



# Mental Health Act 1983

## 1983 CHAPTER 20

### PART VI

#### REMOVAL AND RETURN OF PATIENTS WITHIN UNITED KINGDOM, ETC.

#### *[<sup>F1</sup>Removal to and from Scotland]*

#### Textual Amendments

**F1** S. 80: cross-heading substituted (1.4.2008) by virtue of [Mental Health Act 2007 \(c. 12\)](#), ss. 39, 56, [Sch. 5 para. 2](#) (with [Sch. 10](#)); [S.I. 2008/745](#), [art. 3\(f\)](#)

#### **80** Removal of patients to Scotland.

- (1) If it appears to the Secretary of State, in the case of a patient who is for the time being liable to be detained <sup>F2</sup> . . . under this Act (otherwise than by virtue of section 35, 36 or 38 above), that it is in the interests of the patient to remove him to Scotland, and that arrangements have been made for admitting him to a hospital <sup>F2</sup> . . . there, [<sup>F3</sup>or, where he is not to be admitted to a hospital, for his detention in hospital to be authorised by virtue of the Mental Health (Care and Treatment)(Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995] the Secretary of State may authorise his removal to Scotland and may give any necessary directions for his conveyance to his destination.
- (2) <sup>F4</sup> . . . . .
- (3) <sup>F4</sup> . . . . .
- (4) <sup>F4</sup> . . . . .
- (5) <sup>F4</sup> . . . . .
- (6) [<sup>F5</sup>Where a person removed under this section was immediately before his removal subject to a restriction order or restriction direction of limited duration, [<sup>F6</sup>the

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restriction order or restriction direction<sup>F7</sup> . . . shall expire on the date on which the first-mentioned order or direction would have expired if he had not been so removed.]]

(7) In this section “hospital” has the same meaning as in the [<sup>F8</sup>Mental Health (Care and Treatment)(Scotland) Act 2003] .

[<sup>F9</sup>(8) Reference in this section to a patient's detention in hospital being authorised by virtue of the Mental Health (Care and Treatment)(Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995 shall be read as including references to a patient in respect of whom a certificate under one of the provisions listed in section 290(7)(a) of the Act of 2003 is in operation.]

### Textual Amendments

- F2** Words in s. 80(1) omitted (1.4.2008) and repealed (28.10.2008) by virtue of [Mental Health Act 2007 \(c. 12\)](#), ss. 39, 55, 56, Sch. 5 para. 2, **Sch. 11 Pt. 7** (with Sch. 10); S.I. 2008/745, art. 3(f); S.I. 2008/2788, **art. 2**
- F3** Words in s. 80(1) inserted (E.W.) (5.10.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Consequential Provisions\) Order 2005 \(S.I. 2005/2078\)](#), art. 15, **Sch. 1 para. 2(4)(a)**
- F4** S. 80(2)-(5) repealed (S.) (27.9.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 3, **Sch. 2** and repealed (E.W.) (5.10.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Consequential Provisions\) Order 2005](#), art. 1(1), Sch. 3
- F5** S. 80(6) repealed (E.W.) (5.10.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Consequential Provisions\) Order \(S.I. 2005/2078\)](#), art. 16, {Sch. 3}
- F6** Words substituted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\)](#), s. 41(2), **Sch. 1 para 2**, **Sch. 2 para. 1(b)** and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), **s. 126(2)(d)**
- F7** Words in s. 80(6) repealed (S.) (27.9.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 3, **Sch. 2**
- F8** Words in s. 80(7) substituted (S.) (27.9.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 2, **Sch. 1 para. 13(2)** and words in s. 80(7) substituted (E.W.) (5.10.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(S.I. 2005/2078\)](#), art. 15, **Sch. 1 para. 2(4)(b)**
- F9** S. 80(8) inserted (E.W.) (5.10.05) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Consequential Provisions\) Order 2005 \(S.I. 2005/2078\)](#), art. 15, **Sch. 1 para. 2(4)(c)**

VALID FROM 03/11/2008

### [<sup>F10</sup>80ZA] **Transfer of responsibility for community patients to Scotland**

- (1) If it appears to the appropriate national authority, in the case of a community patient, that the conditions mentioned in subsection (2) below are met, the authority may authorise the transfer of responsibility for him to Scotland.
- (2) The conditions are—
  - (a) a transfer under this section is in the patient's interests; and
  - (b) arrangements have been made for dealing with him under enactments in force in Scotland corresponding or similar to those relating to community patients in this Act.
- (3) The appropriate national authority may not act under subsection (1) above while the patient is recalled to hospital under section 17E above.

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- (4) In this section, “the appropriate national authority” means—
- (a) in relation to a community patient in respect of whom the responsible hospital is in England, the Secretary of State;
  - (b) in relation to a community patient in respect of whom the responsible hospital is in Wales, the Welsh Ministers.]

#### Textual Amendments

**F10** S. 80ZA inserted (E.W.) (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 39, 56, [Sch. 5 para. 3](#) (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(n\)](#) (with [art. 3](#), [Sch.](#))

#### [<sup>F11</sup>80A Transfer of responsibility for patients to Scotland.

- (1) If it appears to the Secretary of State, in the case of a patient who—
- (a) is subject to a restriction order under section 41 above; and
  - (b) has been conditionally discharged under section 42 or 73 above,
- that a transfer under this section would be in the interests of the patient, the Secretary of State may, with the consent of the Minister exercising corresponding functions in Scotland, transfer responsibility for the patient to that Minister.
- (2) <sup>F12</sup> .....
- (3) <sup>F12</sup> .....]

#### Textual Amendments

**F11** S. 80A inserted (E.W.S.) (1.10.1997) by [1997 c. 43](#), s. 48, [Sch. 3 para. 1](#); [S.I. 1997/2200](#), [art. 2](#)

**F12** S. 80A(2)(3) repealed (S.) (27.9.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 3, [Sch. 2](#)

VALID FROM 03/11/2008

#### [<sup>F13</sup>80B Removal of detained patients from Scotland

- (1) This section applies to a patient if—
- (a) he is removed to England and Wales under regulations made under section 290(1)(a) of the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#) (“the 2003 Act”);
  - (b) immediately before his removal, his detention in hospital was authorised by virtue of that Act or the [Criminal Procedure \(Scotland\) Act 1995](#); and
  - (c) on his removal, he is admitted to a hospital in England or Wales.
- (2) He shall be treated as if, on the date of his admission to the hospital, he had been so admitted in pursuance of an application made, or an order or direction made or given, on that date under the enactment in force in England and Wales which most closely corresponds to the enactment by virtue of which his detention in hospital was authorised immediately before his removal.

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- (3) If, immediately before his removal, he was subject to a measure under any enactment in force in Scotland restricting his discharge, he shall be treated as if he were subject to an order or direction under the enactment in force in England and Wales which most closely corresponds to that enactment.
- (4) If, immediately before his removal, the patient was liable to be detained under the 2003 Act by virtue of a transfer for treatment direction, given while he was serving a sentence of imprisonment (within the meaning of section 136(9) of that Act) imposed by a court in Scotland, he shall be treated as if the sentence had been imposed by a court in England and Wales.
- (5) If, immediately before his removal, the patient was subject to a hospital direction or transfer for treatment direction, the restriction direction to which he is subject by virtue of subsection (3) above shall expire on the date on which that hospital direction or transfer for treatment direction (as the case may be) would have expired if he had not been so removed.
- (6) If, immediately before his removal, the patient was liable to be detained under the 2003 Act by virtue of a hospital direction, he shall be treated as if any sentence of imprisonment passed at the time when that hospital direction was made had been imposed by a court in England and Wales.
- (7) Any directions given by the Scottish Ministers under regulations made under section 290 of the 2003 Act as to the removal of a patient to which this section applies shall have effect as if they were given under this Act.
- (8) Subsection (8) of section 80 above applies to a reference in this section as it applies to one in that section.
- (9) In this section—
  - “hospital direction” means a direction made under section 59A of the Criminal Procedure (Scotland) Act 1995; and
  - “transfer for treatment direction” has the meaning given by section 136 of the 2003 Act.]

#### Textual Amendments

**F13** S. 80B inserted (E.W.) (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 39, 56, [Sch. 5 para. 4](#) (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(n\)](#) (with [art. 3](#), [Sch.](#))

VALID FROM 03/11/2008

#### [<sup>F14</sup>80C Removal of patients subject to compulsion in the community from Scotland

- (1) This section applies to a patient if—
  - (a) he is subject to an enactment in force in Scotland by virtue of which regulations under section 289(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 apply to him; and
  - (b) he is removed to England and Wales under those regulations.

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- (2) He shall be treated as if on the date of his arrival at the place where he is to reside in England or Wales—
  - (a) he had been admitted to a hospital in England or Wales in pursuance of an application or order made on that date under the corresponding enactment; and
  - (b) a community treatment order had then been made discharging him from the hospital.
- (3) For these purposes—
  - (a) if the enactment to which the patient was subject in Scotland was an enactment contained in the Mental Health (Care and Treatment) (Scotland) Act 2003, the corresponding enactment is section 3 of this Act;
  - (b) if the enactment to which he was subject in Scotland was an enactment contained in the Criminal Procedure (Scotland) Act 1995, the corresponding enactment is section 37 of this Act.
- (4) “The responsible hospital, in the case of a patient in respect of whom a community treatment order is in force by virtue of subsection (2) above, means the hospital to which he is treated as having been admitted by virtue of that subsection, subject to section 19A above.
- (5) As soon as practicable after the patient's arrival at the place where he is to reside in England or Wales, the responsible clinician shall specify the conditions to which he is to be subject for the purposes of section 17B(1) above, and the conditions shall be deemed to be specified in the community treatment order.
- (6) But the responsible clinician may only specify conditions under subsection (5) above which an approved mental health professional agrees should be specified.]

#### Textual Amendments

**F14** S. 80C inserted (E.W.) (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 39, 56, [Sch. 5 para. 4](#) (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(n\)](#) (with [art. 3](#), [Sch.](#))

### [<sup>F15</sup>80D Transfer of conditionally discharged patients from Scotland

- (1) This section applies to a patient who is subject to—
  - (a) a restriction order under section 59 of the Criminal Procedure (Scotland) Act 1995; and
  - (b) a conditional discharge under section 193(7) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”).
- (2) A transfer of the patient to England and Wales under regulations made under section 290 of the 2003 Act shall have effect only if the Secretary of State has consented to the transfer.
- (3) If a transfer under those regulations has effect, the patient shall be treated as if—
  - (a) on the date of the transfer he had been conditionally discharged under section 42 or 73 above; and
  - (b) he were subject to a hospital order under section 37 above and a restriction order under section 41 above.

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- (4) If the restriction order to which the patient was subject immediately before the transfer was of limited duration, the restriction order to which he is subject by virtue of subsection (3) above shall expire on the date on which the first-mentioned order would have expired if the transfer had not been made.]

#### Textual Amendments

**F15** S. 80D inserted (E.W.) (1.10.2007) by [Mental Health Act 2007 \(c. 12\)](#), ss. 39, 56, [Sch. 5 para. 4](#) (with [Sch. 10](#)); S.I. 2007/2798, [art. 2\(c\)\(i\)](#)

### *Removal to and from Northern Ireland*

#### **81 Removal of patients to Northern Ireland.**

- (1) If it appears to the Secretary of State, in the case of a patient who is for the time being liable to be detained or subject to guardianship under this Act (otherwise than by virtue of section 35, 36 or 38 above), that it is in the interests of the patient to remove him to Northern Ireland, and that arrangements have been made for admitting him to a hospital or, as the case may be, for receiving him into guardianship there, the Secretary of State may authorise his removal to Northern Ireland and may give any necessary directions for his conveyance to his destination.
- (2) Subject to the provisions of subsections (4) and (5) below, where a patient liable to be detained under this Act by virtue of an application, order or direction under any enactment in force in England and Wales is removed under this section and admitted to a hospital in Northern Ireland, he shall be treated as if on the date of his admission he had been so admitted in pursuance of an application made, or an order or direction made or given, on that date under the corresponding enactment in force in Northern Ireland, and, <sup>F16</sup>where he is subject to a hospital order and a restriction order or a transfer direction and a restriction direction under any enactment in this Act, as if he were subject to a hospital order and a restriction order or a transfer direction and a restriction direction under the corresponding enactment] in force in Northern Ireland.
- (3) Where a patient subject to guardianship under this Act by virtue of an application, order or direction under any enactment in force in England and Wales is removed under this section and received into guardianship in Northern Ireland, he shall be treated as if on the date on which he arrives at the place where he is to reside he had been so received in pursuance of an application, order or direction under the corresponding enactment in force in Northern Ireland, and as if the application had been accepted or, as the case may be, the order or direction had been made or given on that date.
- (4) Where a person removed under this section was immediately before his removal liable to be detained by virtue of an application for admission for assessment under this Act, he shall, on his admission to a hospital in Northern Ireland, be treated as if he had been admitted to the hospital in pursuance of an application <sup>F17</sup>for assessment under Article 4 of the Mental Health (Northern Ireland) Order 1986] made on the date of his admission.
- (5) Where a person removed under this section was immediately before his removal liable to be detained by virtue of an application for admission for treatment under this Act, he shall, on his admission to a hospital in Northern Ireland, be treated as if <sup>F18</sup>he were detained for treatment under Part II of the Mental Health (Northern Ireland) Order

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1986 by virtue of a report under Article 12(1) of that Order made on the date of his admission]

- (6) Where a patient removed under this section was immediately before his removal liable to be detained under this Act by virtue of a transfer direction given while he was serving a sentence of imprisonment (within the meaning of section 47(5) above) imposed by a court in England and Wales, he shall be treated as if the sentence had been imposed by a court in Northern Ireland.
- (7) Where a person removed under this section was immediately before his removal subject to a <sup>F19</sup> . . . restriction direction of limited duration, [<sup>F20</sup>the <sup>F19</sup> . . . restriction direction] to which he is subject by virtue of subsection (2) above shall expire on the date on which [<sup>F20</sup>the first-mentioned <sup>F19</sup> . . . restriction direction would have expired if he had not been so removed.
- (8) In this section “hospital” has the same meaning as in the Mental Health [<sup>F21</sup>(Northern Ireland) Order 1986].]

#### Textual Amendments

- F16** Words in s. 81(2) substituted (1.4.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 39, 56, [Sch. 5 para. 5](#) (with [Sch. 10](#)); [S.I. 2008/745](#), [art. 3\(f\)](#)
- F17** Words substituted by [S.I. 1986/596](#), [art. 2\(3\)](#)
- F18** Paragraphs(a)and (b) substituted by [S.I. 1986/596](#), [art. 2\(4\)](#)
- F19** Words in s. 81(7) omitted (1.10.2007 for E.W. otherwise prosp.) and repealed (3.11.2008) by virtue of [Mental Health Act 2007 \(c. 12\)](#), ss. 40(4)(7), 55, 56, [Sch. 11 Pt. 8](#) (with [Sch. 10](#)); [S.I. 2007/2798](#), [art. 2\(d\)](#); [S.I. 2008/1900](#), [art. 2\(p\)](#) (with [art. 3](#), [Sch.](#))
- F20** Words substituted by [S.I. 1986/596](#), [art. 2\(5\)](#)
- F21** Words substituted by [S.I. 1986/596](#), [art. 2\(6\)](#)

VALID FROM 03/11/2008

#### [<sup>F22</sup>81ZA] Removal of community patients to Northern Ireland

- (1) Section 81 above shall apply in the case of a community patient as it applies in the case of a patient who is for the time being liable to be detained under this Act, as if the community patient were so liable.
- (2) Any reference in that section to the application, order or direction by virtue of which a patient is liable to be detained under this Act shall be construed, for these purposes, as a reference to the application, order or direction under this Act in respect of the patient.]

#### Textual Amendments

- F22** [S. 81ZA](#) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 39, 56, [Sch. 5 para. 6](#) (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(n\)](#) (with [art. 3](#), [Sch.](#))

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## <sup>F23F23</sup>81A Transfer of responsibility for patients to Northern Ireland.

- (1) If it appears to the Secretary of State, in the case of a patient who—
  - <sup>F24</sup>(a) is subject to a hospital order under section 37 above and a restriction order under section 41 above or to a transfer direction under section 47 above and a restriction direction under section 49 above;]
  - (b) has been conditionally discharged under section 42 or 73 above, that a transfer under this section would be in the interests of the patient, the Secretary of State may, with the consent of the Minister exercising corresponding functions in Northern Ireland, transfer responsibility for the patient to that Minister.
- (2) Where responsibility for such a patient is transferred under this section, the patient shall be treated—
  - (a) as if on the date of the transfer he had been conditionally discharged under the corresponding enactment in force in Northern Ireland; and
  - (b) as if he were subject to <sup>F25</sup>a hospital order and a restriction order, or to a transfer direction and a restriction direction,] under the corresponding enactment in force in Northern Ireland.
- (3) Where a patient responsibility for whom is transferred under this section was immediately before the transfer subject to a <sup>F26</sup>restriction order or] restriction direction of limited duration, the <sup>F26</sup>restriction order or] restriction direction to which he is subject by virtue of subsection (2) above shall expire on the date on which the first-mentioned <sup>F26</sup>order or ] direction would have expired if the transfer had not been made.]

### Textual Amendments

- F23** S. 81A inserted (1.10.1997) by 1997 c. 43, s. 48, **Sch. 3, para. 2**; S.I. 1997/2200, **art. 2**
- F24** S. 81A(1)(a) substituted (1.10.2007 for E.W.) by Mental Health Act 2007 (c. 12), ss. 39, 56, **Sch. 5 para. 7(2)** (with **Sch. 10**); S.I. 2007/2798, **art. 2(c)(ii)**
- F25** Words in s. 81A(2)(b) substituted (1.10.2007 for E.W.) by Mental Health Act 2007 (c. 12), ss. 39, 56, **Sch. 5 para. 7(3)** (with **Sch. 10**); S.I. 2007/2798, **art. 2(c)(ii)**
- F26** Words in s. 81A(3) omitted (1.10.2007 for E.W. otherwise prosp.) by virtue of Mental Health Act 2007 (c. 12), ss. 40(5)(7), 55, 56, **Sch. 11 Pt. 8** (with **Sch. 10**); S.I. 2007/2798, **art. 2(d)**

## 82 Removal to England and Wales of patients from Northern Ireland.

- (1) If it appears to the responsible authority, in the case of a patient who is for the time being liable to be detained or subject to guardianship under the Mental Health <sup>F27</sup>(Northern Ireland) Order 1986 (otherwise than by virtue of Article 42, 43 or 45 of that Order)], that it is in the interests of the patient to remove him to England and Wales, and that arrangements have been made for admitting him to a hospital or, as the case may be, for receiving him into guardianship there, the responsible authority may authorise his removal to England and Wales and may give any necessary directions for his conveyance to his destination.
- (2) Subject to the provisions of <sup>F28</sup>subsections (4) and (4A)] below, where a patient who is liable to be detained under the <sup>F28</sup>Mental Health (Northern Ireland) Order 1986] by virtue of an application, order or direction under any enactment in force in Northern Ireland is removed under this section and admitted to a hospital in England and Wales, he shall be treated as if on the date of his admission he had been so admitted in



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pursuance of an application made, or an order or direction made or given, on that date under the corresponding enactment in force in England and Wales and, [<sup>F29</sup>where he is subject to a hospital order and a restriction order or a transfer direction and a restriction direction under any enactment in that Order, as if he were subject to a hospital order and a restriction order or a transfer direction and a restriction direction under the corresponding enactment] in force in England and Wales..

(3) Where a patient subject to guardianship under the [<sup>F30</sup>Mental Health (Northern Ireland) Order 1986] by virtue of an application, order or direction under any enactment in force in Northern Ireland is removed under this section and received into guardianship in England and Wales, he shall be treated as if on the date on which he arrives at the place where he is to reside he had been so received in pursuance of an application, order or direction under the corresponding enactment in force in England and Wales and as if the application had been accepted or, as the case may be, the order or direction had been made or given on that date.

[<sup>F31</sup>(4) Where a person removed under this section was immediately before his removal liable to be detained for treatment by virtue of a report under Article 12(1) or 13 of the Mental Health (Northern Ireland) Order 1986, he shall be treated, on his admission to a hospital in England and Wales, as if he had been admitted to the hospital in pursuance of an application for admission for treatment made on the date of his admission.

(4A) Where a person removed under this section was immediately before his removal liable to be detained by virtue of an application for assessment under Article 4 of the Mental Health (Northern Ireland) Order 1986, he shall be treated, on his admission to a hospital in England and Wales, as if he had been admitted to the hospital in pursuance of an application for admission for assessment made on the date of his admission.]

(5) Where a patient removed under this section was immediately before his removal liable to be detained under the [<sup>F32</sup>Mental Health (Northern Ireland) Order 1986] by virtue of a transfer direction given while he was serving a sentence of imprisonment (within the meaning of [<sup>F32</sup>Article 53(5) of that Order] ) imposed by a court in Northern Ireland, he shall be treated as if the sentence had been imposed by a court in England and Wales.

(6) Where a person removed under this section was immediately before his removal subject to [<sup>F33</sup>a restriction order or restriction direction] of limited duration, the restriction order or restriction direction to which he is subject by virtue of subsection (2) above shall expire on the date on which the [<sup>F33</sup>first-mentioned restriction order or restriction direction] would have expired if he had not been so removed.

(7) In this section “the responsible authority” means the Department of Health and Social Services for Northern Ireland or, in relation to a patient who is subject to [<sup>F34</sup>a restriction order or restriction direction], the Secretary of State.

#### Textual Amendments

**F27** Words substituted by [S.I. 1986/596, art. 2\(7\)](#)

**F28** Words substituted by [S.I. 1986/596, art. 2\(8\)](#)

**F29** Words in [s. 82\(2\)](#) substituted (1.10.2007 for E. W.) by [Mental Health Act 2007 \(c. 12\), ss. 39, 56, Sch. 5 para. 8](#) (with [Sch. 10](#)); [S. I. 2007/2798, art. 2\(c\)\(iii\)](#)

**F30** Words substituted by [S.I. 1986/596, art. 2\(9\)](#)

**F31** [S. 82\(4\)\(4A\)](#) substituted for [s. 82\(4\)](#) by [S.I. 1986/596, art. 2\(10\)](#)

**F32** Words substituted by [S.I. 1986/596, art. 2\(11\)](#)

**F33** Words substituted by [S.I. 1986/596, art. 2\(12\)](#)

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**F34** Words substituted by [S.I. 1986/596, art. 2\(13\)](#)

**[<sup>F35</sup>82A [<sup>F36</sup>Transfer of responsibility for conditionally discharged patients to England and Wales from Northern Ireland]**

- (1) If it appears to the relevant Minister, in the case of a patient who—
  - (a) is subject to a restriction order or restriction direction under Article 47(1) or 55(1) of the <sup>M1</sup>Mental Health (Northern Ireland) Order 1986; and
  - (b) has been conditionally discharged under Article 48(2) or 78(2) of that Order, that a transfer under this section would be in the interests of the patient, that Minister may, with the consent of the Secretary of State, transfer responsibility for the patient to the Secretary of State.
- (2) Where responsibility for such a patient is transferred under this section, the patient shall be treated—
  - (a) as if on the date of the transfer he had been conditionally discharged under section 42 or 73 above; and
  - <sup>F37</sup>(b) as if he were subject to a hospital order under section 37 above and a restriction order under section 41 above or to a transfer direction under section 47 above and a restriction direction under section 49 above.]
- (3) Where a patient responsibility for whom is transferred under this section was immediately before the transfer subject to a restriction order or restriction direction of limited duration, the restriction order or restriction direction to which he is subject by virtue of subsection (2) above shall expire on the date on which the first-mentioned order or direction would have expired if the transfer had not been made.
- (4) In this section “the relevant Minister” means the Minister exercising in Northern Ireland functions corresponding to those of the Secretary of State.]

**Textual Amendments**

- F35** S. 82A inserted (E.W.N.I) (1.10.1997) by [1997 c. 43, s. 48, Sch. 3, para. 3](#); [S.I. 1997/2200, art. 2](#)
- F36** S. 82A: title substituted (1.10.2007 for E. W.) by virtue of [Mental Health Act 2007 \(c. 12\), ss. 39, 56, Sch. 5 para. 9](#) (with [Sch. 10](#)); [S. I. 2007/2798, art. 2\(c\)\(iv\)](#)
- F37** S. 82A(2)(b) substituted (1.10.2007 for E. W.) by [Mental Health Act 2007 \(c. 12\), ss. 39, 56, Sch. 5 para. 9](#) (with [Sch. 10](#)); [S. I. 2007/2798, art. 2\(c\)\(iv\)](#)

**Marginal Citations**

- M1** [S.I. 1986/596 \(N.I.4\)](#).

*Removal to and from Channel Islands and Isle of Man*

**83 Removal of patients to Channel Islands or Isle of Man.**

If it appears to the Secretary of State, in the case of a patient who is for the time being liable to be detained or subject to guardianship under this Act (otherwise than by virtue of section 35, 36 or 38 above), that it is in the interests of the patient to remove him to any of the Channel Islands or to the Isle of Man, and that arrangements have been made for admitting him to a hospital or, as the case may be, for receiving him into

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guardianship there, the Secretary of State may authorise his removal to the island in question and may give any necessary directions for his conveyance to his destination.

VALID FROM 03/11/2008

**[<sup>F38</sup>83ZA Removal or transfer of community patients to Channel Islands or Isle of Man**

- (1) Section 83 above shall apply in the case of a community patient as it applies in the case of a patient who is for the time being liable to be detained under this Act, as if the community patient were so liable.
- (2) But if there are in force in any of the Channel Islands or the Isle of Man enactments (“relevant enactments”) corresponding or similar to those relating to community patients in this Act—
  - (a) subsection (1) above shall not apply as regards that island; and
  - (b) subsections (3) to (6) below shall apply instead.
- (3) If it appears to the appropriate national authority, in the case of a community patient, that the conditions mentioned in subsection (4) below are met, the authority may authorise the transfer of responsibility for him to the island in question.
- (4) The conditions are—
  - (a) a transfer under subsection (3) above is in the patient's interests; and
  - (b) arrangements have been made for dealing with him under the relevant enactments.
- (5) But the authority may not act under subsection (3) above while the patient is recalled to hospital under section 17E above.
- (6) In this section, “the appropriate national authority” means—
  - (a) in relation to a community patient in respect of whom the responsible hospital is in England, the Secretary of State;
  - (b) in relation to a community patient in respect of whom the responsible hospital is in Wales, the Welsh Ministers.]

**Textual Amendments**

**F38** S. 83ZA inserted (3.11.2008) by **Mental Health Act 2007 (c. 12)**, ss. 39, 56, **Sch. 5 para. 10** (with **Sch. 10**); **S.I. 2008/1900**, **art. 2(n)** (with **art. 3**, **Sch.**)

**[<sup>F39F39</sup>83A Transfer of responsibility for patients to Channel Islands or Isle of Man.**

- If it appears to the Secretary of State, in the case of a patient who—
- (a) is subject to a restriction order or restriction direction under section 41 or 49 above; and
  - (b) has been conditionally discharged under section 42 or 73 above,
- that a transfer under this section would be in the interests of the patient, the Secretary of State may, with the consent of the authority exercising corresponding functions in any of the Channel Islands or in the Isle of Man, transfer responsibility for the patient to that authority.]

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#### Textual Amendments

**F39** S. 83A inserted (1.10.1997) by 1997 c. 43, s. 48, **Sch. 3**, para. 4; S.I. 1997/2200, **art. 2**

### 84 Removal to England and Wales of offenders found insane in Channel Islands and Isle of Man.

- (1) The Secretary of State may by warrant direct that any offender found by a court in any of the Channel Islands or in the Isle of Man to be insane or to have been insane at the time of the alleged offence, and ordered to be detained during Her Majesty's pleasure, be removed to a hospital in England and Wales.
- (2) A patient removed under subsection (1) above shall, on his reception into the hospital in England and Wales, be treated as if he [<sup>F40</sup>were subject to a hospital order together with a restriction order <sup>F41</sup>. . . ] .
- (3) The Secretary of State may by warrant direct that any patient removed under this section from any of the Channel Islands or from the Isle of Man be returned to the island from which he was so removed, there to be dealt with according to law in all respects as if he had not been removed under this section.

#### Textual Amendments

**F40** Words in s. 84(2) substituted (31.3.2005) by **Domestic Violence, Crime and Victims Act 2004 (c. 28)**, ss. 58(1), 60, **Sch. 10 para. 22**; S.I. 2005/579, **art. 3(g)**

**F41** Words in s. 84(2) omitted (1.10.2007) and repealed (3.11.2008) by virtue of **Mental Health Act 2007 (c. 12)**, ss. 40(3)(b)(7), 55, 56 {Sch. 11 Pt. 8} (with Sch. 10); S.I. 2007/2798, **art. 2(d)**; S.I. 2008/1900, **art. 2(p)** (with art. 3, Sch.)

### 85 Patients removed from Channel Islands or Isle of Man.

- (1) This section applies to any patient who is removed to England and Wales from any of the Channel Islands or the Isle of Man under a provision corresponding to section 83 above and who immediately before his removal was liable to be detained or subject to guardianship in the island in question under a provision corresponding to an enactment contained in this Act (other than section 35, 36 or 38 above).
- (2) Where the patient is admitted to a hospital in England and Wales he shall be treated as if on the date of his admission he had been so admitted in pursuance of an application made, or an order or direction made or given, on that date under the corresponding enactment contained in this Act and, where he is subject to an order or direction restricting his discharge, as if he were subject [<sup>F42</sup>to a hospital order and a restriction order or to a hospital direction and a limitation direction or to a transfer direction and a restriction direction] .
- (3) Where the patient is received into guardianship in England and Wales, he shall be treated as if on the date on which he arrives at the place where he is to reside he had been so received in pursuance of an application, order or direction under the corresponding enactment contained in this Act and as if the application had been accepted or, as the case may be, the order or direction had been made or given on that date.

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- (4) Where the patient was immediately before his removal liable to be detained by virtue of a transfer direction given while he was serving a sentence of imprisonment imposed by a court in the island in question, he shall be treated as if the sentence had been imposed by a court in England and Wales.
- (5) Where the patient was immediately before his removal subject to an order or direction restricting his discharge, being an order or direction of limited duration, the restriction order or restriction direction to which he is subject by virtue of subsection (2) above shall expire on the date on which the first-mentioned order or direction would have expired if he had not been removed.
- (6) While being conveyed to the hospital referred to in subsection (2) or, as the case may be, the place referred to in subsection (3) above, the patient shall be deemed to be in legal custody, and section 138 below shall apply to him as if he were in legal custody by virtue of section 137 below.
- (7) In the case of a patient removed from the Isle of Man the reference in subsection (4) above to a person serving a sentence of imprisonment includes a reference to a person detained as mentioned in section 60(6)(a) of the Mental Health Act 1974 (an Act of Tynwald).

#### Textual Amendments

**F42** Words in s. 85(2) substituted (1.10.2007) by [Mental Health Act 2007 \(c. 12\)](#), ss. 39, 56, [Sch. 5 para. 11](#) (with [Sch. 10](#)); [S.I. 2007/2798](#), [art. 2\(c\)\(v\)](#)

VALID FROM 03/11/2008

#### **[<sup>F43</sup>85ZA] Responsibility for community patients transferred from Channel Islands or Isle of Man**

- (1) This section shall have effect if there are in force in any of the Channel Islands or the Isle of Man enactments (“relevant enactments”) corresponding or similar to those relating to community patients in this Act.
- (2) If responsibility for a patient is transferred to England and Wales under a provision corresponding to section 83ZA(3) above, he shall be treated as if on the date of his arrival at the place where he is to reside in England or Wales—
  - (a) he had been admitted to the hospital in pursuance of an application made, or an order or direction made or given, on that date under the enactment in force in England and Wales which most closely corresponds to the relevant enactments; and
  - (b) a community treatment order had then been made discharging him from the hospital.
- (3) “The responsible hospital”, in his case, means the hospital to which he is treated as having been admitted by virtue of subsection (2) above, subject to section 19A above.
- (4) As soon as practicable after the patient's arrival at the place where he is to reside in England or Wales, the responsible clinician shall specify the conditions to which he is to be subject for the purposes of section 17B(1) above, and the conditions shall be deemed to be specified in the community treatment order.

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(5) But the responsible clinician may only specify conditions under subsection (4) above which an approved mental health professional agrees should be specified.]

#### Textual Amendments

**F43** S. 85ZA inserted (3.11.2008) by *Mental Health Act 2007 (c. 12)*, ss. 39, 56, **Sch. 5 para. 12** (with *Sch. 10*); *S.I. 2008/1900*, **art. 2(n)** (with *art. 3*, *Sch.*)

### [<sup>F44</sup>85A Responsibility for patients transferred from Channel Islands or Isle of Man.

- (1) This section applies to any patient responsibility for whom is transferred to the Secretary of State by the authority exercising corresponding functions in any of the Channel Islands or the Isle of Man under a provision corresponding to section 83A above.
- (2) The patient shall be treated—
  - (a) as if on the date of the transfer he had been conditionally discharged under section 42 or 73 above; and
  - [<sup>F45</sup>(b) as if he were subject to a hospital order under section 37 above and a restriction order under section 41 above, or to a hospital direction and a limitation direction under section 45A above, or to a transfer direction under section 47 above and a restriction direction under section 49 above.]
- (3) Where the patient was immediately before the transfer subject to an order or direction restricting his discharge, being an order or direction of limited duration, the restriction order [<sup>F46</sup>, limitation direction] or restriction direction to which he is subject by virtue of subsection (2) above shall expire on the date on which the first-mentioned order or direction would have expired if the transfer had not been made.]

#### Textual Amendments

**F44** S. 85A inserted (1.10.1997) by *1997 c. 43*, s. 48, **Sch. 3**, para. 5; *S.I. 1997/2200*, **art. 2**

**F45** S. 85A(2)(b) substituted (1.10.2007) by *Mental Health Act 2007 (c. 12)*, ss. 39, 56, **Sch. 5 para. 13(2)** (with *Sch. 10*); *S.I. 2007/2798*, **art. 2(c)(vi)**

**F46** Words in s. 85A(3) inserted (1.10.2007) by *Mental Health Act 2007 (c. 12)*, ss. 39, 56, **Sch. 5 para. 13(3)** (with *Sch. 10*); *S.I. 2007/2798*, **art. 2(c)(vi)**

### *Removal of aliens*

## 86 Removal of alien patients.

- (1) This section applies to any patient who is neither a British citizen nor a Commonwealth citizen having the right of abode in the United Kingdom by virtue of section 2(1)(b) of the <sup>M2</sup>*Immigration Act 1971*, being a patient who is receiving treatment for mental illness as an in-patient in a hospital in England and Wales or a hospital within the meaning of the <sup>M3</sup>*Mental Health* [<sup>F47</sup>(Northern Ireland) Order 1986] and is detained pursuant to—
  - (a) an application for admission for treatment or [<sup>F47</sup>a report under Article 12(1) or 13 of that Order];

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- (b) a hospital order under section 37 above or [<sup>F47</sup>Article 44 of that Order]; or
  - (c) an order or direction under this Act (other than under section 35, 36 or 38 above) or [<sup>F47</sup>under that Order (other than under Article 42, 43 or 45 of that Order)] .
- (2) If it appears to the Secretary of State that proper arrangements have been made for the removal of a patient to whom this section applies to a country or territory outside the United Kingdom, the Isle of Man and the Channel Islands and for his care or treatment there and that it is in the interests of the patient to remove him, the Secretary of State may, subject to subsection (3) below—
- (a) by warrant authorise the removal of the patient from the place where he is receiving treatment as mentioned in subsection (1) above, and
  - (b) give such directions as the Secretary of State thinks fit for the conveyance of the patient to his destination in that country or territory and for his detention in any place or on board any ship or aircraft until his arrival at any specified port or place in any such country or territory.
- (3) The Secretary of State shall not exercise his powers under subsection (2) above in the case of any patient except with the approval of a Mental Health Review Tribunal or, as the case may be, of the Mental Health Review Tribunal for Northern Ireland.

#### Textual Amendments

**F47** Words substituted by [S.I. 1986/596, art. 2\(14\)](#)

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

**C1** [S. 86](#): certain functions transferred (10.7.2008) by [The Welsh Ministers \(Transfer of Functions\) Order 2008 \(S.I. 2008/1786\)](#), art. {2(a)}

#### Marginal Citations

**M2** [1971 c. 77. \(62\)](#)

**M3** [1986/595 \(N.I.4\)](#).

### *Return of patients absent without leave*

## **87 Patients absent from hospitals in Northern Ireland.**

- (1) Any person who—
- (a) under [<sup>F48</sup>Article 29 or 132 of the Mental Health (Northern Ireland) Order 1986] (which provide, respectively, for the retaking of patients absent without leave and for the retaking of patients escaping from custody); or
  - (b) under the said [<sup>F48</sup>Article 29 as applied by Article 31 of the said Order](which makes special provision as to persons sentenced to imprisonment),
- may be taken into custody in Northern Ireland, may be taken into custody in, and returned to Northern Ireland from, England and Wales by an approved social worker, by any constable or by any person authorised by or by virtue of the [<sup>F48</sup>said Order] to take him into custody.
- (2) This section does not apply to any person who is subject to guardianship.

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#### Textual Amendments

**F48** Words substituted by [S.I. 1986/596, art. 2\(15\)](#)

### 88 Patients absent from hospitals in England and Wales.

- (1) Subject to the provisions of this section, any person who, under section 18 above or section 138 below or under the said section 18 as applied by section 22 above, may be taken into custody in England and Wales may be taken into custody in, and returned to England and Wales from, any other part of the United Kingdom or the Channel Islands or the Isle of Man.
- (2) For the purposes of the enactments referred to in subsection (1) above, in their application by virtue of this section to Scotland, Northern Ireland, the Channel Islands or the Isle of Man, the expression “constable” includes a Scottish constable, an officer or constable of the Royal Ulster Constabulary, a member of the police in Jersey, an officer of police within the meaning of section 43 of the Larceny (Guernsey) Ltd 1958 or any corresponding law for the time being in force, or a constable in the Isle of Man, as the case may be.
- (3) For the purposes of the said enactments in their application by virtue of this section to Scotland or Northern Ireland, any reference to an approved social worker shall be construed as including a reference—
  - (a) in Scotland, to any mental health officer within the meaning of the [<sup>F49</sup>Mental Health (Care and Treatment)(Scotland) Act 2003] ;
  - (b) in Northern Ireland, to any [<sup>F50</sup>approved social worker within the meaning of the Mental Health (Northern Ireland) Order 1986].
- (4) This section does not apply to any person who is subject to guardianship.

#### Textual Amendments

**F49** Words in s. 88(3)(a) substituted (S.) (27.9.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\), art. 2, Sch. 1 para. 13\(3\)](#) and words in s. 80(3)(a) substituted (E.W.) (5.10.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Consequential Provisions\) Order 2005 \(S.I. 2005/2078\), art. 15, Sch. 1 para. 2\(5\)](#)

**F50** Words substituted by [S.I. 1986/596, art. 2\(16\)](#)

### 89 Patients absent from hospitals in the Channel Islands or Isle of Man.

- (1) Any person who under any provision corresponding to section 18 above or 138 below may be taken into custody in any of the Channel Islands or the Isle of Man may be taken into custody in, and returned to the island in question from, England and Wales by an approved social worker or a constable.
- (2) This section does not apply to any person who is subject to guardianship.



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## General

### 90 Regulations for purposes of Part VI.

Section 32 above shall have effect as if references in that section to Part II of this Act included references to this Part of this Act and to <sup>F51</sup>regulations made under section 290 of the Mental Health (Care and Treatment)(Scotland) Act 2003 and articles 2, 3 and 10 of the Mental Health (Care and Treatment)(Scotland) Act 2003 (Consequential Provisions) Order 2005], so far as <sup>F52</sup>that Part or those regulations or articles] apply to patients removed to England and Wales thereunder.

#### Textual Amendments

- F51** Words in s. 90 substituted (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), art. 15, **Sch. 1 para. 2(6)(a)**
- F52** Words in s. 90 substituted (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), art. 15, **Sch. 1 para. 2(6)(b)**

### 91 General provisions as to patients removed from England and Wales.

- (1) Subject to subsection (2) below, where a patient liable to be detained or subject to guardianship by virtue of an application, order or direction under Part II or III of this Act (other than section 35, 36 or 38 above) is removed from England and Wales in pursuance of arrangements under this Part of this Act, the application, order or direction shall cease to have effect when he is duly received into a hospital or other institution, or placed under guardianship <sup>F53</sup>or, where he is not received into a hospital but his detention in hospital is authorised by virtue of the Mental Health (Care and Treatment)(Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995], in pursuance of those arrangements.
- (2) Where the Secretary of State exercises his powers under section 86(2) above in respect of a patient who is detained pursuant to a hospital order under section 37 above and in respect of whom a restriction order is in force, those orders shall continue in force so as to apply to the patient if he returns to England and Wales <sup>F54</sup>. . . .
- <sup>F55</sup>(3) Reference in this section to a patient's detention in hospital being authorised by virtue of the Mental Health (Care and Treatment)(Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995 shall be read as including references to a patient in respect of whom a certificate under one of the provisions listed in section 290(7)(a) of the Act of 2003 is in operation.]

#### Textual Amendments

- F53** Words in s. 91(1) inserted (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), art. 15, **Sch. 1 para. 2(7)(a)**
- F54** Words in s. 91(2) omitted (1.10.2007) and repealed (prosp.) by virtue of Mental Health Act 2007 (c. 12), **ss. 40(6)(7), 55, 56**, Sch. 11 Pt. 8 (with Sch. 10); S.I. 2007/2798, **art. 2(d)**; S.I. 2008/1900, **art. 2(p)** (with art. 3, Sch.)
- F55** S. 91(3) inserted (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), art. 15, **Sch. 1 para. 2(7)(b)**

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## 92 Interpretation of Part VI.

- (1) References in this Part of this Act to a hospital, being a hospital in England and Wales, shall be construed as references to a hospital within the meaning of Part II of this Act.
- (2) Where a patient is treated by virtue of this Part of this Act as if he had been removed to a hospital in England and Wales in pursuance of a direction under Part III of this Act, that direction shall be deemed to have been given on the date of his reception into the hospital.
- (3) A patient removed to England and Wales under this Part of this Act or under [<sup>F56</sup>the Mental Health (Care and Treatment)(Scotland) Act 2003 (Consequential Provisions) Order 2005 and regulations made under section 290 of the Mental Health (Care and Treatment)(Scotland) Act 2003] shall be treated for the purposes of this Act as suffering from such form of mental disorder as may be recorded in his case in pursuance of regulations made by virtue of section 90 above, and references in this Act to the form or forms of mental disorder specified in the relevant application, order or direction shall be construed as including references to the form or forms of mental disorder so recorded.
- [<sup>F57</sup>(4) Sections 80 to 85A above shall have effect as if—
  - (a) any hospital direction under section 45A above were a transfer direction under section 47 above; and
  - (b) any limitation direction under section 45A above were a restriction direction under section 49 above.
- (5) Sections 80(5), 81(6) and 85(4) above shall have effect as if any reference to a transfer direction given while a patient was serving a sentence of imprisonment imposed by a court included a reference to a hospital direction given by a court after imposing a sentence of imprisonment on a patient.]

### Textual Amendments

**F56** Words in s. 92(3) substituted (5.10.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Consequential Provisions\) Order 2005 \(S.I. 2005/2078\)](#), art. 15, **Sch. 1 para. 2(8)**

**F57** S. 92(4)(5) inserted (1.10.1997) by [1997 c. 43, s. 55, Sch. 4 para. 12\(16\)](#); [S.I. 1997/2200, art. 2](#)

**Status:**

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**Changes to legislation:**

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