



# Mental Health Act 1983

## 1983 CHAPTER 20

### PART II **U.K.**

#### COMPULSORY ADMISSION TO HOSPITAL AND GUARDIANSHIP

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

- C1** Pt. II (ss. 2–34) modified by [Mental Health \(Scotland\) Act 1984](#) (c. 36, SIF 85), **ss. 17(2)**, 78(2)
- C2** Part II (ss. 2–34) modified (E.W.) (1.1.1992) by [Criminal Procedure \(Insanity and Unfitness to Plead\) Act 1991](#) (c. 25, SIF 39:1), s. 5(1), **Sch. 1 para.3** (with saving in s. 8); S.I. 1991/2488, **art. 2**

#### *Procedure for hospital admission*

## **2 Admission for assessment. **E+W****

- (1) A patient may be admitted to a hospital and detained there for the period allowed by subsection (4) below in pursuance of an application (in this Act referred to as “an application for admission for assessment”) made in accordance with subsections (2) and (3) below.
- (2) An application for admission for assessment may be made in respect of a patient on the grounds that—
  - (a) he is suffering from mental disorder of a nature or degree which warrants the detention of the patient in a hospital for assessment (or for assessment followed by medical treatment) for at least a limited period; and
  - (b) he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons.
- (3) An application for admission for assessment shall be founded on the written recommendations in the prescribed form of two registered medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in subsection (2) above are complied with.

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

### 3 Admission for treatment. **E+W**

- (1) A patient may be admitted to a hospital and detained there for the period allowed by the following provisions of this Act in pursuance of an application (in this Act referred to as “an application for admission for treatment”) made in accordance with this section.
- (2) An application for admission for treatment may be made in respect of a patient on the grounds that—
- (a) he is suffering from [<sup>F1</sup>mental disorder] of a nature or degree which makes it appropriate for him to receive medical treatment in a hospital; and
  - (b) <sup>F2</sup> .....
  - (c) it is necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment and it cannot be provided unless he is detained under this section<sup>F3</sup>; and
  - (d) appropriate medical treatment is available for him.]
- (3) An application for admission for treatment shall be founded on the written recommendations in the prescribed form of two registered medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in subsection (2) above are complied with; and each such recommendation shall include—
- (a) such particulars as may be prescribed of the grounds for that opinion so far as it relates to the conditions set out in paragraphs (a) and [<sup>F4</sup>(d)] of that subsection; and
  - (b) a statement of the reasons for that opinion so far as it relates to the conditions set out in paragraph (c) of that subsection, specifying whether other methods of dealing with the patient are available and, if so, why they are not appropriate.
- [<sup>F5</sup>(4) In this Act, references to appropriate medical treatment, in relation to a person suffering from mental disorder, are references to medical treatment which is appropriate in his case, taking into account the nature and degree of the mental disorder and all other circumstances of his case.]

#### Textual Amendments

- F1** Words in s. 3(2)(a) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 1, 56, [Sch. 1 para. 2](#) (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(a\)](#) (with [art. 3](#), [Sch.](#))
- F2** [S. 3\(2\)\(b\)](#) and following word repealed (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 4(2)(a), 55, 56. {[Sch. 11 Pt. 2](#)} (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(b\)\(p\)](#) (with [art. 3](#), [Sch.](#))
- F3** [S. 3\(2\)\(d\)](#) and preceding word inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 4(2)(b), 56 (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(b\)](#) (with [art. 3](#), [Sch.](#))
- F4** Word in [s. 3\(3\)\(a\)](#) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 4(2)(c), 56 (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(b\)](#) (with [art. 3](#), [Sch.](#))

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**F5** S. 3(4) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. [4\(3\)](#), 56 (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(b\)](#) (with [art. 3](#), [Sch.](#))

#### **4 Admission for assessment in cases of emergency. E+W**

- (1) In any case of urgent necessity, an application for admission for assessment may be made in respect of a patient in accordance with the following provisions of this section, and any application so made is in this Act referred to as “an emergency application”.
- (2) An emergency application may be made either by an [<sup>F6</sup>approved mental health professional] or by the nearest relative of the patient; and every such application shall include a statement that it is of urgent necessity for the patient to be admitted and detained under section 2 above, and that compliance with the provisions of this Part of this Act relating to applications under that section would involve undesirable delay.
- (3) An emergency application shall be sufficient in the first instance if founded on one of the medical recommendations required by section 2 above, given, if practicable, by a practitioner who has previous acquaintance with the patient and otherwise complying with the requirements of section 12 below so far as applicable to a single recommendation, and verifying the statement referred to in subsection (2) above.
- (4) An emergency application shall cease to have effect on the expiration of a period of 72 hours from the time when the patient is admitted to the hospital unless—
  - (a) the second medical recommendation required by section 2 above is given and received by the managers within that period; and
  - (b) that recommendation and the recommendation referred to in subsection (3) above together comply with all the requirements of section 12 below (other than the requirement as to the time of signature of the second recommendation).
- (5) In relation to an emergency application, section 11 below shall have effect as if in subsection (5) of that section for the words “the period of 14 days ending with the date of the application” there were substituted the words “the previous 24 hours”.

#### **Textual Amendments**

**F6** Words in s. 4(2) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 21, 56, [Sch. 2 para. 2\(a\)](#) (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.](#))

#### **5 Application in respect of patient already in hospital. E+W**

- (1) An application for the admission of a patient to a hospital may be made under this Part of this Act notwithstanding that the patient is already an in-patient in that hospital or, in the case of an application for admission for treatment that the patient is for the time being liable to be detained in the hospital in pursuance of an application for admission for assessment; and where an application is so made the patient shall be treated for the purposes of this Part of this Act as if he had been admitted to the hospital at the time when that application was received by the managers.
- (2) If, in the case of a patient who is an in-patient in a hospital, it appears to the registered medical practitioner [<sup>F7</sup>or approved clinician] in charge of the treatment of the patient

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that an application ought to be made under this Part of this Act for the admission of the patient to hospital, he may furnish to the managers a report in writing to that effect; and in any such case the patient may be detained in the hospital for a period of 72 hours from the time when the report is so furnished.

[<sup>F8</sup>(3) The registered medical practitioner or approved clinician in charge of the treatment of a patient in a hospital may nominate one (but not more than one) person to act for him under subsection (2) above in his absence.

(3A) For the purposes of subsection (3) above—

- (a) the registered medical practitioner may nominate another registered medical practitioner, or an approved clinician, on the staff of the hospital; and
- (b) the approved clinician may nominate another approved clinician, or a registered medical practitioner, on the staff of the hospital.]

(4) If, in the case of a patient who is receiving treatment for mental disorder as an in-patient in a hospital, it appears to a nurse of the prescribed class—

- (a) that the patient is suffering from mental disorder to such a degree that it is necessary for his health or safety or for the protection of others for him to be immediately restrained from leaving the hospital; and
- (b) that it is not practicable to secure the immediate attendance of a practitioner [<sup>F9</sup>or clinician] for the purpose of furnishing a report under subsection (2) above,

the nurse may record that fact in writing; and in that event the patient may be detained in the hospital for a period of six hours from the time when that fact is so recorded or until the earlier arrival at the place where the patient is detained of a practitioner [<sup>F9</sup>or clinician] having power to furnish a report under that subsection.

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

(6) The reference in subsection (1) above to an in-patient does not include an in-patient who is liable to be detained in pursuance of an application under this Part of this Act [<sup>F10</sup>or a community patient] and the references in subsections (2) and (4) above do not include an in-patient who is liable to be detained in a hospital under this Part of this Act [<sup>F10</sup>or a community patient] .

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

#### Textual Amendments

- F7** Words in s. 5(2) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 9(2)(a)**, 56 (with Sch. 10); S.I. 2008/1900, **art. 2(b)** (with art. 3, Sch.)
- F8** S. 5(3)(3A) substituted (3.11.2008) for s. 5(3) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 9(2)(b)**, 56 (with Sch. 10); S.I. 2008/1900, **art. 2(b)** (with art. 3, Sch.)
- F9** Words in s. 5(4) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 9(2)(c)**, 56 (with Sch. 10); S.I. 2008/1900, **art. 2(b)** (with art. 3, Sch.)
- F10** Words in s. 5(6) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 32, 56, Sch. 3 para. 2** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)

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## **6 Effect of application for admission. E+W**

- (1) An application for the admission of a patient to a hospital under this Part of this Act, duly completed in accordance with the provisions of this Part of this Act, shall be sufficient authority for the applicant, or any person authorised by the applicant, to take the patient and convey him to the hospital at any time within the following period, that is to say—
  - (a) in the case of an application other than an emergency application, the period of 14 days beginning with the date on which the patient was last examined by a registered medical practitioner before giving a medical recommendation for the purposes of the application;
  - (b) in the case of an emergency application, the period of 24 hours beginning at the time when the patient was examined by the practitioner giving the medical recommendation which is referred to in section 4(3) above, or at the time when the application is made, whichever is the earlier.
- (2) Where a patient is admitted within the said period to the hospital specified in such an application as is mentioned in subsection (1) above, or, being within that hospital, is treated by virtue of section 5 above as if he had been so admitted, the application shall be sufficient authority for the managers to detain the patient in the hospital in accordance with the provisions of this Act.
- (3) Any application for the admission of a patient under this Part of this Act which appears to be duly made and to be founded on the necessary medical recommendations may be acted upon without further proof of the signature or qualification of the person by whom the application or any such medical recommendation is made or given or of any matter of fact or opinion stated in it.
- (4) Where a patient is admitted to a hospital in pursuance of an application for admission for treatment, any previous application under this part of this Act by virtue of which he was liable to be detained in a hospital or subject to guardianship shall cease to have effect.

### *Guardianship*

## **7 Application for guardianship. E+W**

- (1) A patient who has attained the age of 16 years may be received into guardianship, for the period allowed by the following provisions of this Act, in pursuance of an application (in this Act referred to as “a guardianship application”) made in accordance with this section.
- (2) A guardianship application may be made in respect of a patient on the grounds that—
  - (a) he is suffering from mental disorder, <sup>F11</sup> . . . of a nature or degree which warrants his reception into guardianship under this section; and
  - (b) it is necessary in the interests of the welfare of the patient or for the protection of other persons that the patient should be so received.
- (3) A guardianship application shall be founded on the written recommendations in the prescribed form of two registered medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in subsection (2) above are complied with; and each such recommendation shall include—

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- (a) such particulars as may be prescribed of the grounds for that opinion so far as it relates to the conditions set out in paragraph (a) of that subsection; and
  - (b) a statement of the reasons for that opinion so far as it relates to the conditions set out in paragraph (b) of that subsection.
- (4) A guardianship application shall state the age of the patient or, if his exact age is not known to the applicant, shall state (if it be the fact) that the patient is believed to have attained the age of 16 years.
- (5) The person named as guardian in a guardianship application may be either a local social services authority or any other person (including the applicant himself); but a guardianship application in which a person other than a local social services authority is named as guardian shall be of no effect unless it is accepted on behalf of that person by the local social services authority for the area in which he resides, and shall be accompanied by a statement in writing by that person that he is willing to act as guardian.

#### Textual Amendments

- F11** Words in s. 7(2)(a) repealed (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 1, 55, 56, Sch. 1 para. 3 {Sch. 11 Pt. 1} (with Sch. 10); [S.I. 2008/1900](#), [art. 2\(a\)\(p\)](#) (with art. 3, Sch.)

## 8 Effect of guardianship application, etc. **E+W**

- (1) Where a guardianship application, duly made under the provisions of this Part of this Act and forwarded to the local social services authority within the period allowed by subsection (2) below is accepted by that authority, the application shall, subject to regulations made by the Secretary of State, confer on the authority or person named in the application as guardian, to the exclusion of any other person—
- (a) the power to require the patient to reside at a place specified by the authority or person named as guardian;
  - (b) the power to require the patient to attend at places and times so specified for the purpose of medical treatment, occupation, education or training;
  - (c) the power to require access to the patient to be given, at any place where the patient is residing, to any registered medical practitioner, [<sup>F12</sup>approved mental health professional] or other person so specified.
- (2) The period within which a guardianship application is required for the purposes of this section to be forwarded to the local social services authority is the period of 14 days beginning with the date on which the patient was last examined by a registered medical practitioner before giving a medical recommendation for the purposes of the application.
- (3) A guardianship application which appears to be duly made and to be founded on the necessary medical recommendations may be acted upon without further proof of the signature or qualification of the person by whom the application or any such medical recommendation is made or given, or of any matter of fact or opinion stated in the application.
- (4) If within the period of 14 days beginning with the day on which a guardianship application has been accepted by the local social services authority the application, or any medical recommendation given for the purposes of the application, is found to be in any respect incorrect or defective, the application or recommendation may,



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within that period and with the consent of that authority, be amended by the person by whom it was signed; and upon such amendment being made the application or recommendation shall have effect and shall be deemed to have had effect as if it had been originally made as so amended.

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

#### Textual Amendments

**F12** Words in s. 8(1)(c) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 21, 56, [Sch. 2 para. 2\(b\)](#) (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.](#))

## 9 Regulations as to guardianship. **E+W**

- (1) Subject to the provisions of this Part of this Act, the Secretary of State may make regulations—
- (a) for regulating the exercise by the guardians of patients received into guardianship under this Part of this Act of their powers as such; and
  - (b) for imposing on such guardians, and upon local social services authorities in the case of patients under the guardianship of persons other than local social services authorities, such duties as he considers necessary or expedient in the interests of the patients.
- (2) Regulations under this section may in particular make provision for requiring the patients to be visited, on such occasions or at such intervals as may be prescribed by the regulations, on behalf of such local social services authorities as may be so prescribed, and shall provide for the appointment, in the case of every patient subject to the guardianship of a person other than a local social services authority, of a registered medical practitioner to act as the nominated medical attendant of the patient.

## 10 Transfer of guardianship in case of death, incapacity, etc., of guardian. **E+W**

- (1) If any person (other than a local social services authority) who is the guardian of a patient received into guardianship under this Part of this Act—
- (a) dies; or
  - (b) gives notice in writing to the local social services authority that he desires to relinquish the functions of guardian,
- the guardianship of the patient shall thereupon vest in the local social services authority, but without prejudice to any power to transfer the patient into the guardianship of another person in pursuance of regulations under section 19 below.
- (2) If any such person, not having given notice under subsection (1)(b) above, is incapacitated by illness or any other cause from performing the functions of guardian of the patient, those functions may, during his incapacity, be performed on his behalf by the local social services authority or by any other person approved for the purposes by that authority.

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- (3) If it appears to the county court, upon application made by an [<sup>F13</sup>approved mental health professional acting on behalf of the local social services authority] , that any person other than a local social services authority having the guardianship of a patient received into guardianship under this Part of this Act has performed his functions negligently or in a manner contrary to the interests of the welfare of the patient, the court may order that the guardianship of the patient be transferred to the local social services authority or to any other person approved for the purpose by that authority.
- (4) Where the guardianship of a patient is transferred to a local social services authority or other person by or under this section, subsection (2)(c) of section 19 below shall apply as if the patient had been transferred into the guardianship of that authority or person in pursuance of regulations under that section.
- [<sup>F14</sup>(5) In this section “the local social services authority”, in relation to a person (other than a local social services authority) who is the guardian of a patient, means the local social services authority for the area in which that person resides (or resided immediately before his death).]

#### Textual Amendments

- F13** Words in s. 10(3) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 21, 56, [Sch. 2 para. 3\(2\)](#) (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.](#))
- F14** [S. 10\(5\)](#) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 21, 56, [Sch. 2 para. 3\(3\)](#) (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.](#))

### *General provisions as to applications and recommendations*

## 11 General provisions as to applications. **E+W**

- (1) Subject to the provisions of this section, an application for admission for assessment, an application for admission for treatment and a guardianship application may be made either by the nearest relative of the patient or by an [<sup>F15</sup>approved mental health professional] ; and every such application shall specify the qualification of the applicant to make the application.
- [<sup>F16</sup>(1A) No application mentioned in subsection (1) above shall be made by an approved mental health professional if the circumstances are such that there would be a potential conflict of interest for the purposes of regulations under section 12A below.]
- (2) Every application for admission shall be addressed to the managers of the hospital to which admission is sought and every guardianship application shall be forwarded to the local social services authority named in the application as guardian, or, as the case may be, to the local social services authority for the area in which the person so named resides.
- (3) Before or within a reasonable time after an application for the admission of a patient for assessment is made by an [<sup>F17</sup>approved mental health professional, that professional] shall take such steps as are practicable to inform the person (if any) appearing to be the nearest relative of the patient that the application is to be or has been made and of the power of the nearest relative under section 23(2)(a) below.



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- [<sup>F18</sup>(4) An approved mental health professional may not make an application for admission for treatment or a guardianship application in respect of a patient in either of the following cases—
- (a) the nearest relative of the patient has notified that professional, or the local social services authority on whose behalf the professional is acting, that he objects to the application being made; or
  - (b) that professional has not consulted the person (if any) appearing to be the nearest relative of the patient, but the requirement to consult that person does not apply if it appears to the professional that in the circumstances such consultation is not reasonably practicable or would involve unreasonable delay.]
- (5) None of the applications mentioned in subsection (1) above shall be made by any person in respect of a patient unless that person has personally seen the patient within the period of 14 days ending with the date of the application.
- (6) <sup>F19</sup> .....
- (7) Each of the applications mentioned in subsection (1) above shall be sufficient if the recommendations on which it is founded are given either as separate recommendations, each signed by a registered medical practitioner, or as a joint recommendation signed by two such practitioners.

#### Textual Amendments

- F15** Words in s. 11(1) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\), ss. 21, 56, Sch. 2 para. 4\(2\)](#) (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.](#))
- F16** [S. 11\(1A\)](#) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\), ss. 22\(2\), 56](#) (with [Sch. 10](#)); [S.I. 2008/1900, art. 2\(e\)](#) (with [art. 3, Sch.](#))
- F17** Words in s. 11(3) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\), ss. 21, 56, Sch. 2 para. 4\(3\)](#) (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.](#))
- F18** [S. 11\(4\)](#) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\), ss. 21, 56, Sch. 2 para. 4\(4\)](#) (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.](#))
- F19** [S. 11\(6\)](#) repealed (3.11.2008) by [Mental Health Act 2007 \(c. 12\), ss. 55, 56, Sch.11 Pt. 1](#) (with [Sch. 10](#)); [S.I. 2008/1900, art. 2\(p\)](#) (with [art. 3, Sch.](#))

## 12 General provisions as to medical recommendations. **E+W**

- (1) The recommendations required for the purposes of an application for the admission of a patient under this Part of this Act [<sup>F20</sup>or a guardianship application](in this Act referred to as “medical recommendations”) shall be signed on or before the date of the application, and shall be given by practitioners who have personally examined the patient either together or separately, but where they have examined the patient separately not more than five days must have elapsed between the days on which the separate examinations took place.
- (2) Of the medical recommendations given for the purposes of any such application, one shall be given by a practitioner approved for the purposes of this section by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder; and unless that practitioner has previous acquaintance with the patient, the

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other such recommendation shall, if practicable, be given by a registered medical practitioner who has such previous acquaintance.

[<sup>F21</sup>(2A) A registered medical practitioner who is an approved clinician shall be treated as also approved for the purposes of this section under subsection (2) above as having special experience as mentioned there.]

[<sup>F22</sup>(3) No medical recommendation shall be given for the purposes of an application mentioned in subsection (1) above if the circumstances are such that there would be a potential conflict of interest for the purposes of regulations under section 12A below.]

#### Textual Amendments

- F20** Words in s. 12(1) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 22(3)**, 56 (with [Sch. 10](#)); [S.I. 2008/1900](#), **art. 2(e)** (with [art. 3](#), [Sch.](#))
- F21** S. 12(2A) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 16**, 56 (with [Sch. 10](#)); [S.I. 2008/1900](#), **art. 2(b)** (with [art. 3](#), [Sch.](#))
- F22** S. 12(3) substituted (3.11.2008) for s. 12(3)-(7) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 22(4)**, 56 (with [Sch. 10](#)); [S.I. 2008/1900](#), **art. 2(e)** (with [art. 3](#), [Sch.](#))

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

- C3** S. 12(2): certain functions not to be exercisable by a Primary Care Trust (E.) (1.4.2002) by virtue of 2000/695, reg. 4(1), [Sch. 4](#) (as amended by [S.I. 2002/555](#), **reg. 6(3)**)
- C4** S. 12(2): transfer of functions (E.) (1.4.2001) by [S.I. 2001/747](#), [regs. 2\(1\)](#), 3, 4, **Sch. 1**
- C5** S. 12(2): functions made exercisable (W.) (1.10.2009) by [Local Health Boards \(Directed Functions\) \(Wales\) Regulations 2009 \(S.I. 2009/1511\)](#), [reg. 4](#), **Sch.**

#### [<sup>F23</sup>12A Conflicts of interest **E+W**

- (1) The appropriate national authority may make regulations as to the circumstances in which there would be a potential conflict of interest such that—
  - (a) an approved mental health professional shall not make an application mentioned in section 11(1) above;
  - (b) a registered medical practitioner shall not give a recommendation for the purposes of an application mentioned in section 12(1) above.
- (2) Regulations under subsection (1) above may make—
  - (a) provision for the prohibitions in paragraphs (a) and (b) of that subsection to be subject to specified exceptions;
  - (b) different provision for different cases; and
  - (c) transitional, consequential, incidental or supplemental provision.
- (3) In subsection (1) above, “the appropriate national authority” means—
  - (a) in relation to applications in which admission is sought to a hospital in England or to guardianship applications in respect of which the area of the relevant local social services authority is in England, the Secretary of State;
  - (b) in relation to applications in which admission is sought to a hospital in Wales or to guardianship applications in respect of which the area of the relevant local social services authority is in Wales, the Welsh Ministers.
- (4) References in this section to the relevant local social services authority, in relation to a guardianship application, are references to the local social services authority named in

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

#### Textual Amendments

**F23** S. 12A inserted (1.4.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. **22(5)**, 56 (with [Sch. 10](#)); S.I. 2008/745, **art. 3(c)**

### 13 **[<sup>F24</sup>Duty of approved mental health professionals to make applications for admission or guardianship].** **E+W**

<sup>F25</sup>(1) If a local social services authority have reason to think that an application for admission to hospital or a guardianship application may need to be made in respect of a patient within their area, they shall make arrangements for an approved mental health professional to consider the patient's case on their behalf.

(1A) If that professional is—

- (a) satisfied that such an application ought to be made in respect of the patient; and
- (b) of the opinion, having regard to any wishes expressed by relatives of the patient or any other relevant circumstances, that it is necessary or proper for the application to be made by him,

he shall make the application.

(1B) Subsection (1C) below applies where—

- (a) a local social services authority makes arrangements under subsection (1) above in respect of a patient;
- (b) an application for admission for assessment is made under subsection (1A) above in respect of the patient;
- (c) while the patient is liable to be detained in pursuance of that application, the authority have reason to think that an application for admission for treatment may need to be made in respect of the patient; and
- (d) the patient is not within the area of the authority.

(1C) Where this subsection applies, subsection (1) above shall be construed as requiring the authority to make arrangements under that subsection in place of the authority mentioned there.]

(2) Before making an application for the admission of a patient to hospital an [<sup>F26</sup>approved mental health professional] shall interview the patient in a suitable manner and satisfy himself that detention in a hospital is in all the circumstances of the case the most appropriate way of providing the care and medical treatment of which the patient stands in need.

<sup>F27</sup>(3) An application under subsection (1A) above may be made outside the area of the local social services authority on whose behalf the approved mental health professional is considering the patient's case.]

(4) It shall be the duty of a local social services authority, if so required by the nearest relative of a patient residing in their area, to [<sup>F28</sup>make arrangements under subsection (1) above for an approved mental health professional to consider the patient's case] with a view to making an application for his admission to hospital; and

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if in any such case [<sup>F29</sup>that professional] decides not to make an application he shall inform the nearest relative of his reasons in writing.

- (5) Nothing in this section shall be construed as authorising or requiring an application to be made by an [<sup>F30</sup>approved mental health professional] in contravention of the provisions of section 11(4) above [<sup>F31</sup>or of regulations under section 12A], or as restricting the power of [<sup>F32</sup>a local social services authority to make arrangements with an approved mental health professional to consider a patient's case or of] an [<sup>F30</sup>approved mental health professional] to make any application under this Act.

#### Textual Amendments

- F24** S. 13 heading: words substituted (3.11.2008) by virtue of Mental Health Act 2007 (c. 12), ss. 21, 56, **Sch. 2 para. 5(1)** (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.)
- F25** S. 13(1)-(1C) substituted (3.11.2008) for s. 13(1) by Mental Health Act 2007 (c. 12), ss. 21, 56, **Sch. 2 para. 5(2)** (with Sch. 10); S.I. 2008/1900, **art. 2(d)** (with art. 3, Sch.); S.I. 2008/2561, **art. 2(b)** (art. 3, Sch.)
- F26** Words in s. 13(2) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 21, 56, **Sch. 2 para. 5(3)** (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.)
- F27** S. 13(3) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 21, 56, **Sch. 2 para. 5(4)** (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.)
- F28** Words in s. 13(4) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 21, 56, **Sch. 2 para. 5(5)(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.)
- F29** Words in s. 13(4) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 21, 56, **Sch. 2 para. 5(5)(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.)
- F30** Words in s. 13(5) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 21, 56, **Sch. 2 para. 5(6)(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.)
- F31** Words in s. 13(5) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 22(6), 56 (with Sch. 10); S.I. 2008/1900, **art. 2(e)** (with art. 3, Sch.)
- F32** Words in s. 13(5) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 21, 56, **Sch. 2 para. 5(6)(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.)

14

E+W

Where a patient is admitted to a hospital in pursuance of an application (other than an emergency application) made under this Part of this Act by his nearest relative, the managers of the hospital shall as soon as practicable give notice of that fact to the local social services authority for the area in which the patient resided immediately before his admission; and that authority shall as soon as practicable arrange for [<sup>F33</sup>an approved mental health professional]<sup>F34</sup> . . . to interview the patient and provide the managers with a report on his social circumstances.

#### Textual Amendments

- F33** Words in s. 14 substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 21, 56, **Sch. 2 para. 6** (with Sch. 10); S.I. 2008/1900, **art. 2(d)** (with art. 3, Sch.); S.I. 2008/2561, **art. 2(b)** (art. 3, Sch.)

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**F34** Words in s. 14 repealed (1.4.2005 for E. and 1.4.2006 for W.) by [Children Act 2004 \(c. 31\)](#), ss. 64, 67, [Sch. 5 Pt. 4](#); S.I. 2005/394, [art. 2\(2\)\(g\)](#); S.I. 2006/885, [art. 2\(2\)\(h\)](#)

## 15 Rectification of applications and recommendations. **E+W**

- (1) If within the period of 14 days beginning with the day on which a patient has been admitted to a hospital in pursuance of an application for admission for assessment or for treatment the application, or any medical recommendation given for the purposes of the application, is found to be in any respect incorrect or defective, the application or recommendation may, within that period and with the consent of the managers of the hospital, be amended by the person by whom it was signed; and upon such amendment being made the application or recommendation shall have effect and shall be deemed to have had effect as if it had been originally made as so amended.
- (2) Without prejudice to subsection (1) above, if within the period mentioned in that subsection it appears to the managers of the hospital that one of the two medical recommendations on which an application for the admission of a patient is founded is insufficient to warrant the detention of the patient in pursuance of the application, they may, within that period, give notice in writing to that effect to the applicant; and where any such notice is given in respect of a medical recommendation, that recommendation shall be disregarded, but the application shall be, and shall be deemed always to have been, sufficient if—
  - (a) a fresh medical recommendation complying with the relevant provisions of this Part of this Act (other than the provisions relating to the time of signature and the interval between examinations) is furnished to the managers within that period; and
  - (b) that recommendation, and the other recommendation on which the application is founded, together comply with those provisions.
- (3) Where the medical recommendations upon which an application for admission is founded are, taken together, insufficient to warrant the detention of the patient in pursuance of the application, a notice under subsection (2) above may be given in respect of either of those recommendations<sup>F35</sup> . . .
- (4) Nothing in this section shall be construed as authorising the giving of notice in respect of an application made as an emergency application, or the detention of a patient admitted in pursuance of such an application, after the period of 72 hours referred to in section 4(4) above, unless the conditions set out in paragraphs (a) and (b) of that section are complied with or would be complied with apart from any error or defect to which this section applies.

### Textual Amendments

**F35** Words in s. 15(3) repealed (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 55, 56, [Sch. 11 Pt. 1](#) (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(p\)](#) (with [art. 3](#), [Sch.](#))

### *Position of patients subject to detention or guardianship*

## 16 Reclassification of patients. **E+W**

F36 .....

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### Textual Amendments

**F36** S. 16 repealed (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 55, 56, [Sch. 11 Pt. 1](#) (with [Sch. 10](#)); [S.I. 2008/1900, art. 2\(p\)](#) (with [art. 3, Sch.](#))

## 17 Leave of absence from hospital. **E+W**

- (1) The [<sup>F37</sup>responsible clinician] may grant to any patient who is for the time being liable to be detained in a hospital under this Part of this Act leave to be absent from the hospital subject to such conditions (if any) as [<sup>F38</sup>that clinician] considers necessary in the interests of the patient or for the protection of other persons.
  - (2) Leave of absence may be granted to a patient under this section either indefinitely or on specified occasions or for any specified period; and where leave is so granted for a specified period, that period may be extended by further leave granted in the absence of the patient.
- [<sup>F39</sup>(2A) But longer-term leave may not be granted to a patient unless the responsible clinician first considers whether the patient should be dealt with under section 17A instead.
- (2B) For these purposes, longer-term leave is granted to a patient if—
- (a) leave of absence is granted to him under this section either indefinitely or for a specified period of more than seven consecutive days; or
  - (b) a specified period is extended under this section such that the total period for which leave of absence will have been granted to him under this section exceeds seven consecutive days.]
- (3) Where it appears to the [<sup>F40</sup>responsible clinician] that it is necessary so to do in the interests of the patient or for the protection of other persons, he may, upon granting leave of absence under this section, direct that the patient remain in custody during his absence; and where leave of absence is so granted the patient may be kept in the custody of any officer on the staff of the hospital, or of any other person authorised in writing by the managers of the hospital or, if the patient is required in accordance with conditions imposed on the grant of leave of absence to reside in another hospital, of any officer on the staff of that other hospital.
  - (4) In any case where a patient is absent from a hospital in pursuance of leave of absence granted under this section, and it appears to the [<sup>F41</sup>responsible clinician] that it is necessary so to do in the interests of the patient's health or safety or for the protection of other persons, [<sup>F42</sup>that clinician] may, subject to subsection (5) below, by notice in writing given to the patient or to the person for the time being in charge of the patient, revoke the leave of absence and recall the patient to the hospital.
  - (5) A patient to whom leave of absence is granted under this section shall not be recalled under subsection (4) above after he has ceased to be liable to be detained under this Part of this Act;<sup>F43</sup> . . .
- [<sup>F44</sup>(6) Subsection (7) below applies to a person who is granted leave by or by virtue of a provision—
- (a) in force in Scotland, Northern Ireland, any of the Channel Islands or the Isle of Man; and
  - (b) corresponding to subsection (1) above.



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- (7) For the purpose of giving effect to a direction or condition imposed by virtue of a provision corresponding to subsection (3) above, the person may be conveyed to a place in, or kept in custody or detained at a place of safety in, England and Wales by a person authorised in that behalf by the direction or condition.]

#### Textual Amendments

- F37** Words in s. 17(1) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 9\(3\)\(a\)\(i\)](#), 56 (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(b\)](#) (with [art. 3](#), [Sch.](#))
- F38** Words in s. 17(1) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 9\(3\)\(a\)\(ii\)](#), 56 (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(b\)](#) (with [art. 3](#), [Sch.](#))
- F39** S. 17(2A)(2B) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 33\(2\)](#), 56 (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(j\)](#) (with [art. 3](#), [Sch.](#))
- F40** Words in s. 17(3) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 9\(3\)\(b\)](#), 56 (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(b\)](#) (with [art. 3](#), [Sch.](#))
- F41** Words in s. 17(4) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 9\(3\)\(c\)\(i\)](#), 56 (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(b\)](#) (with [art. 3](#), [Sch.](#))
- F42** Words in s. 17(4) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 9\(3\)\(c\)\(ii\)](#), 56 (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(b\)](#) (with [art. 3](#), [Sch.](#))
- F43** Words in s. 17(5) omitted (1.4.1996 with application as mentioned in s. 3(3) of the omitting Act) by virtue of 1995 c. 52, [ss. 3\(1\)\(3\)](#), 7(2)
- F44** S. 17(6)(7) inserted (1.10.2007) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 39\(1\)](#), 56 (with [Sch. 10](#)); S.I. 2007/2798, [art. 2](#)

#### [<sup>F45</sup>17A Community treatment orders **E+W**

- (1) The responsible clinician may by order in writing discharge a detained patient from hospital subject to his being liable to recall in accordance with section 17E below.
- (2) A detained patient is a patient who is liable to be detained in a hospital in pursuance of an application for admission for treatment.
- (3) An order under subsection (1) above is referred to in this Act as a “community treatment order”.
- (4) The responsible clinician may not make a community treatment order unless—
  - (a) in his opinion, the relevant criteria are met; and
  - (b) an approved mental health professional states in writing—
    - (i) that he agrees with that opinion; and
    - (ii) that it is appropriate to make the order.
- (5) The relevant criteria are—
  - (a) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment;
  - (b) it is necessary for his health or safety or for the protection of other persons that he should receive such treatment;
  - (c) subject to his being liable to be recalled as mentioned in paragraph (d) below, such treatment can be provided without his continuing to be detained in a hospital;
  - (d) it is necessary that the responsible clinician should be able to exercise the power under section 17E(1) below to recall the patient to hospital; and

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- (e) appropriate medical treatment is available for him.
- (6) In determining whether the criterion in subsection (5)(d) above is met, the responsible clinician shall, in particular, consider, having regard to the patient's history of mental disorder and any other relevant factors, what risk there would be of a deterioration of the patient's condition if he were not detained in a hospital (as a result, for example, of his refusing or neglecting to receive the medical treatment he requires for his mental disorder).
- (7) In this Act—
- “community patient” means a patient in respect of whom a community treatment order is in force;
- “the community treatment order”, in relation to such a patient, means the community treatment order in force in respect of him; and
- “the responsible hospital”, in relation to such a patient, means the hospital in which he was liable to be detained immediately before the community treatment order was made, subject to section 19A below.

#### Textual Amendments

**F45** Ss. 17A-17G inserted (1.4.2008 s. 17F for certain purposes, otherwise 3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 32\(2\)](#), 56 (with [Sch. 10](#)); S.I. 2008/745, [art. 2\(c\)\(i\)](#); S.I. 2008/1900, [art. 2\(i\)](#) (with [art. 3](#), [Sch.](#) )

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

- C6** S. 17A modified (3.11.2008) by [The Mental Health Act 2007 \(Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions\) Order 2008 \(S.I. 2008/1210\)](#), [art. 6\(b\)](#)
- C7** S. 17A(7) modified (3.11.2008) by [The Mental Health Act 2007 \(Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions\) Order 2008 \(S.I. 2008/1210\)](#), [art. 11\(a\)](#)

## 17B Conditions **E+W**

- (1) A community treatment order shall specify conditions to which the patient is to be subject while the order remains in force.
- (2) But, subject to subsection (3) below, the order may specify conditions only if the responsible clinician, with the agreement of the approved mental health professional mentioned in section 17A(4)(b) above, thinks them necessary or appropriate for one or more of the following purposes—
- ensuring that the patient receives medical treatment;
  - preventing risk of harm to the patient's health or safety;
  - protecting other persons.
- (3) The order shall specify—
- a condition that the patient make himself available for examination under section 20A below; and
  - a condition that, if it is proposed to give a certificate under Part 4A of this Act in his case, he make himself available for examination so as to enable the certificate to be given.

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- (4) The responsible clinician may from time to time by order in writing vary the conditions specified in a community treatment order.
- (5) He may also suspend any conditions specified in a community treatment order.
- (6) If a community patient fails to comply with a condition specified in the community treatment order by virtue of subsection (2) above, that fact may be taken into account for the purposes of exercising the power of recall under section 17E(1) below.
- (7) But nothing in this section restricts the exercise of that power to cases where there is such a failure.

#### Textual Amendments

**F45** Ss. 17A-17G inserted (1.4.2008 s. 17F for certain purposes, otherwise 3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 32\(2\)](#), 56 (with [Sch. 10](#)); S.I. 2008/745, [art. 2\(c\)\(i\)](#); S.I. 2008/1900, [art. 2\(i\)](#) (with [art. 3](#), [Sch.](#) )

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

**C8** S. 17B(2) modified (3.11.2008) by [The Mental Health Act 2007 \(Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions\) Order 2008 \(S.I. 2008/1210\)](#), [art. 6\(c\)](#)

### 17C Duration of community treatment order **E+W**

A community treatment order shall remain in force until—

- (a) the period mentioned in section 20A(1) below (as extended under any provision of this Act) expires, but this is subject to sections 21 and 22 below;
- (b) the patient is discharged in pursuance of an order under section 23 below or a direction under section 72 below;
- (c) the application for admission for treatment in respect of the patient otherwise ceases to have effect; or
- (d) the order is revoked under section 17F below,

whichever occurs first.

#### Textual Amendments

**F45** Ss. 17A-17G inserted (1.4.2008 s. 17F for certain purposes, otherwise 3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 32\(2\)](#), 56 (with [Sch. 10](#)); S.I. 2008/745, [art. 2\(c\)\(i\)](#); S.I. 2008/1900, [art. 2\(i\)](#) (with [art. 3](#), [Sch.](#) )

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

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

### 17D Effect of community treatment order **E+W**

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

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- (2) But while he remains a community patient—
- (a) the authority of the managers to detain him under section 6(2) above in pursuance of that application shall be suspended; and
  - (b) reference (however expressed) in this or any other Act, or in any subordinate legislation (within the meaning of the Interpretation Act 1978), to patients liable to be detained, or detained, under this Act shall not include him.
- (3) And section 20 below shall not apply to him while he remains a community patient.
- (4) Accordingly, authority for his detention shall not expire during any period in which that authority is suspended by virtue of subsection (2)(a) above.

#### Textual Amendments

**F45** Ss. 17A-17G inserted (1.4.2008 s. 17F for certain purposes, otherwise 3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 32(2)**, 56 (with [Sch. 10](#)); S.I. 2008/745, **art. 2(c)(i)**; S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch. )

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

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

### 17E Power to recall to hospital **E+W**

- (1) The responsible clinician may recall a community patient to hospital if in his opinion—
- (a) the patient requires medical treatment in hospital for his mental disorder; and
  - (b) there would be a risk of harm to the health or safety of the patient or to other persons if the patient were not recalled to hospital for that purpose.
- (2) The responsible clinician may also recall a community patient to hospital if the patient fails to comply with a condition specified under section 17B(3) above.
- (3) The hospital to which a patient is recalled need not be the responsible hospital.
- (4) Nothing in this section prevents a patient from being recalled to a hospital even though he is already in the hospital at the time when the power of recall is exercised; references to recalling him shall be construed accordingly.
- (5) The power of recall under subsections (1) and (2) above shall be exercisable by notice in writing to the patient.
- (6) A notice under this section recalling a patient to hospital shall be sufficient authority for the managers of that hospital to detain the patient there in accordance with the provisions of this Act.

#### Textual Amendments

**F45** Ss. 17A-17G inserted (1.4.2008 s. 17F for certain purposes, otherwise 3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 32(2)**, 56 (with [Sch. 10](#)); S.I. 2008/745, **art. 2(c)(i)**; S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch. )

*Status: Point in time view as at 03/11/2008.*

*Changes to legislation: Mental Health Act 1983, Part II is up to date with all changes known to be in force on or before 04 December 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 17F Powers in respect of recalled patients **E+W**

- (1) This section applies to a community patient who is detained in a hospital by virtue of a notice recalling him there under section 17E above.
- (2) The patient may be transferred to another hospital in such circumstances and subject to such conditions as may be prescribed in regulations made by the Secretary of State (if the hospital in which the patient is detained is in England) or the Welsh Ministers (if that hospital is in Wales).
- (3) If he is so transferred to another hospital, he shall be treated for the purposes of this section (and section 17E above) as if the notice under that section were a notice recalling him to that other hospital and as if he had been detained there from the time when his detention in hospital by virtue of the notice first began.
- (4) The responsible clinician may by order in writing revoke the community treatment order if—
  - (a) in his opinion, the conditions mentioned in section 3(2) above are satisfied in respect of the patient; and
  - (b) an approved mental health professional states in writing—
    - (i) that he agrees with that opinion; and
    - (ii) that it is appropriate to revoke the order.
- (5) The responsible clinician may at any time release the patient under this section, but not after the community treatment order has been revoked.
- (6) If the patient has not been released, nor the community treatment order revoked, by the end of the period of 72 hours, he shall then be released.
- (7) But a patient who is released under this section remains subject to the community treatment order.
- (8) In this section—
  - (a) “the period of 72 hours” means the period of 72 hours beginning with the time when the patient's detention in hospital by virtue of the notice under section 17E above begins; and
  - (b) references to being released shall be construed as references to being released from that detention (and accordingly from being recalled to hospital).

### Textual Amendments

**F45** Ss. 17A-17G inserted (1.4.2008 s. 17F for certain purposes, otherwise 3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 32(2)**, 56 (with [Sch. 10](#)); [S.I. 2008/745](#), **art. 2(c)(i)**; [S.I. 2008/1900](#), **art. 2(i)** (with [art. 3](#), [Sch.](#) )

## 17G Effect of revoking community treatment order **E+W**

- (1) This section applies if a community treatment order is revoked under section 17F above in respect of a patient.
- (2) Section 6(2) above shall have effect as if the patient had never been discharged from hospital by virtue of the community treatment order.

*Status: Point in time view as at 03/11/2008.*

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- (3) The provisions of this or any other Act relating to patients liable to be detained (or detained) in pursuance of an application for admission for treatment shall apply to the patient as they did before the community treatment order was made, unless otherwise provided.
- (4) If, when the order is revoked, the patient is being detained in a hospital other than the responsible hospital, the provisions of this Part of this Act shall have effect as if—
  - (a) the application for admission for treatment in respect of him were an application for admission to that other hospital; and
  - (b) he had been admitted to that other hospital at the time when he was originally admitted in pursuance of the application.
- (5) But, in any case, section 20 below shall have effect as if the patient had been admitted to hospital in pursuance of the application for admission for treatment on the day on which the order is revoked.]

#### Textual Amendments

**F45** Ss. 17A-17G inserted (1.4.2008 s. 17F for certain purposes, otherwise 3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 32\(2\), 56](#) (with [Sch. 10](#)); S.I. 2008/745, [art. 2\(c\)\(i\)](#); S.I. 2008/1900, [art. 2\(i\)](#) (with art. 3, Sch. )

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

**C11** S. 17G modified (3.11.2008) by [The Mental Health Act 2007 \(Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions\) Order 2008 \(S.I. 2008/1210\)](#), [art. 11\(d\)](#)

## 18 Return and readmission of patients absent without leave. **U.K.**

- (1) Where a patient who is for the time being liable to be detained under this Part of this Act in a hospital—
  - (a) absents himself from the hospital without leave granted under section 17 above; or
  - (b) fails to return to the hospital on any occasion on which, or at the expiration of any period for which, leave of absence was granted to him under that section, or upon being recalled under that section; or
  - (c) absents himself without permission from any place where he is required to reside in accordance with conditions imposed on the grant of leave of absence under that section,

he may, subject to the provisions of this section, be taken into custody and returned to the hospital or place by any [<sup>F46</sup>approved mental health professional], by any officer on the staff of the hospital, by any constable, or by any person authorised in writing by the managers of the hospital.

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



*Status: Point in time view as at 03/11/2008.*

*Changes to legislation: Mental Health Act 1983, Part II is up to date with all changes known to be in force on or before 04 December 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[<sup>F47</sup>(2A) Where a community patient is at any time absent from a hospital to which he is recalled under section 17E above, he may, subject to the provisions of this section, be taken into custody and returned to the hospital by any approved mental health professional, by any officer on the staff of the hospital, by any constable, or by any person authorised in writing by the responsible clinician or the managers of the hospital.]

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

[<sup>F48</sup>(4) A patient shall not be taken into custody under this section after the later of—  
(a) the end of the period of six months beginning with the first day of his absence without leave; and  
(b) the end of the period for which (apart from section 21 below) he is liable to be detained or subject to guardianship [<sup>F49</sup>or, in the case of a community patient, the community treatment order is in force] ;  
<sup>F50</sup> . . . ]

[<sup>F51</sup>(4A) In determining for the purposes of subsection (4)(b) above or any other provision of this Act whether a person who is or has been absent without leave is at any time liable to be detained or subject to guardianship, a report furnished under section 20 or 21B below before the first day of his absence without leave shall not be taken to have renewed the authority for his detention or guardianship unless the period of renewal began before that day.

(4B) Similarly, in determining for those purposes whether a community treatment order is at any time in force in respect of a person who is or has been absent without leave, a report furnished under section 20A or 21B below before the first day of his absence without leave shall not be taken to have extended the community treatment period unless the extension began before that day.]

(5) A patient shall not be taken into custody under this section if the period for which he is liable to be detained is that specified in section 2(4), 4(4) or 5(2) or (4) above and that period has expired.

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

[<sup>F52</sup>(7) In relation to a patient who has yet to comply with a requirement imposed by virtue of this Act to be in a hospital or place, references in this Act to his liability to be returned to the hospital or place shall include his liability to be taken to that hospital or place; and related expressions shall be construed accordingly.]

#### Extent Information

E1 For extent of s. 18 see 146, 147

*Status: Point in time view as at 03/11/2008.*

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### Textual Amendments

- F46** Words in s. 18(1) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 21, 56, **Sch. 2 para. 7(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.)
- F47** S. 18(2A) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 3(2)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F48** S. 18(4) substituted (1.4.1996) by 1995 c. 52, **ss. 2(1), 7(2)**
- F49** Words in s. 18(4)(b) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 3(3)(a)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F50** Words in s. 18(4) repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 55, 56, Sch. 3 para. 3(3)(b), **Sch. 11 Pt. 5** (with Sch. 10); S.I. 2008/1210, **art. 2(d)** (with art. 4)
- F51** S. 18(4A)(4B) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 3(4)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F52** S. 18(7) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 3(5)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)

## 19 Regulations as to transfer of patients. **E+W**

- (1) In such circumstances and subject to such conditions as may be prescribed by regulations made by the Secretary of State—
- (a) a patient who is for the time being liable to be detained in a hospital by virtue of an application under this Part of this Act may be transferred to another hospital or into the guardianship of a local social services authority or of any person approved by such an authority;
  - (b) a patient who is for the time being subject to the guardianship of a local social services authority or other person by virtue of an application under this Part of this Act may be transferred into the guardianship of another local social services authority or person, or be transferred to a hospital.
- (2) Where a patient is transferred in pursuance of regulations under this section, the provisions of this Part of this Act (including this subsection) shall apply to him as follows, that is to say—
- (a) in the case of a patient who is liable to be detained in a hospital by virtue of an application for admission for assessment or for treatment and is transferred to another hospital, as if the application were an application for admission to that other hospital and as if the patient had been admitted to that other hospital at the time when he was originally admitted in pursuance of the application;
  - (b) in the case of a patient who is liable to be detained in a hospital by virtue of such an application and is transferred into guardianship, as if the application were a guardianship application duly accepted at the said time;
  - (c) in the case of a patient who is subject to guardianship by virtue of a guardianship application and is transferred into the guardianship of another authority or person, as if the application were for his reception into the guardianship of that authority or person and had been accepted at the time when it was originally accepted;
  - (d) in the case of a patient who is subject to guardianship by virtue of a guardianship application and is transferred to a hospital, as if the guardianship application were an application for admission to that hospital for treatment and as if the patient had been admitted to the hospital at the time when the application was originally accepted.

*Status: Point in time view as at 03/11/2008.*

*Changes to legislation: Mental Health Act 1983, Part II is up to date with all changes known to be in force on or before 04 December 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) Without prejudice to subsections (1) and (2) above, any patient, who is for the time being liable to be detained under this Part of this Act in a hospital vested in the Secretary of State for the purposes of his functions under the <sup>F53</sup>National Health Service Act 2006, in a hospital vested in the Welsh Ministers for the purposes of their functions under the National Health Service (Wales) Act 2006, in any accommodation used under either of those Acts] by the managers of such a hospital <sup>F54</sup>or in a hospital vested in a National Health Service trust <sup>F55</sup>, NHS foundation trust<sup>F56</sup>, Local Health Board<sup>F57</sup>or Primary Care Trust], may at any time be removed to any other such hospital or accommodation <sup>F58</sup>which is managed by the managers of, or is vested in the National Health Service trust <sup>F55</sup>, NHS foundation trust<sup>F59</sup>, Local Health Board<sup>F57</sup>or Primary Care Trust] for, the first-mentioned hospital]; and paragraph (a) of subsection (2) above shall apply in relation to a patient so removed as it applies in relation to a patient transferred in pursuance of regulations made under this section.
- (4) Regulations made under this section may make provision for regulating the conveyance to their destination of patients authorised to be transferred or removed in pursuance of the regulations or under subsection (3) above.

#### Textual Amendments

- F53** Words in s. 19(3) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 64** (with Sch. 3 Pt. 1)
- F54** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 24(2)**
- F55** Words in s.19(3) inserted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 34, 199, **Sch. 4 para. 52**; S.I. 2004/759, **art. 2**
- F56** Words in s. 19(3) inserted (1.10.2007) by Mental Health Act 2007 (c. 12), **ss. 46(2)**, 56 (with Sch. 10); S.I. 2007/2798, **art. 2(g)**
- F57** Words in s. 19(3) inserted (8.2.2000) by S.I. 2000/90, art. 3(1), **Sch. 1 para. 16(3)** (with art. 2(5))
- F58** Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 24(2)**
- F59** Words in s. 19(3) inserted (1.10.2007) by Mental Health Act 2007 (c. 12), **ss. 46(2)**, 56 (with Sch. 10); S.I. 2007/2798, **art. 2(g)**

#### <sup>F60</sup>19A Regulations as to assignment of responsibility for community patients **E+W**

- (1) Responsibility for a community patient may be assigned to another hospital in such circumstances and subject to such conditions as may be prescribed by regulations made by the Secretary of State (if the responsible hospital is in England) or the Welsh Ministers (if that hospital is in Wales).
- (2) If responsibility for a community patient is assigned to another hospital—
- the application for admission for treatment in respect of the patient shall have effect (subject to section 17D above) as if it had always specified that other hospital;
  - the patient shall be treated as if he had been admitted to that other hospital at the time when he was originally admitted in pursuance of the application (and as if he had subsequently been discharged under section 17A above from there); and
  - that other hospital shall become “the responsible hospital” in relation to the patient for the purposes of this Act.]

*Status: Point in time view as at 03/11/2008.*

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#### Textual Amendments

**F60** S. 19A inserted (1.4.2008 for certain purposes, otherwise 3.11.2008) by [Mental Health Act 2007](#) (c. 12), ss. 32, 56, [Sch. 3 para. 4](#) (with [Sch. 10](#)); S.I. 2008/745, [art. 2\(c\)\(ii\)](#); S.I. 2008/1900, [art. 2\(i\)](#) (with [art. 3, Sch.](#))

*[<sup>F61</sup>Duration of authority and discharge]*

#### Textual Amendments

**F61** S. 20: cross-heading substituted (3.11.2008) by virtue of [Mental Health Act 2007](#) (c. 12), ss. [32\(3\)](#), 56 (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(i\)](#) (with [art. 3, Sch.](#))

## 20 Duration of authority. **E+W**

- (1) Subject to the following provisions of this Part of this Act, a patient admitted to hospital in pursuance of an application for admission for treatment, and a patient placed under guardianship in pursuance of a guardianship application, may be detained in a hospital or kept under guardianship for a period not exceeding six months beginning with the day on which he was so admitted, or the day on which the guardianship application was accepted, as the case may be, but shall not be so detained or kept for any longer period unless the authority for his detention or guardianship is renewed under this section.
- (2) Authority for the detention or guardianship of a patient may, unless the patient has previously been discharged [<sup>F62</sup>under section 23 below], be renewed—
  - (a) from the expiration of the period referred to in subsection (1) above, for a further period of six months;
  - (b) from the expiration of any period of renewal under paragraph (a) above, for a further period of one year,
 and so on for periods of one year at a time.
- (3) Within the period of two months ending on the day on which a patient who is liable to be detained in pursuance of an application for admission for treatment would cease under this section to be so liable in default of the renewal of the authority for his detention, it shall be the duty of the [<sup>F63</sup>responsible clinician]—
  - (a) to examine the patient; and
  - (b) if it appears to him that the conditions set out in subsection (4) below are satisfied, to furnish to the managers of the hospital where the patient is detained a report to that effect in the prescribed form;
 and where such a report is furnished in respect of a patient the managers shall, unless they discharge the patient [<sup>F64</sup>under section 23 below], cause him to be informed.
- (4) The conditions referred to in subsection (3) above are that—
  - (a) the patient is suffering from [<sup>F65</sup>mental disorder] of a nature or degree which makes it appropriate for him to receive medical treatment in a hospital; and
  - (b) <sup>F66</sup> .....

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- (c) it is necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment and that it cannot be provided unless he continues to be detained;<sup>F67</sup> and
  - (d) appropriate medical treatment is available for him.]
- F68 . . .
- (5) Before furnishing a report under subsection (3) above the [<sup>F63</sup>responsible clinician] shall consult one or more other persons who have been professionally concerned with the patient's medical treatment.
- [<sup>F69</sup>(5A) But the responsible clinician may not furnish a report under subsection (3) above unless a person—
- (a) who has been professionally concerned with the patient's medical treatment; but
  - (b) who belongs to a profession other than that to which the responsible clinician belongs,
- states in writing that he agrees that the conditions set out in subsection (4) above are satisfied.]
- (6) Within the period of two months ending with the day on which a patient who is subject to guardianship under this Part of this Act would cease under this section to be so liable in default of the renewal of the authority for his guardianship, it shall be the duty of the [<sup>F70</sup>appropriate practitioner]—
    - (a) to examine the patient; and
    - (b) if it appears to him that the conditions set out in subsection (7) below are satisfied, to furnish to the guardian and, where the guardian is a person other than a local social services authority, to the responsible local social services authority a report to that effect in the prescribed form;and where such a report is furnished in respect of a patient, the local social services authority shall, unless they discharge the patient [<sup>F64</sup>under section 23 below] , cause him to be informed.
  - (7) The conditions referred to in subsection (6) above are that—
    - (a) the patient is suffering from [<sup>F71</sup>mental disorder] of a nature or degree which warrants his reception into guardianship; and
    - (b) it is necessary in the interests of the welfare of the patient or for the protection of other persons that the patient should remain under guardianship.
  - (8) Where a report is duly furnished under subsection (3) or (6) above, the authority for the detention or guardianship of the patient shall be thereby renewed for the period prescribed in that case by subsection (2) above.
  - (9) <sup>F72</sup> . . . . .
  - (10) <sup>F73</sup> . . . . .

**Textual Amendments**

- F62** Words in s. 20(2) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 32, 56, [Sch. 3 para. 5\(a\)](#) (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(i\)](#) (with [art. 3](#), [Sch.](#))
- F63** Words in s. 20(3)(5) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. [9\(4\)\(a\)](#), 56 (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(b\)](#) (with [art. 3](#), [Sch.](#))

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- F64** Words in s. 20(3)(6) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 5(b)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F65** Words in s. 20(4)(a) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 1, 56, **Sch. 1 para. 4(a)** (with Sch. 10); S.I. 2008/1900, **art. 2(a)** (with art. 3, Sch.)
- F66** S. 20(4)(b) and word "and" at the end of that paragraph repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 4(4)(a), 55, 56, **Sch. 11 Pt. 2** (with Sch. 10); S.I. 2008/1900, **art. 2(b)(p)** (with art. 3, Sch.)
- F67** S. 20(4)(d) and preceding word inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 4(4)(b), 56 (with Sch. 10); S.I. 2008/1900, **art. 2(b)** (with art. 3, Sch.)
- F68** Words in s. 20(4) repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 4(4)(c), 55, 56, **Sch. 11 Pt. 2** (with Sch. 10); S.I. 2008/1900, **art. 2(b)(p)** (with art. 3, Sch.)
- F69** S. 20(5A) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 9(4)(b), 56 (with Sch. 10); S.I. 2008/1900, **art. 2(b)** (with art. 3, Sch.)
- F70** Words in s. 20(6) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 9(4)(c), 56 (with Sch. 10); S.I. 2008/1900, **art. 2(b)** (with art. 3, Sch.)
- F71** Words in s. 20(7)(a) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 1, 56, **Sch. 1 para. 4(b)** (with Sch. 10); S.I. 2008/1900, **art. 2(a)** (with art. 3, Sch.)
- F72** S. 20(9) repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 55, 56, **Sch. 11 Pt. 1** (with Sch. 10); S.I. 2008/1900, **art. 2(p)** (with art. 3, Sch.)
- F73** S. 20(10) repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 9(4)(d), 55, 56, **Sch. 11 Pt. 3** (with Sch. 10); S.I. 2008/1900, **art. 2(b)(p)** (with art. 3, Sch.)

## [<sup>F74</sup>20A Community treatment period **E+W**

- (1) Subject to the provisions of this Part of this Act, a community treatment order shall cease to be in force on expiry of the period of six months beginning with the day on which it was made.
- (2) That period is referred to in this Act as “the community treatment period”.
- (3) The community treatment period may, unless the order has previously ceased to be in force, be extended—
  - (a) from its expiration for a period of six months;
  - (b) from the expiration of any period of extension under paragraph (a) above for a further period of one year,
 and so on for periods of one year at a time.
- (4) Within the period of two months ending on the day on which the order would cease to be in force in default of an extension under this section, it shall be the duty of the responsible clinician—
  - (a) to examine the patient; and
  - (b) if it appears to him that the conditions set out in subsection (6) below are satisfied and if a statement under subsection (8) below is made, to furnish to the managers of the responsible hospital a report to that effect in the prescribed form.
- (5) Where such a report is furnished in respect of the patient, the managers shall, unless they discharge him under section 23 below, cause him to be informed.
- (6) The conditions referred to in subsection (4) above are that—
  - (a) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment;



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- (b) it is necessary for his health or safety or for the protection of other persons that he should receive such treatment;
  - (c) subject to his continuing to be liable to be recalled as mentioned in paragraph (d) below, such treatment can be provided without his being detained in a hospital;
  - (d) it is necessary that the responsible clinician should continue to be able to exercise the power under section 17E(1) above to recall the patient to hospital; and
  - (e) appropriate medical treatment is available for him.
- (7) In determining whether the criterion in subsection (6)(d) above is met, the responsible clinician shall, in particular, consider, having regard to the patient's history of mental disorder and any other relevant factors, what risk there would be of a deterioration of the patient's condition if he were to continue not to be detained in a hospital (as a result, for example, of his refusing or neglecting to receive the medical treatment he requires for his mental disorder).
- (8) The statement referred to in subsection (4) above is a statement in writing by an approved mental health professional—
- (a) that it appears to him that the conditions set out in subsection (6) above are satisfied; and
  - (b) that it is appropriate to extend the community treatment period.
- (9) Before furnishing a report under subsection (4) above the responsible clinician shall consult one or more other persons who have been professionally concerned with the patient's medical treatment.
- (10) Where a report is duly furnished under subsection (4) above, the community treatment period shall be thereby extended for the period prescribed in that case by subsection (3) above.

#### Textual Amendments

**F74** Ss. 20A, 20B inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 32(3), 56 (with Sch. 10); S.I. 2008/1900, art. 2(i) (with art. 3, Sch.)

## 20B Effect of expiry of community treatment order **E+W**

- (1) A community patient shall be deemed to be discharged absolutely from liability to recall under this Part of this Act, and the application for admission for treatment cease to have effect, on expiry of the community treatment order, if the order has not previously ceased to be in force.
- (2) For the purposes of subsection (1) above, a community treatment order expires on expiry of the community treatment period as extended under this Part of this Act, but this is subject to sections 21 and 22 below.]

#### Textual Amendments

**F74** Ss. 20A, 20B inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 32(3), 56 (with Sch. 10); S.I. 2008/1900, art. 2(i) (with art. 3, Sch.)

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

**C12** S. 20B(1) modified (3.11.2008) by [The Mental Health Act 2007 \(Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions\) Order 2008 \(S.I. 2008/1210\)](#), arts. 1(1)(b), **11(e)**

### **[<sup>F75</sup>21 Special provisions as to patients absent without leave. E+W**

- (1) Where a patient is absent without leave—
- (a) on the day on which (apart from this section) he would cease to be liable to be detained or subject to guardianship under this Part of this Act [<sup>F76</sup>or, in the case of a community patient, the community treatment order would cease to be in force] ; or
  - (b) within the period of one week ending with that day,  
he shall not cease to be so liable or subject [<sup>F77</sup>, or the order shall not cease to be in force,] until the relevant time.
- (2) For the purposes of subsection (1) above the relevant time—
- (a) where the patient is taken into custody under section 18 above, is the end of the period of one week beginning with the day on which he is returned to the hospital or place where he ought to be;
  - (b) where the patient returns himself to the hospital or place where he ought to be within the period during which he can be taken into custody under section 18 above, is the end of the period of one week beginning with the day on which he so returns himself; and
  - (c) otherwise, is the end of the period during which he can be taken into custody under section 18 above.

- [ Where a patient is absent without leave on the day on which (apart from this section)
- <sup>F78</sup>(3) the managers would be required under section 68 below to refer the patient's case to [<sup>F79</sup>the appropriate tribunal], that requirement shall not apply unless and until—
- (a) the patient is taken into custody under section 18 above and returned to the hospital where he ought to be; or
  - (b) the patient returns himself to the hospital where he ought to be within the period during which he can be taken into custody under section 18 above.]

- [ Where a community patient is absent without leave on the day on which (apart from
- <sup>F80</sup>(4) this section) the 72-hour period mentioned in section 17F above would expire, that period shall not expire until the end of the period of 72 hours beginning with the time when—
- (a) the patient is taken into custody under section 18 above and returned to the hospital where he ought to be; or
  - (b) the patient returns himself to the hospital where he ought to be within the period during which he can be taken into custody under section 18 above.
- (5) Any reference in this section, or in sections 21A to 22 below, to the time when a community treatment order would cease, or would have ceased, to be in force shall be construed as a reference to the time when it would cease, or would have ceased, to be in force by reason only of the passage of time.]]

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#### Textual Amendments

- F75** Ss. 21, 21A, 21B substituted (1.4.1996) for s. 21 by 1995 c. 52, ss. 2(2), 7(2)
- F76** Words in s. 21(1)(a) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, Sch. 3 para. 6(2)(a) (with Sch. 10); S.I. 2008/1900, art. 2(i) (with art. 3, Sch.)
- F77** Words in s. 21(1) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, Sch. 3 para. 6(2)(b) (with Sch. 10); S.I. 2008/1900, art. 2(i) (with art. 3, Sch.)
- F78** S. 21(3) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 37(2), 56 (with Sch. 10); S.I. 2008/1900, art. 2(i) (with art. 3, Sch.)
- F79** Words in s. 21(3) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 6, Sch. 3 para. 40
- F80** S. 21(4)(5) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, Sch. 3 para. 6(3) (with Sch. 10); S.I. 2008/1900, art. 2(i) (with art. 3, Sch.)

### 21A Patients who are taken into custody or return within 28 days. **E+W**

- (1) This section applies where a patient who is absent without leave is taken into custody under section 18 above, or returns himself to the hospital or place where he ought to be, not later than the end of the period of 28 days beginning with the first day of his absence without leave.
- (2) Where the period for which the patient is liable to be detained or subject to guardianship is extended by section 21 above, any examination and report to be made and furnished in respect of the patient under section 20(3) or (6) above may be made and furnished within the period as so extended.
- (3) Where the authority for the detention or guardianship of the patient is renewed by virtue of subsection (2) above after the day on which (apart from section 21 above) that authority would have expired, the renewal shall take effect as from that day.
- [<sup>F81</sup>(4) In the case of a community patient, where the period for which the community treatment order is in force is extended by section 21 above, any examination and report to be made and furnished in respect of the patient under section 20A(4) above may be made and furnished within the period as so extended.
- (5) Where the community treatment period is extended by virtue of subsection (4) above after the day on which (apart from section 21 above) the order would have ceased to be in force, the extension shall take effect as from that day.]

#### Textual Amendments

- F81** S. 21A(4)(5) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, Sch. 3 para. 7 (with Sch. 10); S.I. 2008/1900, art. 2(i) (with art. 3, Sch.)

### 21B Patients who are taken into custody or return after more than 28 days. **E+W**

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

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- (2) It shall be the duty of the [<sup>F82</sup>appropriate practitioner] , within the period of one week beginning with the day on which the patient is returned or returns himself to the hospital or place where he ought to be [<sup>F83</sup>(his “return day”)]
- (a) to examine the patient; and
  - (b) if it appears to him that the relevant conditions are satisfied, to furnish to the appropriate body a report to that effect in the prescribed form;
- and where such a report is furnished in respect of the patient the appropriate body shall cause him to be informed.
- (3) Where the patient is liable to be detained [<sup>F84</sup>or is a community patient](as opposed to subject to guardianship), the [<sup>F82</sup>appropriate practitioner] shall, before furnishing a report under subsection (2) above, consult—
- (a) one or more other persons who have been professionally concerned with the patient’s medical treatment; and
  - (b) an [<sup>F85</sup>approved mental health professional] .
- [<sup>F86</sup>(4) Where—
- (a) the patient would (apart from any renewal of the authority for his detention or guardianship on or after his return day) be liable to be detained or subject to guardianship after the end of the period of one week beginning with that day; or
  - (b) in the case of a community patient, the community treatment order would (apart from any extension of the community treatment period on or after that day) be in force after the end of that period,
- he shall cease to be so liable or subject, or the community treatment period shall be deemed to expire, at the end of that period unless a report is duly furnished in respect of him under subsection (2) above.]
- [<sup>F87</sup>(4A) If, in the case of a community patient, the community treatment order is revoked under section 17F above during the period of one week beginning with his return day—
- (a) subsections (2) and (4) above shall not apply; and
  - (b) any report already furnished in respect of him under subsection (2) above shall be of no effect.]

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

(6) Where the authority for the detention or guardianship of the patient is renewed by virtue of subsection (5) above—

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

[<sup>F88</sup>(6A) In the case of a community patient, where the community treatment order would (apart from section 21 above) have ceased to be in force on or before the day on which a report is duly furnished in respect of him under subsection (2) above, the report

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shall extend the community treatment period for the period prescribed in that case by section 20A(3) above.

(6B) Where the community treatment period is extended by virtue of subsection (6A) above—

- (a) the extension shall take effect as from the day on which (apart from section 21 above and that subsection) the order would have ceased to be in force; and
- (b) if (apart from this paragraph) the period as so extended would expire on or before the day on which the report is furnished, the report shall further extend that period, as from the day on which it would expire, for the period prescribed in that case by section 20A(3) above.]

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

[<sup>F89</sup>(7A) In the case of a community patient, where the community treatment order would (taking account of any extension under subsection (6A) above) cease to be in force within the period of two months beginning with the day on which a report is duly furnished in respect of him under subsection (2) above, the report shall, if it so provides, have effect also as a report duly furnished under section 20A(4) above.]

(8) <sup>F90</sup> .....

(9) <sup>F90</sup> .....

(10) In this section—

<sup>F91</sup> .....

[<sup>F92</sup>“the appropriate body” means—

- (a) in relation to a patient who is liable to be detained in a hospital, the managers of the hospital;
- (b) in relation to a patient who is subject to guardianship, the responsible local social services authority;
- (c) in relation to a community patient, the managers of the responsible hospital; and]

[<sup>F93</sup>“the relevant conditions” means—

- (a) in relation to a patient who is liable to be detained in a hospital, the conditions set out in subsection (4) of section 20 above;
- (b) in relation to a patient who is subject to guardianship, the conditions set out in subsection (7) of that section;
- (c) in relation to a community patient, the conditions set out in section 20A(6) above.]

#### Textual Amendments

**F82** Words in s. 21B(2)(3) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 9(5)(a), 56 (with Sch. 10); S.I. 2008/1900, art. 2(b) (with art. 3, Sch.)

**F83** Words in s. 21B(2) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, Sch. 3 para. 8(2) (with Sch. 10); S.I. 2008/1900, art. 2(i) (with art. 3, Sch.)

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- F84** Words in s. 21B(3) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 8(3)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F85** Words in s. 21B(3)(b) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 21, 56, **Sch. 2 para. 7(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.)
- F86** S. 21B(4) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 8(4)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F87** S. 21B(4A) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 8(5)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F88** S. 21B(6A)(6B) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 8(6)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F89** S. 21B(7A) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 8(7)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F90** S. 21B(8)(9) repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 55, 56, **Sch. 11 Pt. 1** (with Sch. 10); S.I. 2008/1900, **art. 2(p)** (with art. 3, Sch.)
- F91** S. 21B(10): definition of "appropriate medical officer" repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 9(5)(b), 56, **Sch. 11 Pt. 3** (with Sch. 10); S.I. 2008/1900, **art. 2(b)(p)** (with art. 3, Sch.)
- F92** S. 21B(10): definition of "the appropriate body" substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 8(8)(a)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F93** S. 21B(10): definition of "the relevant conditions" substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 8(8)(b)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)

**[<sup>F94</sup>22 Special provisions as to patients sentenced to imprisonment, etc. U.K.]**

- (1) If—
- (a) a qualifying patient is detained in custody in pursuance of any sentence or order passed or made by a court in the United Kingdom (including an order committing or remanding him in custody); and
  - (b) he is so detained for a period exceeding, or for successive periods exceeding in the aggregate, six months,
- the relevant application shall cease to have effect on expiry of that period.
- (2) A patient is a qualifying patient for the purposes of this section if—
- (a) he is liable to be detained by virtue of an application for admission for treatment;
  - (b) he is subject to guardianship by virtue of a guardianship application; or
  - (c) he is a community patient.
- (3) "The relevant application", in relation to a qualifying patient, means—
- (a) in the case of a patient who is subject to guardianship, the guardianship application in respect of him;
  - (b) in any other case, the application for admission for treatment in respect of him.
- (4) The remaining subsections of this section shall apply if a qualifying patient is detained in custody as mentioned in subsection (1)(a) above but for a period not exceeding, or for successive periods not exceeding in the aggregate, six months.
- (5) If apart from this subsection—
- (a) the patient would have ceased to be liable to be detained or subject to guardianship by virtue of the relevant application on or before the day on which he is discharged from custody; or



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- (b) in the case of a community patient, the community treatment order would have ceased to be in force on or before that day,  
he shall not cease and shall be deemed not to have ceased to be so liable or subject, or the order shall not cease and shall be deemed not to have ceased to be in force, until the end of that day.
- (6) In any case (except as provided in subsection (8) below), sections 18, 21 and 21A above shall apply in relation to the patient as if he had absented himself without leave on that day.
- (7) In its application by virtue of subsection (6) above section 18 above shall have effect as if—
- (a) in subsection (4) for the words from “later of” to the end there were substituted “end of the period of 28 days beginning with the first day of his absence without leave”; and
- (b) subsections (4A) and (4B) were omitted.
- (8) In relation to a community patient who was not recalled to hospital under section 17E above at the time when his detention in custody began—
- (a) section 18 above shall not apply; but
- (b) sections 21 and 21A above shall apply as if he had absented himself without leave on the day on which he is discharged from custody and had returned himself as provided in those sections on the last day of the period of 28 days beginning with that day.]

#### Extent Information

**E2** For extent of s. 22 see [ss. 146, 147](#)

#### Textual Amendments

**F94** [S. 22](#) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 32, 56](#), [Sch. 3 para. 9](#) (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(i\)](#) (with [art. 3](#), [Sch.](#))

## 23 Discharge of patients. **E+W**

- (1) Subject to the provisions of this section and section 25 below, a patient who is for the time being liable to be detained or subject to guardianship under this Part of this Act shall cease to be so liable or subject if an order in writing discharging him [<sup>F95</sup>absolutely from detention or guardianship is made in accordance with this section]
- [<sup>F96</sup>(1A) Subject to the provisions of this section and section 25 below, a community patient shall cease to be liable to recall under this Part of this Act, and the application for admission for treatment cease to have effect, if an order in writing discharging him from such liability is made in accordance with this section.
- (1B) An order under subsection (1) or (1A) above shall be referred to in this Act as “an order for discharge”.]
- (2) An order for discharge may be made in respect of a patient—
- (a) where the patient is liable to be detained in a hospital in pursuance of an application for admission for assessment or for treatment by the

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- [<sup>F97</sup>responsible clinician], by the managers or by the nearest relative of the patient;
- (b) where the patient is subject to guardianship, by the [<sup>F97</sup>responsible clinician], by the responsible local social services authority or by the nearest relative of the patient.
- [<sup>F98</sup>(c) where the patient is a community patient, by the responsible clinician, by the managers of the responsible hospital or by the nearest relative of the patient.]
- (3) Where the patient [<sup>F99</sup>falls within subsection (3A) below] , an order for his discharge may, without prejudice to subsection (2) above, be made by the Secretary of State and, if [<sup>F100</sup>arrangements have been made in respect of the patient] under a contract with a [<sup>F101</sup>National Health Service trust ][<sup>F102</sup>, [<sup>F103</sup>NHS foundation trust,][<sup>F104</sup>[<sup>F105</sup>Local Health Board], Special Health Authority or Primary Care Trust], by that National Health Service trust, [<sup>F103</sup>NHS foundation trust,][<sup>F104</sup>[<sup>F105</sup>Local Health Board], Special Health Authority or Primary Care Trust].]
- [<sup>F106</sup>(3A) A patient falls within this subsection if—
- (a) he is liable to be detained in a registered establishment in pursuance of an application for admission for assessment or for treatment; or
- (b) he is a community patient and the responsible hospital is a registered establishment.]
- (4) The powers conferred by this section on any authority [<sup>F107</sup>trust ][<sup>F108</sup>, board][<sup>F109</sup>(other than an NHS foundation trust)] or body of persons may be exercised [<sup>F107</sup>subject to subsection (5) below] by any three or more members of that authority [<sup>F107</sup>trust][<sup>F108</sup>, board] or body authorised by them in that behalf or by three or more members of a committee or sub-committee of that authority [<sup>F107</sup>trust][<sup>F108</sup>, board] or body which has been authorised by them in that behalf.
- [<sup>F110</sup>(5) The reference in subsection (4) above to the members of an authority, trust [<sup>F111</sup>, board] or body or the members of a committee or sub-committee of an authority, trust [<sup>F111</sup>, board] or body,—
- (a) in the case of [<sup>F112</sup>a [<sup>F113</sup>[<sup>F114</sup>Local Health Board], Special Health Authority or Primary Care Trust]] or a committee or sub-committee of [<sup>F112</sup>a [<sup>F113</sup>[<sup>F114</sup>Local Health Board], Special Health Authority or Primary Care Trust]], is a reference only to the chairman of the authority [<sup>F115</sup>, trust or board]and [<sup>F116</sup>such members (of the authority, trust, board, committee or sub-committee), as the case may be) as are not also officers of the authority [<sup>F115</sup>, trust or board], within the meaning of [<sup>F117</sup>the National Health Service Act 2006 or the National Health Service (Wales) Act 2006] ; and
- (b) in the case of a National Health Service trust or a committee or sub-committee of such a trust, is a reference only to the chairman of the trust and such directors or (in the case of a committee or sub-committee) members as are not also employees of the trust.]
- [<sup>F118</sup>(6) The powers conferred by this section on any NHS foundation trust may be exercised by any three or more [<sup>F119</sup>persons authorised by the board of the trust in that behalf each of whom is neither an executive director of the board nor an employee of the trust.] .]

#### Textual Amendments

**F95** Words in s. 23(1) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 32, 56, [Sch. 3 para. 10\(2\)](#) (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(i\)](#) (with [art. 3](#), [Sch.](#))

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- F96** S. 23(1A)(1B) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 10(3)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F97** Words in s. 23(2)(a)(b) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), **ss. 9(6)**, 56 (with Sch. 10); S.I. 2008/1900, **art. 2(b)** (with art. 3, Sch.)
- F98** S. 23(2)(c) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 10(4)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F99** Words in s. 23(3) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 10(5)(a)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F100** Words in s. 23(3) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 10(5)(b)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F101** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 24(3)(a)**
- F102** Words in s. 23(3) substituted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8, **Sch. 1 Pt. III**, para. 107(2)(a)
- F103** Words in s. 23(3) inserted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 34, 199, **Sch. 4 para. 53(a)**; S.I. 2004/759, {art. 2}
- F104** Words in s. 23(3) substituted (8.2.2000) by S.I. 2000/90, art. 3(1), **Sch. 1 para. 16(4)(a)** (with art. 2(5))
- F105** Words in s. 23(3) substituted (1.4.2007) by The References to Health Authorities Order 2007 (S.I. 2007/961, art. 3, **Sch. para. 13(2)(a)**)
- F106** S. 23(3A) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 10(6)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F107** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 24(3)(b)**
- F108** Words in s. 23(4) inserted (1.4.2007) by The References to Health Authorities Order 2007 (S.I. 2007/961, art. 3, **Sch. para. 13(2)(b)**)
- F109** Words in s. 23(4) inserted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 34, 199, **Sch. 4 para. 53(b)**; S.I. 2004/759, **art. 2**
- F110** S.23(5) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 24(3)(c)**
- F111** Words in s. 23(5) inserted (1.4.2007) by The References to Health Authorities Order 2007 (S.I. 2007/961, art. 3, **Sch. para. 13(2)(c)**)
- F112** Words in s. 23(5)(a) substituted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8, **Sch. 1 Pt. III**, para. 107(2)(b)
- F113** Words in s. 23(5)(a) substituted (8.2.2000) by S.I. 2000/90, art. 3(1), **Sch. 1 para. 16(4)(b)(i)** (with art. 2(5))
- F114** Words in s. 23(5)(a) substituted (1.4.2007) by The References to Health Authorities Order 2007 (S.I. 2007/961, art. 3, **Sch. para. 13(2)(d)(i)**)
- F115** Words in s. 23(5)(a) substituted (1.4.2007) by The References to Health Authorities Order 2007 (S.I. 2007/961, art. 3, **Sch. para. 13(2)(d)(ii)**)
- F116** Words in s. 23(5)(a) substituted (1.4.2007) by virtue of The References to Health Authorities Order 2007 (S.I. 2007/961), art. 3, **Sch. para. 13(2)(d)(iii)**
- F117** Words in s. 23(5)(a) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 65** (with Sch. 3 Pt. 1)
- F118** S. 23(6) inserted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 34, 199, **Sch. 4 para. 53(c)**; S.I. 2004/759, **art. 2**
- F119** Words in s. 23(6) substituted (24.7.2007) by Mental Health Act 2007 (c. 12), **ss. 45(1)**, 56 (with Sch. 10); S.I. 2007/2156, **art. 2**

*Status: Point in time view as at 03/11/2008.*

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## 24 Visiting and examination of patients. **E+W**

- (1) For the purpose of advising as to the exercise by the nearest relative of a patient who is liable to be detained or subject to guardianship under this Part of this Act <sup>F120</sup>, or who is a community patient,] of any power to order his discharge, any registered medical practitioner <sup>F121</sup> or approved clinician] authorised by or on behalf of the nearest relative of the patient may, at any reasonable time, visit the patient and examine him in private.
- (2) Any registered medical practitioner <sup>F121</sup> or approved clinician] authorised for the purposes of subsection (1) above to visit and examine a patient may require the production of and inspect any records relating to the detention or treatment of the patient in any hospital <sup>F122</sup> or to any after-care services provided for the patient under section 117 below.].
- (3) Where application is made by the Secretary of State or a <sup>F123</sup><sup>F124</sup>Local Health Board], Special Health Authority <sup>F125</sup>, Primary Care Trust <sup>F126</sup>, National Health Service trust or NHS foundation trust] to exercise <sup>F127</sup>any power under section 23(3) above to make an order for a patient's discharge], the following persons, that is to say—
  - (a) any registered medical practitioner <sup>F121</sup> or approved clinician] authorised by the Secretary of State or, as the case may be, that <sup>F123</sup><sup>F124</sup>Local Health Board], Special Health Authority <sup>F125</sup>, Primary Care Trust <sup>F126</sup>, National Health Service trust or NHS foundation trust]]]; and
  - (b) any other person (whether a registered medical practitioner <sup>F121</sup> or approved clinician] or not) authorised under <sup>F128</sup>Part II of the Care Standards Act 2000] to inspect <sup>F129</sup>the establishment in question], may at any reasonable time visit the patient and interview him in private.
- (4) Any person authorised for the purposes of subsection (3) above to visit a patient may require the production of and inspect any documents constituting or alleged to constitute the authority for the detention of the patient <sup>F130</sup>, or (as the case may be) for his liability to recall,] under this Part of this Act; and any person so authorised, who is a registered medical practitioner <sup>F121</sup> or approved clinician], may examine the patient in private, and may require the production of and inspect any other records relating to the treatment of the patient in <sup>F131</sup>the establishment]]<sup>F122</sup> or to any after-care services provided for the patient under section 117 below.].

### Textual Amendments

- F120** Words in s. 24(1) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 11(2)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F121** Words in s. 24 inserted (3.11.2008) by Mental Health Act 2007 (c. 12), **ss. 9(7)**, 56, (with Sch. 10); S.I. 2008/1900, **art. 2(b)** (with art. 3, Sch.)
- F122** Words in s. 24(2)(4) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), Sch. 1, para. 1
- F123** Words in s. 24(3) substituted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, s. 2(1), **Sch. 1, Pt. III, para. 107(3)** (with ss. 2(3), 8)
- F124** Words in s. 24(3) substituted (1.4.2007) by The References to Health Authorities Order 2007 (S.I. 2007/961), art. 3, **Sch. para. 13(3)**
- F125** Words in s. 24(3) inserted (8.2.2000) by S.I. 2000/90, art. 3(1), **Sch. 1 para. 16(5)** (with art. 2(5))
- F126** Words in s. 24(3) substituted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 34, 199, **Sch. 4 para. 54**; S.I. 2004/759, **art. 2**
- F127** Words in s. 24(3) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 11(3)(a)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)

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- F128** Words in s. 24(3) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(3)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **art. 3(3)(d)** (with transitional provisions in Schs. 1-3 and art. 3(4)-(10))
- F129** Words in s. 24(3)(b) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 11(3)(b)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F130** Words in s. 24(4) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 11(4)(a)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F131** Words in s. 24(4) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 11(4)(b)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)

## 25 Restrictions on discharge by nearest relative. **E+W**

- (1) An order for the discharge of a patient who is liable to be detained in a hospital shall not be made [<sup>F132</sup>under section 23 above] by his nearest relative except after giving not less than 72 hours' notice in writing to the managers of the hospital; and if, within 72 hours after such notice has been given, the [<sup>F133</sup>responsible clinician] furnishes to the managers a report certifying that in the opinion of [<sup>F134</sup>that clinician] the patient, if discharged, would be likely to act in a manner dangerous to other persons or to himself—
- (a) any order for the discharge of the patient made by that relative in pursuance of the notice shall be of no effect; and
- (b) no further order for the discharge of the patient shall be made by that relative during the period of six months beginning with the date of the report.
- [<sup>F135</sup>(1A) Subsection (1) above shall apply to an order for the discharge of a community patient as it applies to an order for the discharge of a patient who is liable to be detained in a hospital, but with the reference to the managers of the hospital being read as a reference to the managers of the responsible hospital.]
- (2) In any case where a report under subsection (1) above is furnished in respect of a patient who is liable to be detained in pursuance of an application for admission for treatment [<sup>F136</sup>, or in respect of a community patient,] the managers shall cause the nearest relative of the patient to be informed.

### Textual Amendments

- F132** Words in s. 25(1) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 12(2)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F133** Words in s. 25(1) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 9(8)(a), 56 (with Sch. 10); S.I. 2008/1900, **art. 2(b)** (with art. 3, Sch.)
- F134** Words in s. 25(1) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 9(8)(b), 56 (with Sch. 10); S.I. 2008/1900, **art. 2(b)** (with art. 3, Sch.)
- F135** S. 25(1A) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 12(3)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F136** Words in s. 25(2) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 12(4)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)

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### <sup>F137</sup> After-care under supervision

#### Textual Amendments

**F137** Ss. 25A-25J inserted (1.4.1996) by 1995 c. 52, ss. 1(1), 7(2)

#### 25A Application for supervision. **E+W**

**F138**  
.....

#### Textual Amendments

**F138** Ss. 25A-25J repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 36(2), 55, 56, Sch. 11 Pt. 5 (with Sch. 10); S.I. 2008/1210, art. 2(d) (with art. 4)

#### 25B Making of supervision application. **E+W**

**F139**  
.....

#### Textual Amendments

**F139** Ss. 25A-25J repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 36(2), 55, 56, Sch. 11 Pt. 5 (with Sch. 10); S.I. 2008/1210, art. 2(d) (with art. 4)

#### 25C Supervision applications: supplementary. **E+W**

**F140**  
.....

#### Textual Amendments

**F140** Ss. 25A-25J repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 36(2), 55, 56, Sch. 11 Pt. 5 (with Sch. 10); S.I. 2008/1210, art. 2(d) (with art. 4)

#### 25D Requirements to secure receipt of after-care under supervision. **E+W**

**F141**  
.....

#### Textual Amendments

**F141** Ss. 25A-25J repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 36(2), 55, 56, Sch. 11 Pt. 5 (with Sch. 10); S.I. 2008/1210, art. 2(d) (with art. 4)

#### 25E Review of after-care under supervision etc. **E+W**

**F142**  
.....



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**Textual Amendments**

**F142** Ss. 25A-25J repealed (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 36(2), 55, 56, [Sch. 11 Pt. 5](#) (with [Sch. 10](#)); S.I. 2008/1210, [art. 2\(d\)](#) (with [art. 4](#))

**25F** **Reclassification of patient subject to after-care under supervision.** **E+W**

**F143** .....

**Textual Amendments**

**F143** Ss. 25A-25J repealed (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 36(2), 55, 56, [Sch. 11 Pt. 5](#) (with [Sch. 10](#)); S.I. 2008/1210, [art. 2\(d\)](#) (with [art. 4](#))

**25G** **Duration and renewal of after-care under supervision.** **E+W**

**F144** .....

**Textual Amendments**

**F144** Ss. 25A-25J repealed (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 36(2), 55, 56, [Sch. 11 Pt. 5](#) (with [Sch. 10](#)); S.I. 2008/1210, [art. 2\(d\)](#) (with [art. 4](#))

**25H** **Ending of after-care under supervision.** **E+W**

**F145** .....

**Textual Amendments**

**F145** Ss. 25A-25J repealed (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 36(2), 55, 56, [Sch. 11 Pt. 5](#) (with [Sch. 10](#)); S.I. 2008/1210, [art. 2\(d\)](#) (with [art. 4](#))

**25I** **Special provisions as to patients sentenced to imprisonment etc.** **E+W**

**F146** .....

**Textual Amendments**

**F146** Ss. 25A-25J repealed (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 36(2), 55, 56, [Sch. 11 Pt. 5](#) (with [Sch. 10](#)); S.I. 2008/1210, [art. 2\(d\)](#) (with [art. 4](#))

**25J** **Patients moving from Scotland to England and Wales.** **E+W**

**F147** .....]

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### Textual Amendments

**F147** Ss. 25A-25J repealed (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 36(2), 55, 56, [Sch. 11 Pt. 5](#) (with [Sch. 10](#)); [S.I. 2008/1210](#), [art. 2\(d\)](#) (with [art. 4](#))

### *Functions of relatives of patients*

## 26 Definition of “relative” and “nearest relative”. **E+W**

- (1) In this Part of this Act “relative” means any of the following persons:—
  - (a) husband or wife [<sup>F148</sup>or civil partner] ;
  - (b) son or daughter;
  - (c) father or mother;
  - (d) brother or sister;
  - (e) grandparent;
  - (f) grandchild;
  - (g) uncle or aunt;
  - (h) nephew or niece.
- (2) In deducing relationships for the purposes of this section, any relationship of the half-blood shall be treated as a relationship of the whole blood, and an illegitimate person shall be treated as the legitimate child of
  - [<sup>F149</sup>(a) his mother, and
  - (b) if his father has parental responsibility for him within the meaning of section 3 of the Children Act 1989, his father.]
- (3) In this Part of this Act, subject to the provisions of this section and to the following provisions of this Part of this Act, the “nearest relative” means the person first described in subsection (1) above who is for the time being surviving, relatives of the whole blood being preferred to relatives of the same description of the half-blood and the elder or eldest of two or more relatives described in any paragraph of that subsection being preferred to the other or others of those relatives, regardless of sex.
- (4) Subject to the provisions of this section and to the following provisions of this Part of this Act, where the patient ordinarily resides with or is cared for by one or more of his relatives (or, if he is for the time being an in-patient in a hospital, he last ordinarily resided with or was cared for by one or more of his relatives) his nearest relative shall be determined—
  - (a) by giving preference to that relative or those relatives over the other or others; and
  - (b) as between two or more such relatives, in accordance with subsection (3) above.
- (5) Where the person who, under subsection (3) or (4) above, would be the nearest relative of a patient—
  - (a) in the case of a patient ordinarily resident in the United Kingdom, the Channel Islands or the Isle of Man, is not so resident; or
  - (b) is the husband or wife [<sup>F150</sup>or civil partner] of the patient, but is permanently separated from the patient, either by agreement or under an order of a court,

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or has deserted or has been deserted by the patient for a period which has not come to an end; or

(c) is a person other than the husband, wife [<sup>F151</sup>civil partner,] , father or mother of the patient, and is for the time being under 18 years of age; <sup>F152</sup> . . .

<sup>F152</sup>(d) . . . . .

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

(6) In this section “husband” [<sup>F153</sup>, “wife” and “civil partner” include a person who is living with the patient as the patient's husband or wife or as if they were civil partners”] , as the case may be (or, if the patient is for the time being an in-patient in a hospital, was so living until the patient was admitted), and has been or had been so living for a period of not less than six months; but a person shall not be treated by virtue of this subsection as the nearest relative of a married patient [<sup>F154</sup>or a patient in a civil partnership unless the husband, wife or civil partner] of the patient is disregarded by virtue of paragraph (b) of subsection (5) above.

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

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

(b) shall not be treated by virtue of this subsection as the nearest relative of a married patient [<sup>F155</sup>or a patient in a civil partnership unless the husband, wife or civil partner] of the patient is disregarded by virtue of paragraph (b) of subsection (5) above.

#### Textual Amendments

**F148** Words in s. 26(1)(a) inserted (1.12.2007) by Mental Health Act 2007 (c. 12), ss. 26(2), 56 (with Sch. 10); S.I. 2007/2798, art. 3

**F149** S. 26(2)(a)(b) substituted (14.10.1991) by S.I. 1991/1881 art.3

**F150** Words in s. 26(5)(b) inserted (1.12.2007) by Mental Health Act 2007 (c. 12), ss. 26(3)(a), 56 (with Sch. 10); S.I. 2007/2798, art. 3

**F151** Words in s. 26(5)(c) inserted (1.12.2007) by Mental Health Act 2007 (c. 12), ss. 26(3)(b), 56 (with Sch. 10); S.I. 2007/2798, art. 3

**F152** In s. 26(5) the word “or” and paragraph (d) repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(7), Sch. 15 (with Sch. 14 paras. 1(1), 27(4)); S.I. 1991/828, art. 3(2)

**F153** Words in s. 26(6) substituted (1.12.2007) by Mental Health Act 2007 (c. 12), ss. 26(4)(a), 56, (with Sch. 10); S.I. 2007/2798, art. 3

**F154** Words in s. 26(6) substituted (1.12.2007) by Mental Health Act 2007 (c. 12), {ss. 26(4)(b)}, 56, (with Sch. 10); S.I. 2007/2798, art. 3

**F155** Words in s. 26(7)(b) substituted (1.12.2007) by Mental Health Act 2007 (c. 12), ss. 26(5), 56, (with Sch. 10); S.I. 2007/2798, art. 3

#### [<sup>F156</sup>27 Children and young persons in care. **E+W**

Where—

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

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

the authority shall be deemed to be the nearest relative of the patient in preference to any person except the patient's husband or wife [<sup>F157</sup>or civil partner] (if any).]

#### Textual Amendments

**F156** S. 27 substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(5), Sch. 13 para. 48(1) (with Sch. 14 para. 1(1)); S.I. 1991/828, art. 3(2)

**F157** Words in s. 27 inserted (1.12.2007) by Mental Health Act 2007 (c. 12), ss. 26(6), 56 (with Sch. 10); S.I. 2007/2798, art. 3

## 28 Nearest relative of minor under guardianship, etc. **E+W**

[<sup>F158</sup>(1) Where—

- (a) a guardian has been appointed for a person who has not attained the age of eighteen years; or
- (b) a residence order (as defined by section 8 of the Children Act 1989) is in force with respect to such a person,

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

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

[<sup>F159</sup>(3) In this section “guardian” [<sup>F160</sup>includes a special guardian (within the meaning of the Children Act 1989), but] does not include a guardian under this Part of this Act.]

- (4) In this section “court” includes a court in Scotland or Northern Ireland, and “enactment” includes an enactment of the Parliament of Northern Ireland, a Measure of the Northern Ireland Assembly and an Order in Council under Schedule 1 of the <sup>M1</sup>Northern Ireland Act 1974.

#### Textual Amendments

**F158** S. 28(1) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(5), Sch. 13 para. 48(3) (with Sch. 14 para. 1(1)); S.I. 1991/828, art. 3(2)

**F159** S. 28(3) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(5), Sch. 13 para. 48(4); S.I. 1991/828, art. 3(2)

**F160** Words in s. 28(3) inserted (30.12.2005) by 2002 c. 38, ss. 139, 148, Sch. 3 para. 41 (with Sch. 4 paras. 6-8); S.I. 2005/2213, art. 2(o)

#### Marginal Citations

**M1** 1974 c. 28.

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## 29 Appointment by court of acting nearest relative. **E+W**

(1) The county court may, upon application made in accordance with the provisions of this section in respect of a patient, by order direct that the functions of the nearest relative of the patient under this Part of this Act and sections 66 and 69 below shall, during the continuance in force of the order, be exercisable by [<sup>F161</sup>the person specified in the order] .

[<sup>F162</sup>(1A) If the court decides to make an order on an application under subsection (1) above, the following rules have effect for the purposes of specifying a person in the order—

- (a) if a person is nominated in the application to act as the patient's nearest relative and that person is, in the opinion of the court, a suitable person to act as such and is willing to do so, the court shall specify that person (or, if there are two or more such persons, such one of them as the court thinks fit);
- (b) otherwise, the court shall specify such person as is, in its opinion, a suitable person to act as the patient's nearest relative and is willing to do so.]

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

- [<sup>F163</sup>(za) the patient;]
- (a) any relative of the patient;
- (b) any other person with whom the patient is residing (or, if the patient is then an in-patient in a hospital, was last residing before he was admitted); or
- (c) an [<sup>F164</sup>approved mental health professional] ;

<sup>F165</sup> . . .

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

- (a) that the patient has no nearest relative within the meaning of this Act, or that it is not reasonably practicable to ascertain whether he has such a relative, or who that relative is;
- (b) that the nearest relative of the patient is incapable of acting as such by reason of mental disorder or other illness;
- (c) that the nearest relative of the patient unreasonably objects to the making of an application for admission for treatment or a guardianship application in respect of the patient; <sup>F166</sup> . . .
- (d) that the nearest relative of the patient has exercised without due regard to the welfare of the patient or the interests of the public his power to discharge the patient <sup>F167</sup> . . . under this Part of this Act, or is likely to do so. [<sup>F168</sup>; or
- (e) that the nearest relative of the patient is otherwise not a suitable person to act as such.]

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

- (a) in any case, until the application under this section has been finally disposed of; and
- (b) if an order is made in pursuance of the application under this section, for a further period of seven days;

and for the purposes of this subsection an application under this section shall be deemed to have been finally disposed of at the expiration of the time allowed for appealing from the decision of the court or, if notice of appeal has been given within

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that time, when the appeal has been heard or withdrawn, and “pending” shall be construed accordingly.

- (5) An order made on the ground specified in subsection [F169(3)(a), (b) or (e)] above may specify a period for which it is to continue in force unless previously discharged under section 30 below.
- (6) While an order made under this section is in force, the provisions of this Part of this Act (other than this section and section 30 below) and sections 66, 69, 132(4) and 133 below shall apply in relation to the patient as if for any reference to the nearest relative of the patient there were substituted a reference to the person having the functions of that relative and (without prejudice to section 30 below) shall so apply notwithstanding that the person who was the patient’s nearest relative when the order was made is no longer his nearest relative; but this subsection shall not apply to section 66 below in the case mentioned in paragraph (h) of subsection (1) of that section.

#### Textual Amendments

- F161** Words in s. 29(1) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 23(2), 56 (with Sch. 10); S.I. 2008/1900, art. 2(f) (with art. 3, Sch.)
- F162** S. 29(1A) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 23(3), 56 (with Sch. 10); S.I. 2008/1900, art. 2(f) (with art. 3, Sch.)
- F163** S. 29(2)(za) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 23(4)(a), 56 (with Sch. 10); S.I. 2008/1900, art. 2(f) (with art. 3, Sch.)
- F164** Words in s. 29(2)(c) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 21, 56, Sch. 2 para. 7(c) (with Sch. 10); S.I. 2008/1900, art. 2(d) (with art. 3, Sch.); S.I. 2008/2561, art. 2(b) (art. 3, Sch.)
- F165** Words in s. 29(2) repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 23(4)(b), 55, 56, Sch. 11 Pt. 4 (with Sch. 10); S.I. 2008/1900, art. 2(f)(p) (with art. 3, Sch.)
- F166** Word in s. 29(3)(c) repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 23(5)(a), 55, 56, Sch. 11 Pt. 4 (with Sch. 10); S.I. 2008/1900, art. 2(f)(p) (with art. 3, Sch.)
- F167** Words in s. 29(3)(d) repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 55, 56, Sch. 3 para. 13, Sch. 11 Pt. 5 (with Sch. 10); S.I. 2008/1210, art. 2(d) (with art. 4); S.I. 2008/1900, art. 2(i) (with art. 3, Sch.)
- F168** S. 29(3)(e) and preceding words inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 23(5)(b), 56 (with Sch. 10); S.I. 2008/1900, art. 2(f) (with art. 3, Sch.)
- F169** Words in s. 29(5) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 23(6), 56, (with Sch. 10); S.I. 2008/1900, art. 2(f) (with art. 3, Sch.)

### 30 Discharge and variation of orders under s. 29. **E+W**

- (1) An order made under section 29 above in respect of a patient may be discharged by the county court upon application made—
- in any case, by [F170 the patient or] the person having the functions of the nearest relative of the patient by virtue of the order;
  - where the order was made on the ground specified in paragraph (a) [F171, (b) or (e)] of section 29(3) above, or where the person who was the nearest relative of the patient when the order was made has ceased to be his nearest relative, on the application of the nearest relative of the patient.

[F172(1A) But, in the case of an order made on the ground specified in paragraph (e) of section 29(3) above, an application may not be made under subsection (1)(b) above



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by the person who was the nearest relative of the patient when the order was made except with leave of the county court.]

- (2) An order made under section 29 above in respect of a patient may be varied by the county court, on the application of the person having the functions of the nearest relative by virtue of the order or on the application of [<sup>F173</sup>the patient or of] an [<sup>F174</sup>approved mental health professional] , by substituting [<sup>F175</sup>another person for the person having those functions].
- [<sup>F176</sup>(2A) If the court decides to vary an order on an application under subsection (2) above, the following rules have effect for the purposes of substituting another person—
- (a) if a person is nominated in the application to act as the patient's nearest relative and that person is, in the opinion of the court, a suitable person to act as such and is willing to do so, the court shall specify that person (or, if there are two or more such persons, such one of them as the court thinks fit);
  - (b) otherwise, the court shall specify such person as is, in its opinion, a suitable person to act as the patient's nearest relative and is willing to do so.]
- (3) If the person having the functions of the nearest relative of a patient by virtue of an order under section 29 above dies—
- (a) subsections (1) and (2) above shall apply as if for any reference to that person there were substituted a reference to any relative of the patient, and
  - (b) until the order is discharged or varied under those provisions the functions of the nearest relative under this Part of this Act and sections 66 and 69 below shall not be exercisable by any person.
- (4) [<sup>F177</sup>An order made on the ground specified in paragraph (c) or (d) of section 29(3) above shall, unless previously discharged under subsection (1) above, cease to have effect as follows]—
- [<sup>F178</sup>(a) if—
- (i) on the date of the order the patient was liable to be detained or subject to guardianship by virtue of a relevant application, order or direction; or
  - (ii) he becomes so liable or subject within the period of three months beginning with that date; or
  - (iii) he was a community patient on the date of the order,
- it shall cease to have effect when he is discharged under section 23 above or 72 below or the relevant application, order or direction otherwise ceases to have effect (except as a result of his being transferred in pursuance of regulations under section 19 above);
- (b) otherwise, it shall cease to have effect at the end of the period of three months beginning with the date of the order.]
- [<sup>F179</sup>(4A) In subsection (4) above, reference to a relevant application, order or direction is to any of the following—
- (a) an application for admission for treatment;
  - (b) a guardianship application;
  - (c) an order or direction under Part 3 of this Act (other than under section 35, 36 or 38).]
- [<sup>F180</sup>(4B) An order made on the ground specified in paragraph (a), (b) or (e) of section 29(3) above shall—

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- (a) if a period was specified under section 29(5) above, cease to have effect on expiry of that period, unless previously discharged under subsection (1) above;
  - (b) if no such period was specified, remain in force until it is discharged under subsection (1) above.]
- (5) The discharge or variation under this section of an order made under section 29 above shall not affect the validity of anything previously done in pursuance of the order.

#### Textual Amendments

- F170** Words in s. 30(1)(a) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 24(2)(a)**, 56 (with Sch. 10); S.I. 2008/1900, **art. 2(f)** (with art. 3, Sch.)
- F171** Words in s. 30(1)(b) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 24(2)(b)**, 56 (with Sch. 10); S.I. 2008/1900, **art. 2(f)** (with art. 3, Sch.)
- F172** S. 30(1A) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 24(3)**, 56 (with Sch. 10); S.I. 2008/1900, **art. 2(f)** (with art. 3, Sch.)
- F173** Words in s. 30(2) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 24(4)(a)**, 56 (with Sch. 10); S.I. 2008/1900, **art. 2(f)** (with art. 3, Sch.)
- F174** Words in s. 30(2) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 21, 56, **Sch. 2 para. 7(d)** (with Sch. 10); S.I. 2008/1900, **art. 2(f)** (with art. 3, Sch.); S.I. 2008/2561, **art. 2(b)**, (with art. 3, Sch.)
- F175** Words in s. 30(2) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 24(4)(b)**, 56 (with Sch. 10); S.I. 2008/1900, **art. 2(f)** (with art. 3, Sch.)
- F176** S. 30(2A) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 24(5)**, 56 (with Sch. 10); S.I. 2008/1900, **art. 2(f)** (with art. 3, Sch.)
- F177** Words in s. 30(4) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 24(6)**, 56 (with Sch. 10); S.I. 2008/1900, **art. 2(f)** (with art. 3, Sch.)
- F178** S. 30(4)(a)(b) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 32, 56, **Sch. 3 para. 14(2)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F179** S. 30(4A) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 32, 56, **Sch. 3 para. 14(3)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F180** S. 30(4B) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 24(7)**, 56 (with Sch. 10); S.I. 2008/1900, **art. 2(f)** (with art. 3, Sch.)

#### Supplemental

### 31 Procedure on applications to county court. **E+W**

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

- (a) for the hearing and determination of such applications otherwise than in open court;
- (b) for the admission on the hearing of such applications of evidence of such descriptions as may be specified in the rules notwithstanding anything to the contrary in any enactment or rule of law relating to the admissibility of evidence;
- (c) for the visiting and interviewing of patients in private by or under the directions of the court.

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## 32 Regulations for purposes of Part II. **E+W**

- (1) The Secretary of State may make regulations for prescribing anything which, under this Part of this Act, is required or authorised to be prescribed, and otherwise for carrying this Part of this Act into full effect.
- (2) Regulations under this section may in particular make provision—
  - (a) for prescribing the form of any application, recommendation, report, order, notice or other document to be made or given under this Part of this Act;
  - (b) for prescribing the manner in which any such application, recommendation, report, order, notice or other document may be proved, and for regulating the service of any such application, report, order or notice;
  - (c) for requiring [<sup>F181</sup>such bodies as may be prescribed by the regulations] to keep such registers or other records as may be [<sup>F181</sup>so prescribed] in respect of patients liable to be detained or subject to guardianship <sup>F182</sup>. . . under this Part of this Act [<sup>F183</sup>or community patients] , and to furnish or make available to those patients, and their relatives, such written statements of their rights and powers under this Act as may be so prescribed;
  - (d) for the determination in accordance with the regulations of the age of any person whose exact age cannot be ascertained by reference to the registers kept under the <sup>M2</sup>Births and Deaths Registration Act 1953; and
  - (e) for enabling the functions under this Part of this Act of the nearest relative of a patient to be performed, in such circumstances and subject to such conditions (if any) as may be prescribed by the regulations, by any person authorised in that behalf by that relative;

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

- (3) Without prejudice to subsections (1) and (2) above, but subject to section 23(4) [<sup>F184</sup>and (6)] above, regulations under this section may determine the manner in which functions under this Part of this Act of the managers of hospitals, local social services authorities, [<sup>F185</sup>[<sup>F186</sup>Local Health Board] Special Health Authorities [<sup>F187</sup>, Primary Care Trusts][<sup>F188</sup>, National Health Service trusts or NHS foundation trusts]] are to be exercised, and such regulations may in particular specify the circumstances in which, and the conditions subject to which, any such functions may be performed by officers of or other persons acting on behalf of those managers [<sup>F189</sup>, boards,][<sup>F190</sup>authorities and trusts].

### Textual Amendments

- F181** Words in s. 32(2)(c) substituted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1 para. 2**
- F182** Words in s. 32(2)(c) repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 55, 56, **Sch. 11 Pt. 5** (with Sch. 10); S.I. 2008/1210, **art. 2(d)** (with art. 4)
- F183** Words in s. 32(2)(c) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 15** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F184** Words in s. 32(3) inserted (24.7.2007) by Mental Health Act 2007 (c. 12), **ss. 45(2)**, 56 (with Sch. 10); S.I. 2007/2156, **art. 2**
- F185** Words in s. 32(3) substituted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, s. 2(1)(3), 8, **Sch. 1, Pt. III, para. 107(4)**

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- F186** Words in s. 32(3) substituted (1.4.2007) by The References to Health Authorities Order 2007 (S.I. 2007/961), **art. 3**, {Sch. para. 13(7(a))}
- F187** Words in s. 32(3) inserted (8.2.2000) by S.I. 2000/90, art. 3(1), **Sch. 1 para. 16(6)** (with art. 2(5))
- F188** Words in s. 32(3) substituted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 34, 199, **Sch. 4 para. 55**; S.I. 2004/759, **art.2**
- F189** Word in s. 32(3) inserted (1.4.2007) by The References to Health Authorities Order 2007 (S.I. 2007/961), **art. 3**, {Sch. para. 13(7(b))}
- F190** Words substituted by virtue of National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 24(5)**

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

- C13** S. 32(2)(c) modified (3.11.2008) by The Mental Health Act 2007 (Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions) Order 2008 (S.I. 2008/1210), arts. 1(1)(b), **6(d)**
- C14** S. 32(3) modified (1.7.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), s. 45(4); S.I. 2005/1705, art. 2(b) (as inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 48, 56, **Sch. 6 para. 16(4)** (with Sch. 10)); S.I. 2008/1900, **art. 2(o)** (with art. 3, Sch.)

#### Marginal Citations

- M2** 1953 c. 20.

### 33 Special provisions as to wards of court. **E+W**

- (1) An application for the admission to hospital of a minor who is a ward of court may be made under this Part of this Act with the leave of the court; and section 11(4) above shall not apply in relation to an application so made.
- (2) Where a minor who is a ward of court is liable to be detained in a hospital by virtue of an application for admission under this Part of this Act [<sup>F191</sup>or is a community patient], any power exercisable under this Part of this Act or under section 66 below in relation to the patient by his nearest relative shall be exercisable by or with the leave of the court.
- (3) Nothing in this Part of this Act shall be construed as authorising the making of a guardianship application in respect of a minor who is a ward of court, or the transfer into guardianship of any such minor.
- [<sup>F192</sup>(4) Where a community treatment order has been made in respect of a minor who is a ward of court, the provisions of this Part of this Act relating to community treatment orders and community patients have effect in relation to the minor subject to any order which the court makes in the exercise of its wardship jurisdiction; but this does not apply as regards any period when the minor is recalled to hospital under section 17E above.]

#### Textual Amendments

- F191** Words in s. 33(2) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 16(2)** (with Sch. 10); S.I. 2008/1210, **art. 2(b)** (with art. 4)
- F192** S. 33(4) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 16(3)** (with Sch. 10); S.I. 2008/1210, **art. 2(b)** (with art. 4)

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

**C15** S. 33 modified (3.11.2008) by [The Mental Health Act 2007 \(Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions\) Order 2008 \(S.I. 2008/1210\)](#), arts. 1(1)(b), **6(e)**

**34 Interpretation of Part II. E+W**

(1) In this Part of this Act—

[<sup>F193</sup>“the appropriate practitioner” means—

- (a) in the case of a patient who is subject to the guardianship of a person other than a local social services authority, the nominated medical attendant of the patient; and
- (b) in any other case, the responsible clinician;]

<sup>F194</sup>

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

[<sup>F195</sup>“registered establishment” means an establishment—

- (a) which would not, apart from subsection (2) below, be a hospital for the purposes of this Part; and
- (b) in respect of which a person is registered under Part II of the Care Standards Act 2000 as an independent hospital in which treatment or nursing (or both) are provided for persons liable to be detained under this Act;]

[<sup>F196</sup>“the responsible clinician” means—

- (a) in relation to a patient liable to be detained by virtue of an application for admission for assessment or an application for admission for treatment, or a community patient, the approved clinician with overall responsibility for the patient's case;
- (b) in relation to a patient subject to guardianship, the approved clinician authorised by the responsible local social services authority to act (either generally or in any particular case or for any particular purpose) as the responsible clinician;]

<sup>F194</sup>

(1A) <sup>F197</sup>

.....  
(2) Except where otherwise expressly provided, this Part of this Act applies in relation to [<sup>F198</sup>a registered establishment], as it applies in relation to a hospital, and references in this Part of this Act to a hospital, and any reference in this Act to a hospital to which this Part of this Act applies, shall be construed accordingly.

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

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

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### Textual Amendments

- F193** Definition of "the appropriate practitioner" in s 34(1) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 9\(9\)](#), 56 (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(b\)](#) (with [art. 3](#), [Sch.](#))
- F194** Definitions of "the community responsible medical officer" and "the supervisor" in s 34(1) repealed (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 55](#), 56, [Sch. 11 Pt. 5](#) (with [Sch. 10](#)); S.I. 2008/1210, [art. 2\(d\)](#) (with [art. 4](#))
- F195** S. 34(1): definition of "registered establishment" inserted (1.4.2002) by 2000 c. 14, s. 116, [Sch. 4 para. 9\(4\)\(a\)](#); S.I. 2001/4150, [art. 3\(3\)](#) (subject to transitional provisions in [art. 4](#) and S.I. 2002/1493, [art. 4](#)); S.I. 2002/920, [art. 3\(3\)\(d\)](#) (subject to transitional provisions in [Schs. 1-3](#) and [art. 3\(4\)-\(10\)](#))
- F196** Definition of "the responsible clinician" in s 34(1) substituted (3.11.2008) for definition of "the responsible medical officer" by [Mental Health Act 2007 \(c. 12\)](#), [ss. 9\(10\)](#), 56 (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(b\)](#) (with [art. 3](#), [Sch.](#))
- F197** S. 34(1A) repealed (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 55](#), 56, [Sch. 11 Pt. 5](#) (with [Sch. 10](#)); S.I. 2008/1210, [art. 2\(d\)](#) (with [art. 4](#))
- F198** Words in s. 34(2) substituted (1.4.2002) by 2000 c. 14, s. 116, [Sch. 4 para. 9\(4\)\(b\)](#); S.I. 2001/4150, [art. 3\(3\)](#) (subject to transitional provisions in [art. 4](#) and S.I. 2002/1493, [art. 4](#)); S.I. 2002/920, [art. 3\(3\)\(d\)](#) (subject to transitional provisions in [Schs. 1-3](#) and [art. 3\(4\)-\(10\)](#))



**Status:**

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