

SCHEDULES

SCHEDULE 5

Section 148.

TRANSITIONAL AND SAVING PROVISIONS

- 1 Where any period of time specified in an enactment repealed by this Act is current at the commencement of this Act, this Act shall have effect as if the corresponding provision of this Act had been in force when that period began to run.
- 2 Nothing in this Act shall affect the interpretation of any provision of the Mental Health Act 1959 which is not repealed by this Act and accordingly sections 1 and 145(1) of this Act shall apply to any such provision as if it were contained in this Act.
- 3 Where, apart from this paragraph, anything done under or for the purposes of any enactment which is repealed by this Act would cease to have effect by virtue of that repeal it shall have effect as if it had been done under or for the purposes of the corresponding provision of this Act.
- 4 (1) Until the expiration of the period of two years beginning with the day on which the Mental Health (Amendment) Act 1982 was passed this Act shall have effect as if—
 - (a) section 114 were omitted ;
 - (b) in section 145(1) the definition of an approved social worker were omitted and there were inserted in the appropriate place the following definition:—

“‘ mental welfare officer’ means an officer of a local social services authority appointed to act as mental welfare officer for the purposes of the Mental Health Act 1959 or this Act”;
 - (c) for paragraph 16(e) of Schedule 4 there were substituted—

“(e) in section 83(3)(a) for the words ‘ the Mental Health Act 1959’ there were substituted the words ‘ the Mental Health Act 1983 ’”;
 - (d) for paragraph 47(e)(i) of Schedule 4 there were substituted—

“(i) in sub-paragraph (1)(d) for the words ‘ the Mental Health Act 1959’ and ‘ Part IV or Part V’ there were substituted respectively the words ‘ the Mental Health Act 1983 ’ and ‘ Part II or III ’;”and
 - (e) for any reference to an approved social worker there were substituted a reference to a mental welfare officer.
- (2) Any appointment of a person as a mental welfare officer for the purposes of the Mental Health Act 1959 or this Act shall terminate at the expiration of the period mentioned in sub-paragraph (1) above but without prejudice to anything previously done by that person or to the continuation by an approved social worker of anything which is then in process of being done by that person.
- 5 If no order has been made under section 11 of the National Health Service Act 1977 before 30th September 1983 establishing the Mental Health Act Commission the following shall be substituted for subsection (1) of section 121 of this Act—

Status: This is the original version (as it was originally enacted).

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

- 6 This Act shall apply in relation to any authority for the detention or guardianship of a person who was liable to be detained or subject to guardianship under the Mental Health Act 1959 immediately before 30th September 1983 as if the provisions of this Act which derive from provisions amended by section 1 or 2 of the Mental Health (Amendment) Act 1982 and the amendments in Schedule 3 to that Act which are consequential on those sections were included in this Act in the form the provisions from which they derive would take if those amendments were disregarded but this provision shall not apply to any renewal of that authority on or after that date.
- 7 This Act shall apply to any application made before 30th September 1983 as if the provisions of this Act which derive from provisions amended by sections 3 to 5 of the Mental Health (Amendment) Act 1982 and the amendments in Schedule 3 to that Act which are consequential on those sections were included in this Act in the form the provisions from which they derive would take if those amendments were disregarded.
- 8 (1) Where on 30th September 1983 a person who has not attained the age of sixteen years is subject to guardianship by virtue of a guardianship application the authority for his guardianship shall terminate on that day.
- (2) Section 8(1) of this Act has effect (instead of section 34(1) of the Mental Health Act 1959) in relation to a guardianship application made before the coming into force of this Act as well as in relation to one made later.
- 9 (1) Section 20(1) of this Act shall have effect in relation to any application for admission for treatment and to any guardianship application made before 1st October 1983 with the substitution for the words " six months" of the words "one year".
- (2) Section 20(2) of this Act shall have effect in relation to any authority renewed before 1st October 1983 with the substitution for the words " six months " of the words " one year " and for the words "one year" in both places they occur of the words "two years ".
- (3) Where an authority has been renewed on or before 30th September 1983 for a period of two years of which less than 16 months has expired on that date that period shall expire at the end of 18 months from the date on which it began,
- 10 Section 23(2)(a) of this Act shall have effect in relation to a patient liable to be detained in pursuance of an application under section 25 of the Mental Health Act 1959 made before 30th September 1983 as if the reference to the nearest relative of the patient were omitted.
- 11 Where at any time before 30th September 1983 an application to a Mental Health Review Tribunal has been made by a person who at that time was the patient's nearest relative and the application has not then been determined and by reason of the coming into force of section 26 of this Act that person ceased to be the patient's nearest relative on that date, that person shall nevertheless be treated for the purposes of the application as continuing to be his nearest relative.
- 12 A person—

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- (a) who was admitted to hospital in pursuance of an application for admission for treatment; or
 - (b) in respect of whom a guardianship application was accepted ; or
 - (c) in respect of whom a hospital order was made,
- before 30th September 1983 may make an application to a tribunal under section 66 of this Act in the cases mentioned in subsection (1)(b) and (c) of that section and under section 69(1)(b) of this Act within the period of six months beginning with the day on which he attains the age of 16 years if that period is later than that which would otherwise apply to an application in his case.
- 13 Subsection (1) of section 68 of this Act does not apply to any patient admitted or transferred to hospital more than six months before 30th September 1983 ; and subsection (2) of that section applies only in relation to a renewal of authority for detention after that date.
- 14 Section 69(1)(b) of this Act shall have effect in relation to patients liable to be detained immediately before 30th September 1983 as if after the words " in respect of a patient" there were inserted the words " admitted to a hospital in pursuance of a hospital order or " .
- 15 The provisions of this Act which derive from sections 24 to 27 of the Mental Health (Amendment) Act 1982 shall have effect in relation to a transfer direction given before 30th September 1983 as well as in relation to one given later, but where, apart from this paragraph, a transfer direction given before 30th September 1983 would by virtue of the words in section 50(3) of this Act which are derived from section 24(3) of the Mental Health (Amendment) Act 1982 have ceased to have effect before that date it shall cease to have effect on that date.
- 16 The words in section 42(1) of this Act which derive from the amendment of section 66(1) of the Mental Health Act 1959 by section 28(1) of the Mental Health (Amendment) Act 1982 and the provisions of this Act which derive from section 28(3) of and Schedule 1 to that Act have effect in relation to a restriction order or, as the case may be, a restriction direction made or given before 30th September 1983 as well as in relation to one made or given later, but—
- (a) any reference to a tribunal under section 66(6) of the said Act of 1959 in respect of a patient shall be treated for the purposes of subsections (1) and (2) of section 77 of this Act in their application to sections 70 and 75(2) of this Act as an application made by him ; and
 - (b) sections 71(5) and 75(1)(a) of this Act do not apply where the period in question has expired before 30th September 1983.
- 17 Section 91(2) of this Act shall not apply in relation to a patient removed from England and Wales before 30th September 1983.
- 18 (1) Subsection (3) of section 58 of this Act shall not apply to any treatment given to a patient in the period of six months beginning with 30th September 1983 if—
- (a) the detention of the patient began before the beginning of that period; and
 - (b) that subsection has not been complied with in respect of any treatment previously given to him in that period.
- (2) The Secretary of State may by order reduce the length of the period mentioned in sub-paragraph (1) above.

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- 19 In the case of a patient who is detained at the time when section 132 of this Act comes into force, the steps required by that section shall be taken as soon as practicable after that time.
- 20 The repeal by the Mental Health (Amendment) Act 1982 of section 77 of the Mental Health Act 1959 does not affect subsection (4) of that section in its application to a transfer direction given before 30th September 1983, but after the coming into force of this Act that subsection shall have effect for that purpose as if for the references to subsection (6) of section 60, Part IV of that Act and the provisions of that Act there were substituted respectively references to section 37(8), Part II and the provisions of this Act.
- 21 Section 46(3) of this Act shall apply to any direction to which section 71(4) of the Mental Health Act 1959 applied immediately before the commencement of this Act.
- 22 Notwithstanding the repeal by this Act of section 53(5) of the Mental Health Act 1959, the discharge or variation under that section of an order made under section 52 of that Act shall not affect the validity of anything previously done in pursuance of the order.
- 23 For any reference in any enactment, instrument, deed or other document to a receiver under Part VIII of the Mental Health Act 1959 there shall be substituted a reference to a receiver under Part VII of this Act.
- 24 Nothing in this Act shall affect the operation of the proviso to section 107(5) of the Mental Health Act 1959 in relation to a charge created before the commencement of this Act under that section.
- 25 Nothing in this Act shall affect the operation of subsection (6) of section 112 of the Mental Health Act 1959 in relation to a charge created before the commencement of this Act by virtue of subsection (5) of that section.
- 26 If the person who is the Master of the Court of Protection at the commencement of this Act has before that time duly taken the oaths required by section 115(1) of the Mental Health Act 1959 he shall not be obliged to take those oaths again by virtue of section 93(3) of this Act.
- 27 Nothing in this Act shall affect the operation of section 116 of the Mental Health Act 1959 in relation to orders made, directions or authorities given or other instruments issued before the commencement of this Act.
- 28 References to applications, recommendations, reports and other documents in section 126 of this Act shall include those to which section 125 of the Mental Health Act 1959 applied immediately before the commencement of this Act and references in section 139 of this Act to the acts to which that section applies shall include those to which section 141 of the said Act of 1959 applied at that time.
- 29 The repeal by the Mental Health Act 1959 of the Mental Treatment Act 1930 shall not affect any amendment effected by section 20 of that Act in any enactment not repealed by the said Act of 1959.
- 30 The repeal by the Mental Health Act 1959 of the provisions of the Lunacy Act 1890 and of the Mental Deficiency Act 1913 relating to the superannuation of officers or employees shall not affect any arrangements for the payment of allowances or other benefits made in accordance with those provisions and in force on 1st November 1960.
- 31 (1) Any patient who immediately before the commencement of this Act was liable to be detained in a hospital or subject to guardianship by virtue of paragraph 9

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of Schedule 6 to the Mental Health Act 1959 shall unless previously discharged continue to be so liable for the remainder of the period of his treatment current on 1st November 1960.

- (2) The patient may before the expiration of the period of treatment referred to in subparagraph (1) above apply to a Mental Health Review Tribunal.
- 32 Any patient who immediately before the commencement of this Act was liable to be detained or subject to guardianship by virtue of an authority which had been renewed under paragraph 11 of Schedule 6 to the Mental Health Act 1959 shall unless previously discharged continue to be so liable during the period for which that authority was so renewed.
- 33 (1) This paragraph applies to patients who at the commencement of this Act are liable to be detained or subject to guardianship by virtue of paragraph 31 or 32 above.
- (2) Authority for the detention or guardianship of the patient may on the expiration of the relevant period, unless the patient has previously been discharged, be renewed for a further period of two years.
- (3) Sections 20(3) to (10) and 66(1)(f) of this Act shall apply in relation to the renewal of authority for the detention or guardianship of a patient under this paragraph as they apply in relation to the renewal of authority for the detention or guardianship of the patient under section 20(2).
- (4) In this paragraph " the relevant period " means—
- (a) in relation to a patient liable to be detained or subject to guardianship by virtue of the said paragraph 31, the period of his treatment referred to in that paragraph ;
 - (b) in relation to a patient detained by virtue of the said paragraph 32, the period for which authority for the detention or guardianship of the patient has been renewed under paragraph 11 of Schedule 6 to the 1959 Act;
 - (c) in relation to a patient the authority for whose detention or guardianship has previously been renewed under this paragraph, the latest period for which it has been so renewed.
- 34 (1) Any patient who is liable to be detained in a hospital or subject to guardianship by virtue of paragraph 31 above shall (subject to the exceptions and modifications specified in the following provisions of this paragraph) be treated as if he had been admitted to the hospital in pursuance of an application for admission for treatment under Part II of this Act or had been received into guardianship in pursuance of a guardianship application under the said Part II and had been so admitted or received as a patient suffering from the form or forms of mental disorder recorded under paragraph 7 of Schedule 6 to the Mental Health Act 1959 or, if a different form or forms have been specified in a report under section 38 of that Act as applied by that paragraph, the form or forms so specified.
- (2) Section 20 of this Act shall not apply in relation to the patient, but the provisions of paragraph 33 above shall apply instead.
- (3) Any patient to whom paragraph 9(3) of Schedule 6 to the Mental Health Act 1959 applied at the commencement of this Act who fell within paragraph (b) of that paragraph shall cease to be liable to be detained on attaining the age of 25 years unless, during the period of two months ending on the date when he attains that age, the responsible medical officer records his opinion under the following provisions of this Schedule that the patient is unfit for discharge.

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- (4) If the patient was immediately before 1st November 1960 liable to be detained by virtue of section 6, 8(1) or 9 of the Mental Deficiency Act 1913, the power of discharging him under section 23 of this Act shall not be exercisable by his nearest relative, but his nearest relative may make one application in respect of him to a Mental Health Review Tribunal in any period of 12 months.
- 35 (1) The responsible medical officer may record for the purposes of paragraph 34(3) above his opinion that a patient detained in a hospital is unfit for discharge if it appears to the responsible medical officer—
- (a) that if that patient were released from the hospital he would be likely to act in a manner dangerous to other persons or to himself, or would be likely to resort to criminal activities ; or
 - (b) that that patient is incapable of caring for himself and that there is no suitable hospital or other establishment into which he can be admitted and where he would be likely to remain voluntarily;
- and where the responsible medical officer records his opinion as aforesaid he shall also record the grounds for his opinion.
- (2) Where the responsible medical officer records his opinion under this paragraph in respect of a patient, the managers of the hospital or other persons in charge of the establishment where he is for the time being detained or liable to be detained shall cause the patient to be informed, and the patient may, at any time before the expiration of the period of 28 days beginning with the date on which he is so informed, apply to a Mental Health Review Tribunal.
- (3) On any application under sub-paragraph (2) above the tribunal shall, if satisfied that none of the conditions set out in paragraphs (a) and (b) of sub-paragraph (1) above are fulfilled, direct that the patient be discharged, and subsection (1) of section 72 of this Act shall have effect in relation to the application as if paragraph (b) of that subsection were omitted.
- 36 Any person who immediately before the commencement of this Act was deemed to have been named as the guardian of any patient under paragraph 14 of Schedule 6 to the Mental Health Act 1959 shall be deemed for the purposes of this Act to have been named as the guardian of the patient in an application for his reception into guardianship under Part II of this Act accepted on that person's behalf by the relevant local authority.
- 37 (1) This paragraph applies to patients who immediately before the commencement of this Act were transferred patients within the meaning of paragraph 15 of Schedule 6 to the Mental Health Act 1959.
- (2) A transferred patient who immediately before the commencement of this Act was by virtue of sub-paragraph (2) of that paragraph treated for the purposes of that Act as if he were liable to be detained in a hospital in pursuance of a direction under section 71 of that Act shall be treated as if he were so liable in pursuance of a direction under section 46 of this Act.
- (3) A transferred patient who immediately before the commencement of this Act was by virtue of sub-paragraph (3) of that paragraph treated for the purposes of that Act as if he were liable to be detained in a hospital by virtue of a transfer direction under section 72 of that Act and as if a direction restricting his discharge had been given under section 74 of that Act shall be treated as if he were so liable by virtue of a

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transfer direction under section 47 of this Act and as if a restriction direction had been given under section 49 of this Act.

(4) Section 84 of this Act shall apply to a transferred patient who was treated by virtue of sub-paragraph (5) of that paragraph immediately before the commencement of this Act as if he had been removed to a hospital under section 89 of that Act as if he had been so removed under the said section 84.

(5) Any person to whom sub-paragraph (6) of that paragraph applied immediately before the commencement of this Act shall be treated for the purposes of this Act as if he were liable to be detained in a hospital in pursuance of a transfer direction given under section 48 of this Act and as if a restriction direction had been given under section 49 of this Act, and he shall be so treated notwithstanding that he is not suffering from a form of mental disorder mentioned in the said section 48.

38 Any patient who immediately before the commencement of this Act was treated by virtue of sub-paragraph (1) of paragraph 16 of Schedule 6 to the Mental Health Act 1959 as if he had been conditionally discharged under section 66 of that Act shall be treated as if he had been conditionally discharged under section 42 of this Act and any such direction as is mentioned in paragraph (b) of that sub-paragraph shall be treated as if it had been given under the said section 42.

39 Upon a restriction direction in respect of a patient who immediately before the commencement of this Act was a transferred patient within the meaning of paragraph 15 of Schedule 6 to the Mental Health Act 1959 ceasing to have effect, the responsible medical officer shall record his opinion whether the patient is suffering from mental illness, severe mental impairment, psychopathic disorder or mental impairment, 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 recorded under this paragraph or under paragraph 17 of the said Schedule 6.

40 A person who immediately before the commencement of this Act was detained by virtue of paragraph 19 of Schedule 6 to the Mental Health Act 1959 may continue to be detained until the expiration of the period of his treatment current on 1st November 1960 or until he becomes liable to be detained or subject to guardianship under this Act, whichever occurs first, and may be so detained in any place in which he might have been detained under that paragraph.

41 Any opinion recorded by the responsible medical officer under the foregoing provisions of this Schedule shall be recorded in such form as may be prescribed by regulations made by the Secretary of State.

42 (1) In the foregoing provisions of this Schedule—

(a) references to the period of treatment of a patient that was current on 1st November 1960 are to the period for which he would have been liable to be detained or subject to guardianship by virtue of any enactment repealed or excluded by the Mental Health Act 1959, or any enactment repealed or replaced by any such enactment as aforesaid, being a period which began but did not expire before that date ; and

(b) " the responsible medical officer " means—

(i) 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;

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- (ii) in relation to any other class of patient, the registered medical practitioner in charge of the treatment of the patient.
- (2) Subsection (2) of section 34 of this Act shall apply for the purposes of the foregoing provisions of this Schedule as it applies for the purposes of Part II of this Act.
- (3) The sentence or other period of detention of a person who was liable to be detained or subject to guardianship immediately before 1st November 1960 by virtue of an order under section 9 of the Mental Deficiency Act 1913 shall be treated for the purposes of the foregoing provisions of this Schedule as expiring at the end of the period for which that person would have been liable to be detained in a prison or other institution if the order had not been made.
- (4) For the purposes of the foregoing provisions of this Schedule, an order sending a person to an institution or placing a person under guardianship made before 9th March 1956 on a petition presented under the Mental Deficiency Act 1913 shall be deemed to be valid if it was so deemed immediately before the commencement of this Act by virtue of section 148(2) of the Mental Health Act 1959.
- 43 (1) Any order or appointment made, direction or authority given, or thing done which by virtue of paragraph 25 of Schedule 6 to the Mental Health Act 1959 had effect immediately before the commencement of this Act as if made, given or done under any provision of Part VIII of that Act shall have effect as if made, given or done under Part VII of this Act.
- (2) Where at the commencement of this Act Part VIII of the Mental Health Act 1959 applied in any person's case by virtue of paragraph 25 of Schedule 6 to that Act as if immediately after the commencement of that Act it had been determined that he was a patient within the meaning of the said Part VIII, Part VII of this Act shall apply in his case as if immediately after the commencement of this Act it had been determined that he was a patient within the meaning of the said Part VII.
- 44 Where a person who immediately before 1st November 1960 was the committee of the estate of a person of unsound mind so found by inquisition was immediately before the commencement of this Act deemed by virtue of paragraph 26 of Schedule 6 to the Mental Health Act 1959 to be a receiver appointed under section 105 of that Act for that person, he shall be deemed to be a receiver appointed under section 99 of this Act for that person and shall continue to have the same functions in relation to that person's property and affairs as were exercisable by him immediately before the commencement of that Act as committee of the estate and references in any document to the committee of the estate of that person shall be construed accordingly.
- 45 Section 101(1) of this Act shall apply in relation to any disposal of property (within the meaning of that section) of a person living on 1st November 1960, being a disposal effected under the Lunacy Act 1890 as it applies in relation to the disposal of property of a person effected under Part VII of this Act.
- 46 For the purposes of section 15 of the National Health Service Reorganisation Act 1973 (preservation of certain boards of governors) any provision of this Act which corresponds to a provision amended by that Act shall be treated as if it were such a provision and any reference in any order for the time being in force under that section to such a provision shall have effect as if it were a reference to the corresponding provision of this Act.