



Mental Health (Scotland) Act 1984

1984 CHAPTER 36

PART XI

MISCELLANEOUS AND GENERAL

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—
 - (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, or subject to guardianship under this Act, by any other person who could take him into custody under section 28 or 44 of this Act if he had absented himself without leave.

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- (2) A person who escapes as aforesaid when liable to be detained or subject to guardianship 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 or 44 of this Act if he had absented himself without leave on the day of the escape; and subsection (3) of the said section 28 and subsection (2) of the said section 44 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 (in the case of a patient who is liable to be detained in a hospital) and section 48 (in the case of a patient who is subject to guardianship) 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 or section 44 of this Act respectively, and references therein to the said section 28 or the said section 44 (as the case may be) shall be construed accordingly.

VALID FROM 01/04/1996

[^{F1}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 section 30 or 108 of the Mental Health Act (Northern Ireland) 1961 (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

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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 section 107 of the Mental Health Act (Northern Ireland) 1961 (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 the Mental Health Act (Northern Ireland) 1961 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 the said Act of 1961 or section 297 of the said Act of 1995, as the case may be.]

Textual Amendments

F1 S. 121A inserted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4**, para. 50(9)

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 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 ^{M1}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

M1 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 ^{M2}Local Government (Scotland) Act 1973 (which relates to the holding of local inquiries) shall apply to any inquiry held under this Act.

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Marginal Citations

M2 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;
 - “application for admission” and “guardianship application” have the meanings respectively assigned to them by sections 18 and 37 of this Act;
 - “health service” has the meaning given by section 108(1) of the ^{M3}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;
 - [^{F2}(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 Part IV of this Act; and
 - (c) any State hospital;
 - “hospital order” and “guardianship order” have the meanings respectively assigned to them by section 175 or 376 of the ^{M4}Criminal Procedure (Scotland) Act 1975;
 - “local authority” has the same meaning as in the ^{M5}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;
 - [^{F3}(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 or to the Common Services Agency for the Scottish Health Service, that Board or Agency, as the case may be;

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“medical practitioner” means a registered medical practitioner within the meaning of Schedule 1 to the ^{M6}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 Part IV of this Act;

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

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

“restriction order” means an order made under section 178 or 379 of the ^{M7}Criminal Procedure (Scotland) Act 1975;

“standard scale” means the standard scale defined in section 75 of the ^{M8}Criminal Justice Act 1982;

“State hospital” has the meaning assigned to it in Part VIII of this Act;

“statutory maximum” means the statutory maximum defined in section 74(2) of the Criminal Justice Act 1982;

“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.

- (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 or subject to guardianship by virtue of an order or direction under Part VI of this Act or under section 174, 175, 178, 375, 376 or 379 of the Criminal Procedure (Scotland) Act 1975, 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 or received, or liable to be received, into guardianship under this Act (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 or received or liable to be received into guardianship under the ^{M9}Criminal Procedure (Scotland) Act 1975.

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Textual Amendments

- F2** 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)**
- F3** 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)**

Marginal Citations

- M3** 1978 c. 29.
M4 1975 c. 21.
M5 1968 c. 49.
M6 1978 c. 30.
M7 1975 c. 21.
M8 1982 c. 48.
M9 1975 c. 21.

126 Preservation of amendments.

- (1) Notwithstanding the repeal by this Act of the ^{M10}Mental Health (Scotland) Act 1960 (“the 1960 Act”)—
- (a) the definition of “nursing home” in section 10 of the ^{M11}Nursing Homes Registration (Scotland) Act 1938 (which defines, *inter alia*, the expression “nursing home”) shall continue to have effect with the amendment made by section 15(2) of the 1960 Act (which substituted a new paragraph (ii) for paragraphs (ii) and (iii)) but subject to the amendment made to that definition, in consequence of this Act, by Schedule 3 to this Act; and
 - (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.
- (2) Notwithstanding the repeal by this Act of the ^{M12}Mental Health (Amendment) (Scotland) Act 1983 (“the 1983 Act”)—
- (a) paragraph (bb) of section 64(5) of the ^{M13}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;
 - (c) paragraph 5 of Schedule 5 to the ^{M14}Employment Protection (Consolidation) Act 1978 (which was added by Schedule 2 to the 1983 Act) shall continue to have effect; and
 - (d) section 80 of the ^{M15}Mental Health Act 1983 shall continue to have effect with the amendments made by paragraph 1 of Schedule 2 to the 1983 Act.

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- M10** 1960 c. 61.
- M11** 1938 c. 73.
- M12** 1983 c. 39.
- M13** 1973 c. 65.
- M14** 1978 c. 44.
- M15** 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 ^{M16}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

- M16** 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;
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;

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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.

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