



Mental Health (Scotland) Act 1984

1984 CHAPTER 36

PART XI

MISCELLANEOUS AND GENERAL

Offences

104 False statements.

- (1) Any person who makes any statement or entry which is false in a material particular in any application, recommendation, report, record or other document required or authorised to be made for any of the purposes of this Act or, with intent to deceive, makes use of any such entry or statement which he knows to be false, shall be guilty of an offence.
- (2) Any person guilty of an offence under this section shall be liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or both; or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

105 Ill-treatment of patients.

- (1) It shall be an offence for any person being an officer on the staff of or otherwise employed in a hospital or [^{F1}employed in the provision of a care home service], or being a manager of a hospital or a person [^{F2}providing or managing a care home service]—
 - (a) to ill-treat or wilfully neglect a patient for the time being receiving treatment for mental disorder as an in-patient in that hospital or [^{F3}in accommodation provided by that care home service]; or
 - (b) to ill-treat or wilfully neglect, on the premises of which the hospital or [^{F4}accommodation] forms part, a patient for the time being receiving such treatment there as an out-patient.

Status: Point in time view as at 01/04/2002.

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- (2) It shall be an offence for any individual to ill-treat or wilfully neglect a patient who is for the time being ^{F5} . . . in his custody or care.
- [^{F6}(2A) It shall be an offence for any individual to ill-treat or wilfully neglect a patient in respect of whom a community care order is for the time being in force.]
- (3) Any person guilty of an offence against this section shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

Textual Amendments

- F1** Words in s. 105(1) substituted (1.4.2002) by 2001 asp 8, ss. 79, 81(2), **Sch. 3 para. 11(5)(a)**; S.S.I. 2002/162, {art. 2(f)(h)} (subject to arts. 3-13)
- F2** Words in s. 105(1) substituted (1.4.2002) by 2001 asp 8, ss. 79, 81(2), **Sch. 3 para. 11(5)(b)**; S.S.I. 2002/162, **art. 2(f)(h)** (subject to arts. 3-13)
- F3** Words in s. 105(1) substituted (1.4.2002) by 2001 asp 8, ss. 79, 81(2), **Sch. 3 para. 11(5)(c)**; S.S.I. 2002/162, **art. 2(f)(h)** (subject to arts. 3-13)
- F4** Words in s. 105(1)(b) substituted (1.4.2002) by 2001 asp 8, ss. 79, 81(2), **Sch. 3 para. 11(5)(b)**; S.S.I. 2002/162, **art. 2(f)(h)** (subject to arts. 3-13)
- F5** Words in s. 105(2) repealed (1.4.2002) by 2000 asp 4, s. 88(3), **Sch. 6**; S.S.I. 2001/81, art. 3, **Sch. 2**
- F6** S. 105(2A) inserted (1.4.1996) by 1995 c. 52, ss. 4(2), 7(2), **Sch. 2**, para. 6

106 Protection of mentally handicapped females.

- (1) It shall be an offence, subject to the exception mentioned in this section,—
- (a) for a man to have unlawful sexual intercourse with a woman who is protected by the provisions of this section;
 - (b) for any person to procure or encourage any woman who is protected by the provisions of this section to have unlawful sexual intercourse;
 - (c) for the owner or occupier of any premises or any person having or assisting in the management or control of premises to induce any woman who is protected by the provisions of this section to resort to or be upon such premises for the purpose of unlawful sexual intercourse with any man.
- (2) A person shall not be guilty of an offence against this section if he did not know and had no reason to suspect that the woman in respect of whom he is charged was protected by the provisions of this section.
- (3) Any person guilty of an offence under this section shall be liable on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine.
- (4) [^{F7}Section 16 of the ^{M1}Criminal Law (Consolidation)(Scotland) Act 1995] (which relates to warrants to search where there is reasonable cause to suspect that a woman or girl is being unlawfully detained for immoral purposes) shall apply in the case of a woman who is protected by the provisions of this section in the same manner as that section applies in the case of a girl who is under the age of 16 years.
- (5) If on the trial of an indictment for rape the jury are satisfied that the accused is guilty of an offence against paragraph (a) of subsection (1) of this section, but are not satisfied

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that he is guilty of rape, the jury may acquit him of rape and find him guilty of such offence as aforesaid, and in that event he shall be liable to be punished as if he had been convicted on an indictment for such offence as aforesaid.

- (6) A woman is protected by the provisions of this section if she is suffering from a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning.
- (7) In this section “woman” includes girl.

Textual Amendments

F7 Words in s. 106(4) substituted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 9(12)**; S.I. 1997/1712, art. 3, **Sch.**

Marginal Citations

M1 1995 c.39.

107 Protection of patients.

- (1) Without prejudice to the last foregoing section, it shall be an offence, subject to the exception mentioned in this section,—
- (a) for a man who is an officer on the staff or is otherwise employed in a hospital or ^{F8}employed in the provision of a care home service], or who is a manager of a hospital or ^{F9}a person providing or managing a care home service] to have unlawful sexual intercourse with a woman who is for the time being receiving treatment for mental disorder as an in-patient in that hospital or ^{F10}in accommodation provided by that care home service], or to have such intercourse on the premises of which the hospital or ^{F11}accommodation] forms part with a woman who is for the time being receiving such treatment there as an out-patient;
- (b) for a man to have unlawful sexual intercourse with a woman suffering from mental disorder who is ^{F12} . . . in his custody or care under this Act or in the care of a local authority under the ^{M2}Social Work (Scotland) Act 1968 or resident in a house provided by a local authority under that Act.
- (2) It shall not be an offence under this section for a man to have sexual intercourse with a woman if he does not know and has no reason to suspect her to be a person suffering from mental disorder.
- (3) In this section any reference to having unlawful sexual intercourse with a woman shall include a reference to committing a homosexual act as defined in ^{F13}section 13(4) of the Criminal Law (Consolidation) (Scotland) Act 1995].
- (4) Any person guilty of an offence under this section shall be liable on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine.

Textual Amendments

F8 Words in s. 107(1)(a) substituted (1.4.2002) by 2001 asp 8, ss. 79, 81(2), Sch. 3 para. 11(6)(a); S.S.I. 2002/162, **art. 2(f)(h)** (subject to arts. 3-13)

F9 Words in s. 107(1)(a) substituted (1.4.2002) by 2001 asp 8, ss. 79, 81(2), Sch. 3 para. 11(6)(b); S.S.I. 2002/162, **art. 2(f)(h)** (subject to arts. 3-13)

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- F10** Words in s. 107(1)(a) substituted (1.4.2002) by 2001 asp 8, ss. 79, 81(2), Sch. 3 para. 11(6)(c); S.S.I. 2002/162, **art. 2(f)(h)** (subject to arts. 3-13)
- F11** Words in s. 107(1)(a) substituted (1.4.2002) by 2001 asp 8, ss. 79, 81(2), Sch. 3 para. 11(6)(d); S.S.I. 2002/162, **art. 2(f)(h)** (subject to arts. 3-13)
- F12** Words in s. 107(1)(b) repealed (1.4.2002) by 2000 asp 4, s. 88(3), **Sch. 6**; S.S.I. 2001/81, art. 3, **Sch. 2**
- F13** Words in s. 107(3) substituted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 9(13)**; S.I. 1997/1712, art. 3, **Sch.**

Marginal Citations

- M2** 1968 c. 49.

108 Assisting patients to absent themselves without leave etc.

- (1) Any person who induces or knowingly assists any other person—
- (a) being liable to be detained in a hospital [^{F14} or being subject to guardianship] under this Act, to absent himself without leave; or
 - (b) being in legal custody by virtue of section 120 of this Act, to escape from such custody,
- shall be guilty of an offence.
- (2) Any person who knowingly harbours a patient who is absent without leave or is otherwise at large and liable to be retaken under this Act, or gives him any assistance with intent to prevent, hinder or interfere with his being taken into custody or returned to the hospital or other place where he ought to be, shall be guilty of an offence.
- (3) Any person guilty of an offence against this section shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

Textual Amendments

- F14** Words in s. 108(1)(a) repealed (S.) (1.4.2002) by 2000 asp 4, s. 88(3), **Sch. 6**; S.S.I. 2001/81, art. 3, **Sch. 2**

109 Obstruction.

- (1) Any person who refuses to allow the inspection of any premises, or without reasonable cause refuses to allow the visiting, interviewing or examination of any person, by a person authorised in that behalf by or under this Act [^{F15} or to give access to any person to a person so authorised], or to produce for the inspection of any person so authorised any document or record the production of which is duly required by him, or otherwise obstructs any such person in the exercise of his functions, shall be guilty of an offence.
- (2) Without prejudice to the generality of the last foregoing subsection, any person who insists on being present when requested to withdraw by a person authorised as aforesaid to interview or examine a person in private, shall be guilty of an offence.

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- (3) Any person guilty of an offence against this section shall be liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 3 on the standard scale, or both.

Textual Amendments

F15 Words in s. 109(1) inserted (1.4.1996) by 1995 c. 52, ss. 4(2), 7(2), **Sch. 2**, para. 7

Miscellaneous provisions

110 Duty to give information to patients and nearest relatives.

- (1) The managers of a hospital in which a patient is detained under the provisions of this Act, ^{F16} . . . shall take such steps as are practicable to ensure that the patient understands—
- (a) under which of those provisions he is for the time being detained ^{F16} . . . and the effect of that provision; and
 - (b) what rights of appeal to the sheriff are available to him in respect of his detention ^{F16} . . . under that provision; and
 - (c) that he may make representations to the Mental Welfare Commission,
- and those steps shall be taken as soon as practicable after the commencement of the patient's detention ^{F16} . . ., or any renewal of the authority for his detention ^{F16} . . .
- (2) The managers of a hospital in which a patient is detained as aforesaid shall also take such steps as are practicable to ensure that the patient understands the effect, so far as relevant in his case, of—
- (a) sections 33 and 34 of this Act; and
 - (b) Part X and sections 115, 116 and 119 of this Act;
- and those steps shall be taken as soon as practicable after the commencement of the patient's detention in the hospital.
- (3) The steps to be taken under this section shall include giving the requisite information both orally and in writing.
- (4) The managers of a hospital in which a patient is detained as aforesaid ^{F16} . . . shall, except where the patient otherwise requests, take such steps as are practicable to furnish the person (if any) appearing to them to be his nearest relative with a copy of any information given to him in writing under subsection (1) and (2) above; and those steps shall be taken when the information is given to the patient or within a reasonable time thereafter.
- (5) Section 56(4) of this Act shall have effect as if subsection (4) of this section were contained in part V of this Act.

Textual Amendments

F16 Words in s. 110(1)(4) repealed (1.4.2002) by 2000 asp 4, s. 88(3), **Sch. 6**; S.S.I. 2001/81, art. 3, **Sch. 2**

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111 Duty of managers to inform nearest relative of discharge of detained patients.

- (1) Where a patient liable to be detained in a hospital under this Act is to be discharged otherwise than by virtue of an order for discharge made by his nearest relative [^{F17}or the making of a community care order], the managers of the hospital shall, subject to subsection (2) of this section, take such steps as are practicable to inform the person (if any) appearing to them to be the nearest relative of the patient; and that information shall, if practicable, be given at least seven days before the date of discharge.
- (2) Subsection (1) of this section shall not apply if the patient or his nearest relative has requested that information about the patient's discharge should not be given under this section.
- (3) Section 56(4) of this Act shall have effect as if this section were contained in Part V of this Act.

Textual Amendments

F17 Words in s. 111(1) inserted (1.4.1996) by 1995 c. 52, ss. 4(2), 7(2), Sch. 2, para. 8

112 Religious persuasion of patients.

In any arrangements that may be made for the detention of a patient ^{F18}. . . in pursuance of this Act, regard shall be had to the religious persuasion to which the patient belongs or appears to belong.

Textual Amendments

F18 Words in s. 112 repealed (1.4.2002) by 2000 asp 4, s. 88(3), Sch. 6; S.S.I. 2001/81, art. 3, Sch. 2

113 Duty of sheriff to give patient opportunity to be heard.

- (1) In any appeal to the sheriff under this Act, or in any proceedings relating to an application for admission to a hospital ^{F19}. . ., the sheriff shall give the patient an opportunity to be heard, either—
 - (a) in person (unless cause to the contrary has been shown); or
 - (b) by means of a representative.
- (2) Where it is established to the satisfaction of the sheriff that it would be prejudicial to the patient's health or treatment if he were present during any such appeal or proceedings, the sheriff may exclude the patient (but not his representative) from the whole or part of that appeal or those proceedings.

Textual Amendments

F19 Words in s. 113(1) repealed (1.4.2002) by 2000 asp 4, s. 88(3), Sch. 6; S.S.I. 2001/81, art. 3, Sch. 2

114 Provision for personal expenses of in-patients in hospital.

- (1) The Secretary of State may pay to persons who are receiving treatment as in-patients (whether liable to be detained or not) in any hospital, other than a private hospital,

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being a hospital wholly or mainly used for the treatment of persons suffering from mental disorder, such amounts as he thinks fit in respect of their occasional personal expenses where it appears to him that they would otherwise be without resources to meet those expenses.

- (2) For the purposes of the ^{M3}National Health Service (Scotland) Act 1978, the making of payments under this section to persons for whom services are provided under that Act shall be treated as included among those services.

Marginal Citations

M3 1978 c. 29.

115 Correspondence of patients.

- (1) Any postal packet addressed to any person by a patient detained in a hospital under this Act and delivered by him for dispatch may be withheld from the [^{F20}postal operator]—
- (a) if that person has requested that communications addressed to him by the patient should be withheld; or
 - (b) subject to subsection (3) of this section, if the hospital is a State hospital and the managers of the hospital consider that the postal packet is likely—
 - (i) to cause distress to the person to whom it is addressed or to any other person (not being a person on the staff of the hospital); or
 - (ii) to cause danger to any person,and any request for the purposes of paragraph (a) of this subsection shall be made by a notice in writing given to the managers of the hospital, the responsible medical officer or the Secretary of State.
- (2) Subject to subsection (3) of this section a postal packet addressed to a patient detained in a State hospital under this Act may be withheld from the patient if, in the opinion of the managers of the hospital, it is necessary to do so in the interests of the safety of the patient or for the protection of other persons.
- (3) Subsections (1)(b) and (2) of this section do not apply to any postal packet addressed by a patient to, or sent to a patient by or on behalf of—
- (a) any Minister of the Crown [^{F21}or the Scottish Ministers] or member of either House of Parliament [^{F21}or member of the Scottish Parliament][^{F22}or of the Northern Ireland Assembly];
 - (b) the Mental Welfare Commission, any Commissioner thereof or any person appointed by them under section 3(9)(b) of this Act;
 - (c) the Parliamentary Commissioner for Administration, the Health Service Commissioner for Scotland, or the Commissioner for Local Administration in Scotland;
 - (d) any judge or clerk of court;
 - (e) a Health Board, the Common Services Agency for the Scottish Health Service or a local council established under section 7 of the ^{M4}National Health Service (Scotland) Act 1978;
 - (f) a local authority within the meaning of section 235 of the ^{M5}Local Government (Scotland) Act 1973;
 - (g) the managers of the hospital in which the patient is detained;

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- (h) any legally qualified person instructed by the patient to act as his legal advisor; or
 - (i) the European Commission on Human Rights or the European Court of Human Rights.
- (4) The managers of the hospital may open and inspect any postal packet for the purpose of determining whether it is one to which subsection (1) or (2) of this section applies and, if so, whether or not it should be withheld under that subsection; and the power to withhold a postal packet under either of those subsections includes power to withhold anything contained in it.
- (5) Where a postal packet or anything contained in it is withheld under subsection (1) or (2) of this section the managers of the hospital shall record that fact in writing and shall, within 7 days of the date on which they withheld the postal packet or anything contained in it, notify the Mental Welfare Commission of—
- (a) the name of the patient concerned; and
 - (b) the nature of the postal packet or contents withheld; and
 - (c) the reason for withholding the postal packet or contents.
- (6) Where a postal packet or anything contained in it is withheld under subsection (1)(b) or (2) of this section the managers of the hospital shall within 7 days give notice of that fact to the patient and, in a case under subsection (2) of this section, to the person (if known) by whom the postal packet was sent; and any such notice shall be in writing and shall contain a statement of the effect of section 116 of this Act.
- (7) The functions of the managers of a hospital under this section shall be discharged on their behalf by a person on the staff of the hospital appointed by them for that purpose, and different persons may be appointed to discharge different functions.
- (8) The Secretary of State may make regulations with respect to the exercise of the powers conferred by this section.
- (9) In this section and in section 116 of this Act “postal packet”^{F23} and “postal operator” have] the same meaning as in the [^{F24}Postal Services Act 2000]. . .

Textual Amendments

- F20** Words in s. 115(1) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 60(a)**
- F21** Words in s. 115(3)(a) inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I, para. 74(2)** (with art. 5); S.I. 1998/3178, **art. 2**
- F22** Words in s. 115(3)(a) inserted (2.12.1999) by S.I. 1999/663, art. 2(1), **Sch. 1 para. 24** (with art. 5(1)); S.I. 1999/3208, **art. 2**
- F23** Words in s. 115(9) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 60(b)(i)**
- F24** Words in s. 115(9) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 60(b)(ii)**

Modifications etc. (not altering text)

- C1** s. 115(3)(c) extended in part (1.7.1999) by S.I. 1999/1351, **art. 17(2)(c)** (with art. 18); S.I. 1998/3178, **art. 2**

Marginal Citations

- M4** 1978 c. 29.
- M5** 1973 c. 65.

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116 Review of decision to withhold postal packet.

- (1) The Mental Welfare Commission shall review any decision to withhold a postal packet or anything contained in it under subsection (1)(b) or (2) of section 115 of this Act if an application in that behalf is made—
 - (a) in a case under the said subsection (1)(b), by the patient; or
 - (b) in a case under the said subsection (2), either by the patient or by the person by whom the postal packet was sent;and any such application shall be made within 6 months of the receipt by the applicant of the notice referred to in subsection (6) of that section.
- (2) On an application under subsection (1) of this section the Commission may direct that the postal packet or anything contained in it which is the subject of the application shall not be withheld and the managers of the hospital in which the patient is detained shall comply with any such direction.
- (3) The Secretary of State may by regulations make provision with respect to the making and determination of applications under subsection (1) of this section, including provision for the production to the Mental Welfare Commission of any postal packet which is the subject of such an application.

117 Entry on premises and warrant to search for and remove patients.

- (1) Where a mental health officer or a medical commissioner has reasonable cause to believe that a person suffering from mental disorder—
 - (a) has been or is being ill-treated, neglected or kept otherwise than under control, in any place; or
 - (b) being unable to care for himself, is living alone or uncared for in any place,he may, on production of some duly authenticated document showing that he is so authorised, demand admission at all reasonable times and, if admission is not refused, may enter and inspect that place.
- (2) If it appears to a justice of the peace on sworn information in writing by such officer or commissioner as aforesaid, that admission when demanded in pursuance of subsection (1) of this section has been refused or that a refusal of such admission is apprehended, he may issue a warrant authorising any constable named therein to enter, if need be by force, any premises specified in the warrant, and to remove, if it appears proper so to do, any person suffering from mental disorder to whom subsection (1) of this section applies to a place of safety with a view to the making of an application or emergency recommendation in respect of him under Part V of this Act, or of other arrangements for his treatment or care.
- (3) If it appears to a justice of the peace on sworn information in writing by any constable or other person who is authorised by or under this Act or under section 88 of the ^{M6}Mental Health Act 1983, to take a patient to any place, or to take into custody or retake a patient who is liable to be so taken or retaken—
 - (a) that there is reasonable cause to believe that that patient is to be found on any premises; and
 - (b) that admission to the premises has been refused or that a refusal of such admission is apprehended,the justice may issue a warrant authorising any constable named therein to enter the premises, if need be by force, and to remove the patient.

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- (4) A patient who is removed to a place of safety in the execution of a warrant issued under this section may be detained there for a period not exceeding 72 hours.
- (5) In the execution of a warrant issued under subsection (2) of this section, the constable to whom it is addressed shall be accompanied by a medical practitioner, and in the execution of a warrant issued under subsection (3) of this section the constable to whom it is addressed may be accompanied—
 - (a) by a medical practitioner;
 - (b) by any person authorised by or under this Act or section 88 of the ^{M7}Mental Health Act 1983, to take or retake the patient.
- (6) It shall not be necessary in any information or warrant under subsection (2) of this section to name the person concerned.
- (7) In this section—
 - (a) any reference to a justice of the peace includes a reference to the sheriff and to a stipendiary magistrate; and
 - (b) “place of safety” means a hospital as defined by this Act or residential home for persons suffering from mental disorder or any other suitable place the occupier of which is willing temporarily to receive the patient; but shall not include a police station unless by reason of emergency there is no place as aforesaid available for receiving the patient.

Marginal Citations

- M6** 1983 c. 20.
M7 1983 c. 20.

118 Mentally disordered persons found in public places.

- (1) If a constable finds in a place to which the public have access a person who appears to him to be suffering from mental disorder and to be in immediate need of care or control, the constable may, if he thinks it necessary to do so in the interests of that person or for the protection of other persons, remove that person to a place of safety within the meaning of the last foregoing section.
- (2) A person removed to a place of safety under this section may be detained there for a period not exceeding 72 hours for the purpose of enabling him to be examined by a medical practitioner and of making any necessary arrangements for his treatment or care.
- (3) Where a patient is removed as aforesaid, it shall, where practicable, be the duty of the constable who has so removed him without delay to inform some responsible person residing with the patient and the nearest relative of the patient of that removal.

119 Code of practice.

- (1) The [^{F25}Scottish Ministers] shall prepare, and from time to time revise, a code of practice—
 - (a) for the guidance of medical practitioners, managers and staff of hospitals and mental health officers in relation to the detention and discharge of patients in

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- and from hospitals under this Act, [F26F27 . . . and after-care services provided under section 8 of this Act for patients subject to community care orders]; and
- (b) for the guidance of medical practitioners and members of other professions in relation to the medical treatment of patients suffering from mental disorder.
- (2) Before preparing the code or making any alteration in it the [F25Scottish Ministers] shall consult such bodies as appear to him to be concerned.
- (3) The [F25Scottish Ministers] shall lay copies of the code and of any alteration in the code before [F25Scottish Parliament]; and if [F25Scottish Parliament] passes a resolution requiring the code or any alteration in it to be withdrawn the [F25Scottish Ministers] shall withdraw the code or alteration and, where he withdraws the code, shall prepare a code in substitution for the one which is withdrawn.
- (4) No resolution shall be passed by [F25the Scottish Parliament] under subsection (3) of this section in respect of a code or alteration after the expiration of the period of 40 days beginning with the day on which a copy of the code or alteration was laid before [F25the Scottish Parliament]; but for the purposes of this subsection no account shall be taken of any time during which [F25the Scottish Parliament] is dissolved [F25 or is in recess] for more than four days.
- (5) The [F25Scottish Ministers] shall publish the code as for the time being in force.

Textual Amendments

- F25** Words in s. 119 substituted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 pt. I**, para. 74(3) (with art. 5); S.I. 1998/3178, **art. 2**
- F26** Words in s. 119(1)(a) inserted (1.4.1996) by 1995 c. 52, ss. 4(2), 7(2), **Sch. 2 para. 9**
- F27** Words in s. 119(1)(a) repealed (1.4.2002) by 2000 asp 4, s. 88(3), **Sch. 6**; S.S.I. 2001/81, art. 3, **Sch. 2**

Supplementary

120 Provisions as to custody, conveyance and detention.

- (1) Any person required or authorised by or by virtue of this Act to be conveyed to any place or to be kept in custody or detained in a place of safety or at any place to which he is taken under section 68(5) of this Act shall, while being so conveyed, detained or kept, as the case may be, be deemed to be in legal custody.
- (2) A constable or any other person required or authorised by or by virtue of this Act to take any person into custody, or to convey or detain any person shall, for the purposes of taking him into custody or conveying or detaining him, have all the powers, authorities, protection and privileges which a constable has within the area for which he acts as constable.
- (3) In this section “convey” includes any other expression denoting removal from one place to another.

121 Retaking of patients escaping from custody.

- (1) If any person being in legal custody by virtue of section 120 of this Act escapes, he may, subject to the provisions of this section, be retaken—

Status: Point in time view as at 01/04/2002.

Changes to legislation: Mental Health (Scotland) Act 1984, Part XI is up to date with all changes known to be in force on or before 23 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) in any case, by the person who had his custody immediately before the escape, or by any constable or mental health officer;
 - (b) if at the time of the escape he was liable to be detained in a hospital, ^{F28} . . . under this Act, by any other person who could take him into custody under section 28 ^{F28} . . . of this Act if he had absented himself without leave.
- (2) A person who escapes as aforesaid when liable to be detained ^{F29} . . . as mentioned in paragraph (b) of subsection (1) of this section (not being a person subject to a restriction order under Part VI of this Act or an order or direction having the like effect as such an order) shall not be retaken under this section after the expiration of the period within which he could be retaken under section 28 ^{F29} . . . of this Act if he had absented himself without leave on the day of the escape; and subsection (3) of the said section 28 ^{F29} . . . shall apply, with the necessary modifications, accordingly.
- (3) A person who escapes while being taken to or detained in a place of safety under section 117 or 118 of this Act shall not be retaken under this section after the expiration of the period of 72 hours beginning with the time when he escapes or the period during which he is liable to be so detained whichever expires first.
- (4) This section, so far as it relates to the escape of a person liable to be detained in a hospital, shall apply in relation to a person who escapes—
- (a) while being taken to a hospital in pursuance of an application for admission approved by the sheriff;
 - (b) while being taken to or from a hospital in pursuance of section 29 of this Act, or of any order, direction or authorisation under Parts VI and VII of this Act; or
 - (c) while being taken to or detained in a place of safety in pursuance of an order under Part VI of this Act pending his admission to a hospital,
- as if he were liable to be detained in that hospital and, if he had not previously been received therein, as if he had been so received.
- (5) In computing for the purposes of sections 22 and 60 of this Act the periods therein mentioned relating to the removal, admission or reception of patients, no account shall be taken of any time during which the patient is at large and liable to be retaken by virtue of this section.
- (6) Section 31 ^{F30} . . . of this Act shall, with any necessary modifications, apply in relation to a patient who is at large and liable to be retaken by virtue of this section as it applies in relation to a patient who is absent without leave within the meaning of section 28 ^{F30} . . . of this Act ^{F30} . . ., and references therein to the said section 28 ^{F30} . . . shall be construed accordingly.

Extent Information

E1 For extent of s. 121, see ss. 128, 129

Textual Amendments

F28 Words in s. 121(1)(b) repealed (1.4.2002) by 2000 asp 4, s. 88(3), **Sch. 6**; S.S.I. 2001/81, art. 3, **Sch. 2**

F29 Words in s. 121(2) repealed (1.4.2002) by 2000 asp 4, s. 88(3), **Sch. 6**; S.S.I. 2001/81, art. 3, **Sch. 2**

F30 Words in s. 121(6) repealed (1.4.2002) by 2000 asp 4, s. 88(3), **Sch. 6**; S.S.I. 2001/81, art. 3, **Sch. 2**

Status: Point in time view as at 01/04/2002.

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[^{F31}121A Warrants for arrest of escaped mental patients.

- (1) On an application being made to a justice alleging that any person is a convicted mental patient liable to be retaken under section 18, 38(7) or 138 of the Mental Health Act 1983, section 28, 44 or 121 of the this Act or [^{F32}Articles 29, 45(6) and 132 of the ^{M8}Mental Health (Northern Ireland) Order 1986] (retaking of mental patients who are absent without leave or have escaped from custody), the justice may issue a warrant to arrest him and bring him before any sheriff.
- (2) Where a person is brought before a sheriff in pursuance of a warrant for his arrest under this section, the sheriff shall, if satisfied that he is the person named in the warrant and if satisfied that he is a convicted mental patient as mentioned in subsection (1) above, order him to be kept in custody or detained in a place of safety pending his admission to hospital.
- (3) Section 137 of the Mental Health Act 1983 and [^{F33}Article 131 of the Mental Health (Northern Ireland) Order 1986] (custody, conveyance and detention of certain mental patients) shall apply to a convicted mental patient required by this section to be conveyed to any place or to be kept in custody or detained in a place of safety as they apply to a person required by or by virtue of the said Act of 1983 or 1961, as the case may be, to be so conveyed, kept or detained.

- (4) In this section—

“convicted mental patient” means a person liable after being convicted of an offence to be detained under Part III of the Mental Health Act 1983, Part VI of this Act, Part III of [^{F34}the Mental Health (Northern Ireland) Order 1986] or section 52, 59(1) to (10) or 60 of the Criminal Procedure (Scotland) Act 1995 in pursuance of a hospital order or transfer direction together with an order or direction restricting his discharge or a person liable to be detained under section 38 of the said Act of 1983;

“place of safety” has the same meaning as in Part III of the said Act of 1983 or Part III of [^{F34}the said Order of 1986] or section 297 of the said Act of 1995, as the case may be.]

Textual Amendments

- F31** S. 121A inserted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4**, para. 50(9)
- F32** Words in s. 121A(1) substituted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1**, para. 9(14)(a); S.I. 1997/1712, art. 3, **Sch.**
- F33** Words in s. 121A(3) substituted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1**, para. 9(14)(b); S.I. 1997/1712, art. 3, **Sch.**
- F34** S. 121A(4): Words in definition of “convicted mental patient” and “place of safety” substituted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1**, para. 9(14)(c); S.I. 1997/1712, art. 3, **Sch.**

Marginal Citations

- M8** S.I. 1986/595 (N.I. 4).

122 Protection for acts done in pursuance of this Act.

- (1) No person shall be liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings to which he would have been liable apart from this section in respect of any act purporting to be done in pursuance of

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this Act or any regulations thereunder, unless the act was done in bad faith or without reasonable care.

- (2) Outwith Scotland, section 139 of the ^{M9}Mental Health Act 1983 (which relates to protection for acts done in pursuance of that Act) shall apply in respect of any act purporting to be done in pursuance of this Act or any regulations thereunder as it applies in relation to an act purporting to be done in pursuance of that Act or any regulations or rules thereunder.

Marginal Citations

M9 1983 c. 20.

123 Inquiries.

The Secretary of State may cause an inquiry to be held in any case where he thinks it advisable to do so in connection with any matter arising under this Act, and subsections (2) to (9) of section 210 of the ^{M10}Local Government (Scotland) Act 1973 (which relates to the holding of local inquiries) shall apply to any inquiry held under this Act.

Marginal Citations

M10 1973 c. 65.

124 General provisions as to regulations and orders.

- (1) Any power of the Secretary of State to make regulations or orders under this Act shall be exercisable by statutory instrument.
- (2) Any statutory instrument containing regulations made under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

125 Interpretation.

- (1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

“absent without leave” has the meaning assigned to it by section 59 of this Act;

[^{F35}“after-care officer” has the meaning assigned to it by section 35A(4)(c) of this Act;]

[^{F36}“application for admission” has the meaning assigned to it by section 18 of this Act]

[^{F37}“care home service” has the meaning assigned to it by section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8);]

[^{F35}“community care application” and “community care order” have the meanings respectively assigned to them by section 35A(1) of this Act;]

[^{F38}“guardian” includes a guardian (however called) appointed under the law of any country to, or entitled under the law of any country to act for an adult during his incapacity, if the guardianship is recognised by the law of Scotland;]

Status: Point in time view as at 01/04/2002.

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“health service” has the meaning given by section 108(1) of the ^{M11}National Health Service (Scotland) Act 1978;

“hospital” means—

- (a) any hospital vested in the Secretary of State under the National Health Service (Scotland) Act 1978;
- [^{F39}(aa) any hospital managed by a National Health Service trust established under section 12A of the said Act of 1978;]
- (b) any private hospital registered under [^{F40}Part 1 of the Regulation of Care (Scotland) Act 2001 (asp 8)]; and
- (c) any State hospital;

[^{F41}“hospital direction” has the meaning assigned to it by section 59A(1) of the ^{M12}Criminal Procedure (Scotland) Act 1995;]

“hospital order” and “guardianship order” have the meanings respectively assigned to them by [^{F42}section 58 of the Criminal Procedure (Scotland) Act 1995];

[^{F43}“hospital unit” means any part of a hospital which is treated as a separate unit;]

“local authority” has the same meaning as in the ^{M13}Social Work (Scotland) Act 1968;

“managers of a hospital” means—

- (a) in relation to a hospital vested in the Secretary of State under the National Health Service (Scotland) Act 1978, the Health Board responsible for the administration of that hospital;
- [^{F44}(aa) in relation to a hospital managed by a National Health Service trust established under section 12A (National Health Service trusts) of the said Act of 1978, the directors of the trust;]
- (b) in relation to a private hospital registered under Part IV of this Act, the person or persons carrying on the hospital;
- (c) in relation to a State hospital, the Secretary of State or, if the Secretary of State has appointed a State Hospital Management Committee to manage that hospital, that Committee, or, if the management of that hospital has been delegated to a Health Board [^{F45}, to a Special Health Board, to an NHS trust] or to the Common Services Agency for the Scottish Health Service, that Board [^{F45}, trust] or Agency, as the case may be;

“medical practitioner” means a registered medical practitioner within the meaning of Schedule 1 to the ^{M14}Interpretation Act 1978;

“medical treatment” includes nursing, and also includes care and training under medical supervision;

“mental health officer” means an officer of a local authority appointed to act as a mental health officer for the purposes of this Act;

“nearest relative”, in relation to a patient, has the meaning assigned to it in Part V of this Act;

“patient” (except in Part IX of this Act) means a person suffering or appearing to be suffering from mental disorder;

“private hospital” has the meaning assigned to it in [^{F46}section 12(2)] of this Act;

“responsible medical officer” has the meaning assigned to it by section 59 of this Act;

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“restriction direction” has the meaning assigned to it by section 72 of this Act;

“restriction order” means an order made under [F47]section 59 of the Criminal Procedure (Scotland) Act 1995];

[F35]“special medical officer” has the meaning assigned to it by section 35A(4)(b) of this Act]

F48
...

“State hospital” has the meaning assigned to it in [F49]section 102(2) of the National Health Service (Scotland) Act 1978];

F48
...

“transfer direction” has the meaning assigned to it by section 71 of this Act;

“transfer order” has the meaning assigned to it by section 70 of this Act;

“voluntary organisation” means a body the activities of which are carried on otherwise than for profit, but does not include any public or local authority.

[F38]“welfare attorney” includes a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed) relating to the granter’s personal welfare and having effect during the granter’s incapacity;]

- (2) Unless the context otherwise requires, any reference in this Act to any other enactment is a reference thereto as amended, and includes a reference thereto as extended or applied by or under any other enactment, including this Act.
- (3) Without prejudice to the last foregoing subsection, any reference in this Act to an enactment of the Parliament of Northern Ireland, or to an enactment which that Parliament has power to amend, shall be construed, in relation to Northern Ireland, as a reference to that enactment as amended by any Act of that Parliament, whether passed before or after this Act.
- (4) In relation to a person who is liable to be detained [F50 or subject to guardianship]by virtue of an order or direction under Part VI of this Act or under [F51]section 54, 57, 58 or 59 of the Criminal Procedure (Scotland) Act 1995], any reference in this Act to any enactment contained in Part V of this Act shall be construed as a reference to that enactment as it applies to that person by virtue of the said Part VI or any of the provisions of the said sections.
- (5) Any reference, however expressed, in this Act to a patient admitted to or detained in, or liable to be admitted to or detained in, a hospital [F50or received, or liable to be received, into guardianship] under this Act [F50(other than under Part V thereof)]or under Part VI of this Act shall include a reference to a patient who is admitted to or detained in, or liable to be admitted to or detained in, a hospital [F50or received or liable to be received into guardianship] under the M15Criminal Procedure (Scotland) Act 1975.

Extent Information

E2 For extent of this section see [ss. 128, 129](#)

Textual Amendments

F35 [S. 125\(1\)](#): Definitions of “after-care officer”, “community care application”, “community care order” and “special medical officer” inserted (1.4.1996) by [1995 c. 52, ss. 4\(2\), 7\(2\), Sch. 2 Para. 10](#)

Status: Point in time view as at 01/04/2002.

Changes to legislation: Mental Health (Scotland) Act 1984, Part XI is up to date with all changes known to be in force on or before 23 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- F36** Definition of “application for admission” in s. 125(1) substituted (S.) (1.4.2002) for definitions of “application for admission” and “guardianship application” by 2000 asp 4, s. 88(2), **Sch. 5 para. 17(24)(a)**; S.S.I. 2001/81, art. 3, **Sch. 2**
- F37** S. 125(1): definition of “care home service” inserted (S.) (1.4.2002) by 2001 asp 8, ss. 79, 81(2), Sch. 3 para. 11(7)(a)); S.S.I. 2002/162, **art. 2(f)(h)** (subject to arts. 3-13)
- F38** Definitions of “guardian” and “welfare attorney” in s. 125(1) inserted (S.) (1.4.2002) by 2000 asp 4, s. 88(2), **Sch. 5 para. 17(24)(b)**; S.S.I. 2001/81, art. 3, **Sch. 2**
- F39** In the definition of “hospital” paragraph (aa) inserted by National Health Service and Community Care Act 1990 (c. 9, SIF 113:2), s. 66(1), **Sch. 9 para. 28(4)(a)**
- F40** S. 125(1): words in the definition of “hospital” substituted (S.) (1.4.2002) by 2001 asp 8, ss. 79, 81(2), Sch. 3 para. 11(7)(b); S.S.I. 2002/162, **art. 2(f)(h)** (subject to arts. 3-13)
- F41** S. 125(1): Definition of “hospital direction” inserted (S.) (1.1.1998) by 1997 c. 48, s. 7(5); S.I. 1997/2323 art. 4, Sch.2
- F42** S. 125: Words in definition of “hospital order” and “guardianship order” substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 50(10)(a)** (with Sch. 3, paras. 1, 3)
- F43** S. 125(1): Definition of “hospital unit” inserted (1.1.1998) by 1997 c. 48, s. 62(1), **Sch. 1**, para. 9(15); S.I. 1997/2323 art. 4, Sch. 2
- F44** In the definition of “managers of a hospital” paragraph (aa) inserted by National Health Service and Community Care Act 1990 (c. 9, SIF 113:2), s. 66(1), **Sch. 9 para. 28(4)(b)**
- F45** Words in definition of “managers of a hospital” inserted (1.10.1999) by 1999 c. 8, s. 65, **Sch. 4 para. 70**; S.S.I. 1999/90, art. 2, **Sch. 1**
- F46** S. 125(1): words in the definition of “private hospital” substituted (S.) (1.4.2002) by 2001 asp 8, ss. 79, 81(2), Sch. 3 para. 11(7)(c); S.S.I. 2002/162, **art. 2(f)(h)** (subject to arts. 3-13)
- F47** S. 125: Words in definition of “restriction order” substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 50(10)(b)** (with Sch. 3, paras. 1, 3)
- F48** The definitions of “standard scale” and “statutory maximum” in s. 125(1) repealed (5.11.1993) by 1993 c. 50, s. 1(1), **Sch. 1 Pt. XIV**
- F49** S. 125(1): Words in definition of “state hospital” substituted (1.4.1995) by 1994 c. 16, s. 2(5); S.I. 1995/576, **art. 2**
- F50** Words in s. 125(4)(5) repealed (S.) (1.4.2002) by 2000 asp 4, s. 88(3), **Sch. 6**; S.S.I. 2001/81, art. 3, **Sch. 2**
- F51** Words in s. 125(4) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 50(10)(C)** (with Sch. 3, paras. 1, 3)

Marginal Citations

- M11** 1978 c. 29.
- M12** 1995 c.46.
- M13** 1968 c. 49.
- M14** 1978 c. 30.
- M15** 1975 c. 21.

126 Preservation of amendments.

- (1) Notwithstanding the repeal by this Act of the ^{M16}Mental Health (Scotland) Act 1960 (“the 1960 Act”)—
 - (a) ^{F52}
 - (b) the amendments made by Schedule 4 of the 1960 Act shall, insofar as not otherwise repealed, continue to have effect but subject to any amendments made to them, in consequence of this Act, by Schedule 3 to this Act or by any other enactment.

Status: Point in time view as at 01/04/2002.

Changes to legislation: Mental Health (Scotland) Act 1984, Part XI is up to date with all changes known to be in force on or before 23 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (2) Notwithstanding the repeal by this Act of the ^{M17}Mental Health (Amendment) (Scotland) Act 1983 (“the 1983 Act”)—
- (a) paragraph (bb) of section 64(5) of the ^{M18}Local Government (Scotland) Act 1973 (which was inserted by section 7(2) of the 1983 Act) shall continue to have effect but subject to the amendment made, in consequence of this Act, by Schedule 3 to this Act;
 - (b) Sections 174, 174A, 175, 176, 178, 184, 280, 375A, 376, 377, 379, 385, 443, and 462 of, and paragraph 4(b) of Schedule 5 to, the Criminal Procedure (Scotland) Act 1975 shall continue to have effect with the amendments made by the 1983 Act but subject to any amendments made, in consequence of this Act, by Schedule 3 to this Act;
 - ^{F53}(c)
 - (d) section 80 of the ^{M19}Mental Health Act 1983 shall continue to have effect with the amendments made by paragraph 1 of Schedule 2 to the 1983 Act.

Textual Amendments

F52 S. 126(1)(a) repealed (1.4.2002) by 2001 asp 8, ss. 79, Sch. 3 para. 11(8): S.S.I. 2002/162, art. 2(f)(h) (subject to arts. 3-13)

F53 S. 126(2)(c) repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, Sch. 1, Pt. I (with ss. 191-195, 202)

Marginal Citations

M16 1960 c. 61.

M17 1983 c. 39.

M18 1973 c. 65.

M19 1983 c. 20.

127 Consequential and transitional provisions and repeals.

- (1) Schedule 3 (consequential amendments) and Schedule 4 (transitional and saving provisions) to this Act shall have effect but without prejudice to the operation of sections 15 to 17 of the ^{M20}Interpretation Act 1978 (which relate to the effect of repeals).
- (2) The enactments specified in Schedule 5 to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

Marginal Citations

M20 1978 c. 30.

128 Application to England and Wales.

The following provisions of this Act shall extend to England and Wales, that is to say—

- section 10;
- section 68(5);
- section 77;
- section 78;
- section 84 and, so far as applied by that section, sections 28, 32 and 121;

Status: Point in time view as at 01/04/2002.

Changes to legislation: Mental Health (Scotland) Act 1984, Part XI is up to date with all changes known to be in force on or before 23 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

section 108, except so far as it relates to patients subject to guardianship;
section 120;
section 122(2);
section 127 and Schedules 2 and 5 so far as they relate to enactments extending to England and Wales;

but except as aforesaid, and except so far as it relates to the interpretation or commencement of the said provisions, this Act shall not extend to England and Wales.

129 Application to Northern Ireland.

The following provisions of this Act shall extend to Northern Ireland, that is to say—

sections 80 and 81;
section 84 and, so far as applied by that section, sections 28, 32 and 121;
section 85;
section 95;
section 108, except so far as it relates to patients subject to guardianship;
section 120;
section 122(2);
section 127 and Schedules 2 and 5 so far as they relate to enactments extending to Northern Ireland;

but except as aforesaid, and except so far as it relates to the interpretation or commencement of the said provisions, this Act shall not extend to Northern Ireland.

130 Short title and commencement.

This Act may be cited as the Mental Health (Scotland) Act 1984 and shall come into force on 30th September 1984.

Status:

Point in time view as at 01/04/2002.

Changes to legislation:

Mental Health (Scotland) Act 1984, Part XI is up to date with all changes known to be in force on or before 23 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.