



# Mental Health Act 1983

## 1983 CHAPTER 20

### PART X

#### MISCELLANEOUS AND SUPPLEMENTARY

##### *Miscellaneous provisions*

#### <sup>[F1]</sup> 130A **Independent mental health advocates<sup>[F2]</sup>: England**

- (1) <sup>[F3]</sup>A local social services authority whose area is in England] shall make such arrangements as it considers reasonable to enable persons (“independent mental health advocates”) to be available to help qualifying patients <sup>[F4]</sup>for whom the authority is responsible for the purposes of this section].
- (2) The <sup>[F5]</sup>Secretary of State] 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;
  - (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, <sup>[F6]</sup>a local social services 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.

*Status: Point in time view as at 01/04/2013.*

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- (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

- F1** 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)**
- F2** Word in s. 130A title inserted (3.1.2012 for specified purposes, 2.4.2012 in so far as not already in force) by [Mental Health \(Wales\) Measure 2010 \(nawm 7\)](#), s. 55(3), **Sch. 1 para. 2**; [S.I. 2011/3046](#), **arts. 2(k)**, **3(j)** (with [art. 5](#))
- F3** Words in s. 130A(1) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 43(1)(a)**, **306(4)**; [S.I. 2013/160](#), **art. 2(2)** (with [arts. 7-9](#))
- F4** Words in s. 130A(1) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 43(1)(b)**, **306(4)**; [S.I. 2013/160](#), **art. 2(2)** (with [arts. 7-9](#))
- F5** Words in s. 130A(2) substituted (3.1.2012 for specified purposes, 2.4.2012 in so far as not already in force) by [Mental Health \(Wales\) Measure 2010 \(nawm 7\)](#), s. 55(3), **Sch. 1 para. 3**; [S.I. 2011/3046](#), **arts. 2(k)**, **3(j)** (with [art. 5](#))
- F6** Words in s. 130A(4) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 43(2)**, **306(4)**; [S.I. 2013/160](#), **art. 2(2)** (with [arts. 7-9](#))

### 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.
- (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;

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- (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

**F1** 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\(a\)](#)

### 130C Section 130A: supplemental

(1) This section applies for the purposes of section 130A above.

[<sup>F7</sup>(2) A patient is a qualifying patient if he is—

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- (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) and the hospital or registered establishment in which he is liable to be detained is situated in England;
  - (b) subject to guardianship under this Act and the area of the responsible local social services authority within the meaning of section 34(3) above is situated in England;
  - (c) a community patient and the responsible hospital is situated in England.]
- (3) A patient is also a qualifying patient if [<sup>F8</sup>the patient is to be regarded as being in England for the purposes of this subsection and]—
- (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.
- [ For the purposes of subsection (3), a patient is to be regarded as being in England if <sup>F9</sup>(3A) that has been determined in accordance with arrangements made for the purposes of that subsection and section 130I(4), and published, by the Secretary of State and the Welsh Ministers.]
- (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.
- [ A local social services authority is responsible for a qualifying patient if—
- <sup>F10</sup>(4A) (a) in the case of a qualifying patient falling within subsection (2)(a) above, the hospital or registered establishment in which he is liable to be detained is situated in that authority's area;
- (b) in the case of a qualifying patient falling within subsection (2)(b) above, that authority is the responsible local social services authority within the meaning of section 34(3) above;
- (c) in the case of a qualifying patient falling within subsection (2)(c), the responsible hospital is situated in that authority's area;
- (d) in the case of a qualifying patient falling within subsection (3)—
- (i) in a case where the patient has capacity or is competent to do so, he nominates that authority as responsible for him for the purposes of section 130A above, or
  - (ii) in any other case, a donee or deputy or the Court of Protection, or a person engaged in caring for the patient or interested in his welfare, nominates that authority on his behalf as responsible for him for the purposes of that section.
- (4B) In subsection (4A)(d) above—
- (a) the reference to a patient who has capacity is to be read in accordance with the Mental Capacity Act 2005;

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- (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.]

<sup>F11</sup>( 5 ) . . . . .

<sup>F11</sup>( 6 ) . . . . .

#### Textual Amendments

- F1** 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)**
- F7** S. 130C(2) substituted (3.1.2012 for specified purposes, otherwise 2.4.2012) by [Mental Health \(Wales\) Measure 2010 \(nawm 7\)](#), s. 55(3), **Sch. 1 para. 4**; [S.I. 2011/3046](#), **art. 2(k), 3(j)** (with [art. 5](#))
- F8** Words in s. 130C(3) inserted (3.1.2012 for specified purposes, otherwise 2.4.2012) by [Mental Health \(Wales\) Measure 2010 \(nawm 7\)](#), s. 55(3), **Sch. 1 para. 5**; [S.I. 2011/3046](#), **art. 2(k), 3(j)** (with [art. 5](#))
- F9** S. 130C(3A) inserted (3.1.2012 for specified purposes, otherwise 2.4.2012) by [Mental Health \(Wales\) Measure 2010 \(nawm 7\)](#), s. 55(3), **Sch. 1 para. 6**; [S.I. 2011/3046](#), **arts. 2(k), 3(j)** (with [art. 5](#))
- F10** S. 130C(4A)(4B) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 43(3), 306(4)**; [S.I. 2013/160](#), **art. 2(2)** (with [arts. 7-9](#))
- F11** S. 130C(5)(6) repealed (3.1.2012 for specified purposes, otherwise 2.4.2012) by [Mental Health \(Wales\) Measure 2010 \(nawm 7\)](#), s. 55(3), [Sch. 1 para. 7](#), **Sch. 2**; [S.I. 2011/3046](#), **arts. 2(k), 3(j)** (with [art. 5](#))

### 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.

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- (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 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

**F1** 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\(a\)](#)

#### [<sup>F12</sup>130E Independent mental health advocates: Wales

- (1) The Welsh Ministers shall make such arrangements as they consider reasonable to enable persons (“independent mental health advocates”) to be available to help—
- (a) Welsh qualifying compulsory patients; and
  - (b) Welsh qualifying informal patients.
- (2) The Welsh Ministers 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;
  - (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 Welsh Ministers 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—

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- (a) is professionally concerned with the patient's medical treatment; or
  - (b) falls within a description specified in regulations made by the Welsh Ministers.
- (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 and sections 130F to 130H—
- (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

**F12** S. 130E inserted (15.2.2011 for specified purposes, 3.1.2012 for specified purposes and 2.4.2012 in so far as not already in force) by [Mental Health \(Wales\) Measure 2010 \(nawm 7\)](#), **ss. 31, 55(1), (2)**; [S.I. 2011/3046](#), **arts. 2(a), 3(a)** (with [art. 5](#))

#### [<sup>F13</sup>130F Arrangements under section 130E for Welsh qualifying compulsory patients

- (1) The help available to a Welsh qualifying compulsory patient under arrangements under section 130E shall include help in obtaining information about and understanding—
- (a) the provisions of this Act by virtue of which he is a qualifying compulsory 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 Welsh qualifying compulsory 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;
  - (b) help (by way of representation or otherwise)—
    - (i) in exercising the rights referred to in paragraph (a);
    - (ii) for patients who wish to become involved, or more involved, in decisions made about their care or treatment, or care or treatment generally;
    - (iii) for patients who wish to complain about their care or treatment;

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- (c) the provision of information about other services which are or may be available to the patient;
- (d) other help specified in regulations made by the Welsh Ministers.]

#### Textual Amendments

**F13** S. 130F inserted (15.2.2011 for specified purposes, 3.1.2012 in so far as not already in force) by [Mental Health \(Wales\) Measure 2010 \(nawm 7\), ss. 32, 55\(1\), \(2\); S.I. 2011/3046, art. 2\(b\) \(with art. 5\)](#)

#### [<sup>F14</sup>130G Arrangements under section 130E for Welsh qualifying informal patients

- (1) The help available to a Welsh qualifying informal patient under arrangements under section 130E shall include help in obtaining information about and understanding–
  - (a) what (if any) medical treatment is given to him or is proposed or discussed in his case;
  - (b) why it is given, proposed or discussed;
  - (c) the authority under which it is, or would be, given.
- (2) The help available under the arrangements to a Welsh qualifying informal patient shall also include–
  - (a) help (by way of representation or otherwise)–
    - (i) for patients who wish to become involved, or more involved, in decisions made about their care or treatment, or care or treatment generally;
    - (ii) for patients who wish to complain about their care or treatment;
  - (b) the provision of information about other services which are or may be available to the patient;
  - (c) other help specified in regulations made by the Welsh Ministers.]

#### Textual Amendments

**F14** S. 130G inserted (15.2.2011 for specified purposes, otherwise 2.4.2012) by [Mental Health \(Wales\) Measure 2010 \(nawm 7\), ss. 33, 55\(1\)\(2\); S.I. 2011/3046, art. 3\(b\) \(with art. 5\)](#)

#### [<sup>F15</sup>130H Independent mental health advocates for Wales: supplementary powers and duties

- (1) For the purpose of providing help to a patient in accordance with arrangements made under section 130E, an independent mental health advocate may–
  - (a) visit and interview the patient in private;
  - (b) visit and interview–
    - (i) any person who is professionally concerned with his medical treatment;
    - (ii) any other person who falls within a description specified in regulations made by the Welsh Ministers;
  - (c) require the production of and inspect any records relating to his detention, treatment or assessment in any hospital or registered establishment or to any after-care services provided for him under section 117 above;



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- (d) require the production of and inspect any records of, or held by, a local social services authority which relate to him.
- (2) But an independent mental health advocate is not entitled to the production of, or to inspect, records in reliance on subsection (1)(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 130E above, considers that–
    - (i) the records may be relevant to the help to be provided by the advocate;
    - (ii) the production or inspection is appropriate.
- (3) For the purpose of providing help to a Welsh qualifying compulsory 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 patient;
  - (b) the person (if any) appearing to the advocate to be the patient's nearest relative;
  - (c) the responsible clinician for the purposes of this Act;
  - (d) an approved mental health professional;
  - (e) a registered social worker who is professionally concerned with the patient's care, treatment or assessment;
  - (f) where the patient is liable to be detained in a hospital or registered establishment, the managers of the hospital or establishment or a person duly authorised on their behalf;
  - (g) the patient's donee or deputy.
- (4) For the purpose of providing help to a Welsh qualifying informal 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 patient;
  - (b) the managers of the hospital or establishment in which the patient is an in-patient or a person duly authorised on their behalf;
  - (c) any person appearing to the advocate to whom the request is made to be the patient's carer;
  - (d) the patient's donee or deputy;
  - (e) a registered social worker who is professionally concerned with the patient's care, treatment or assessment.
- (5) But nothing in this Act prevents the patient from declining to be provided with help under the arrangements.
- (6) In subsection (2) above the reference to a patient who has capacity is to be read in accordance with the Mental Capacity Act 2005.
- (7) In subsection (4) above–
- (a) “ carer ”, in relation to a Welsh qualifying informal patient, means an individual who provides or intends to provide a substantial amount of care on a regular basis for the patient, but does not include any individual who

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provides, or intends to provide care by virtue of a contract of employment or other contract with any person or as a volunteer for a body (whether or not incorporated);

- (b) “registered social worker” means a person included in the principal part or the visiting European part of a register maintained under section 56(1) of the Care Standards Act 2000.

(8) In subsections (2) to (4) above–

- (a) the reference to a donee is 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, in making the decision referred to in subsection (2) or the request referred to in subsection (3) or (4), is acting within the scope of his authority and in accordance with that Act;
- (b) 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, in making the decision referred to in subsection (2) or the request referred to in subsection (3) or (4), is acting within the scope of his authority and in accordance with that Act.]

#### Textual Amendments

**F15** S. 130H inserted (15.2.2011 for specified purposes, 3.1.2012 for specified purposes and 2.4.2012 in so far as not already in force) by [Mental Health \(Wales\) Measure 2010 \(nawm 7\)](#), [ss. 34, 55\(1\), \(2\)](#); [S.I. 2011/3046](#), [arts. 2\(c\), 3\(c\)](#) (with [art. 5](#))

#### [<sup>F16</sup>130I Welsh qualifying compulsory patients

- (1) This section applies for the purposes of section 130E above.
- (2) A patient is a Welsh qualifying compulsory patient if he is–
- (a) liable to be detained under this Act (other than under section 135 or 136 below) and the hospital or registered establishment in which he is liable to be detained is situated in Wales;
- (b) subject to guardianship under this Act and the area of the responsible local social services authority within the meaning of section 34(3) above is situated in Wales; or
- (c) a community patient and the responsible hospital is situated in Wales.
- (3) A patient is also a Welsh qualifying compulsory patient if the patient is to be regarded as being in Wales for the purposes of this subsection and–
- (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) For the purposes of subsection (3), a patient is to be regarded as being in Wales if that has been determined in accordance with arrangements made for the purposes of that subsection and section 130C(3), and published, by the Secretary of State and the Welsh Ministers.

*Status: Point in time view as at 01/04/2013.*

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- (5) Where a patient who is a Welsh qualifying compulsory 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.]

#### Textual Amendments

**F16** S. 130I inserted (3.1.2012) by [Mental Health \(Wales\) Measure 2010 \(nawm 7\)](#), **ss. 35, 55(3)**; S.I. 2011/3046, [art. 2\(d\)](#) (with [art. 5](#))

#### [<sup>F17</sup> 130J Welsh qualifying informal patients

- (1) This section applies for the purposes of section 130E above.
- (2) A patient is a Welsh qualifying informal patient if—
- (a) the patient is an in-patient at a hospital or registered establishment situated in Wales;
  - (b) the patient is receiving treatment for, or assessment in relation to, mental disorder at the hospital or registered establishment; and
  - (c) no application, order, direction or report renders the patient liable to be detained under this Act.]

#### Textual Amendments

**F17** S. 130J inserted (2.4.2012) by [Mental Health \(Wales\) Measure 2010 \(nawm 7\)](#), **ss. 36, 55(3)**; S.I. 2011/3046, [art. 3\(d\)](#) (with [art. 5](#))

#### [<sup>F18</sup> 130KDuty to give information about independent mental health advocates to Welsh qualifying compulsory patients

- (1) The responsible person in relation to a Welsh qualifying compulsory patient (within the meaning given by section 130I 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 Welsh qualifying compulsory patient falling within section 130I(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; or
  - (b) in relation to a Welsh qualifying compulsory patient falling within section 130I(2)(a) above and conditionally discharged by virtue of section 42(2), 73 or 74 above, the responsible clinician;
  - (c) in relation to a Welsh qualifying compulsory patient falling within section 130I(2)(b) above, the responsible local social services authority within the meaning of section 34(3) above;

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- (d) in relation to a Welsh qualifying compulsory patient falling within section 130I(2)(c) above, the managers of the responsible hospital;
  - (e) in relation to a Welsh qualifying compulsory patient falling within section 130I(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 Welsh qualifying compulsory patient falling within section 130I(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 practicable to furnish any person falling within subsection (6) with a copy of any information given to the patient in writing under subsection (1) above.
- (6) A person falls within this subsection if–
- (a) the person appears to the responsible person to be the patient's nearest relative;
  - (b) the person is a donee of a lasting power of attorney (within the meaning of section 9 of the Mental Capacity Act 2005) created by the patient and the scope of the donee's authority includes matters related to the care and treatment of the patient;
  - (c) the person is a deputy appointed for the patient by the Court of Protection under section 16 of that Act and the scope of the deputy's authority includes matters related to the care and treatment of the patient.
- (7) 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

**F18** S. 130K inserted (3.1.2012) by [Mental Health \(Wales\) Measure 2010 \(nawm 7\)](#), **ss. 37, 55(3)**; [S.I. 2011/3046](#), **art. 2(e)** (with **art. 5**)

#### [<sup>F19</sup>130L Duty to give information about independent mental health advocates to Welsh qualifying informal patients

- (1) The responsible person in relation to a Welsh qualifying informal patient (within the meaning given by section 130J above) shall take such steps as are practicable to ensure that the patient understands–

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- (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 the managers of the hospital or registered establishment to which the patient is admitted as an in-patient.
- (3) The steps to be taken under subsection (1) above shall be taken as soon as practicable after the patient becomes an in-patient.
- (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 Welsh qualifying informal patient shall, except where the patient otherwise requests, take such steps as are practicable to furnish any person falling within subsection (6) with a copy of any information given to the patient in writing under subsection (1) above.
- (6) A person falls within this subsection if—
  - (a) the person appears to the responsible person to be a carer of the patient;
  - (b) the person is a donee of a lasting power of attorney (within the meaning of section 9 of the Mental Capacity Act 2005) created by the patient and the scope of the donee's authority includes matters related to the care and treatment of the patient;
  - (c) the person is a deputy appointed for the patient by the Court of Protection under section 16 of that Act and the scope of the deputy's authority includes matters related to the care and treatment of the patient.
- (7) In subsection (6), “carer”, in relation to a Welsh qualifying informal patient, means an individual who provides or intends to provide a substantial amount of care on a regular basis for the patient, but does not include any individual who provides, or intends to provide care by virtue of a contract of employment or other contract with any person or as a volunteer for a body (whether or not incorporated);
- (8) 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

**F19** S. 130L inserted (2.4.2012) by [Mental Health \(Wales\) Measure 2010 \(nawm 7\)](#), ss. 38, 55(3); S.I. 2011/3046, art. 3(e) (with art. 5)

### 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 [<sup>F20</sup>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 [<sup>F20</sup>registered establishment] in pursuance of such arrangements after he has ceased to be so liable to be detained.
- [<sup>F21</sup>(2) Subsections (3) and (4) below apply in the case of a patient aged 16 or 17 years who has capacity to consent to the making of such arrangements as are mentioned in subsection (1) above.

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- (3) If the patient consents to the making of the arrangements, they may be made, carried out and determined on the basis of that consent even though there are one or more persons who have parental responsibility for him.
- (4) If the patient does not consent to the making of the arrangements, they may not be made, carried out or determined on the basis of the consent of a person who has parental responsibility for him.
- (5) In this section—
  - (a) the reference to a patient who has capacity is to be read in accordance with the Mental Capacity Act 2005; and
  - (b) “ parental responsibility ” has the same meaning as in the Children Act 1989. ]

#### Textual Amendments

- F20** 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)**)
- F21** S. 131(2)-(5) substituted (1.1.2008) for s. 131(2) by **Mental Health Act 2007 (c. 12), ss. 43, 56** (with **Sch. 10**); S.I. 2007/2798, **art. 4**

#### [<sup>F22</sup>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).
- (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

- F22** 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 [<sup>F23</sup>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

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- (b) what rights of applying to a [<sup>F24</sup>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 [<sup>F23</sup>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 [<sup>F25</sup>establishment] .
- (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 [<sup>F23</sup>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

- F23** 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))
- F24** Words in s. 132(1)(b) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 6, **Sch. 3 para. 63**
- F25** Words in s. 132(2) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 29** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)

#### [<sup>F26</sup>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 [<sup>F27</sup>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.]

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#### Textual Amendments

- F26** 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.](#))
- F27** 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 [<sup>F28</sup>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 [<sup>F28</sup>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.

[<sup>F29</sup>(1A) The reference in subsection (1) above to a patient who is to be discharged includes a patient who is to be discharged from hospital under section 17A above.

- (1B) Subsection (1) above shall also apply in a case where a community patient is discharged under section 23 or 72 above (otherwise than by virtue of an order for discharge made by his nearest relative), but with the reference in that subsection to the managers of the hospital or registered establishment being read as a reference to the managers of the responsible hospital.]

- (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

- F28** 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\(4\)-\(10\)](#))
- F29** S. 133(1A)(1B) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 32, 56, [Sch. 3 para. 31](#) (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(i\)](#) (with [art. 3](#), [Sch.](#))

### 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 [<sup>F30</sup>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 [<sup>F31</sup>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;



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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, [<sup>F32</sup>or] the [<sup>F33</sup>approved clinician with overall responsibility for the patient's case]<sup>F34</sup> ... .

(2) Subject to subsection (3) below, a postal packet addressed to a patient detained [<sup>F35</sup>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 [<sup>F36</sup>or the Scottish Ministers] or Member of either House of Parliament [<sup>F36</sup>or member of the Scottish Parliament][<sup>F37</sup>or of the Northern Ireland Assembly];

[<sup>F38</sup>(aa) any of the Welsh Ministers, the Counsel General to the Welsh Assembly Government or a member of the National Assembly for Wales;]

[<sup>F39</sup>(b) any judge or officer of the Court of Protection, any of the Court of Protection Visitors or any person asked by that Court for a report under section 49 of the Mental Capacity Act 2005 concerning the patient;]

(c) the Parliamentary Commissioner for Administration, [<sup>F40</sup>the Scottish Public Services Ombudsman,][<sup>F41</sup>the Public Services Ombudsman for Wales] the Health Service Commissioner for England, <sup>F42</sup> . . . or a Local Commissioner within the meaning of Part III of the <sup>M1</sup>Local Government Act 1974;

[<sup>F43</sup>(ca) the Care Quality Commission;]

(d) [<sup>F44</sup>the First-tier Tribunal or the Mental Health Review Tribunal for Wales];

(e) [<sup>F45</sup>the National Health Service Commissioning Board, a clinical commissioning group,] a <sup>F46</sup>... [<sup>F47</sup>Local Health Board][<sup>F48</sup>or Special Health Authority]<sup>F49</sup> . . . , a local social services authority, a Community Health Council <sup>F50</sup> . . . [<sup>F51</sup>, a][<sup>F52</sup>local probation board established under section 4 of the Criminal Justice and Court Services Act 2000)][<sup>F53</sup>or a provider of probation services];

[<sup>F54</sup>(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.

[<sup>F55</sup> and for the purposes of paragraph (d) above the reference to the First-tier Tribunal is a reference to that tribunal so far as it is acting for the purposes of any proceedings under this Act or paragraph 5(2) of the Schedule to the Repatriation of Prisoners Act 1984 <sup>F56</sup> . ]

[<sup>F57</sup>(3A) In subsection (3) above—

(a) “ patient advocacy and liaison service ” means a service of a description prescribed by regulations made by the Secretary of State, and

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“ independent advocacy services ” means services provided under arrangements under [F58 section 248 of the National Health Service Act 2006 or section 187 of the National Health Service (Wales) Act 2006 ]. ]

[F59(b) “ independent advocacy services ” means services provided under—  
(i) arrangements under section 130A [F60 or section 130E ] above;  
(ii) arrangements under [F61 section 223A of the Local Government and Public Involvement in Health Act 2007] or section 187 of the National Health Service (Wales) Act 2006; or  
(iii) arrangements of a description prescribed as mentioned in paragraph (a) above.]

- (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 [F62 section 134A(1) to (4)].
- (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 [F63 and section 134A ] “ hospital ” has the same meaning as in Part II of this Act [F64 and “postal operator” and ], “ postal packet ” [F65 have ] the same meaning as in [F66 Part 3 of the Postal Services Act 2011 (see section 27) ]

#### Textual Amendments

- F30** 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)
- F31** 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**
- F32** Word in s. 134(1) inserted (1.7.2012) by Health and Social Care Act 2012 (c. 7), **ss. 44(1)(a)**, 306(4) (with s. 44(2)); S.I. 2012/1319, art. 2(3)
- F33** Words in s. 134(1) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), **ss. 14(4)**, 56 (with Sch. 10); S.I. 2008/1900, **art. 2(b)** (with art. 3, Sch.)
- F34** Words in s. 134(1) omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 44(1)(b)**, 306(4) (with s. 44(2)); S.I. 2012/1319, art. 2(3)

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- F35** 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**
- F36** 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**
- F37** 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.**
- F38** S. 134(3)(aa) inserted by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), art. 3, **Sch. 1 para. 18** (the amendment comming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2)(3) of the amending S.I. and see ss. 46, 161(5) of Government of Wales Act 2006 (c. 32))
- F39** S. 134(3)(b) substituted (1.10.2007) by Mental Capacity Act 2005 (c. 9), ss. 67(1), 68(1)-(3), **Sch. 6 para. 29(2)** (with ss. 27, 28, 29, 62); S.I. 2007/1897, **art. 2(1)(d)**
- F40** 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**
- F41** 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))
- F42** 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))
- F43** S. 134(3)(ca) inserted (1.4.2009) by Health and Social Care Act 2008 (c. 14), ss. 52, 170, **Sch. 3 para. 11(2)**; S.I. 2009/462, **arts. 1(1)(b)**, 2, **Sch. 1 para. 33**
- F44** Words in s. 134(3)(d) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 6, **Sch. 3 para. 65(a)**
- F45** Words in s. 134(3)(e) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7) , s. 306(4) , **Sch. 5 para. 29(a)** ; S.I. 2013/160 , art. 2(2) (with arts. 7-9)
- F46** Words in s. 134(3)(e) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7) , s. 306(4) , **Sch. 5 para. 29(b)** ; S.I. 2013/160 , art. 2(2) (with arts. 7-9 )
- F47** Words in s. 134(3)(e) substituted (1.4.2007) by The References to Health Authorities Order 2007 (S.I. 2007/961), art. 3, **Sch. para. 13(10)**
- F48** Words in s. 134(3)(e) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7) , s. 306(4) , **Sch. 5 para. 29(c)** ; S.I. 2013/160 , art. 2(2) (with arts. 7-9 )
- F49** Words in s. 134(3)(e) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7) , s. 306(4) , **Sch. 5 para. 29(d)** ; S.I. 2013/160 , art. 2(2) (with arts. 7-9 )
- F50** Words in s. 134(3)(e) repealed (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), ss. 241, 245, **Sch. 18 Pt. 18**; S.I. 2008/461, **art. 2(3)**, **Sch.**
- F51** Words in s. 134(3)(e) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 7(2)**
- F52** 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)**
- F53** Words in s. 134(3)(e) inserted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 7(2)**
- F54** 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)**
- F55** Words in s. 134(3) inserted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 6, **Sch. 3 para. 65(b)**
- F56** 1984 c.47.
- F57** 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)**
- F58** 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**)
- F59** S. 134(3A)(b) substituted (1.4.2008 for certain purposes, 3.11.2008 for further purposes and otherwise 1.4.2009) by Mental Health Act 2007 (c. 12), **ss. 30(3)**, 56 (with **Sch. 10**); S.I. 2008/745, **art. 2(b)(ii)**; S.I. 2008/2561, **art. 2(c)** (with art. 3, **Sch.**); S.I. 2009/139, **art. 2(a)** (with **Sch. paras. 3, 4**)

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- F60** Words in s. 134(3A)(b)(i) inserted (3.1.2012 for specified purposes, 2.4.2012 in so far as not already in force) by [Mental Health \(Wales\) Measure 2010](#) (nawm 7), s. 55(3), **Sch. 1 para. 8**; S.I. 2011/3046, arts. 2(k), 3(j) (with art. 5)
- F61** Words in s. 134(3A)(b)(ii) substituted (27.3.2012 for specified purposes, otherwise 1.4.2013) by [Health and Social Care Act 2012](#) (c. 7), **ss. 185(3)**, 306(1)(d), (4); S.I. 2013/106, art. 2 (with arts. 7-9)
- F62** Words in s. 134(6) substituted (1.4.2009) by [Health and Social Care Act 2008](#) (c. 14), **ss. 52**, 170, **Sch. 3 para. 11(3)**; S.I. 2009/462, **arts. 1(1)(b)**, 2, Sch. 1 para. 33
- F63** Words in s. 134(9) inserted (1.4.2009) by [Health and Social Care Act 2008](#) (c. 14), **ss. 52**, 170, **Sch. 3 para. 11(4)**; S.I. 2009/462, **arts. 1(1)(b)**, 2, Sch. 1 para. 33
- F64** 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)
- F65** 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)
- F66** Words in s. 134(9) substituted (1.10.2011) by [Postal Services Act 2011](#) (c. 5), s. 93(2)(3), **Sch. 12 para. 115**; S.I. 2011/2329, art. 3

#### Modifications etc. (not altering text)

- C1** 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

- M1** 1974 c. 7.

### [<sup>F67</sup>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.
- (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.]

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### Textual Amendments

**F67** 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 <sup>F68</sup>approved mental health professional], 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 . . . <sup>F69</sup> 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 <sup>F70</sup>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 <sup>F71</sup>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 . . . <sup>F69</sup> 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.

<sup>F72</sup>(3A) A constable, an approved mental health professional or a person authorised by either of them for the purposes of this subsection may, before the end of the period of 72 hours mentioned in subsection (3) above, take a person detained in a place of safety under that subsection to one or more other places of safety.

(3B) A person taken to a place of safety under subsection (3A) above may be detained there for a period ending no later than the end of the period of 72 hours mentioned in subsection (3) above.]

(4) In the execution of a warrant issued under subsection (1) above, <sup>F73</sup>a constable] shall be accompanied by an <sup>F68</sup>approved mental health professional] and by a registered medical practitioner, and in the execution of a warrant issued under subsection (2) above <sup>F73</sup>a constable] may be accompanied—

(a) by a registered medical practitioner;

(b) by any person authorised by or under this Act or under <sup>F74</sup>article 8 of the Mental Health (Care and Treatment)(Scotland) Act 2003 (Consequential Provisions) Order 2005] to take or retake the patient.

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- (5) It shall not be necessary in any information or warrant under subsection (1) above to name the patient concerned.
- (6) In this section “place of safety” means residential accommodation provided by a local social services authority under Part III of the <sup>M2</sup>National Assistance Act 1948<sup>F75</sup> . . . , a hospital as defined by this Act, a police station, [<sup>F76</sup>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

- F68** Words in s. 135(1)(4) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\), ss. 21, 56, Sch. 2 para. 10\(a\)](#) (with [Sch. 10](#)); [S.I. 2008/1900, art. 2\(d\)](#) (with [art. 3, Sch.](#)); [S.I. 2008/2561, art. 2\(b\)](#) (with [art. 3, Sch.](#))
- F69** Words repealed by [Police and Criminal Evidence Act 1984 \(c. 60, SIF 95\), s. 119, Sch. 7 Pt. I](#)
- F70** 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\(9\)\(a\)\(i\)](#)
- F71** 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\(9\)\(a\)\(ii\)](#)
- F72** S. 135(3A)(3B) inserted (30.4.2008) by [Mental Health Act 2007 \(c. 12\), ss. 44\(2\), 56](#) (with [Sch. 10](#)); [S.I. 2008/800, art. 2](#) (with [art. 3](#))
- F73** Words substituted by [Police and Criminal Evidence Act 1984 \(c. 60, SIF 95\), s. 119, Sch. 6 Pt. I para. 26](#)
- F74** 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\(9\)\(b\)](#)
- F75** 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.](#)
- F76** 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

- M2** 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 [<sup>F77</sup>approved mental health professional] and of making any necessary arrangements for his treatment or care.
- [<sup>F78</sup>(3) A constable, an approved mental health professional or a person authorised by either of them for the purposes of this subsection may, before the end of the period of 72 hours mentioned in subsection (2) above, take a person detained in a place of safety under that subsection to one or more other places of safety.

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- (4) A person taken to a place of a safety under subsection (3) above may be detained there for a purpose mentioned in subsection (2) above for a period ending no later than the end of the period of 72 hours mentioned in that subsection.]

#### Textual Amendments

- F77** Words in s. 136(2) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 21, 56, [Sch. 2 para. 10\(b\)](#) (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(d\)](#) (with [art. 3](#), [Sch.](#)); [S.I. 2008/2561](#), [art. 2\(b\)](#) (with [art. 3](#), [Sch.](#))
- F78** S. 136(3)(4) inserted (30.4.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 44(3), 56 (with [Sch. 10](#)); [S.I. 2008/800](#), [art. 2](#) (with [art. 3](#))

### 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.
- (3) In this section “convey” includes any other expression denoting removal from one place to another.

#### Modifications etc. (not altering text)

- C2** 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 [<sup>F79</sup>approved mental health professional] ;
- (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, [<sup>F80</sup>or a community patient who was recalled to hospital under section 17E above,] 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.

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- (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)<sup>F81</sup>... ; 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 to a patient who is absent without leave and references in that section to section 18 above shall be construed accordingly.

#### Textual Amendments

- F79** Words in s. 138(1)(a) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\), ss. 21, 56, Sch. 2 para. 10\(c\)](#) (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(d\)](#) (with [art. 3, Sch.](#)); S.I. 2008/2561, [art. 2\(b\)](#) (with [art. 3, Sch.](#))
- F80** Words in s. 138(1)(b) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\), ss. 32, 56, Sch. 3 para. 32](#) (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(i\)](#) (with [art. 3, Sch.](#))
- F81** Words in s. 138(4)(a) omitted (1.7.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\), ss. 42\(3\), 306\(4\)](#) (with [s. 42\(5\)](#)); S.I. 2012/1319, [art. 2\(3\)](#)

#### Modifications etc. (not altering text)

- C3** 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,<sup>F82</sup> . . . , 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



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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 [<sup>F83</sup> the National Health Service Commissioning Board, a clinical commissioning group,] a [<sup>F84</sup> ... [<sup>F85</sup> Local Health Board][<sup>F86</sup> or Special Health Authority]<sup>F87</sup> ... [<sup>F88</sup> or against a National Health Service trust established under [<sup>F89</sup> the National Health Service Act 2006 or the National Health Service (Wales) Act 2006][<sup>F90</sup> or NHS foundation trust][<sup>F91</sup> or against the Department of Justice in Northern Ireland][<sup>F92</sup> or against a person who has functions under this Act by virtue of section 12ZA in so far as the proceedings relate to the exercise of those functions].
- (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

- E1** 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

- F82** Words in s. 139(1) repealed (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\)](#), ss. 67(1)(2), 68(1)-(3), [Sch. 6 para. 29\(3\)](#), [Sch. 7](#) (with ss. 27, 28, 29, 62); S.I. 2007/1897, [art. 2\(1\)\(d\)](#)
- F83** Words in s. 139(4) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 5 para. 30\(a\)](#); S.I. 2013/160, [art. 2\(2\)](#) (with arts. 7-10, [Sch. para. 3](#))
- F84** Words in s. 139(4) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 5 para. 30\(b\)](#); S.I. 2013/160, [art. 2\(2\)](#) (with arts. 7-10, [Sch. para. 3](#))
- F85** Words in s. 139(4) substituted (1.4.2007) by [The References to Health Authorities Order 2007 \(S.I. 2007/961\)](#), [art. 3](#), [Sch. para. 13\(11\)](#)
- F86** Words in s. 139(4) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 5 para. 30\(c\)](#); S.I. 2013/160, [art. 2\(2\)](#) (with arts. 7-10, [Sch. para. 3](#))
- F87** Words in s. 139(4) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 5 para. 30\(d\)](#); S.I. 2013/160, [art. 2\(2\)](#) (with arts. 7-10, [Sch. para. 3](#))
- F88** 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\(7\)](#)
- F89** 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](#))
- F90** 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](#)
- F91** Words in s. 139(4) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), [art. 1\(2\)](#), [Sch. 14 para. 28\(5\)](#) (with arts. 28-31)
- F92** Words in s. 139(4) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. 38(3), 306(4); S.I. 2013/160, [art. 2\(2\)](#) (with arts. 7-9)

#### Modifications etc. (not altering text)

- C4** 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\(2\)](#)
- C5** S. 139 extended by [Mental Health \(Scotland\) Act 1984 \(c. 36\)](#), SIF 85), ss. 17(2), 122(2)

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C6 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,<sup>F82</sup> . . . 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 [<sup>F83</sup> the National Health Service Commissioning Board, a clinical commissioning group,] a <sup>F84</sup> . . . [<sup>F85</sup> Local Health Board][<sup>F86</sup> or Special Health Authority][<sup>F119</sup> or against a National Health Service trust established under [<sup>F120</sup> the National Health Service Act 2006 or the National Health Service (Wales) Act 2006][<sup>F121</sup> or NHS foundation trust][<sup>F91</sup> or against the Department of Justice in Northern Ireland][<sup>F92</sup> or against a person who has functions under this Act by virtue of section 12ZA in so far as the proceedings relate to the exercise of those functions].
- (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

- E2** For extent of s. 139 to Northern Ireland and of s. 139(1) to Scotland see ss. 146, 147
- E3** 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

- F82** Words in s. 139(1) repealed (1.10.2007) by [Mental Capacity Act 2005](#) (c. 9), ss. 67(1)(2), 68(1)-(3), [Sch. 6 para. 29\(3\)](#), [Sch. 7](#) (with ss. 27, 28, 29, 62); S.I. 2007/1897, [art. 2\(1\)\(d\)](#)
- F83** Words in s. 139(4) inserted (1.4.2013) by [Health and Social Care Act 2012](#) (c. 7), s. 306(4), [Sch. 5 para. 30\(a\)](#); S.I. 2013/160, [art. 2\(2\)](#) (with arts. 7-10, [Sch. para. 3](#))
- F84** Words in s. 139(4) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012](#) (c. 7), s. 306(4), [Sch. 5 para. 30\(b\)](#); S.I. 2013/160, [art. 2\(2\)](#) (with arts. 7-10, [Sch. para. 3](#))
- F85** Words in s. 139(4) substituted (1.4.2007) by [The References to Health Authorities Order 2007](#) (S.I. 2007/961), [art. 3](#), [Sch. para. 13\(11\)](#)
- F86** Words in s. 139(4) substituted (1.4.2013) by [Health and Social Care Act 2012](#) (c. 7), s. 306(4), [Sch. 5 para. 30\(c\)](#); S.I. 2013/160, [art. 2\(2\)](#) (with arts. 7-10, [Sch. para. 3](#))
- F91** Words in s. 139(4) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010](#) (S.I. 2010/976), [art. 1\(2\)](#), [Sch. 14 para. 28\(5\)](#) (with arts. 28-31)

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- F92** Words in s. 139(4) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 38(3)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F119** 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)**
- F120** 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)
- F121** 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)

- C9** 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)**
- C10** S. 139 extended by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), **ss. 17(2)**, 122(2)

#### 140 [F93 Notification of hospitals having arrangements for special cases.]

It shall be the duty of [F94 every clinical commissioning group and of]F95 ... every [F96 Local Health Board] to give notice to every local social services authority for an area wholly or partly comprised within the [F97 area of the [F98 clinical commissioning group or]F99 ... [F96 Local Health Board]] specifying the hospital or hospitals administered by [F100 or otherwise available [F101 to the [F102 clinical commissioning group or]F103 ... [F96 Local Health Board]]] in which arrangements are from time to time in force

- [F104(a) for the reception of patients in cases of special urgency;  
(b) for the provision of accommodation or facilities designed so as to be specially suitable for patients who have not attained the age of 18 years.]

#### Textual Amendments

- F93** S. 140: title substituted (3.11.2008) by virtue of Mental Health Act 2007 (c. 12), **ss. 31(4)**, 56 (with Sch. 10); S.I. 2008/1900, **art. 2(h)** (with art. 3, Sch.)
- F94** Words in s. 140 inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 45(1)(a)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F95** Words in s. 140 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 45(1)(b)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F96** Words in s. 140 substituted (1.4.2007) by The References to Health Authorities Order 2007 (S.I. 2007/961), art. 3, **Sch. para. 13(12)**
- F97** 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)
- F98** Words in s. 140 inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 45(1)(c)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F99** Words in s. 140 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 45(1)(d)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F100** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 24(8)**
- F101** 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)
- F102** Words in s. 140 inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 45(1)(e)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F103** Words in s. 140 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 45(1)(f)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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**F104** S. 140(a)(b) substituted (3.11.2008) for words in s. 140 by [Mental Health Act 2007 \(c. 12\), ss. 31\(4\), 56](#) (with [Sch. 10](#)); [S.I. 2008/1900, art. 2\(h\)](#) (with [art. 3, Sch.](#))

**Modifications etc. (not altering text)**

**C7** 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 [<sup>F105</sup>under a relevant enactment] on the ground (however formulated) that he is suffering from [<sup>F106</sup>mental disorder] , 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.
- (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 [<sup>F107</sup>mental disorder] and is authorised to be detained [<sup>F108</sup>under a relevant enactment] as such.
- (5) If the report is to the effect that the member is suffering from [<sup>F109</sup>mental disorder] 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 [<sup>F109</sup>mental disorder] 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.

[<sup>F110</sup>(6A) For the purposes of this section, the following are relevant enactments—

- (a) this Act;
- (b) the Criminal Procedure (Scotland) Act 1995 and the Mental Health (Care and Treatment) Scotland Act 2003 (“the Scottish enactments”); and
- (c) the Mental Health (Northern Ireland) Order 1986 (“ the 1986 Order ”).

(6B) In relation to an authorisation for detention under the Scottish enactments or the 1986 Order, the references in this section to mental disorder shall be construed in accordance with those enactments or that Order (as the case may be).]

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[<sup>F111</sup>(6C) References in this section to a member who is authorised to be detained shall not include a member who is a community patient (whether or not he is recalled to hospital under section 17E above).]

(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.

[<sup>F112</sup>(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.]

[<sup>F113</sup>(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 [<sup>F114</sup>Commission]”.]

[<sup>F115</sup>(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

- F105** Words in s. 141(1) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 1, 56, [Sch. 1 para. 16\(2\)\(a\)](#) (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(a\)](#) (with [art. 3](#), [Sch.](#))
- F106** Words in s. 141(1) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 1, 56, {[Sch. 1 para. 16\(2\)\(b\)](#)}; (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(a\)](#) (with [art. 3](#), [Sch.](#))
- F107** Words in s. 141(4) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 1, 56, [Sch. 1 para. 16\(3\)\(a\)](#) (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(a\)](#) (with [art. 3](#), [Sch.](#))
- F108** Words in s. 141(4) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 1, 56, [Sch. 1 para. 16\(3\)\(b\)](#) (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(a\)](#) (with [art. 3](#), [Sch.](#))
- F109** Words in s. 141(5)(6) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 1, 56, [Sch. 1 para. 16\(4\)](#) (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(a\)](#) (with [art. 3](#), [Sch.](#))
- F110** S. 141(6A)(6B) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 1, 56, [Sch. 1 para. 16\(5\)](#) (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(a\)](#) (with [art. 3](#), [Sch.](#))
- F111** S. 141(6C) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 32, 56, [Sch. 3 para. 33](#) (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(i\)](#) (with [art. 3](#), [Sch.](#))
- F112** S. 141(8) added (19.11.1998) by [1998 c. 46](#), ss. [125](#), [130](#), [131](#) [Sch. 8](#), para. 19 (with s. 126(3)-(11))
- F113** S. 141(9) added (1.4.1999) by [1998 c. 38](#), s. [125](#), [Sch. 12](#), para. 23; [S.I. 1999/782](#), [art. 2](#)
- F114** Word in s. 141(9)(b) inserted by [Government of Wales Act 2006 \(c. 32\)](#), ss. [160\(1\)](#), [161](#), [Sch. 10 para. 13](#) (with [Sch. 11 para. 22](#)), the amending provision coming into force immediately after “the 2007 election” (held on 3.5.2007) subject to s. 161(4)(5) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of “initial

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period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see ss. 46, 161(1)(4)(5) of the amending Act.

**F115** S. 141(10) added (2.12.1999) by 1998 c. 47, s. 95, **Sch. 13**, para. 5(3); S.I. 1999/3209, **art. 2**

## <sup>F116</sup>**142 Pay, pensions, etc., of mentally disordered persons.**

.....

### Textual Amendments

**F116** S. 142 ceases to have effect (E.W.) (1.10.2007) by **Mental Capacity Act 2005 (c. 9)**, ss. 67(1), 68(1)-(3), **Sch. 6 para. 29(4)** (with ss. 27, 28, 29, 62, **Sch. 6 para. 29(5)(6)**); S.I. 2007/1897, **art. 2(1)(d)**; s. 142 repealed (S.) (5.10.2007) by **Adult Support and Protection (Scotland) Act 2007 (asp. 10)**, ss. 77(2), 79, **Sch. 2**; S.S.I. 2007/334, **art. 2(b)**, **Sch. 2** (with art. 6)

### Modifications etc. (not altering text)

**C8** S. 142 applied (21.1.1994) by S.I. 1993/3253, **reg. R1(2)**.

## [<sup>F117</sup>**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.]

### Textual Amendments

**F117** 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)**

## [<sup>F118</sup>**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

**F118** 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**

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