section shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine of any amount, or to both.

129 Obstruction.

(1) Any person who without reasonable cause—

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(a) refuses to allow the inspection of any premises; or

(b) refuses to allow the visiting, interviewing or examination of any person by a person authorised in that behalf by or under this Act **[**[F271]or to give access to any person to a person so authorised**]**; or

(c) refuses to produce for the inspection of any person so authorised any document or record the production of which is duly required by him; or

(d) otherwise obstructs any such person in the exercise of his functions,

shall be guilty of an offence.

(2) Without prejudice to the generality of subsection (1) above, any person who insists on being present when required to withdraw by a person authorised by or under this Act to interview or examine a person in private shall be guilty of an offence.

(3) Any person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 4 on the standard scale or to both.

Textual Amendments

F271 Words in s. 129(1)(b) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 19

130 Prosecutions by local authorities.

A local social services authority may institute proceedings for any offence under this Part of this Act, but without prejudice to any provision of this Part of this Act requiring the consent of the Director of Public Prosecutions for the institution of such proceedings.

PART X

MISCELLANEOUS AND SUPPLEMENTARY

Miscellaneous provisions

VALID FROM 01/04/2008

[[F272]130A Independent mental health advocates

(1) The appropriate national authority shall make such arrangements as it considers reasonable to enable persons ("independent mental health advocates") to be available to help qualifying patients.

(2) The appropriate national authority may by regulations make provision as to the appointment of persons as independent mental health advocates.

(3) The regulations may, in particular, provide—

(a) that a person may act as an independent mental health advocate only in such circumstances, or only subject to such conditions, as may be specified in the regulations;

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(b) for the appointment of a person as an independent mental health advocate to be subject to approval in accordance with the regulations.

(4) In making arrangements under this section, the appropriate national authority shall have regard to the principle that any help available to a patient under the arrangements should, so far as practicable, be provided by a person who is independent of any person who is professionally concerned with the patient's medical treatment.

(5) For the purposes of subsection (4) above, a person is not to be regarded as professionally concerned with a patient's medical treatment merely because he is representing him in accordance with arrangements—
(a) under section 35 of the Mental Capacity Act 2005; or
(b) of a description specified in regulations under this section.

(6) Arrangements under this section may include provision for payments to be made to, or in relation to, persons carrying out functions in accordance with the arrangements.

(7) Regulations under this section—
(a) may make different provision for different cases;
(b) may make provision which applies subject to specified exceptions;
(c) may include transitional, consequential, incidental or supplemental provision.

Textual Amendments

F272 Ss. 130A-130D inserted (1.4.2008 for ss. 130A, 130C for certain purposes, otherwise 3.11.2008 for W. and 1.4.2009 for E.) by Mental Health Act 2007 (c. 12), **ss. 30(2)**, 56 (with Sch. 10); S.I. 2008/745, **arts. 2(b)(i)**, **3(d)**: S.I. 2008/2561, **art. 2(c)** (with art. 3, Sch.); S.I. 2009/139, **art. 2(a)**

VALID FROM 03/11/2008

130B Arrangements under section 130A

(1) The help available to a qualifying patient under arrangements under section 130A above shall include help in obtaining information about and understanding—
(a) the provisions of this Act by virtue of which he is a qualifying patient;
(b) any conditions or restrictions to which he is subject by virtue of this Act;
(c) what (if any) medical treatment is given to him or is proposed or discussed in his case;
(d) why it is given, proposed or discussed;
(e) the authority under which it is, or would be, given; and
(f) the requirements of this Act which apply, or would apply, in connection with the giving of the treatment to him.

(2) The help available under the arrangements to a qualifying patient shall also include—
(a) help in obtaining information about and understanding any rights which may be exercised under this Act by or in relation to him; and
(b) help (by way of representation or otherwise) in exercising those rights.

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(3) For the purpose of providing help to a patient in accordance with the arrangements, an independent mental health advocate may—

(a) visit and interview the patient in private;

(b) visit and interview any person who is professionally concerned with his medical treatment;

(c) require the production of and inspect any records relating to his detention or treatment in any hospital or registered establishment or to any after-care services provided for him under section 117 above;

(d) require the production of and inspect any records of, or held by, a local social services authority which relate to him.

(4) But an independent mental health advocate is not entitled to the production of, or to inspect, records in reliance on subsection (3)(c) or (d) above unless—

(a) in a case where the patient has capacity or is competent to consent, he does consent; or

(b) in any other case, the production or inspection would not conflict with a decision made by a donee or deputy or the Court of Protection and the person holding the records, having regard to such matters as may be prescribed in regulations under section 130A above, considers that—

(i) the records may be relevant to the help to be provided by the advocate; and

(ii) the production or inspection is appropriate.

(5) For the purpose of providing help to a patient in accordance with the arrangements, an independent mental health advocate shall comply with any reasonable request made to him by any of the following for him to visit and interview the patient—

(a) the person (if any) appearing to the advocate to be the patient's nearest relative;

(b) the responsible clinician for the purposes of this Act;

(c) an approved mental health professional.

(6) But nothing in this Act prevents the patient from declining to be provided with help under the arrangements.

(7) In subsection (4) above—

(a) the reference to a patient who has capacity is to be read in accordance with the Mental Capacity Act 2005;

(b) the reference to a donee is to a donee of a lasting power of attorney (within the meaning of section 9 of that Act) created by the patient, where the donee is acting within the scope of his authority and in accordance with that Act;

(c) the reference to a deputy is to a deputy appointed for the patient by the Court of Protection under section 16 of that Act, where the deputy is acting within the scope of his authority and in accordance with that Act.

Textual Amendments

F272 Ss. 130A-130D inserted (1.4.2008 for ss. 130A, 130C for certain purposes, otherwise 3.11.2008 for W. and 1.4.2009 for E.) by Mental Health Act 2007 (c. 12), **ss. 30(2)**, 56 (with Sch. 10); S.I. 2008/745, **arts. 2(b)(i)**, **3(d)**: S.I. 2008/2561, **art. 2(c)** (with art. 3, Sch.); S.I. 2009/139, **art. 2(a)**

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VALID FROM 01/04/2008

130C Section 130A: supplemental

(1) This section applies for the purposes of section 130A above.

(2) A patient is a qualifying patient if he is—
- (a) liable to be detained under this Act (otherwise than by virtue of section 4 or 5(2) or (4) above or section 135 or 136 below);
- (b) subject to guardianship under this Act; or
- (c) a community patient.

(3) A patient is also a qualifying patient if—
- (a) not being a qualifying patient falling within subsection (2) above, he discusses with a registered medical practitioner or approved clinician the possibility of being given a form of treatment to which section 57 above applies; or
- (b) not having attained the age of 18 years and not being a qualifying patient falling within subsection (2) above, he discusses with a registered medical practitioner or approved clinician the possibility of being given a form of treatment to which section 58A above applies.

(4) Where a patient who is a qualifying patient falling within subsection (3) above is informed that the treatment concerned is proposed in his case, he remains a qualifying patient falling within that subsection until—
- (a) the proposal is withdrawn; or
- (b) the treatment is completed or discontinued.

(5) References to the appropriate national authority are—
- (a) in relation to a qualifying patient in England, to the Secretary of State;
- (b) in relation to a qualifying patient in Wales, to the Welsh Ministers.

(6) For the purposes of subsection (5) above—
- (a) a qualifying patient falling within subsection (2)(a) above is to be regarded as being in the territory in which the hospital or registered establishment in which he is liable to be detained is situated;
- (b) a qualifying patient falling within subsection (2)(b) above is to be regarded as being in the territory in which the area of the responsible local social services authority within the meaning of section 34(3) above is situated;
- (c) a qualifying patient falling within subsection (2)(c) above is to be regarded as being in the territory in which the responsible hospital is situated;
- (d) a qualifying patient falling within subsection (3) above is to be regarded as being in the territory determined in accordance with arrangements made for the purposes of this paragraph, and published, by the Secretary of State and the Welsh Ministers.

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Textual Amendments

F272 Ss. 130A-130D inserted (1.4.2008 for ss. 130A, 130C for certain purposes, otherwise 3.11.2008 for W. and 1.4.2009 for E.) by Mental Health Act 2007 (c. 12), **ss. 30(2)**, 56 (with Sch. 10); S.I. 2008/745, **arts. 2(b)(i)**, **3(d)**: S.I. 2008/2561, **art. 2(c)** (with art. 3, Sch.); S.I. 2009/139, **art. 2(a)**

VALID FROM 03/11/2008

130D Duty to give information about independent mental health advocates

(1) The responsible person in relation to a qualifying patient (within the meaning given by section 130C above) shall take such steps as are practicable to ensure that the patient understands—

(a) that help is available to him from an independent mental health advocate; and

(b) how he can obtain that help.

(2) In subsection (1) above, "the responsible person" means—

(a) in relation to a qualifying patient falling within section 130C(2)(a) above (other than one also falling within paragraph (b) below), the managers of the hospital or registered establishment in which he is liable to be detained;

(b) in relation to a qualifying patient falling within section 130C(2)(a) above and conditionally discharged by virtue of section 42(2), 73 or 74 above, the responsible clinician;

(c) in relation to a qualifying patient falling within section 130C(2)(b) above, the responsible local social services authority within the meaning of section 34(3) above;

(d) in relation to a qualifying patient falling within section 130C(2)(c) above, the managers of the responsible hospital;

(e) in relation to a qualifying patient falling within section 130C(3) above, the registered medical practitioner or approved clinician with whom the patient first discusses the possibility of being given the treatment concerned.

(3) The steps to be taken under subsection (1) above shall be taken—

(a) where the responsible person falls within subsection (2)(a) above, as soon as practicable after the patient becomes liable to be detained;

(b) where the responsible person falls within subsection (2)(b) above, as soon as practicable after the conditional discharge;

(c) where the responsible person falls within subsection (2)(c) above, as soon as practicable after the patient becomes subject to guardianship;

(d) where the responsible person falls within subsection (2)(d) above, as soon as practicable after the patient becomes a community patient;

(e) where the responsible person falls within subsection (2)(e) above, while the discussion with the patient is taking place or as soon as practicable thereafter.

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

(5) The responsible person in relation to a qualifying patient falling within section 130C(2) above (other than a patient liable to be detained by virtue of Part 3 of this Act) shall, except where the patient otherwise requests, take such steps as are

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practicable to furnish the person (if any) appearing to the responsible person to be the patient's nearest relative with a copy of any information given to the patient in writing under subsection (1) above.

(6) The steps to be taken under subsection (5) above shall be taken when the information concerned is given to the patient or within a reasonable time thereafter.**]**

Textual Amendments

F272 Ss. 130A-130D inserted (1.4.2008 for ss. 130A, 130C for certain purposes, otherwise 3.11.2008 for W. and 1.4.2009 for E.) by Mental Health Act 2007 (c. 12), **ss. 30(2)**, 56 (with Sch. 10); S.I. 2008/745, **arts. 2(b)(i)**, **3(d)**: S.I. 2008/2561, **art. 2(c)** (with art. 3, Sch.); S.I. 2009/139, **art. 2(a)**

131 Informal admission of patients.

(1) Nothing in this Act shall be construed as preventing a patient who requires treatment for mental disorder from being admitted to any hospital or **[**[F273]registered establishment**]** in pursuance of arrangements made in that behalf and without any application, order or direction rendering him liable to be detained under this Act, or from remaining in any hospital or **[**[F273]registered establishment**]** in pursuance of such arrangements after he has ceased to be so liable to be detained.

(2) In the case of a minor who has attained the age of 16 years and is capable of expressing his own wishes, any such arrangements as are mentioned in subsection (1) above may be made, carried out and determined **[**[F274]even though there are one or more persons who have parental responsibility for him (within the meaning of the Children Act 1989)**]**.

Textual Amendments

F273 Words in s. 131(1) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(2)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **art. 3(3)(d)** (subject to transitional provisions in Schs. 1-3 and art. 3(4)-(10))

F274 Words in s. 131(2) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(5), **Sch. 13 para. 48(5)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**

VALID FROM 01/04/2010

[[F275]**131A Accommodation, etc. for children**

(1) This section applies in respect of any patient who has not attained the age of 18 years and who—

(a) is liable to be detained in a hospital under this Act; or

(b) is admitted to, or remains in, a hospital in pursuance of such arrangements as are mentioned in section 131(1) above.

(2) The managers of the hospital shall ensure that the patient's environment in the hospital is suitable having regard to his age (subject to his needs).

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(3) For the purpose of deciding how to fulfil the duty under subsection (2) above, the managers shall consult a person who appears to them to have knowledge or experience of cases involving patients who have not attained the age of 18 years which makes him suitable to be consulted.

(4) In this section, " hospital " includes a registered establishment. **]**

Textual Amendments

F275 S. 131A inserted (1.4.2010) by Mental Health Act 2007 (c. 12), **ss. 31(3)**, 56(1); S.I. 2010/143, art. 2

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

(1) The managers of a hospital or **[**[F276]registered establishment**]** in which a patient is detained under this Act shall take such steps as are practicable to ensure that the patient understands—

(a) under which of the provisions of this Act 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 **[**[F276]registered establishment**]** 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 sections 23, 25, 56 to 64, 66(1)(g), 118 and 120 above and section 134 below; 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 **[**[F276]registered establishment**]** 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.

Textual Amendments

F276 Words in s. 132(1)(2)(4) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(2)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **art. 3(3)(d)** (subject to transitional provisions in Schs. 1-3 and art. 3(4)-(10))

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VALID FROM 03/11/2008

[F277 132A Duty of managers of hospitals to give information to community patients

(1) The managers of the responsible hospital shall take such steps as are practicable to ensure that a community patient understands—

(a) the effect of the provisions of this Act applying to community patients; and

(b) what rights of applying to a **[**F278 tribunal**]** are available to him in that capacity;

and those steps shall be taken as soon as practicable after the patient becomes a community patient.

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

(3) The managers of the responsible hospital shall, except where the community 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 subsection (1) above; and those steps shall be taken when the information is given to the patient or within a reasonable time thereafter.**]**

Textual Amendments

F277 S. 132A inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 30** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)

F278 Words in s. 132A(1)(b) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 6, **Sch. 3 para. 64**

133 Duty of managers of hospitals to inform nearest relatives of discharge.

(1) Where a patient liable to be detained under this Act in a hospital or **[**F279 registered establishment**]** is to be discharged otherwise than by virtue of an order for discharge made by his nearest relative, the managers of the hospital or **[**F279 registered establishment**]** 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.

(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.

Textual Amendments

F279 Words in s. 133(1) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(2)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **art. 3(3)(d)** (subject to transitional provisions in Schs. 1-3 and art. 3(4)-(10))

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134 Correspondence of patients.

(1) A postal packet addressed to any person by a patient detained in a hospital under this Act and delivered by the patient for dispatch may be withheld from **[**[F280]the postal operator concerned**]**—

(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 **[**[F281]one at which high security psychiatric services are provided**]**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

(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 registered 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 **[**[F282]under this Act in a hospital at which high security psychiatric services are provided**]** 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 **[**[F283]or the Scottish Ministers**]** or Member of either House of Parliament **[**[F283]or member of the Scottish Parliament**]**[F284]or of the Northern Ireland Assembly**]**;

(b) the Master or any other officer of the Court of Protection or any of the Lord Chancellor's Visitors;

(c) the Parliamentary Commissioner for Administration, **[**[F285]the Scottish Public Services Ombudsman,**]**[F286]the Public Services Ombudsman for Wales**]** the Health Service Commissioner for England, [F287]. . . or a Local Commissioner within the meaning of Part III of the [M27]Local Government Act 1974;

(d) a Mental Health Review Tribunal;

(e) a **[**[F288]**[**[F289]Strategic Health Authority,**]**Health Authority **[**[F290], Special Health Authority or Primary Care Trust**]]**, a local social services authority, a Community Health Council **[**[F291], a Patients' Forum**]**or a **[**[F292]Local probation board established under section 4 of the Criminal Justice and Court Services Act 2000)**]**;

[[F293](ea) a provider of a patient advocacy and liaison service for the assistance of patients at the hospital and their families and carers;

(eb) a provider of independent advocacy services for the patient;**]**

(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.

[[F294](3A) In subsection (3) above—

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(a) "patient advocacy and liaison service" means a service of a description prescribed by regulations made by the Secretary of State, and

(b) "independent advocacy services" means services provided under arrangements under **[**[F295]section 248 of the National Health Service Act 2006 or section 187 of the National Health Service (Wales) Act 2006**].]**

(4) The managers of a hospital may inspect and open any postal packet for the purposes of determining—

(a) whether it is one to which subsection (1) or (2) applies, and

(b) in the case of a postal packet to which subsection (1) or (2) above applies, whether or not it should be withheld under that subsection;

and the power to withhold a postal packet under either 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 the case of a packet withheld under subsection (2) above, to the person (if known) by whom the postal packet was sent; and any such notice shall be given in writing and shall contain a statement of the effect of section 121(7) and (8) above.

(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.

(9) In this section "hospital" has the same meaning as in Part II of this Act **[**[F296]and "postal operator"and**]**, "postal packet"**[**[F297]have**]** the same meaning as in **[**[F298]the Post al Services Act 2000**]**.

Textual Amendments

F280 Words in s. 134(1) substituted (26.3.2001) by 2000 c. 26, s. 127(4), **Sch. 8 Pt. II para. 19(2)**; S.I. 2001/1148, art. 2, **Sch.** (with art. 34)

F281 Words in s. 134(1)(b) substituted (1.4.2000) by 1999 c. 8, s. 65(1), **Sch. 4 para. 68**; S.I. 1999/2793, art. 2(3)(a), **Sch. 3**

F282 Words in s. 134(2) substituted (1.4.2000) by 1999 c. 8, s. 65(1), **Sch. 4 para. 68**; S.I. 1999/2793, art. 2(3)(a), **Sch. 3**

F283 Words in s. 134(3)(a) inserted (1.7.1999) by S.I. 1999/1820, art 4, **Sch. 2 Pt. I**, para. 71 (with art. 5); S.I. 1998/3178, **art. 2**

F284 Words in s. 134(3)(a) inserted (2.12.1999) by 1998 c. 47, s. 99, **Sch. 13**, para. 5(2); S.I. 1999/3209, art. 2, **Sch.**

F285 Words in s. 134(3)(c) inserted (14.7.2004) by The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), **art. 9**

F286 Words in s. 134(3)(c) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), ss. 39, 40, **Sch. 6 para. 21(a)**; S.I. 2005/2800, **art. 5(1)** (with art. 5(2))

F287 Words in s. 134(3)(c) repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), ss. 39, 40, Sch. 6 para. 21(b), **Sch. 7**; S.I. 2005/2800, **art. 5(1)** (with art. 5(2))

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F288 Words in 134(3)(e) substituted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 5(1)(2), **Sch. 1**, Pt. III, para. 107(10) (with ss. 2(3), 8)

F289 Words in s. 134(3)(e) inserted (1.10.2002) by S.I. 2002/2469, reg. 4, **Sch. 1 Pt. 1 para. 10(2)**

F290 Words in s. 134(3)(e) substituted (8.2.2000) by S.I. 2000/90, art. 3(1), **Sch. 1 para. 16(7)** (with art. 2(5))

F291 Words in s. 134(3)(e) inserted (1.9.2003) by 2002 c. 17, ss. 19(6), 42(3); S.I. 2003/2246, **art. 2(a)**

F292 Words in s. 134(3)(e) substituted (1.4.2001) by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 74**; S.I. 2001/919, **art. 2(f)**

F293 S. 134(3)(ea)(eb) inserted (1.7.2002 for W. and 1.9.2003 for E.) by 2001 c. 15, ss. 67(1), 70(2), Sch. 5 para. 6(2) (with ss. 64(9), 65(4)); S.I. 2002/1475, art. 2(1), Sch. Pt. 2; S.I. 2003/2245, **art. 2(b)**

F294 S. 134(3A) inserted (1.7.2002 for W. and 1.9.2003 for E.) by 2001 c. 15, ss. 67(1), 70(2), Sch. 5 para. 6(2) (with ss. 64(9), 65(4)); S.I. 2002/1475, art. 2(1), Sch. Pt. 2; S.I. 2003/2245, **art. 2(b)**

F295 Words in s. 134(3A) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s.2, **Sch. 1 para. 68** (with Sch. 3 Pt. 1)

F296 Words in s. 134(9) inserted (26.3.2001) by 2000 c. 26, s. 127(4), **Sch. 8 Pt. II para. 19(3)(a)**; S.I. 2001/1148, art. 2, **Sch.** (with art. 34)

F297 Words in s. 134(9) substituted (26.3.2001) by 2000 c. 26, s. 127(4), **Sch. 8 Pt. II para. 19(3)(b)**; S.I. 2001/1148, art. 2, **Sch.** (with art. 34)

F298 Words in s. 134(9) substituted (26.3.2001) by 2000 c. 26, s. 127(4), **Sch. 8 Pt. II para. 19(3)(c)**; S.I. 2001/1148, art. 2, **Sch.** (with art. 34)

Modifications etc. (not altering text)

C50 S. 134(3)(c) extended in part (1.7.1999) by S.I. 1999/1351, **art. 17(2)(b)** (with art. 18); S.I. 1998/3178, **art. 2**

Marginal Citations

M27 1974 c. 7.

VALID FROM 01/04/2009

[F299 134A Review of decisions to withhold correspondence

(1) The regulatory authority must review any decision to withhold a postal packet (or anything contained in it) under subsection (1)(b) or (2) of section 134 if an application for a review of the decision is made—

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

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

(2) An application under subsection (1) must be made within 6 months of receipt by the applicant of the notice referred to in section 134(6).

(3) On an application under subsection (1), the regulatory authority may direct that the postal packet (or anything contained in it) is not to be withheld.

(4) The managers of the hospital concerned must comply with any such direction.

(5) The Secretary of State may by regulations make provision in connection with the making to and determination by the Care Quality Commission of applications under subsection (1), including provision for the production to the Commission of any postal packet which is the subject of such an application.

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(6) The Welsh Ministers may by regulations make provision in connection with the making to them of applications under subsection (1), including provision for the production to them of any postal packet which is the subject of such an application.**]**

Textual Amendments

F299 S. 134A inserted (1.4.2009) by Health and Social Care Act 2008 (c. 14), ss. 52, 170, **Sch. 3 para. 12**; S.I. 2009/462, **arts. 1(1)(b)**, 2, Sch. 1 para. 33

135 Warrant to search for and remove patients.

(1) If it appears to a justice of the peace, on information on oath laid by an approved social worker, that there is reasonable cause to suspect that a person believed to be suffering from mental disorder—

(a) has been, or is being, ill-treated, neglected or kept otherwise than under proper control, in any place within the jurisdiction of the justice, or

(b) being unable to care for himself, is living alone in any such place,

the justice may issue a warrant authorising any constable . . . [F300] to enter, if need be by force, any premises specified in the warrant in which that person is believed to be, and, if thought fit, to remove him to a place of safety with a view to the making of an application in respect of him under Part II of this Act, or of other arrangements for his treatment or care.

(2) If it appears to a justice of the peace, on information on oath laid by any constable or other person who is authorised by or under this Act or under **[**[F301]article 8 of the Mental Health (Care and Treatment)(Scotland) Act 2003 (Consequential Provisions) Order 2005**]** to take a patient to any place, or to take into custody or retake a patient who is liable under this Act or under the said **[**[F302]article 8**]** to be so taken or retaken—

(a) that there is reasonable cause to believe that the patient is to be found on premises within the jurisdiction of the justice; and

(b) that admission to the premises has been refused or that a refusal of such admission is apprehended,

the justice may issue a warrant authorising any constable . . . [F300] to enter the premises, if need be by force, and remove the patient.

(3) A patient who is removed to a place of safety in the execution of a warrant issued under this section may be detained there for a period not exceeding 72 hours.

(4) In the execution of a warrant issued under subsection (1) above, **[**[F303]a constable**]** shall be accompanied by an approved social worker and by a registered medical practitioner, and in the execution of a warrant issued under subsection (2) above **[**[F303]a constable**]** may be accompanied—

(a) by a registered medical practitioner;

(b) by any person authorised by or under this Act or under **[**[F304]article 8 of the Mental Health (Care and Treatment)(Scotland) Act 2003 (Consequential Provisions) Order 2005**]** to take or retake the patient.

(5) It shall not be necessary in any information or warrant under subsection (1) above to name the patient concerned.

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(6) In this section "place of safety" means residential accommodation provided by a local social services authority under Part III of the [M28]National Assistance Act 1948[F305]. . . , a hospital as defined by this Act, a police station, **[**[F306]an independent hospital or care home**]** for mentally disordered persons or any other suitable place the occupier of which is willing temporarily to receive the patient.

Textual Amendments

F300 Words repealed by Police and Criminal Evidence Act 1984 (c. 60, SIF 95), s. 119, **Sch. 7 Pt. I**

F301 Words in s. 135(2) substituted (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), art. 15, **Sch. 1 para. 2(9)(a)(i)**

F302 Words in s. 135(2) substituted (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), art. 15, **Sch. 1 para. 2(9)(a)(ii)**

F303 Words substituted by Police and Criminal Evidence Act 1984 (c. 60, SIF 95), s. 119, **Sch. 6 Pt. I para. 26**

F304 Words in s. 135(4)(b) substituted (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), art. 15, **Sch. 1 para. 2(9)(b)**

F305 Words in s. 135(6) repealed (1.4.1993) by National Health Service and Community Care Act 1990 (c. 19), s. 66(2), **Sch. 10**; S.I. 1992/2975, art. 2(2), **Sch.**

F306 Words in s. 135(6) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(9)**; S.I. 2001/4050, **art. 3(3)** (subject to art. 4); S.I. 2002/920, **art. 3(3)(d)** (subject to transitional provisions in Schs. 1-3 and art. 3(4)-(10))

Marginal Citations

M28 1948 c. 29.

136 Mentally disordered persons found in public places.

(1) If a constable finds in a place to which the public have access a person who appears to him to be suffering from mental disorder and to be in immediate need of care or control, the constable may, if he thinks it necessary to do so in the interests of that person or for the protection of other persons, remove that person to a place of safety within the meaning of section 135 above.

(2) A person removed to a place of safety under this section may be detained there for a period not exceeding 72 hours for the purpose of enabling him to be examined by a registered medical practitioner and to be interviewed by an approved social worker and of making any necessary arrangements for his treatment or care.

137 Provisions as to custody, conveyance and detention.

(1) Any person required or authorised by or by virtue of this Act to be conveyed to any place or to be kept in custody or detained in a place of safety or at any place to which he is taken under section 42(6) above shall, while being so conveyed, detained or kept, as the case may be, be deemed to be in legal custody.

(2) A constable or any other person required or authorised by or by virtue of this Act to take any person into custody, or to convey or detain any person shall, for the purposes of taking him into custody or conveying or detaining him, have all the powers, authorities, protection and privileges which a constable has within the area for which he acts as constable.

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(3) In this section "convey" includes any other expression denoting removal from one place to another.

Modifications etc. (not altering text)

C51 S. 137 extended (E.W.) (1.1.1992) by Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25, SIF 39:1), **s. 6(2)**; S.I. 1991/2488, **art.2**

138 Retaking of patients escaping from custody.

(1) If any person who is in legal custody by virtue of section 137 above escapes, he may, subject to the provisions of this section, be retaken—

(a) in any case, by the person who had his custody immediately before the escape, or by any constable or approved social worker;

(b) if at the time of the escape he was liable to be detained in a hospital within the meaning of Part II of this Act, or subject to guardianship under this Act, by any other person who could take him into custody under section 18 above if he had absented himself without leave.

(2) A person to whom paragraph (b) of subsection (1) above applies shall not be retaken under this section after the expiration of the period within which he could be retaken under section 18 above if he had absented himself without leave on the day of his escape unless he is subject to a restriction order under Part III of this Act or an order or direction having the same effect as such an order; and subsection (4) of the said section 18 shall apply with the necessary modifications accordingly.

(3) A person who escapes while being taken to or detained in a place of safety under section 135 or 136 above shall not be retaken under this section after the expiration of the period of 72 hours beginning with the time when he escapes or the period during which he is liable to be so detained, whichever expires first.

(4) This section, so far as it relates to the escape of a person liable to be detained in a hospital within the meaning of Part II of this Act, shall apply in relation to a person who escapes—

(a) while being taken to or from such a hospital in pursuance of regulations under section 19 above, or of any order, direction or authorisation under Part III or VI of this Act (other than under section 35, 36, 38, 53, 83 or 85) or under section 123 above; or

(b) while being taken to or detained in a place of safety in pursuance of an order under Part III of this Act (other than under section 35, 36 or 38 above) pending his admission to such a hospital,

as if he were liable to be detained in that hospital and, if he had not previously been received in that hospital, as if he had been so received.

(5) In computing for the purposes of the power to give directions under section 37(4) above and for the purposes of sections 37(5) and 40(1) above the period of 28 days mentioned in those sections, no account shall be taken of any time during which the patient is at large and liable to be retaken by virtue of this section.

(6) Section 21 above shall, with any necessary modifications, apply in relation to a patient who is at large and liable to be retaken by virtue of this section as it applies in relation

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to a patient who is absent without leave and references in that section to section 18 above shall be construed accordingly.

Modifications etc. (not altering text)

C52 S. 138 extended (E.W.) (1.1.1992) by Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25, SIF 39:1), **s. 6(2)**; S.I. 1991/2488, **art.2**

139 Protection for acts done in pursuance of this Act. E+W

(1) No person shall be liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings to which he would have been liable apart from this section in respect of any act purporting to be done in pursuance of this Act or any regulations or rules made under this Act, or in, or in pursuance of anything done in, the discharge of functions conferred by any other enactment on the authority having jurisdiction under Part VII of this Act, unless the act was done in bad faith or without reasonable care.

(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) This section does not apply to proceedings for an offence under this Act, being proceedings which, under any other provision of this Act, can be instituted only by or with the consent of the Director of Public Prosecutions.

(4) This section does not apply to proceedings against the Secretary of State or against a **[**[F307]Strategic Health Authority,**][**[F308]Health Authority **[**[F309], Special Health Authority or Primary Care Trust**]][**[F310]or against a National Health Service trust established under **[**[F311]the National Health Service Act 2006 or the National Health Service (Wales) Act 2006**]][**[F312]or NHS foundation trust**]** .

(5) 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.

Extent Information

E3 This version of this provision extends to England and Wales only; a separate version has been created for Scotland and Northern Ireland only

Textual Amendments

F307 Words in s. 139(4) inserted (1.10.2002) by S.I. 2002/2469, reg. 4, **Sch. 1 Pt. 1**

F308 Words in s. 139(4) substituted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8, **Sch. 1 Pt. III para. 107(11)**

F309 Words in s. 139(4) substituted (E.W.) (8.2.2000) by virtue of S.I. 2000/90, art. 3(1), **Sch. 1 para. 16(8)** (with art. 2(5))

F310 Words in s. 139(4) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 24(7)**

F311 Words in s. 139(4) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 69** (with Sch. 3 Pt. 1)

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F312 Words in s. 139(4) inserted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 34, 199, **Sch. 4 para. 56**; S.I. 2004/759, **art.2**

Modifications etc. (not altering text)

C53 S. 139 applied (E.W) (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), **art. 12(2)**

C54 S. 139 extended by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), **ss. 17(2)**, 122(2)

C55 S. 139 extended (E.W.) (1.1.1992) by Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25, SIF 39:1), **s. 6(2)**; S.I. 1991/2488, **art. 2**

139 Protection for acts done in pursuance of this Act. S+N.I.

(1) No person shall be liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings to which he would have been liable apart from this section in respect of any act purporting to be done in pursuance of this Act or any regulations or rules made under this Act, or in, or in pursuance of anything done in, the discharge of functions conferred by any other enactment on the authority having jurisdiction under Part VII of this Act, unless the act was done in bad faith or without reasonable care.

(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) This section does not apply to proceedings for an offence under this Act, being proceedings which, under any other provision of this Act, can be instituted only by or with the consent of the Director of Public Prosecutions.

(4) This section does not apply to proceedings against the Secretary of State or against a **[**[F362]Strategic Health Authority,**][**[F363]Health Authority or Special Health Authority**][**[F364]or against a National Health Service trust established under **[**[F365]the National Health Service Act 2006 or the National Health Service (Wales) Act 2006**]][**[F366]or NHS foundation trust**]** .

(5) 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.

Extent Information

E4 For extent of s. 139 to Northern Ireland and of s. 139(1) to Scotland see ss. 146, 147

E5 This version of this provision extends to Scotland and Northern Ireland only; a separate version has been created for England and Wales only

Textual Amendments

F362 Words in s. 139(4) inserted (1.10.2002) by S.I. 2002/2469, reg. 4, **Sch. 1 Pt. 1 para. 10(3)**

F363 Words in s. 139(4) substituted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8, **Sch. 1 Pt. III para. 107(11)**

F364 Words in s. 139(4) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 24(7)**

F365 Words in s. 139(4) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 69** (with Sch. 3 Pt. 1)

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F366 Words in s. 139(4) inserted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 34, 199, **Sch. 4 para. 56**; S.I. 2004/759, **art.2**

Modifications etc. (not altering text)

C58 S. 139 applied (N.I.) (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), **art. 12(2)**

C59 S. 139 extended by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), **ss. 17(2)**, 122(2)

140 Notification of hospitals having arrangements for reception of urgent cases.

It shall be the duty of **[**[F313]every Primary Care Trust and of**]** every **[**[F314]Health Authority**]** to give notice to every local social services authority for an area wholly or partly comprised within the **[**[F315]area of the Primary Care Trust or Health Authority**]** specifying the hospital or hospitals administered by **[**[F316]or otherwise available **[**[F317]Primary Care Trust or**][**[F314]to the Health Authority**]]** in which arrangements are from time to time in force for the reception, in case of special urgency, of patients requiring treatment for mental disorder.

Textual Amendments

F313 Words in s. 140 inserted (1.10.2002) by 2002 c. 17, s. 2(5), **Sch. 2 Pt. 2 para. 48(a)**; S.I. 2002/2478, **art. 3(1)(d)** (with saving in art. 3(3) and transitional provision in art. 4)

F314 Words in s. 140 substituted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, s. 2(1), **Sch. 1**, Pt. III, para. 107(12) (with ss. 2(3), 8)

F315 Words in s. 140 inserted (1.10.2002) by 2002 c. 17, s. 2(5), **Sch. 2 Pt. 2 para. 48(b)**; S.I. 2002/2478, **art. 3(1)(d)** (with saving in art. 3(3) and transitional provision in art. 4)

F316 Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 24(8)**

F317 Words in s. 140 inserted (1.10.2002) by 2002 c. 17, s. 2(5), **Sch. 2 Pt. 2 para. 48(c)**; S.I. 2002/2478, **art. 3(1)(d)** (with saving in art. 3(3) and transitional provision in art. 4)

Modifications etc. (not altering text)

C56 S. 140: functions of local authority may be responsibility of an executive of the authority (1.4.2000) by virtue of S.I. 2000/695, reg. 3(2)(b), **Sch. 2**

141 Members of Parliament suffering from mental illness.

(1) Where a member of the House of Commons is authorised to be detained on the ground (however formulated) that he is suffering from mental illness, it shall be the duty of the court, authority or person on whose order or application, and of any registered medical practitioner upon whose recommendation or certificate, the detention was authorised, and of the person in charge of the hospital or other place in which the member is authorised to be detained, to notify the Speaker of the House of Commons that the detention has been authorised.

(2) Where the Speaker receives a notification under subsection (1) above, or is notified by two members of the House of Commons that they are credibly informed that such an authorisation has been given, the Speaker shall cause the member to whom the notification relates to be visited and examined by two registered medical practitioners appointed in accordance with subsection (3) below.

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(3) The registered medical practitioners to be appointed for the purposes of subsection (2) above shall be appointed by the President of the Royal College of Psychiatrists and shall be practitioners appearing to the President to have special experience in the diagnosis or treatment of mental disorders.

(4) The registered medical practitioners appointed in accordance with subsection (3) above shall report to the Speaker whether the member is suffering from mental illness and is authorised to be detained as such.

(5) If the report is to the effect that the member is suffering from mental illness and authorised to be detained as aforesaid, the Speaker shall at the expiration of six months from the date of the report, if the House is then sitting, and otherwise as soon as may be after the House next sits, again cause the member to be visited and examined by two such registered medical practitioners as aforesaid, and the registered medical practitioners shall report as aforesaid.

(6) If the second report is that the member is suffering from mental illness and authorised to be detained as mentioned in subsection (4) above, the Speaker shall forthwith lay both reports before the House of Commons, and thereupon the seat of the member shall become vacant.

(7) Any sums required for the payment of fees and expenses to registered medical practitioners acting in relation to a member of the House of Commons under this section shall be defrayed out of moneys provided by Parliament.

[[F318](8) This section also has effect in relation to members of the Scottish Parliament but as if—

(a) any references to the House of Commons or the Speaker were references to the Scottish Parliament or (as the case may be) the Presiding Officer, and

(b) subsection (7) were omitted.**]**

[[F319](9) This section also has effect in relation to members of the National Assembly for Wales but as if—

(a) references to the House of Commons were to the Assembly and references to the Speaker were to the presiding officer, and

(b) in subsection (7), for "defrayed out of moneys provided by Parliament" there were substituted "paid by the National Assembly for Wales".**]**

[[F320](10) This section also has effect in relation to members of the Northern Ireland Assembly but as if—

(a) references to the House of Commons were to the Assembly and references to the Speaker were to the Presiding Officer; and

(b) in subsection (7), for "provided by Parliament" there were substituted "appropriated by Act of the Assembly".**]**

Textual Amendments

F318 S. 141(8) added (19.11.1998) by 1998 c. 46, **ss. 125**, 130, 131 Sch. 8, para. 19 (with s. 126(3)-(11))

F319 S. 141(9) added (1.4.1999) by 1998 c. 38, s. 125, **Sch. 12**, para. 23; S.I. 1999/782, **art. 2**

F320 S. 141(10) added (2.12.1999) by 1998 c. 47, s. 95, **Sch. 13**, para. 5(3); S.I. 1999/3209, **art. 2**

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142 Pay, pensions, etc., of mentally disordered persons.

(1) Where a periodic payment falls to be made to any person by way of pay or pension or otherwise in connection with the service or employment of that or any other person, and the payment falls to be made directly out of moneys provided by Parliament or the Consolidated Fund **[**[F321]or the Scottish Consolidated Fund**]**, or other moneys administered by or under the control or supervision of a government department, the authority by whom the sum in question is payable, if satisfied after considering medical evidence that the person to whom it is payable (referred to in this section as "the patient") is incapable by reason of mental disorder of managing and administering his property and affairs, may, instead of paying the sum to the patient, apply it in accordance with subsecdtion (2) below.

(2) The authority may pay the sum or such part of it as they think fit to the institution or person having the care of the patient, to be applied for his benefit and may pay the remainder (if any) or such part of the remainder as they think fit—

(a) to or for the benefit of persons who appear to the authority to be members of the patient's family or other persons for whom the patient might be expected to provide if he were not mentally disordered, or

(b) in reimbursement, with or without interest, of money applied by any person either in payment of the patient's debts (whether legally enforceable or not) or for the maintenance or other benefit of the patient or such persons as are mentioned in paragraph (a) above.

(3) In this section "government department" does not include a Northern Ireland department.

Textual Amendments

F321 Words in s. 142(1) inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I**, para. 71(3) (with art. 5); S.i 1998/3178, art. 3

Modifications etc. (not altering text)

C57 S. 142 applied (21.1.1994) by S.I. 1993/3253, **reg. R1(2)**.

VALID FROM 01/04/2008

[[F322]142A Regulations as to approvals in relation to England and Wales

The Secretary of State jointly with the Welsh Ministers may by regulations make provision as to the circumstances in which—

(a) a practitioner approved for the purposes of section 12 above, or

(b) a person approved to act as an approved clinician for the purposes of this Act,

approved in relation to England is to be treated, by virtue of his approval, as approved in relation to Wales too, and vice versa.**]**

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Textual Amendments

F322 S. 142A inserted (1.4.2008 for E.W.) by Mental Health Act 2007 (c. 12), **ss. 17**, 56 (with Sch. 10); S.I. 2008/745, **art. 3(a)**

VALID FROM 24/07/2007

[F323 142B Delegation of powers of managers of NHS foundation trusts

(1) The constitution of an NHS foundation trust may not provide for a function under this Act to be delegated otherwise than in accordance with provision made by or under this Act.

(2) Paragraph 15(3) of Schedule 7 to the National Health Service Act 2006 (which provides that the powers of a public benefit corporation may be delegated to a committee of directors or to an executive director) shall have effect subject to this section.**]**

Textual Amendments

F323 S. 142B inserted (24.7.2007) by Mental Health Act 2007 (c. 12), **ss. 45(3)**, 56 (with Sch. 10); S.I. 2007/2156, **art. 2**

Supplemental

143 General provisions as to regulations, orders and rules.

(1) Any power of the Secretary of State or the Lord Chancellor to make regulations, orders or rules under this Act shall be exercisable by statutory instrument.

(2) Any Order in Council under this Act **[F324** or any order made under section 54A **[F325** or 65**]** above**]** and any statutory instrument containing regulations or rules 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 **[F326** 45A(10),**]** 68(4) or 71(3) above unless a draft of it has been approved by a resolution of each House of Parliament.

[F327 (4) This section does not apply to rules which are, by virtue of section 108 of this Act, to be made in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005.**]**

Textual Amendments

F324 Words in s. 143(2) inserted (E.W) (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), **s. 27(3)** (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**

F325 Words in s. 143(2) substituted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8, **Sch. 1 Pt. III para. 107(13)**

F326 Words in s. 143(3) inserted (E.W) (1.10.1997) by 1997 c. 43, ss. 55, 57(2), **Sch. 4 para. 12(18)**; S.I. 1997/2200, **art. 2**

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F327 S. 143(4) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 12, 148, **Sch. 1 para. 16**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 7

144 Power to amend local Acts.

Her Majesty may by Order in Council repeal or amend any local enactment so far as appears to Her Majesty to be necessary in consequence of this Act.

145 Interpretation.

(1) In this Act, unless the context otherwise requires—

"absent without leave" has the meaning given to it by section 18 above and related expressions shall be construed accordingly;

"application for admission for assessment" has the meaning given in section 2 above;

"application for admission for treatment" has the meaning given in section 3 above;

"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;

[[F328]"care home" has the same meaning as in the Care Standards Act 2000**]**

[F329] . . . . . .

[[F330]"high security psychiatric services" has the same meaning as in the **[**[F331]section 4 of the National Health Service Act 2006 or section 4 of the National Health Service (Wales) Act 2006**],]**

"hospital" means—

(a) any health service hospital within the meaning of the **[**[F332]National Health Service Act 2006 or the National Health Service (Wales) Act 2006**]** ; 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;

"hospital within the meaning of Part II of this Act" has the meaning given in section 34 above;

[[F333]"hospital direction" has the meaning given in section 45A(3)(a) above;**]**

"hospital order" and "guardianship order" have the meanings respectively given in section 37 above;

[[F334]"independent hospital" has the same meaning as in the Care Standards Act 2000;**]**

"interim hospital order" has the meaning given in section 38 above;

[[F333]"limitation direction" has the meaning given in section 45A(3)(b) above;**]**

"local social services authority" means a council which is a local authority for the purpose of the [M29]Local Authority Social Services Act 1970;

"the managers" means—

(a) in relation to a hospital vested in the Secretary of State for the purposes of his functions under **[**[F335]the National Health Service Act 2006, or in the Welsh Ministers for the purposes of their functions under the National Health Service (Wales) Act 2006,**]** and in relation to any accommodation provided by a local authority and used as a hospital by or on behalf of the Secretary of State under **[**[F336]the National Health Service Act 2006, or of the Welsh Ministers under

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the National Health Service (Wales) Act 2006,] , the [F337[F338Primary Care Trust,][F339Strategic Health Authority,]Health Authority or Special Health Authority] responsible for the administration of the hospital;

F340(b) . . . . . .

[F341(bb) in relation to a hospital vested in [F342a Primary Care Trust or] a National Health Service trust, F343. . . the trust]

[F344(bc) in relation to a hospital vested in an NHS foundation trust, the trust;]

[F345(c) in relation to a registered establishment, the person or persons registered in respect of the establishment;]

and in this definition "hospital" means a hospital within the meaning of Part II of this Act;

"medical treatment" includes nursing, and also includes care, habilitation and rehabilitation under medical supervision;

"mental disorder", "severe mental impairment", "mental impairment" and "psychopathic disorder" have the meanings given in section 1 above;

F346 . . . . . .

"nearest relative", in relation to a patient, has the meaning given in Part II of this Act;

"patient" (except in Part VII of this Act) means a person suffering or appearing to be suffering from mental disorder;

[F347"Primary Care Trust" means a Primary Care Trust established under [F348section 18 of the National Health Service Act 2006];]

[F349"registered establishment" has the meaning given in section 34 above;]

[F350"the responsible after-care bodies" has the meaning given in section 25D above;]

"restriction direction" has the meaning given to it by section 49 above;

"restriction order" has the meaning given to it by section 41 above;

[F351"Special Health Authority" means a Special Health Authority established under [F352section 28 of the National Health Service Act 2006, or section 22 of the National Health Service (Wales) Act 2006];]

F353 . . . . . .

[F354"Strategic Health Authority" means a Strategic Health Authority established under [F355section 13 of the National Health Service Act 2006];]

[F356"supervision application" has the meaning given in section 25A above;]

F357 . . . . . .

"transfer direction" has the meaning given to it by section 47 above.

[F358(1AA) Where high security psychiatric services and other services are provided at a hospital, the part of the hospital at which high security psychiatric services are provided and the other part shall be treated as separate hospitals for the purposes of this Act.]

[F359(1A) References in this Act to a patient being subject to after-care under supervision (or to after-care under supervision) shall be construed in accordance with section 25A above.]

F360(2) . . . . . .

(3) In relation to a person who is liable to be detained or subject to guardianship by virtue of an order or direction under Part III of this Act (other than under section 35, 36 or

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38), any reference in this Act to any enactment contained in Part II of this Act or in section 66 or 67 above shall be construed as a reference to that enactment as it applies to that person by virtue of Part III of this Act.

Textual Amendments

F328 Definition of "care home" in s. 145(1) inserted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(10)(a)**; S.I. 2001/4150, **art. 3(3)** (subject to art. 4); S.I. 2002/920, **reg. 3(3)(d)** (subject to transitional provisions in Schs. 1-3 and art. 3(4)-(10))

F329 Definition of "Health Authority" in s. 145(1) omitted (1.3.2007) by virtue of National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 70(a)** (with Sch. 3 Pt. 1)

F330 Definition of "high security psychiatric services" in s. 145(1) inserted (1.4.2000) by 1999 c. 8, s. 65, **Sch. 4**, para. 69(2)(a); S.I. 1999/2793, art. 2(3)(a), **Sch. 3**

F331 Words in definition of "high security psychiatric services" in s. 145(1) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 70(b)** (with Sch. 3 Pt. 1)

F332 Words in definition of "hospital" para. (a) in s. 145(1) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act (c. 43), ss. 2, 8(2), ({Sch. 1 para. 70(c)} (with Sch. 3 Pt. 1)

F333 Definitions of “hospital direction” and “limitation direction” inserted (E.W but unlimited in so far as it confers a power or imposes a duty on a court-martial or a Standing Civilian Court) (1.10.1997) by 1997 c. 43, s. 55, **Sch. 4 para. 12(19)** (with s. 57(4)(8); S.I. 1997/2200, **art. 2**

F334 S. 145: definition of "independent hospital" inserted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(10)(b)**; S.I. 2001/4150, **art. 3(3)** (subject to art. 4); S.I. 2002/920, **reg. 3(3)(d)** (subject to transitional provisions in Schs. 1-3 and art. 3(4)-(10))

F335 Words in definition of "the managers" in s. 145(1) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 70(d)(i)** (with Sch. 3 Pt. 1)

F336 Words in definition of "the managers" in s. 145(1) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 2, **Sch. 1 para. 70(d)(ii)** (with Sch. 3 Pt. 1)

F337 Words in definition of “the managers” in s. 145(1) substituted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8, **Sch. 1 para. 107(14)(b)**

F338 Words in definition of “the managers” para. (a) in s. 145(1) inserted (1.10.2002) by 2002 c. 17, s. 2(5), **Sch. 2 Pt. 2 para. 49**; S.I. 2002/2478, **art. 3(1)(d)** (with saving in art. 3(3) and transitional provision in art. 4)

F339 Words in definition of “the managers” para. (a) in s. 145(1) inserted (1.10.2002) by S.I. 2002/2469, reg. 4, **Sch. 1 Pt. 1 para. 10(4)(a)**

F340 Definition of "the managers" para. (b) in s. 145(1) repealed (1.4.2000) by 1999 c. 8, ss. 41(2), 65(2), **Sch. 5**; S.I. 1999/2793, art. 2(3)(a), **Sch. 3**

F341 Definition of “the managers” para. (bb) in s. 145(1) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 24(9)**

F342 Words in definition of "the managers" para. (bb) in s. 145(1) inserted (8.2.2000) by S.I. 2000/90, art. 3(1), **Sch. 1 para. 16(9)(a)** (with art. 2(5))

F343 Words in definition of "the managers" in s. 145(1) repealed (E.W.) (14.4.1994) by 1994 c. 6, **ss. 1**, 2(2)(3)

F344 S. 145(1)(bc) inserted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 34, 199, **Sch. 4 para. 57**; S.I. 2004/759, **art.2**

F345 S. 145: in definition of "the managers" para. (c) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(10)(c)**; S.I. 2001/4150, **art. 3(3)** (subject to art. 4); S.I. 2002/920, **reg. 3(3)(d)** (subject to transitional provisions in Schs. 1-3 and art. 3(4)-(10))

F346 Definition of "mental nursing home" in s 145(1) repealed (1.4.2002) by 2000 c. 14, s. 117(2), **Sch. 6**; S.I. 2001/4150, **art. 3(3)** (subject to art. 4); S.I. 2002/920, **reg. 3(3)(g)** (subject to transitional provisions in Schs. 1-3 and art. 3(5)-(10))

F347 Definition of "Primary Care Trust" in s. 145(1) inserted (8.2.2000) by S.I. 2000/90, art. 3(1), **Sch. 1 para. 16(9)(b)**

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F348 Words in definition of "Primary Care Trust" in s. 145(1) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 70(e)** (with Sch. 3 Pt. 1)

F349 Definition of "registered establishment" in s. 145(1) inserted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(10)(d)**; S.I. 2001/4150, **art. 3(3)** (subject to art. 4); S.I. 2002/920, **reg. 3(3)(d)** (subject to transitional provisions in Schs. 1-3 and art. 3(4)-(10))

F350 Definition of "the responsible after-care bodies"inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1 para. 20(2)(a)**

F351 Definition of "Special Health Authority" in s. 145(1) inserted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8, **Sch. 1 para. 107(14)(c)**

F352 Words in definition of "Special Health Authority" in s. 145(1) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 70(f)** (with Sch. 3 Pt. 1)

F353 Definition of "special hospital" in s. 145(1) repealed (1.4.2000) by 1999 c. 8, s. 65, Sch. 4, para. 69(2)(b), **Sch. 5**; S.I. 1999/2793, art. 2(3)(a), **Sch. 3**

F354 Definition of "Strategic Health Authority" in s. 145(1) inserted (1.10.2002) by S.I. 2002/2469, reg. 4, **Sch. 2 Pt. 1 para. 10(4)(b)**

F355 Words in definition of "Strategic Health Authority" in s. 145(1) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 70(g)** (with Sch. 3 Pt. 1)

F356 Definition of "supervision application"inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 20(2)(b)

F357 Definition of "standard scale" in s. 145(1) repealed (5.11.1993) by 1993 c. 50, s. 1(1), **Sch. 1 Pt. XIV** Group. 2.

F358 S. 145(1AA) inserted (1.4.2000) by 1999 c. 8, S. 65(1), **Sch. 4**, para. 69(3); S.I. 1999/2793, art. 2(3)(a), **Sch. 3**

F359 S. 145(1A) added (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 20(3)

F360 S. 145(2) repealed (5.11.1993) by 1993 c. 50, s. 1(1), **Sch. 1 Pt. XIV** Gp. 2.

Marginal Citations

M29 1970 c. 42.

146 Application to Scotland.

Sections 42(6), 80, 88 (and so far as applied by that section sections 18, 22 and 138), 104(4), 110 (and so much of Part VII of this Act as is applied in relation to Scotland by that section), 116, 122, 128 (except so far as it relates to patients subject to guardianship), 137, 139(1), 141, 142, 143 (so far as applicable to any Order in Council extending to Scotland) and 144 above shall extend to Scotland together with any amendment or repeal by this Act of or any provision of Schedule 5 to this Act relating to any enactment which so extends; but, except as aforesaid and except so far as it relates to the interpretation or commencement of the said provisions, this Act shall not extend to Scotland.

147 Application to Northern Ireland.

Sections 81, 82, 86, 87, 88 (and so far as applied by that section sections 18, 22 and 138), 104(4), 110 (and so much of Part VII as is applied in relation to Northern Ireland by that section), section 128 (except so far as it relates to patients subject to guardianship), 137, 139, 141, 142, 143 (so far as applicable to any Order in Council extending to Northern Ireland) and 144 above shall extend to Northern Ireland together with any amendment or repeal by this Act of or any provision of Schedule 5 to this Act relating to any enactment which so extends; but except as aforesaid and except

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so far as it relates to the interpretation or commencement of the said provisions, this Act shall not extend to Northern Ireland.

148 Consequential and transitional provisions and repeals.

(1) Schedule 4 (consequential amendments) and Schedule 5 (transitional and saving provisions) to this Act shall have effect but without prejudice to the operation of sections 15 to 17 of the [M30]Interpretation Act 1978 (which relate to the effect of repeals).

(2) Where any amendment in Schedule 4 to this Act affects an enactment amended by the [M31]Mental Health (Amendment) Act 1982 the amendment in Schedule 4 shall come into force immediately after the provision of the Act of 1982 amending that enactment.

(3) The enactments specified in Schedule 6 to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

Marginal Citations

M30 1978 c. 30.

M31 1982 c. 51.

149 Short title, commencement and application to Scilly Isles.

(1) This Act may be cited as the Mental Health Act 1983.

(2) Subject to subsection (3) below and Schedule 5 to this Act, this Act shall come into force on 30th September 1983.

(3) [F361] . . . . . .

(4) Section 130(4) of the [M32]National Health Service Act 1977 (which provides for the extension of that Act to the Isles of Scilly) shall have effect as if the references to that Act included references to this Act.

Textual Amendments

F361 S. 149(3) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), **s. 1(1)**, {Sch. 1 Pt. 17 Group 8}

Marginal Citations

M32 1977 c. 49.

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