

## SCHEDULES

### SCHEDULE 1

Section 1

#### CATEGORIES OF MENTAL DISORDER: FURTHER AMENDMENTS ETC

##### PART 1

##### AMENDMENTS TO 1983 ACT

- 1 The 1983 Act is amended as follows.
- 2 In section 3(2) (grounds for application for admission for treatment), in paragraph (a), for “mental illness, severe mental impairment, psychopathic disorder or mental impairment and his mental disorder is” substitute “mental disorder”.
- 3 In section 7(2) (grounds for guardianship application), in paragraph (a), omit the words “, being mental illness, severe mental impairment, psychopathic disorder or mental impairment and his mental disorder is”.
- 4 In section 20 (renewal of detention or guardianship)—
  - (a) in subsection (4)(a), for “mental illness, severe mental impairment, psychopathic disorder or mental impairment, and his mental disorder is” substitute “mental disorder”, and
  - (b) in subsection (7)(a), for “mental illness, severe mental impairment, psychopathic disorder or mental impairment and his mental disorder is” substitute “mental disorder”.
- 5 In section 35(3) (conditions for exercise of power to remand accused to hospital for report), in paragraph (a), for “mental illness, psychopathic disorder, severe mental impairment or mental impairment” substitute “mental disorder”.
- 6 In section 36(1) (conditions for exercise of power to remand accused to hospital for medical treatment), for the words from “he is suffering” to the end substitute—
  - “(a) he is suffering from mental disorder of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment;”.
- 7 In section 37 (power to order hospital admission or guardianship)—
  - (a) in subsection (2)(a), for “mental illness, psychopathic disorder, severe mental impairment or mental impairment” substitute “mental disorder”, and
  - (b) in subsection (3), omit the words “as being a person suffering from mental illness or severe mental impairment”.
- 8 In section 38(1) (conditions for exercise of power to make interim hospital order), in paragraph (a), for “mental illness, psychopathic disorder, severe mental impairment or mental impairment” substitute “mental disorder”.

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- 9 In section 45A(2) (conditions for exercise of power to direct hospital admission), in paragraph (a), for “psychopathic disorder” substitute “mental disorder”.
- 10 In section 47(1) (power to make transfer direction), in paragraph (a), for “mental illness, psychopathic disorder, severe mental impairment or mental impairment” substitute “mental disorder”.
- 11 In section 48 (further power to make transfer direction)—
- (a) in subsection (1), for the words from “that person is suffering” to “such treatment,” substitute—
    - “(a) that person is suffering from mental disorder of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment; and
    - (b) he is in urgent need of such treatment;”, and
  - (b) in subsection (3), for “to (4)” substitute “and (3)”.
- 12 In section 51(6) (further power to make hospital order), in paragraph (a), for the words from “the detainee” to the end substitute—
- “(i) the detainee is suffering from mental disorder of a nature or degree which makes it appropriate for the patient to be detained in a hospital for medical treatment;”.
- 13 In section 66(2) (time limits for applications to tribunals), in paragraph (d), for “in the cases mentioned in paragraphs (d), (fb), (g)” substitute “in the case mentioned in paragraph (g)”.
- 14 In section 72 (powers of tribunals)—
- (a) in subsection (1)(b)(i), for “mental illness, psychopathic disorder, severe mental impairment or mental impairment or from any of those forms of disorder” substitute “mental disorder or from mental disorder”,
  - (b) in subsection (4)(a), for “mental illness, psychopathic disorder, severe mental impairment or mental impairment” substitute “mental disorder”, and
  - (c) in subsection (6), for “(5)” substitute “(4)”.
- 15 (1) Section 86 (application of power to remove alien patients) is amended as follows.
- (2) In subsection (1), for “mental illness” substitute “mental disorder”.
- (3) After subsection (3) insert—
- “(4) In relation to a patient receiving treatment in a hospital within the meaning of the Mental Health (Northern Ireland) Order 1986, the reference in subsection (1) above to mental disorder shall be construed in accordance with that Order.”
- 16 (1) Section 141 (Members of Parliament etc) is amended as follows.
- (2) In subsection (1)—
- (a) after “House of Commons is authorised to be detained” insert “under a relevant enactment”, and
  - (b) for “mental illness” substitute “mental disorder”.
- (3) In subsection (4)—
- (a) for “mental illness” substitute “mental disorder”, and
  - (b) after “detained” insert “under a relevant enactment”.

(4) In subsections (5) and (6), for “mental illness” substitute “mental disorder”.

(5) After subsection (6) insert—

“(6A) For the purposes of this section, the following are relevant enactments—

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

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

17 In section 145(1) (interpretation), for the definitions of “mental disorder”, “severe mental impairment”, “mental impairment” and “psychopathic disorder” substitute—

““mental disorder” has the meaning given in section 1 above (subject to sections 86(4) and 141(6B));”.

## PART 2

### AMENDMENTS TO OTHER ACTS

#### *Juries Act 1974*

18 (1) Part 1 of Schedule 1 to the Juries Act 1974 (c. 23) (mentally disordered persons) is amended as follows.

(2) In paragraph 1, for “mental illness, psychopathic disorder, mental handicap or severe mental handicap” substitute “mental disorder within the meaning of the Mental Health Act 1983”.

(3) Omit paragraph 4(1).

#### *Contempt of Court Act 1981*

19 In section 14 of the Contempt of Court Act 1981 (c. 49) (proceedings in England and Wales), in subsection (4) and the first subsection (4A), for “mental illness or severe mental impairment” substitute “mental disorder within the meaning of that Act”.

#### *Family Law Act 1996*

20 (1) The Family Law Act 1996 (c. 27) is amended as follows.

(2) In section 48 (remand for medical examination and report), in subsection (4)—

- (a) for “mental illness or severe mental impairment” substitute “mental disorder within the meaning of the Mental Health Act 1983”,
- (b) for “the Mental Health Act 1983” substitute “that Act”, and

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(c) for “section 35 of the Act of 1983” substitute “that section”.

- (3) In section 51 (power of magistrates' court to order hospital admission or guardianship), in subsection (1), for “mental illness or severe mental impairment” substitute “mental disorder within the meaning of that Act”.

*Housing Act 1996*

- 21 In section 156 of the Housing Act 1996 (c. 52) (remand for medical examination and report), in subsection (4)—
- (a) for “mental illness or severe mental impairment” substitute “mental disorder within the meaning of the Mental Health Act 1983”,
  - (b) for “the Mental Health Act 1983” substitute “that Act”, and
  - (c) for “section 35 of that Act” substitute “that section”.

*Care Standards Act 2000*

- 22 In section 121 of the Care Standards Act 2000 (c. 14) (general interpretation), in subsection (1), for the definition of “mental disorder” substitute—
- ““mental disorder” has the same meaning as in the Mental Health Act 1983;”.

*Mental Capacity Act 2005*

- 23 (1) In Schedule 4 to the Mental Capacity Act 2005 (c. 9) (provisions applying to existing enduring powers of attorney), paragraph 23 is amended as follows.
- (2) In sub-paragraph (1), omit the words “(within the meaning of the Mental Health Act)”.
- (3) After sub-paragraph (1) insert—
- “(1A) In sub-paragraph (1), “mental disorder” has the same meaning as in the Mental Health Act but disregarding the amendments made to that Act by the Mental Health Act 2007.”

*National Health Service Act 2006*

- 24 In section 275 of the National Health Service Act 2006 (c. 41) (interpretation), in the definition of “illness” in subsection (1), for “mental disorder within the meaning of the Mental Health Act 1983” substitute “any disorder or disability of the mind”.

*National Health Service (Wales) Act 2006*

- 25 In section 206 of the National Health Service (Wales) Act 2006 (c. 42) (interpretation), in the definition of “illness” in subsection (1), for “mental disorder within the meaning of the Mental Health Act 1983” substitute “any disorder or disability of the mind”.

*Police and Justice Act 2006*

- 26 In section 27 of the Police and Justice Act 2006 (c. 48) (anti-social behaviour injunctions: power of arrest and remand), in subsection (11)—

- (a) for “mental illness or severe mental impairment” substitute “mental disorder within the meaning of the Mental Health Act 1983”, and
- (b) for “the Mental Health Act 1983 (c. 20)” substitute “that Act”.

## SCHEDULE 2

## Section 21

## APPROVED MENTAL HEALTH PROFESSIONALS: FURTHER AMENDMENTS TO 1983 ACT

- 1 The 1983 Act is amended as follows.
- 2 In the following provisions, for “approved social worker” substitute “approved mental health professional”—
- (a) section 4(2) (admission for assessment in cases of emergency), and
  - (b) section 8(1)(c) (effect of guardianship application).
- 3 (1) Section 10 (transfer of guardianship) is amended as follows.
- (2) In subsection (3), for “approved social worker” substitute “approved mental health professional acting on behalf of the local social services authority”.
- (3) After subsection (4) insert—
- “(5) In this section “the local social services authority”, in relation to a person (other than a local social services authority) who is the guardian of a patient, means the local social services authority for the area in which that person resides (or resided immediately before his death).”
- 4 (1) Section 11 (general provisions as to applications) is amended as follows.
- (2) In subsection (1), for “approved social worker” substitute “approved mental health professional”.
- (3) In subsection (3), for “approved social worker, that social worker” substitute “approved mental health professional, that professional”.
- (4) For subsection (4) substitute—
- “(4) An approved mental health professional may not make an application for admission for treatment or a guardianship application in respect of a patient in either of the following cases—
- (a) the nearest relative of the patient has notified that professional, or the local social services authority on whose behalf the professional is acting, that he objects to the application being made; or
  - (b) that professional has not consulted the person (if any) appearing to be the nearest relative of the patient, but the requirement to consult that person does not apply if it appears to the professional that in the circumstances such consultation is not reasonably practicable or would involve unreasonable delay.”
- 5 (1) Section 13 (the title to which becomes “Duty of approved mental health professionals to make applications for admission or guardianship”) is amended as follows.
- (2) For subsection (1) substitute—

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

(1A) If that professional is—

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

he shall make the application.

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

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

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

(3) In subsection (2), for “approved social worker” substitute “approved mental health professional”.

(4) For subsection (3) substitute—

“(3) An application under subsection (1A) above may be made outside the area of the local social services authority on whose behalf the approved mental health professional is considering the patient’s case.”

(5) In subsection (4)—

- (a) for the words from “direct” to “above” substitute “make arrangements under subsection (1) above for an approved mental health professional to consider the patient’s case”, and
- (b) for “that approved social worker” substitute “that professional”.

(6) In subsection (5)—

- (a) for “approved social worker”, in each place, substitute “approved mental health professional”, and
- (b) after “the power of” insert “a local social services authority to make arrangements with an approved mental health professional to consider a patient’s case or of”.

6 In section 14 (social reports), for “a social worker” substitute “an approved mental health professional”.

- 7 In the following provisions, for “approved social worker” substitute “approved mental health professional”—
- (a) section 18(1) (return of patients absent without leave),
  - (b) section 21B(3)(b) (consultation before furnishing report),
  - (c) section 29(2)(c) (application for appointment of acting nearest relative),
  - (d) section 30(2) (application for variation of orders under section 29),
  - (e) section 40(1)(a) (power to convey patient),
  - (f) section 87(1) (power to take Northern Ireland patient into custody),
  - (g) section 88(3) (power to take England and Wales patient into custody), in the first place it occurs, and
  - (h) section 89(1) (power to take Channel Islands or Isle of Man patient into custody).

- 8 For section 115 substitute—

**“115 Powers of entry and inspection**

(1) An approved mental health professional may at all reasonable times enter and inspect any premises (other than a hospital) in which a mentally disordered patient is living, if he has reasonable cause to believe that the patient is not under proper care.

(2) The power under subsection (1) above shall be exercisable only after the professional has produced, if asked to do so, some duly authenticated document showing that he is an approved mental health professional.”

- 9 In section 118(1)(a) (application of code of practice), for “approved social workers” substitute “approved mental health professionals”.

- 10 In the following provisions, for “approved social worker” substitute “approved mental health professional”—

- (a) section 135(1) and (4) (warrant to search for and remove patient),
- (b) section 136(2) (detention of person removed to a place of safety), and
- (c) section 138(1)(a) (retaking of patients escaping from custody).

- 11 (1) Section 145 (interpretation) is amended as follows.

- (2) In subsection (1), for the definition of “approved social worker” substitute—

““approved mental health professional” has the meaning given in section 114 above;”.

- (3) After subsection (1AB) (inserted by section 4 of this Act) insert—

“(1AC) References in this Act to an approved mental health professional shall be construed as references to an approved mental health professional acting on behalf of a local social services authority, unless the context otherwise requires.”

### SCHEDULE 3

Section 32

#### SUPERVISED COMMUNITY TREATMENT: FURTHER AMENDMENTS TO 1983 ACT

1           The 1983 Act is amended as follows.

*Application in respect of patient already in hospital*

2           In section 5 (application in respect of patient already in hospital), in subsection (6) after “this Act”, in each place, insert “or a community patient”.

*Return of patients absent without leave*

3           (1) Section 18 (return and readmission of patients absent without leave) is amended as follows.

(2) After subsection (2) insert—

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

(3) In subsection (4)—

- (a) in paragraph (b), after “guardianship” insert “or, in the case of a community patient, the community treatment order is in force”, and
- (b) omit the words from “and, in determining” to the end.

(4) After subsection (4) insert—

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

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

(5) After subsection (6) insert—

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

*Assignment of responsibility for community patients*

4           After section 19 insert—



**“19A Regulations as to assignment of responsibility for community patients**

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

*Renewal of authority to detain patients*

- 5 In section 20 (duration of authority)—
- (a) in subsection (2), after “discharged” insert “under section 23 below”, and
  - (b) in subsections (3) and (6), after “discharge the patient” insert “under section 23 below”.

*Special provisions as to patients absent without leave*

- 6 (1) Section 21 (special provisions as to patients absent without leave) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a), after “Act” insert “or, in the case of a community patient, the community treatment order would cease to be in force”, and
  - (b) after “liable or subject” insert “, or the order shall not cease to be in force,”.
- (3) After subsection (3) (inserted by section 37 of this Act) insert—
- “(4) Where a community patient is absent without leave on the day on which (apart from this section) the 72-hour period mentioned in section 17F above would expire, that period shall not expire until the end of the period of 72 hours beginning with the time when—
- (a) the patient is taken into custody under section 18 above and returned to the hospital where he ought to be; or
  - (b) the patient returns himself to the hospital where he ought to be within the period during which he can be taken into custody under section 18 above.
- (5) Any reference in this section, or in sections 21A to 22 below, to the time when a community treatment order would cease, or would have ceased, to be in force shall be construed as a reference to the time when it would cease, or would have ceased, to be in force by reason only of the passage of time.”

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- 7 In section 21A (patients who are taken into custody or return within 28 days), after subsection (3) insert—
- “(4) In the case of a community patient, where the period for which the community treatment order is in force is extended by section 21 above, any examination and report to be made and furnished in respect of the patient under section 20A(4) above may be made and furnished within the period as so extended.
- (5) Where the community treatment period is extended by virtue of subsection (4) above after the day on which (apart from section 21 above) the order would have ceased to be in force, the extension shall take effect as from that day.”
- 8 (1) Section 21B (patients who are taken into custody or return after more than 28 days) is amended as follows.
- (2) In subsection (2), after “ought to be” insert “(his “return day”)”.
- (3) In subsection (3), after “detained” insert “or is a community patient”.
- (4) For subsection (4) substitute—
- “(4) Where—
- (a) the patient would (apart from any renewal of the authority for his detention or guardianship on or after his return day) be liable to be detained or subject to guardianship after the end of the period of one week beginning with that day; or
- (b) in the case of a community patient, the community treatment order would (apart from any extension of the community treatment period on or after that day) be in force after the end of that period,
- he shall cease to be so liable or subject, or the community treatment period shall be deemed to expire, at the end of that period unless a report is duly furnished in respect of him under subsection (2) above.”
- (5) After subsection (4) insert—
- “(4A) If, in the case of a community patient, the community treatment order is revoked under section 17F above during the period of one week beginning with his return day—
- (a) subsections (2) and (4) above shall not apply; and
- (b) any report already furnished in respect of him under subsection (2) above shall be of no effect.”
- (6) After subsection (6) insert—
- “(6A) In the case of a community patient, where the community treatment order would (apart from section 21 above) have ceased to be in force on or before the day on which a report is duly furnished in respect of him under subsection (2) above, the report shall extend the community treatment period for the period prescribed in that case by section 20A(3) above.
- (6B) Where the community treatment period is extended by virtue of subsection (6A) above—

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

(7) After subsection (7) insert—

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

(8) In subsection (10)—

(a) for the definition of “the appropriate body” substitute—

““the appropriate body” means—

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

(b) for the definition of “the relevant conditions” substitute—

““the relevant conditions” means—

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

### *Patients sentenced to imprisonment etc*

9 For section 22 substitute—

#### **“22 Special provisions as to patients sentenced to imprisonment, etc**

(1) If—

- (a) a qualifying patient is detained in custody in pursuance of any sentence or order passed or made by a court in the United Kingdom (including an order committing or remanding him in custody); and
- (b) he is so detained for a period exceeding, or for successive periods exceeding in the aggregate, six months,

the relevant application shall cease to have effect on expiry of that period.

(2) A patient is a qualifying patient for the purposes of this section if—

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- (a) he is liable to be detained by virtue of an application for admission for treatment;
  - (b) he is subject to guardianship by virtue of a guardianship application; or
  - (c) he is a community patient.
- (3) “The relevant application”, in relation to a qualifying patient, means—
- (a) in the case of a patient who is subject to guardianship, the guardianship application in respect of him;
  - (b) in any other case, the application for admission for treatment in respect of him.
- (4) The remaining subsections of this section shall apply if a qualifying patient is detained in custody as mentioned in subsection (1)(a) above but for a period not exceeding, or for successive periods not exceeding in the aggregate, six months.
- (5) If apart from this subsection—
- (a) the patient would have ceased to be liable to be detained or subject to guardianship by virtue of the relevant application on or before the day on which he is discharged from custody; or
  - (b) in the case of a community patient, the community treatment order would have ceased to be in force on or before that day,
- he shall not cease and shall be deemed not to have ceased to be so liable or subject, or the order shall not cease and shall be deemed not to have ceased to be in force, until the end of that day.
- (6) In any case (except as provided in subsection (8) below), sections 18, 21 and 21A above shall apply in relation to the patient as if he had absented himself without leave on that day.
- (7) In its application by virtue of subsection (6) above section 18 above shall have effect as if—
- (a) in subsection (4) for the words from “later of” to the end there were substituted “end of the period of 28 days beginning with the first day of his absence without leave”; and
  - (b) subsections (4A) and (4B) were omitted.
- (8) In relation to a community patient who was not recalled to hospital under section 17E above at the time when his detention in custody began—
- (a) section 18 above shall not apply; but
  - (b) sections 21 and 21A above shall apply as if he had absented himself without leave on the day on which he is discharged from custody and had returned himself as provided in those sections on the last day of the period of 28 days beginning with that day.”

### *Discharge*

- 10 (1) Section 23 (discharge of patients) is amended as follows.
- (2) In subsection (1) for the words from “from detention” to the end substitute “absolutely from detention or guardianship is made in accordance with this section”.

- (3) After subsection (1) insert—
- “(1A) Subject to the provisions of this section and section 25 below, a community patient shall cease to be liable to recall under this Part of this Act, and the application for admission for treatment cease to have effect, if an order in writing discharging him from such liability is made in accordance with this section.
- (1B) An order under subsection (1) or (1A) above shall be referred to in this Act as “an order for discharge”.”
- (4) In subsection (2), after paragraph (b) insert—
- “(c) where the patient is a community patient, by the responsible clinician, by the managers of the responsible hospital or by the nearest relative of the patient.”
- (5) In subsection (3)—
- (a) for the words from “is liable” to “treatment” substitute “falls within subsection (3A) below”, and
- (b) for “the patient is maintained” substitute “arrangements have been made in respect of the patient”.
- (6) After subsection (3) insert—
- “(3A) A patient falls within this subsection if—
- (a) he is liable to be detained in a registered establishment in pursuance of an application for admission for assessment or for treatment; or
- (b) he is a community patient and the responsible hospital is a registered establishment.”
- 11 (1) Section 24 (visiting and examination of patients) is amended as follows.
- (2) In subsection (1), after “this Act” insert “, or who is a community patient,”.
- (3) In subsection (3)—
- (a) for the words from “, in respect of” to “his discharge” substitute “any power under section 23(3) above to make an order for a patient’s discharge”, and
- (b) in paragraph (b) for “the home” substitute “the establishment in question”.
- (4) In subsection (4)—
- (a) after “the detention of the patient” insert “, or (as the case may be) for his liability to recall,” and
- (b) for “the home” substitute “the establishment”.
- 12 (1) Section 25 (restrictions on discharge by nearest relative) is amended as follows.
- (2) In subsection (1), after “shall not be made” insert “under section 23 above”.
- (3) After that subsection insert—
- “(1A) Subsection (1) above shall apply to an order for the discharge of a community patient as it applies to an order for the discharge of a patient who is liable to be detained in a hospital, but with the reference to the managers of the hospital being read as a reference to the managers of the responsible hospital.”
- (4) In subsection (2), after “treatment” insert “, or in respect of a community patient,”.

*Orders appointing acting nearest relative*

- 13 In section 29 (appointment by court of acting nearest relative), in subsection (3)(d) omit the words “from hospital or guardianship”.
- 14 (1) Section 30 (discharge and variation of orders under section 29) is amended as follows.
- (2) In subsection (4), for paragraphs (a) and (b) substitute—
- “(a) if—
- (i) on the date of the order the patient was liable to be detained or subject to guardianship by virtue of a relevant application, order or direction; or
- (ii) he becomes so liable or subject within the period of three months beginning with that date; or
- (iii) he was a community patient on the date of the order,
- it shall cease to have effect when he is discharged under section 23 above or 72 below or the relevant application, order or direction otherwise ceases to have effect (except as a result of his being transferred in pursuance of regulations under section 19 above);
- (b) otherwise, it shall cease to have effect at the end of the period of three months beginning with the date of the order.”
- (3) After subsection (4) insert—
- “(4A) In subsection (4) above, reference to a relevant application, order or direction is to any of the following—
- (a) an application for admission for treatment;
- (b) a guardianship application;
- (c) an order or direction under Part 3 of this Act (other than under section 35, 36 or 38).”

*Regulations for purposes of Part 2*

- 15 In section 32 (regulations for purposes of Part 2), in subsection (2)(c) after “this Part of this Act” insert “or community patients”.

*Wards of court*

- 16 (1) Section 33 (special provisions as to wards of court) is amended as follows.
- (2) In subsection (2), after “admission under this Part of this Act” insert “or is a community patient”.
- (3) For subsection (4) substitute—
- “(4) Where a community treatment order has been made in respect of a minor who is a ward of court, the provisions of this Part of this Act relating to community treatment orders and community patients have effect in relation to the minor subject to any order which the court makes in the exercise of its wardship jurisdiction; but this does not apply as regards any period when the minor is recalled to hospital under section 17E above.”

*Restricted patients*

- 17 In section 41 (power of higher courts to restrict discharge from hospital), in subsection (3)(aa) for “after-care under supervision” substitute “community treatment orders and community patients”.

*Applications and references to Mental Health Review Tribunal*

- 18 (1) Section 66 (applications to tribunals) is amended as follows.
- (2) In subsection (1)—
- (a) after paragraph (c) insert—
    - “(ca) a community treatment order is made in respect of a patient; or
    - (cb) a community treatment order is revoked under section 17F above in respect of a patient; or”
  - (b) in paragraph (f), after “discharged” insert “under section 23 above”,
  - (c) after that paragraph insert—
    - “(fza) a report is furnished under section 20A above in respect of a patient and the patient is not discharged under section 23 above; or”
  - (d) after paragraph (fa) insert—
    - “(faa) a report is furnished under subsection (2) of section 21B above in respect of a community patient and subsection (6A) of that section applies (or subsections (6A) and (6B)(b) of that section apply) in the case of the report; or”
  - (e) in paragraph (g), after “treatment” insert “or a community patient”, and
  - (f) in paragraph (h), after “this Act” insert “or who is a community patient”.
- (3) In subsection (2)—
- (a) after paragraph (c) insert—
    - “(ca) in the case mentioned in paragraph (ca) of that subsection, six months beginning with the day on which the community treatment order is made;
    - (cb) in the case mentioned in paragraph (cb) of that subsection, six months beginning with the day on which the community treatment order is revoked;”, and
  - (b) after paragraph (f) insert—
    - “(fza) in the cases mentioned in paragraphs (fza) and (faa) of that subsection, the period or periods for which the community treatment period is extended by virtue of the report;”.
- (4) After subsection (2) insert—
- “(2A) Nothing in subsection (1)(b) above entitles a community patient to make an application by virtue of that provision even if he is admitted to a hospital on being recalled there under section 17E above.”
- 19 In section 67 (references to tribunals by Secretary of State concerning Part 2 patients), in subsection (1), at the end insert “or of any community patient”.

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*Status: This is the original version (as it was originally enacted).*

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- 20 In section 69 (applications to tribunals concerning patients subject to hospital and guardianship orders)—
- (a) in subsection (1), for paragraph (a) substitute—
    - “(a) in respect of a patient liable to be detained in pursuance of a hospital order or a community patient who was so liable immediately before he became a community patient, by the nearest relative of the patient in any period in which an application may be made by the patient under any such provision as so applied;”
  - (b) in subsection (2)(b), omit the words “45B(2), 46(3),” and
  - (c) after subsection (2) insert—
    - “(3) The provisions of section 66 above as applied by section 40(4) above are subject to subsection (4) below.
    - (4) If the initial detention period has not elapsed when the relevant application period begins, the right of a hospital order patient to make an application by virtue of paragraph (ca) or (cb) of section 66(1) above shall be exercisable only during whatever remains of the relevant application period after the initial detention period has elapsed.
    - (5) In subsection (4) above—
      - (a) “hospital order patient” means a patient who is subject to a hospital order, excluding a patient of a kind mentioned in paragraph (a) or (b) of subsection (2) above;
      - (b) “the initial detention period”, in relation to a hospital order patient, means the period of six months beginning with the date of the hospital order; and
      - (c) “the relevant application period” means the relevant period mentioned in paragraph (ca) or (cb), as the case may be, of section 66(2) above.”
- 21 (1) Section 72 (powers of tribunals) is amended as follows.
- (2) In subsection (1)—
- (a) after “this Act” insert “or is a community patient”, and
  - (b) after paragraph (b) insert—
    - “(c) the tribunal shall direct the discharge of a community patient if they are not satisfied—
      - (i) that he is then suffering from mental disorder or mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment; or
      - (ii) that it is necessary for his health or safety or for the protection of other persons that he should receive such treatment; or
      - (iii) that it is necessary that the responsible clinician should be able to exercise the power under section 17E(1) above to recall the patient to hospital; or



(iv) that appropriate medical treatment is available for him; or

(v) in the case of an application by virtue of paragraph (g) of section 66(1) above, that the patient, if discharged, would be likely to act in a manner dangerous to other persons or to himself.”

(3) After subsection (1) insert—

“(1A) In determining whether the criterion in subsection (1)(c)(iii) above is met, the tribunal shall, in particular, consider, having regard to the patient’s history of mental disorder and any other relevant factors, what risk there would be of a deterioration of the patient’s condition if he were to continue not to be detained in a hospital (as a result, for example, of his refusing or neglecting to receive the medical treatment he requires for his mental disorder).”

(4) For subsection (3A) substitute—

“(3A) Subsection (1) above does not require a tribunal to direct the discharge of a patient just because they think it might be appropriate for the patient to be discharged (subject to the possibility of recall) under a community treatment order; and a tribunal—

(a) may recommend that the responsible clinician consider whether to make a community treatment order; and

(b) may (but need not) further consider the patient’s case if the responsible clinician does not make an order.”

22 In section 76 (visiting and examination of patients), in subsection (1), after “this Act” insert “or a community patient.”.

23 In section 77 (general provisions concerning tribunal applications), in subsection (3) for the words from “to the tribunal” to the end substitute—

“(a) in the case of a patient who is liable to be detained in a hospital, to the tribunal for the area in which that hospital is situated;

(b) in the case of a community patient, to the tribunal for the area in which the responsible hospital is situated;

(c) in the case of a patient subject to guardianship, to the tribunal for the area in which the patient is residing.”

#### *After-care services*

24 In section 117 (after-care), in subsection (2) for the words from “patient who is subject” to the end substitute “community patient while he remains such a patient.”

#### *Code of practice*

25 In section 118 (code of practice), in subsection (1)(a) for “after-care under supervision” substitute “community patients”.

#### *General protection of detained patients*

26 (1) Section 120 (general protection of detained patients) is amended as follows.

(2) In subsection (1)—

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- (a) after “liable to be detained under this Act” insert “or to community patients”,
- (b) in paragraph (a) after “registered establishments” insert “and community patients in hospitals and establishments of any description and (if access is granted) other places”, and
- (c) in paragraph (b)—
  - (i) in sub-paragraph (i), after “this Act in” insert “, or recalled under section 17E above to,”, and
  - (ii) in sub-paragraph (ii), after “detained” insert “or is or has been a community patient”.

(3) In subsection (4)—

- (a) in paragraph (a), for “registered establishment” substitute “hospital or establishment of any description”, and
- (b) in paragraph (b), for “in a registered establishment” substitute “under this Act or who is or has been a community patient”.

(4) After subsection (7) insert—

“(8) In this section, “establishment of any description” has the same meaning as in section 119 above.”

- 27 In section 121 (Mental Health Act Commission), in subsection (4), for the words from “not liable” to the end substitute “neither liable to be detained under this Act nor community patients”.

### *Offences*

- 28 In section 128 (assisting patients to absent themselves without leave, etc), in subsection (1) after “under this Act” insert “or is a community patient”.

### *Duty to give information*

- 29 In section 132 (duty of managers of hospitals to give information to detained patients), in subsection (2) for “nursing home” substitute “establishment”.

- 30 After section 132 insert—

#### **“132A Duty of managers of hospitals to give information to community patients**

- (1) The managers of the responsible hospital shall take such steps as are practicable to ensure that a community patient understands—
  - (a) the effect of the provisions of this Act applying to community patients; and
  - (b) what rights of applying to a Mental Health Review Tribunal are available to him in that capacity;
 and those steps shall be taken as soon as practicable after the patient becomes a community patient.
- (2) The steps to be taken under subsection (1) above shall include giving the requisite information both orally and in writing.
- (3) The managers of the responsible hospital shall, except where the community patient otherwise requests, take such steps as are practicable to furnish the

person (if any) appearing to them to be his nearest relative with a copy of any information given to him in writing under subsection (1) above; and those steps shall be taken when the information is given to the patient or within a reasonable time thereafter.”

- 31 In section 133 (duty of managers of hospitals to inform nearest relatives of discharge), after subsection (1) insert—

“(1A) The reference in subsection (1) above to a patient who is to be discharged includes a patient who is to be discharged from hospital under section 17A above.

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

#### *Retaking of patients escaping from custody*

- 32 In section 138 (retaking of patients escaping from custody), in subsection (1)(b) after “under this Act,” insert “or a community patient who was recalled to hospital under section 17E above;”.

#### *Members of Parliament suffering from mental disorder*

- 33 In section 141 (Members of Parliament suffering from mental disorder), after subsection (6B) (inserted by Schedule 1 to this Act) insert—

“(6C) References in this section to a member who is authorised to be detained shall not include a member who is a community patient (whether or not he is recalled to hospital under section 17E above).”

#### *Interpretation*

- 34 (1) Section 145 (interpretation) is amended as follows.
- (2) In subsection (1), in the definition of “absent without leave”, after “related expressions” insert “(including expressions relating to a patient’s liability to be returned to a hospital or other place)”.
- (3) In that subsection, at the appropriate places insert—
- ““community patient” has the meaning given in section 17A above;”
- ““community treatment order” and “the community treatment order” have the meanings given in section 17A above;”
- ““the community treatment period” has the meaning given in section 20A above;”
- ““the responsible hospital” has the meaning given in section 17A above;”.
- (4) In subsection (3), after “guardianship” insert “or a community patient”.

*Extent*

- 35 (1) In section 146 (application to Scotland), omit the words from “128” to “guardianship”).
- (2) This paragraph does not extend to Scotland.

*Application of certain provisions to patients concerned in criminal proceedings*

- 36 (1) In Schedule 1 (application of certain provisions to patients subject to hospital and guardianship orders), Part 1 (patients not subject to special restrictions) is amended as follows.
- (2) In paragraph 1, after “17” insert “to 17C, 17E, 17F, 20A”.
- (3) In paragraph 2—
- (a) for “18, 19, 20” substitute “17D, 17G, 18 to 20, 20B”, and
  - (b) for “paragraphs 3” substitute “paragraphs 2A”.
- (4) After paragraph 2 insert—
- “2A In section 17D(2)(a) for the reference to section 6(2) above there shall be substituted a reference to section 40(1)(b) below.
- 2B In section 17G—
- (a) in subsection (2) for the reference to section 6(2) above there shall be substituted a reference to section 40(1)(b) below;
  - (b) in subsection (4) for paragraphs (a) and (b) there shall be substituted the words “the order or direction under Part 3 of this Act in respect of him were an order or direction for his admission or removal to that other hospital”; and
  - (c) in subsection (5) for the words from “the patient” to the end there shall be substituted the words “the date of the relevant order or direction under Part 3 of this Act were the date on which the community treatment order is revoked”.
- (5) After paragraph 5 insert—
- “5A In section 19A(2), paragraph (b) shall be omitted.”
- (6) After paragraph 6 insert—
- “6A In section 20B(1), for the reference to the application for admission for treatment there shall be substituted a reference to the order or direction under Part 3 of this Act by virtue of which the patient is liable to be detained.”
- (7) In paragraph 8(b), for “and (b)” substitute “to (c)”.
- 37 (1) Part 2 of that Schedule (patients subject to special restrictions) is amended as follows.
- (2) In paragraph 2, for “17 to 19” substitute “17, 18, 19”.
- (3) For paragraph 6 substitute—
- “6 In section 22, subsections (1) and (5) shall not apply.”

## SCHEDULE 4

Section 32

### SUPERVISED COMMUNITY TREATMENT: AMENDMENTS TO OTHER ACTS

#### *Administration of Justice Act 1960*

1 After section 5 of the Administration of Justice Act 1960 (c. 65) insert—

#### **“5A Power to order continuation of community treatment order**

- (1) Where the defendant in any proceedings from which an appeal lies under section 1 of this Act would, but for the decision of the court below, be liable to recall, and immediately after that decision the prosecutor is granted, or gives notice that he intends to apply for, leave to appeal, the court may make an order under this section.
- (2) For the purposes of this section, a person is liable to recall if he is subject to a community treatment order (within the meaning of the Mental Health Act 1983) and, when that order was made, he was liable to be detained in pursuance of an order or direction under Part 3 of that Act.
- (3) An order under this section is an order providing for the continuation of the community treatment order and the order or direction under Part 3 of that Act so long as any appeal under section 1 of this Act is pending.
- (4) Where the court makes an order under this section, the provisions of the Mental Health Act 1983 with respect to persons liable to recall (including provisions as to the extension of the community treatment period, the removal or discharge of community patients, the revocation of community treatment orders and the re-detention of patients following revocation) shall apply accordingly.
- (5) An order under this section shall (unless the appeal has previously been disposed of) cease to have effect at the expiration of the period for which the defendant would, but for the decision of the court below, have been—
  - (a) liable to recall; or
  - (b) where the community treatment order is revoked, liable to be detained in pursuance of the order or direction under Part 3 of the Mental Health Act 1983.
- (6) Where the court below has power to make an order under this section, and either no such order is made or the defendant is discharged by virtue of subsection (4) or (5) of this section before the appeal is disposed of, the defendant shall not be liable to be again detained as the result of the decision of the Supreme Court on the appeal.”

#### *Criminal Appeal Act 1968*

2 (1) The Criminal Appeal Act 1968 (c. 19) is amended as follows.

(2) In section 8 (supplementary provisions as to retrial), after subsection (3A) insert—

“(3B) If the person ordered to be retried—

- (a) was liable to be detained in pursuance of an order or direction under Part 3 of the Mental Health Act 1983;

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- (b) was then made subject to a community treatment order (within the meaning of that Act); and
- (c) was subject to that community treatment order immediately before the determination of his appeal,

the order or direction under Part 3 of that Act and the community treatment order shall continue in force pending the retrial as if the appeal had not been allowed, and any order made by the Court of Appeal under this section for his release on bail shall have effect subject to the community treatment order.”

(3) After section 37 insert—

**“37A Continuation of community treatment order on appeal by the Crown**

- (1) The following provisions apply where, immediately after a decision of the Court of Appeal from which an appeal lies to the Supreme Court, the prosecutor is granted, or gives notice that he intends to apply for, leave to appeal.
- (2) If, but for the decision of the Court of Appeal, the defendant would be liable to recall, the Court of Appeal may make an order under this section.
- (3) For the purposes of this section, a person is liable to recall if he is subject to a community treatment order (within the meaning of the Mental Health Act 1983) and, when that order was made, he was liable to be detained in pursuance of an order or direction under Part 3 of that Act.
- (4) An order under this section is an order providing for the continuation of the community treatment order and the order or direction under Part 3 of that Act so long as an appeal to the Supreme Court is pending.
- (5) Where an order is made under this section the provisions of the Mental Health Act 1983 with respect to persons liable to recall (including provisions as to the extension of the community treatment period, the removal or discharge of community patients, the revocation of community treatment orders and the re-detention of patients following revocation) shall apply accordingly.
- (6) An order under this section shall (unless the appeal has previously been disposed of) cease to have effect at the expiration of the period for which the defendant would, but for the decision of the Court of Appeal, have been—
  - (a) liable to recall; or
  - (b) where the community treatment order is revoked, liable to be detained in pursuance of the order or direction under Part 3 of the Mental Health Act 1983.
- (7) Where the Court of Appeal have power to make an order under this section, and either no such order is made or the defendant is discharged, by virtue of subsection (5) or (6) of this section, before the appeal is disposed of, the defendant shall not be liable to be again detained as the result of the decision of the Supreme Court on the appeal.”

*Courts-Martial (Appeals) Act 1968*

- 3 (1) The Courts-Martial (Appeals) Act 1968 (c. 20) is amended as follows.

- (2) In section 20 (implementation of authority for retrial etc), after subsection (4) insert—

“(4A) Where retrial is authorised in the case of a person who—

- (a) was liable to be detained in pursuance of an order or direction under Part 3 of the Mental Health Act 1983;
- (b) was then made subject to a community treatment order (within the meaning of that Act); and
- (c) was subject to that community treatment order immediately before the date of the authorisation,

the order or direction under Part 3 of that Act and the community treatment order shall continue in force until the relevant time (as defined in subsection (3A)) as if his conviction had not been quashed.

(4B) An order under subsection (1E)(a) is of no effect in relation to a person for so long as he is subject to a community treatment order.”

- (3) In section 43 (detention of accused), after subsection (3) insert—

“(3A) The relevant provisions of the Mental Health Act 1983 with respect to community treatment orders (within the meaning of that Act) shall also apply for the purposes of subsection (3).”

- (4) After that section insert—

**“43A Continuation of community treatment order**

- (1) The Appeal Court may make an order under this section where—
  - (a) but for the decision of the Appeal Court, the accused would be liable to recall; and
  - (b) immediately after that decision, the Director of Service Prosecutions is granted leave to appeal or gives notice that he intends to apply for leave to appeal.
- (2) For the purposes of this section, a person is liable to recall if he is subject to a community treatment order (within the meaning of the Mental Health Act 1983) and, when that order was made, he was liable to be detained in pursuance of an order or direction under Part 3 of that Act.
- (3) An order under this section is an order providing for the continuation of the community treatment order and the order or direction under Part 3 of that Act so long as any appeal to the Supreme Court is pending.
- (4) Where the Appeal Court makes an order under this section, the relevant provisions of the Mental Health Act 1983 with respect to persons liable to recall (including provisions as to the extension of the community treatment period, the removal or discharge of community patients, the revocation of community treatment orders and the re-detention of patients following revocation) shall apply accordingly.
- (5) An order under this section shall (unless the appeal has been previously disposed of) cease to have effect at the end of the period for which the accused would, but for the decision of the Appeal Court, have been—
  - (a) liable to recall; or

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*Status: This is the original version (as it was originally enacted).*

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- (b) where the community treatment order is revoked, liable to be detained in pursuance of the order or direction under Part 3 of the Mental Health Act 1983.
- (6) Where the Appeal Court has power to make an order under this section and either no such order is made or the accused is discharged by virtue of subsection (4) or (5) above before the appeal is disposed of, the accused shall not be liable to be again detained as a result of the decision of the Supreme Court on the appeal.”

#### *Juries Act 1974*

- 4 In Schedule 1 to the Juries Act 1974 (c. 23) (mentally disordered persons and persons disqualified from serving), at the end of paragraph 2 insert “or subject to a community treatment order under section 17A of that Act”.

## SCHEDULE 5

Section 39

### CROSS-BORDER ARRANGEMENTS

#### PART 1

#### AMENDMENTS TO PART 6 OF 1983 ACT

#### *Introduction*

- 1 Part 6 of the 1983 Act is amended as set out in this Part of this Schedule.

#### *Transfer of patients: Scotland*

- 2 In section 80 (removal of patients to Scotland) (the cross-heading immediately above which becomes “Removal to and from Scotland”), in subsection (1), omit the words “or subject to guardianship” and the words “or, as the case may be, for receiving him into guardianship”.
- 3 (1) After that section insert—

#### **“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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*Status: This is the original version (as it was originally enacted).*

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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.”
- (2) This paragraph does not extend to Scotland.
- 4 (1) After section 80A (the title to which becomes “Transfer of responsibility for conditionally discharged patients to Scotland”) insert—

**“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.
- (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.

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- (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.

### **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.
- (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.

### **80D Transfer of conditionally discharged patients from Scotland**

- (1) This section applies to a patient who is subject to—

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*Status: This is the original version (as it was originally enacted).*

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- (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.
- (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.”

(2) This paragraph does not extend to Scotland.

#### *Transfer of patients: Northern Ireland*

5 In section 81 (removal of patients to Northern Ireland), in subsection (2), for the words from “where he is” to “the corresponding enactment” substitute “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”.

6 After that section insert—

#### **“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.”

7 (1) Section 81A (transfer of responsibility for patients to Northern Ireland) is amended as follows.

(2) For subsection (1)(a) substitute—

“(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;”

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*Status: This is the original version (as it was originally enacted).*

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- (3) In subsection (2)(b), for “a restriction order or restriction direction” substitute “a hospital order and a restriction order, or to a transfer direction and a restriction direction.”.
- 8 In section 82 (removal to England and Wales of patients from Northern Ireland), in subsection (2), for the words from “where he is” to “the corresponding enactment” substitute “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”.
- 9 In section 82A (the title to which becomes “Transfer of responsibility for conditionally discharged patients to England and Wales from Northern Ireland), for subsection (2)(b) substitute—
- “(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.”

*Transfer of patients: Channel Islands and Isle of Man*

- 10 Before section 83A (the title to which becomes “Transfer of responsibility for conditionally discharged patients to Channel Islands or Isle of Man”) insert—

**“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;

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- (b) in relation to a community patient in respect of whom the responsible hospital is in Wales, the Welsh Ministers.”
- 11 In section 85 (patients removed from Channel Islands or Isle of Man), in subsection (2), for “to a restriction order or restriction direction” substitute “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”.
- 12 Before section 85A (the title to which becomes “Responsibility for conditionally discharged patients transferred from Channel Islands or Isle of Man”) insert—

**“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.
- (5) But the responsible clinician may only specify conditions under subsection (4) above which an approved mental health professional agrees should be specified.”
- 13 (1) Section 85A is amended as follows.
- (2) For subsection (2)(b) substitute—
- “(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) In subsection (3) after “restriction order” insert “, limitation direction”.

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*Patients absent from hospitals in England and Wales*

- 14 (1) Section 88 (patients absent from hospitals in England and Wales) is amended as follows.
- (2) In subsection (1) for the words from “any other part” to the end substitute “Northern Ireland”.
- (3) For subsection (2) substitute—
- “(2) For the purposes of the enactments referred to in subsection (1) above in their application by virtue of this section, the expression “constable” includes an officer or constable of the Police Service of Northern Ireland.”
- (4) In subsection (3) omit the following—
- (a) the words “to Scotland or Northern Ireland”,
  - (b) paragraph (a), and
  - (c) in paragraph (b), the words “in Northern Ireland.”.

*Regulations for purposes of Part 6*

- 15 In section 90 (regulations for purposes of Part 6), for the words from “and to regulations” to the end substitute “, so far as this Part of this Act applies to patients removed to England and Wales or for whom responsibility is transferred to England and Wales.”

*General provisions as to patients removed from England and Wales*

- 16 In section 91 (general provisions as to patients removed from England and Wales), after subsection (2) insert—
- “(2A) Where responsibility for a community patient is transferred to a jurisdiction outside England and Wales (or such a patient is removed outside England and Wales) in pursuance of arrangements under this Part of this Act, the application, order or direction mentioned in subsection (1) above in force in respect of him shall cease to have effect on the date on which responsibility is so transferred (or he is so removed) in pursuance of those arrangements.”

*Interpretation*

- 17 In section 92 (interpretation of Part 6), after subsection (1) insert—
- “(1A) References in this Part of this Act to the responsible clinician shall be construed as references to the responsible clinician within the meaning of Part 2 of this Act.”

**PART 2**

RELATED AMENDMENTS

*The 1983 Act*

- 18 In section 69 of the 1983 Act (applications to tribunals concerning patients subject to hospital and guardianship orders), in subsection (2)(a)—

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- (a) after “hospital order” insert “, hospital direction”, and
  - (b) for the words from “, 82(2) or” to the end substitute “or section 80B(2), 82(2) or 85(2) below.”
- 19 (1) Section 79 of that Act (interpretation of Part 5) is amended as follows.
- (2) In subsection (1), for paragraph (c) substitute—
- “(c) is treated as subject 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, by virtue of any provision of Part 6 of this Act (except section 80D(3), 82A(2) or 85A(2) below),”.
- (3) In subsection (5)—
- (a) after “the relevant hospital order,” insert “the relevant hospital direction,”,
  - (b) after “the restriction order” insert “, the limitation direction”,
  - (c) after “the hospital order,” insert “hospital direction,”, and
  - (d) after “restriction order,” insert “limitation direction,”.
- (4) After that subsection insert—
- “(5A) Section 75 above shall, subject to the modifications in subsection (5C) below, have effect in relation to a qualifying patient as it has effect in relation to a restricted patient who is conditionally discharged under section 42(2), 73 or 74 above.
  - (5B) A patient is a qualifying patient if he is treated by virtue of section 80D(3), 82A(2) or 85A(2) below as if he had been conditionally discharged and were subject 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.
  - (5C) The modifications mentioned in subsection (5A) above are—
    - (a) references to the relevant hospital order, hospital direction or transfer direction, or to the restriction order, limitation direction or restriction direction to which the patient is subject, shall be construed as references to the hospital order, hospital direction or transfer direction, or restriction order, limitation direction or restriction direction, to which the patient is treated as subject by virtue of section 80D(3), 82A(2) or 85A(2) below; and
    - (b) the reference to the date on which the patient was conditionally discharged shall be construed as a reference to the date on which he was treated as conditionally discharged by virtue of a provision mentioned in paragraph (a) above.”
- 20 (1) In section 146 (application to Scotland), omit the words from “88” to “138”).
- (2) This paragraph does not extend to Scotland.

*Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078)*

- 21 (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 is amended as follows.
- (2) Omit the following provisions—
- (a) article 1(5),

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- (b) article 2, and
  - (c) article 3.
- (3) In article 8 (the title to which becomes “Patients absent from hospitals or other places in Scotland”), in paragraph (1)(b), for “290” substitute “289, 290, 309, 309A”.
- (4) In article 12(2), for “2 to 11” substitute “4 to 11”.

## SCHEDULE 6

Section 48

### VICTIMS' RIGHTS

#### *Introduction*

- 1 Chapter 2 of Part 3 of the Domestic Violence, Crime and Victims Act 2004 (c. 28) (provision of information to victims of restricted patients under the 1983 Act, etc.) is amended as set out in this Schedule.

#### *Hospital orders (with or without restriction orders)*

- 2 (1) Section 36 (victims' rights: preliminary) is amended as follows.
- (2) In subsection (3), for “with a restriction order” substitute “, whether with or without a restriction order,”.
- (3) In subsection (5)—
- (a) in paragraph (a), after “discharge from hospital” insert “while a restriction order is in force in respect of him”, and
  - (b) after paragraph (b) insert “;
  - (c) what conditions he should be subject to in the event of his discharge from hospital under a community treatment order”.
- 3 After section 36 insert—

#### **“36A Supplemental provision for case where no restriction order made**

- (1) This section applies if, in a case where section 36 applies, the hospital order in respect of the patient was made without a restriction order.
- (2) Subsection (3) applies if a person who appears to the local probation board mentioned in section 36(4) to be the victim of the offence or to act for the victim of the offence, when his wishes are ascertained under section 36(4), expresses a wish—
- (a) to make representations about a matter specified in section 36(5), or
  - (b) to receive the information specified in section 36(6).
- (3) The local probation board must—
- (a) notify the managers of the hospital in which the patient is detained of that person’s wish and of that person’s name and address, and
  - (b) notify that person of the name and address of the hospital.



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- (4) Subsection (5) applies if a person who appears to the local probation board mentioned in section 36(4) to be the victim of the offence or to act for the victim of the offence, subsequently to his wishes being ascertained under section 36(4), expresses a wish to do something specified in subsection (2) (a) or (b).
- (5) The local probation board mentioned in section 36(4) must take all reasonable steps—
  - (a) to ascertain whether the hospital order made in respect of the patient continues in force and whether a community treatment order is in force in respect of him, and
  - (b) if the board ascertains that the hospital order does continue in force—
    - (i) to notify the managers of the relevant hospital of that person's wish, and
    - (ii) to notify that person of the name and address of the hospital.
- (6) The relevant hospital is—
  - (a) the hospital in which the patient is detained, or
  - (b) if a community treatment order is in force in respect of the patient, the responsible hospital.”

4 In section 37 (the title to which becomes “Representations where restriction order made”), in subsection (1), for “if section 36 applies” substitute “if, in a case where section 36 applies, the hospital order in respect of the patient was made with a restriction order”.

5 After section 37 insert—

**“37A Representations where restriction order not made**

- (1) This section applies if, in a case where section 36 applies, the hospital order in respect of the patient was made without a restriction order.
- (2) Subsection (3) applies if—
  - (a) a person makes representations about a matter specified in section 36(5) to the managers of the relevant hospital, and
  - (b) it appears to the managers that the person is the victim of the offence or acts for the victim of the offence.
- (3) The managers must forward the representations to the persons responsible for determining the matter.
- (4) The responsible clinician must inform the managers of the relevant hospital if he is considering making—
  - (a) an order for discharge in respect of the patient under section 23(2) of the Mental Health Act 1983,
  - (b) a community treatment order in respect of the patient, or
  - (c) an order under section 17B(4) of the Mental Health Act 1983 to vary the conditions specified in a community treatment order in force in respect of the patient.

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- (5) Any person who has the power to make an order for discharge in respect of the patient under section 23(3) of the Mental Health Act 1983 must inform the managers of the relevant hospital if he is considering making that order.
- (6) A Mental Health Review Tribunal must inform the managers of the relevant hospital if—
  - (a) an application is made to the tribunal under section 66 or 69 of the Mental Health Act 1983, or
  - (b) the patient's case is referred to the tribunal under section 67 of that Act.
- (7) Subsection (8) applies if—
  - (a) the managers of the relevant hospital receive information under subsection (4), (5) or (6), and
  - (b) a person who appears to the managers to be the victim of the offence or to act for the victim of the offence—
    - (i) when his wishes were ascertained under section 36(4), expressed a wish to make representations about a matter specified in section 36(5), or
    - (ii) has made representations about such a matter to the managers of the hospital in which the patient was, at the time in question, detained.
- (8) The managers of the relevant hospital must provide the information to the person.
- (9) The relevant hospital has the meaning given in section 36A(6)."

6 In section 38 (the title to which becomes "Information where restriction order made"), in subsection (1) for "if section 36 applies" substitute "if, in a case where section 36 applies, the hospital order in respect of the patient was made with a restriction order".

7 After section 38 insert —

**“38A Information where restriction order not made**

- (1) This section applies if, in a case where section 36 applies, the hospital order in respect of the patient was made without a restriction order.
- (2) The responsible clinician must inform the managers of the relevant hospital—
  - (a) whether he is to make an order for discharge in respect of the patient under section 23(2) of the Mental Health Act 1983;
  - (b) whether he is to make a community treatment order in respect of the patient;
  - (c) if a community treatment order is to be made in respect of the patient, what conditions are to be specified in the order;
  - (d) if a community treatment order is in force in respect of the patient, of any variation to be made under section 17B(4) of the Mental Health Act 1983 of the conditions specified in the order;
  - (e) if a community treatment order in respect of the patient is to cease to be in force, of the date on which it is to cease to be in force;

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- (f) if, following the examination of the patient under section 20 of the Mental Health Act 1983, it does not appear to the responsible clinician that the conditions set out in subsection (4) of that section are satisfied, of the date on which the authority for the patient's detention is to expire.
- (3) Any person who has the power to make an order for discharge in respect of the patient under section 23(3) of the Mental Health Act 1983 must inform the managers of the relevant hospital if he is to make that order.
- (4) Subsection (5) applies if—
- (a) an application is made to a Mental Health Review Tribunal under section 66 or 69 of the Mental Health Act 1983,
  - (b) the patient's case is referred to a Mental Health Review Tribunal under section 67 of that Act, or
  - (c) the managers of the relevant hospital refer the patient's case to a Mental Health Review Tribunal under section 68 of that Act.
- (5) The tribunal must inform the managers of the relevant hospital if it directs that the patient is to be discharged.
- (6) Subsection (7) applies if a person who appears to the managers of the relevant hospital to be the victim of the offence or to act for the victim of the offence—
- (a) when his wishes were ascertained under section 36(4), expressed a wish to receive the information specified in section 36(6), or
  - (b) has subsequently informed the managers of the relevant hospital that he wishes to receive that information.
- (7) The managers of the relevant hospital order must take all reasonable steps—
- (a) to inform that person whether the patient is to be discharged under section 23 or 72 of the Mental Health Act 1983;
  - (b) to inform that person whether a community treatment order is to be made in respect of the patient;
  - (c) if a community treatment order is to be made in respect of the patient and is to specify conditions which relate to contact with the victim or his family, to provide that person with details of those conditions;
  - (d) if a community treatment order is in force in respect of the patient and the conditions specified in the order are to be varied under section 17B(4) of the Mental Health Act 1983, to provide that person with details of any variation which relates to contact with the victim or his family;
  - (e) if a community treatment order in respect of the patient is to cease to be in force, to inform that person of the date on which it is to cease to be in force;
  - (f) if, following the examination of the patient under section 20 of the Mental Health Act 1983, the authority for the patient's detention is not to be renewed, to inform that person of the date on which the authority is to expire;
  - (g) to provide that person with such other information as the managers of the relevant hospital consider appropriate in all the circumstances of the case.

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(8) The relevant hospital has the meaning given by section 36A(6).

### **38B Removal of restriction**

- (1) This section applies if, in a case where section 36 applies—
- (a) the hospital order in respect of the patient was made with a restriction order, and
  - (b) the restriction order ceases to have effect while the hospital order continues in force.
- (2) Subsection (3) applies if a person who appears to the relevant local probation board to be the victim of the offence or to act for the victim of the offence—
- (a) when his wishes were ascertained under section 36(4), expressed a wish to make representations about a matter specified in section 36(5) or to receive the information specified in section 36(6), or
  - (b) has subsequently informed the relevant local probation board that he wishes to make representations about such a matter or to receive that information.
- (3) The relevant local probation board must take all reasonable steps—
- (a) to notify the managers of the relevant hospital of an address at which that person may be contacted;
  - (b) to notify that person of the name and address of the hospital.
- (4) While the hospital order continues in force, the patient is to be regarded as a patient in respect of whom a hospital order was made without a restriction order; and sections 37A and 38A are to apply in relation to him accordingly.
- (5) The relevant hospital has the meaning given in section 36A(6).
- (6) The relevant local probation board has the meaning given in section 37(8)."

### *Hospital directions and limitation directions*

- 8 In section 39 (victims' rights: preliminary), in subsection (3)—
- (a) in paragraph (a), after "discharge from hospital" insert "while he is subject to a limitation direction", and
  - (b) after that paragraph insert—
    - "(aa) what conditions he should be subject to in the event of his discharge from hospital under a community treatment order;"

9 After section 41 insert—

### **"41A Removal of restriction**

- (1) This section applies if, in a case where section 39 applies—
- (a) the limitation direction in respect of the offender ceases to be in force, and
  - (b) he is treated for the purposes of the Mental Health Act 1983 as a patient in respect of whom a hospital order has effect.

- (2) Subsection (3) applies if a person who appears to the relevant local probation board to be the victim of the offence or to act for the victim of the offence—
  - (a) when his wishes were ascertained under section 39(2), expressed a wish to make representations about a matter specified in section 39(3) or to receive the information specified in section 39(4), or
  - (b) has subsequently informed the relevant local probation board that he wishes to make representations about such a matter or to receive that information.
- (3) The relevant local probation board must take all reasonable steps—
  - (a) to notify the managers of the relevant hospital of an address at which that person may be contacted;
  - (b) to notify that person of the address of the hospital.
- (4) The offender is to be regarded as a patient in respect of whom a hospital order was made without a restriction order; and sections 37A and 38A are to apply in relation to him accordingly.
- (5) The relevant hospital has the meaning given in section 36A(6).
- (6) The relevant local probation board has the meaning given in section 40(8).”

*Transfer directions (with or without restriction directions)*

- 10 (1) Section 42 (victims' rights: preliminary) is amended as follows.
- (2) In subsection (1)(c), for “and a restriction direction in respect of him” substitute “in respect of the offender (whether or not he also gives a restriction direction in respect of the offender)”.
  - (3) In subsection (3)—
    - (a) in paragraph (a), after “discharge from hospital” insert “at a time when a restriction direction is in force in respect of him”, and
    - (b) after paragraph (b) insert “;
    - (c) what conditions he should be subject to in the event of his discharge from hospital under a community treatment order”.

11 After section 42 insert—

**“42A Supplemental provision for case where no restriction direction given**

- (1) This section applies if, in a case where section 42 applies, the transfer direction in respect of the patient was given without a restriction direction.
- (2) Subsection (3) applies if a person who appears to the local probation board mentioned in section 42(2) to be the victim of the offence or to act for the victim of the offence, when his wishes are ascertained under section 42(2), expresses a wish—
  - (a) to make representations about a matter specified in section 42(3), or
  - (b) to receive the information specified in section 42(4).
- (3) The local probation board must—

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- (a) notify the managers of the hospital in which the patient is detained of that person's wish and of that person's name and address, and
  - (b) notify that person of the name and address of the hospital.
- (4) Subsection (5) applies if a person who appears to the local probation board mentioned in section 42(2) to be the victim of the offence or to act for the victim of the offence, subsequently to his wishes being ascertained under section 42(2), expressed a wish to do something specified in subsection (2) (a) or (b).
- (5) The local probation board mentioned in section 42(2) must take all reasonable steps—
- (a) to ascertain whether the transfer direction given in respect of the patient continues in force and whether a community treatment order is in force in respect of him, and
  - (b) if the board ascertains that the transfer direction does continue in force—
    - (i) to notify the managers of the relevant hospital of that person's wish, and
    - (ii) to notify that person of the name and address of the hospital.
- (6) The relevant hospital has the meaning given in section 36A(6)."
- 12 In section 43 (the title to which becomes "Representations where restriction direction made"), in subsection (1), for "if section 42 applies" substitute "if, in a case where section 42 applies, the transfer direction in respect of the patient was given with a restriction direction".
- 13 After section 43 insert—

**"43A Representations where restriction direction not given**

- (1) This section applies if, in a case where section 42 applies, the transfer direction in respect of the patient was given without a restriction direction.
- (2) Subsection (3) applies if—
  - (a) a person makes representations about a matter specified in section 42(3) to the managers of the relevant hospital, and
  - (b) it appears to the managers that the person is the victim of the offence or acts for the victim of the offence.
- (3) The managers must forward the representations to the persons responsible for determining the matter.
- (4) The responsible clinician must inform the managers of the relevant hospital if he is considering making—
  - (a) an order for discharge in respect of the patient under section 23(2) of the Mental Health Act 1983,
  - (b) a community treatment order in respect of him, or
  - (c) an order under section 17B(4) of the Mental Health Act 1983 to vary the conditions specified in a community treatment order in force in respect of the patient.

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- (5) Any person who has power to make an order for discharge in respect of the patient under section 23(3) of the Mental Health Act 1983 must inform the managers of the relevant hospital if he is considering making that order.
- (6) A Mental Health Review Tribunal must inform the managers of the relevant hospital if—
  - (a) an application is made to the tribunal under section 66 or 69 of the Mental Health Act 1983, or
  - (b) the patient's case is referred to the tribunal under section 67 of that Act.
- (7) Subsection (8) applies if—
  - (a) the managers of the relevant hospital receive information under subsection (4), (5) or (6), and
  - (b) a person who appears to the managers to be the victim of the offence or to act for the victim of the offence—
    - (i) when his wishes were ascertained under section 42(2), expressed a wish to make representations about a matter specified in section 42(3), or
    - (ii) has made representations about such a matter to the managers of the hospital in which the patient was, at the time in question, detained.
- (8) The managers of the relevant hospital must provide the information to the person.
- (9) The relevant hospital has the meaning given in section 36A(6)."

14 In section 44 (the title to which becomes "Information where restriction direction made"), in subsection (1), for "if section 42 applies" substitute "if, in a case where section 42 applies, the transfer direction in respect of the patient was given with a restriction direction".

15 After section 44 insert —

**"44A Information where restriction direction not given**

- (1) This section applies if, in a case where section 42 applies, the transfer direction in respect of the patient was given without a restriction direction.
- (2) The responsible clinician must inform the managers of the relevant hospital—
  - (a) whether he is to make an order for discharge in respect of the patient under section 23(2) of the Mental Health Act 1983;
  - (b) whether he is to make a community treatment order in respect of the patient;
  - (c) if a community treatment order is to be made in respect of the patient, what conditions are to be specified in the order;
  - (d) if a community treatment order is in force in respect of the patient, of any variation to be made under section 17B(4) of the Mental Health Act 1983 of the conditions specified in the order;
  - (e) if a community treatment order in respect of the patient is to cease to be in force, of the date on which it is to cease to be in force;

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- (f) if, following the examination of the patient under section 20 of the Mental Health Act 1983, it does not appear to the responsible clinician that the conditions set out in subsection (4) of that section are satisfied, of the date on which the authority for the patient's detention is to expire.
- (3) Any person who has power to make an order for discharge in respect of the patient under section 23(3) of the Mental Health Act 1983 must inform the managers of the relevant hospital if he is to make that order.
- (4) Subsection (5) applies if—
- (a) an application is made to a Mental Health Review Tribunal under section 66 or 69 of the Mental Health Act 1983,
  - (b) the patient's case is referred to a Mental Health Review Tribunal under section 67 of that Act, or
  - (c) the managers of the relevant hospital refer the patient's case to a Mental Health Review Tribunal under section 68 of that Act.
- (5) The tribunal must inform the managers of the relevant hospital if it directs that the patient be discharged.
- (6) Subsection (7) applies if a person who appears to the managers of the relevant hospital to be the victim of the offence or to act for the victim of the offence—
- (a) when his wishes were ascertained under section 42(2), expressed a wish to receive the information specified in section 42(4), or
  - (b) has subsequently informed the managers of the relevant hospital that he wishes to receive that information.
- (7) The managers of the relevant hospital order must take all reasonable steps—
- (a) to inform that person whether the patient is to be discharged under section 23 or 72 of the Mental Health Act 1983;
  - (b) to inform that person whether a community treatment order is to be made in respect of the patient;
  - (c) if a community treatment order is to be made in respect of the patient and is to specify conditions which relate to contact with the victim or his family, to provide that person with details of those conditions;
  - (d) if a community treatment order is in force in respect of the patient and the conditions specified in the order are to be varied under section 17B(4) of the Mental Health Act 1983, to provide that person with details of any variation which relates to contact with the victim or his family;
  - (e) if a community treatment order in respect of the patient is to cease to be in force, to inform that person of the date on which it is to cease to be in force;
  - (f) if, following the examination of the patient under section 20 of the Mental Health Act 1983, the authority for the patient's detention is not to be renewed, to inform that person of the date on which the authority is to expire;
  - (g) to provide that person with such other information as the managers of the relevant hospital consider appropriate in all the circumstances of the case.



(8) The relevant hospital has the meaning given by section 36A(6).

#### **44B Removal of restriction**

- (1) This section applies if, in a case where section 42 applies—
- (a) the transfer direction in respect of the patient was given with a restriction direction, and
  - (b) the restriction direction ceases to be in force while the transfer direction continues in force.
- (2) Subsection (3) applies if a person who appears to the relevant local probation board to be the victim of the offence or to act for the victim of the offence—
- (a) when his wishes were ascertained under section 42(2), expressed a wish to make representations about a matter specified in section 42(3) or to receive the information specified in section 42(4), or
  - (b) has subsequently informed the relevant local probation board that he wishes to make representations about such a matter or to receive that information.
- (3) The relevant local probation board must take all reasonable steps—
- (a) to notify the managers of the relevant hospital of an address at which that person may be contacted;
  - (b) to notify that person of the name and address of the hospital.
- (4) While the transfer direction continues in force, the patient is to be regarded as a patient in respect of whom a transfer direction was given without a restriction direction; and sections 43A and 44A are to apply in relation to him accordingly.
- (5) The relevant hospital has the meaning given in section 36A(6).
- (6) The relevant local probation board has the meaning given in section 43(8)."

#### *Interpretation*

16 (1) Section 45 (the title to which becomes "Interpretation: sections 35 to 44B") is amended as follows.

(2) In subsection (1)—

- (a) for "44" substitute "44B", and
- (b) at the appropriate places insert—

““community treatment order” has the meaning given in section 17A of the Mental Health Act 1983;”,

““the managers” has the meaning given in section 145 of the Mental Health Act 1983;”,

““responsible clinician” means the responsible clinician for the purposes of Part 3 of the Mental Health Act 1983;”, and

““responsible hospital” has the meaning given in section 17A of the Mental Health Act 1983;”.

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(3) In subsection (2), for “44” substitute “44B”.

(4) After subsection (2) insert—

“(3) A reference in sections 35 to 44B to a place in which a person is detained includes a reference to a place in which he is liable to be detained under the Mental Health Act 1983.

(4) For the purposes of section 32(3) of that Act (regulations as to delegation of managers' functions, etc.) as applied by Parts 1 and 2 of Schedule 1 to that Act, a function conferred on the managers of a hospital under sections 35 to 44B of this Act is to be treated as a function of theirs under Part 3 of that Act.”

## SCHEDULE 7

Section 50

### MENTAL CAPACITY ACT 2005: NEW SCHEDULE A1

Before Schedule 1 to the Mental Capacity Act 2005 (c. 9) insert—

#### “SCHEDULE A1

#### HOSPITAL AND CARE HOME RESIDENTS: DEPRIVATION OF LIBERTY

#### PART 1

#### AUTHORISATION TO DEPRIVE RESIDENTS OF LIBERTY ETC

#### **Application of Part**

- 1 (1) This Part applies if the following conditions are met.
  - (2) The first condition is that a person (“P”) is detained in a hospital or care home — for the purpose of being given care or treatment — in circumstances which amount to deprivation of the person’s liberty.
  - (3) The second condition is that a standard or urgent authorisation is in force.
  - (4) The third condition is that the standard or urgent authorisation relates—
    - (a) to P, and
    - (b) to the hospital or care home in which P is detained.

#### **Authorisation to deprive P of liberty**

- 2 The managing authority of the hospital or care home may deprive P of his liberty by detaining him as mentioned in paragraph 1(2).

#### **No liability for acts done for purpose of depriving P of liberty**

- 3 (1) This paragraph applies to any act which a person (“D”) does for the purpose of detaining P as mentioned in paragraph 1(2).

- (2) D does not incur any liability in relation to the act that he would not have incurred if P—
- (a) had had capacity to consent in relation to D’s doing the act, and
  - (b) had consented to D’s doing the act.

### **No protection for negligent acts etc**

- 4 (1) Paragraphs 2 and 3 do not exclude a person’s civil liability for loss or damage, or his criminal liability, resulting from his negligence in doing any thing.
- (2) Paragraphs 2 and 3 do not authorise a person to do anything otherwise than for the purpose of the standard or urgent authorisation that is in force.
- (3) In a case where a standard authorisation is in force, paragraphs 2 and 3 do not authorise a person to do anything which does not comply with the conditions (if any) included in the authorisation.

## **PART 2**

### INTERPRETATION: MAIN TERMS

#### **Introduction**

- 5 This Part applies for the purposes of this Schedule.

#### **Detained resident**

- 6 “Detained resident” means a person detained in a hospital or care home — for the purpose of being given care or treatment — in circumstances which amount to deprivation of the person’s liberty.

#### **Relevant person etc**

- 7 In relation to a person who is, or is to be, a detained resident—
- “relevant person” means the person in question;
  - “relevant hospital or care home” means the hospital or care home in question;
  - “relevant care or treatment” means the care or treatment in question.

#### **Authorisations**

- 8 “Standard authorisation” means an authorisation given under Part 4.
- 9 “Urgent authorisation” means an authorisation given under Part 5.
- 10 “Authorisation under this Schedule” means either of the following—
- (a) a standard authorisation;
  - (b) an urgent authorisation.
- 11 (1) The purpose of a standard authorisation is the purpose which is stated in the authorisation in accordance with paragraph 55(1)(d).

- (2) The purpose of an urgent authorisation is the purpose which is stated in the authorisation in accordance with paragraph 80(d).

### PART 3

#### THE QUALIFYING REQUIREMENTS

##### The qualifying requirements

- 12 (1) These are the qualifying requirements referred to in this Schedule—
- (a) the age requirement;
  - (b) the mental health requirement;
  - (c) the mental capacity requirement;
  - (d) the best interests requirement;
  - (e) the eligibility requirement;
  - (f) the no refusals requirement.
- (2) Any question of whether a person who is, or is to be, a detained resident meets the qualifying requirements is to be determined in accordance with this Part.
- (3) In a case where—
- (a) the question of whether a person meets a particular qualifying requirement arises in relation to the giving of a standard authorisation, and
  - (b) any circumstances relevant to determining that question are expected to change between the time when the determination is made and the time when the authorisation is expected to come into force,
- those circumstances are to be taken into account as they are expected to be at the later time.

##### The age requirement

- 13 The relevant person meets the age requirement if he has reached 18.

##### The mental health requirement

- 14 (1) The relevant person meets the mental health requirement if he is suffering from mental disorder (within the meaning of the Mental Health Act, but disregarding any exclusion for persons with learning disability).
- (2) An exclusion for persons with learning disability is any provision of the Mental Health Act which provides for a person with learning disability not to be regarded as suffering from mental disorder for one or more purposes of that Act.

##### The mental capacity requirement

- 15 The relevant person meets the mental capacity requirement if he lacks capacity in relation to the question whether or not he should be accommodated in the relevant hospital or care home for the purpose of being given the relevant care or treatment.

### **The best interests requirement**

- 16 (1) The relevant person meets the best interests requirement if all of the following conditions are met.
- (2) The first condition is that the relevant person is, or is to be, a detained resident.
- (3) The second condition is that it is in the best interests of the relevant person for him to be a detained resident.
- (4) The third condition is that, in order to prevent harm to the relevant person, it is necessary for him to be a detained resident.
- (5) The fourth condition is that it is a proportionate response to—
- (a) the likelihood of the relevant person suffering harm, and
  - (b) the seriousness of that harm,
- for him to be a detained resident.

### **The eligibility requirement**

- 17 (1) The relevant person meets the eligibility requirement unless he is ineligible to be deprived of liberty by this Act.
- (2) Schedule 1A applies for the purpose of determining whether or not P is ineligible to be deprived of liberty by this Act.

### **The no refusals requirement**

- 18 The relevant person meets the no refusals requirement unless there is a refusal within the meaning of paragraph 19 or 20.
- 19 (1) There is a refusal if these conditions are met—
- (a) the relevant person has made an advance decision;
  - (b) the advance decision is valid;
  - (c) the advance decision is applicable to some or all of the relevant treatment.
- (2) Expressions used in this paragraph and any of sections 24, 25 or 26 have the same meaning in this paragraph as in that section.
- 20 (1) There is a refusal if it would be in conflict with a valid decision of a donee or deputy for the relevant person to be accommodated in the relevant hospital or care home for the purpose of receiving some or all of the relevant care or treatment—
- (a) in circumstances which amount to deprivation of the person's liberty, or
  - (b) at all.
- (2) A donee is a donee of a lasting power of attorney granted by the relevant person.
- (3) A decision of a donee or deputy is valid if it is made—
- (a) within the scope of his authority as donee or deputy, and
  - (b) in accordance with Part 1 of this Act.

## PART 4

### STANDARD AUTHORISATIONS

#### **Supervisory body to give authorisation**

- 21 Only the supervisory body may give a standard authorisation.
- 22 The supervisory body may not give a standard authorisation unless—
- (a) the managing authority of the relevant hospital or care home have requested it, or
  - (b) paragraph 71 applies (right of third party to require consideration of whether authorisation needed).
- 23 The managing authority may not make a request for a standard authorisation unless—
- (a) they are required to do so by paragraph 24 (as read with paragraphs 27 to 29),
  - (b) they are required to do so by paragraph 25 (as read with paragraph 28), or
  - (c) they are permitted to do so by paragraph 30.

#### **Duty to request authorisation: basic cases**

- 24 (1) The managing authority must request a standard authorisation in any of the following cases.
- (2) The first case is where it appears to the managing authority that the relevant person—
- (a) is not yet accommodated in the relevant hospital or care home,
  - (b) is likely — at some time within the next 28 days — to be a detained resident in the relevant hospital or care home, and
  - (c) is likely—
    - (i) at that time, or
    - (ii) at some later time within the next 28 days,to meet all of the qualifying requirements.
- (3) The second case is where it appears to the managing authority that the relevant person—
- (a) is already accommodated in the relevant hospital or care home,
  - (b) is likely — at some time within the next 28 days — to be a detained resident in the relevant hospital or care home, and
  - (c) is likely—
    - (i) at that time, or
    - (ii) at some later time within the next 28 days,to meet all of the qualifying requirements.
- (4) The third case is where it appears to the managing authority that the relevant person—
- (a) is a detained resident in the relevant hospital or care home, and
  - (b) meets all of the qualifying requirements, or is likely to do so at some time within the next 28 days.
- (5) This paragraph is subject to paragraphs 27 to 29.

### **Duty to request authorisation: change in place of detention**

- 25 (1) The relevant managing authority must request a standard authorisation if it appears to them that these conditions are met.
- (2) The first condition is that a standard authorisation—
- (a) has been given, and
  - (b) has not ceased to be in force.
- (3) The second condition is that there is, or is to be, a change in the place of detention.
- (4) This paragraph is subject to paragraph 28.
- 26 (1) This paragraph applies for the purposes of paragraph 25.
- (2) There is a change in the place of detention if the relevant person—
- (a) ceases to be a detained resident in the stated hospital or care home, and
  - (b) becomes a detained resident in a different hospital or care home (“the new hospital or care home”).
- (3) The stated hospital or care home is the hospital or care home to which the standard authorisation relates.
- (4) The relevant managing authority are the managing authority of the new hospital or care home.

### **Other authority for detention: request for authorisation**

- 27 (1) This paragraph applies if, by virtue of section 4A(3), a decision of the court authorises the relevant person to be a detained resident.
- (2) Paragraph 24 does not require a request for a standard authorisation to be made in relation to that detention unless these conditions are met.
- (3) The first condition is that the standard authorisation would be in force at a time immediately after the expiry of the other authority.
- (4) The second condition is that the standard authorisation would not be in force at any time on or before the expiry of the other authority.
- (5) The third condition is that it would, in the managing authority’s view, be unreasonable to delay making the request until a time nearer the expiry of the other authority.
- (6) In this paragraph—
- (a) the other authority is—
    - (i) the decision mentioned in sub-paragraph (1), or
    - (ii) any further decision of the court which, by virtue of section 4A(3), authorises, or is expected to authorise, the relevant person to be a detained resident;
  - (b) the expiry of the other authority is the time when the other authority is expected to cease to authorise the relevant person to be a detained resident.

### **Request refused: no further request unless change of circumstances**

- 28 (1) This paragraph applies if—

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- (a) a managing authority request a standard authorisation under paragraph 24 or 25, and
  - (b) the supervisory body are prohibited by paragraph 50(2) from giving the authorisation.
- (2) Paragraph 24 or 25 does not require that managing authority to make a new request for a standard authorisation unless it appears to the managing authority that—
- (a) there has been a change in the relevant person’s case, and
  - (b) because of that change, the supervisory body are likely to give a standard authorisation if requested.

**Authorisation given: request for further authorisation**

- 29 (1) This paragraph applies if a standard authorisation—
- (a) has been given in relation to the detention of the relevant person, and
  - (b) that authorisation (“the existing authorisation”) has not ceased to be in force.
- (2) Paragraph 24 does not require a new request for a standard authorisation (“the new authorisation”) to be made unless these conditions are met.
- (3) The first condition is that the new authorisation would be in force at a time immediately after the expiry of the existing authorisation.
- (4) The second condition is that the new authorisation would not be in force at any time on or before the expiry of the existing authorisation.
- (5) The third condition is that it would, in the managing authority’s view, be unreasonable to delay making the request until a time nearer the expiry of the existing authorisation.
- (6) The expiry of the existing authorisation is the time when it is expected to cease to be in force.

**Power to request authorisation**

- 30 (1) This paragraph applies if—
- (a) a standard authorisation has been given in relation to the detention of the relevant person,
  - (b) that authorisation (“the existing authorisation”) has not ceased to be in force,
  - (c) the requirement under paragraph 24 to make a request for a new standard authorisation does not apply, because of paragraph 29, and
  - (d) a review of the existing authorisation has been requested, or is being carried out, in accordance with Part 8.
- (2) The managing authority may request a new standard authorisation which would be in force on or before the expiry of the existing authorisation; but only if it would also be in force immediately after that expiry.
- (3) The expiry of the existing authorisation is the time when it is expected to cease to be in force.



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- (4) Further provision relating to cases where a request is made under this paragraph can be found in—
- (a) paragraph 62 (effect of decision about request), and
  - (b) paragraph 124 (effect of request on Part 8 review).

### **Information included in request**

- 31 A request for a standard authorisation must include the information (if any) required by regulations.

### **Records of requests**

- 32 (1) The managing authority of a hospital or care home must keep a written record of—
- (a) each request that they make for a standard authorisation, and
  - (b) the reasons for making each request.
- (2) A supervisory body must keep a written record of each request for a standard authorisation that is made to them.

### **Relevant person must be assessed**

- 33 (1) This paragraph applies if the supervisory body are requested to give a standard authorisation.
- (2) The supervisory body must secure that all of these assessments are carried out in relation to the relevant person—
- (a) an age assessment;
  - (b) a mental health assessment;
  - (c) a mental capacity assessment;
  - (d) a best interests assessment;
  - (e) an eligibility assessment;
  - (f) a no refusals assessment.
- (3) The person who carries out any such assessment is referred to as the assessor.
- (4) Regulations may be made about the period (or periods) within which assessors must carry out assessments.
- (5) This paragraph is subject to paragraphs 49 and 133.

### **Age assessment**

- 34 An age assessment is an assessment of whether the relevant person meets the age requirement.

### **Mental health assessment**

- 35 A mental health assessment is an assessment of whether the relevant person meets the mental health requirement.
- 36 When carrying out a mental health assessment, the assessor must also—

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- (a) consider how (if at all) the relevant person's mental health is likely to be affected by his being a detained resident, and
- (b) notify the best interests assessor of his conclusions.

### **Mental capacity assessment**

- 37 A mental capacity assessment is an assessment of whether the relevant person meets the mental capacity requirement.

### **Best interests assessment**

- 38 A best interests assessment is an assessment of whether the relevant person meets the best interests requirement.

- 39 (1) In carrying out a best interests assessment, the assessor must comply with the duties in sub-paragraphs (2) and (3).

- (2) The assessor must consult the managing authority of the relevant hospital or care home.

- (3) The assessor must have regard to all of the following—

- (a) the conclusions which the mental health assessor has notified to the best interests assessor in accordance with paragraph 36(b);
- (b) any relevant needs assessment;
- (c) any relevant care plan.

- (4) A relevant needs assessment is an assessment of the relevant person's needs which—

- (a) was carried out in connection with the relevant person being accommodated in the relevant hospital or care home, and
- (b) was carried out by or on behalf of—
  - (i) the managing authority of the relevant hospital or care home, or
  - (ii) the supervisory body.

- (5) A relevant care plan is a care plan which—

- (a) sets out how the relevant person's needs are to be met whilst he is accommodated in the relevant hospital or care home, and
- (b) was drawn up by or on behalf of—
  - (i) the managing authority of the relevant hospital or care home, or
  - (ii) the supervisory body.

- (6) The managing authority must give the assessor a copy of—

- (a) any relevant needs assessment carried out by them or on their behalf, or
- (b) any relevant care plan drawn up by them or on their behalf.

- (7) The supervisory body must give the assessor a copy of—

- (a) any relevant needs assessment carried out by them or on their behalf, or
- (b) any relevant care plan drawn up by them or on their behalf.

- (8) The duties in sub-paragraphs (2) and (3) do not affect any other duty to consult or to take the views of others into account.

- 40 (1) This paragraph applies whatever conclusion the best interests assessment comes to.

- (2) The assessor must state in the best interests assessment the name and address of every interested person whom he has consulted in carrying out the assessment.
- 41 Paragraphs 42 and 43 apply if the best interests assessment comes to the conclusion that the relevant person meets the best interests requirement.
- 42 (1) The assessor must state in the assessment the maximum authorisation period.
- (2) The maximum authorisation period is the shorter of these periods—
- (a) the period which, in the assessor’s opinion, would be the appropriate maximum period for the relevant person to be a detained resident under the standard authorisation that has been requested;
  - (b) 1 year, or such shorter period as may be prescribed in regulations.
- (3) Regulations under sub-paragraph (2)(b)—
- (a) need not provide for a shorter period to apply in relation to all standard authorisations;
  - (b) may provide for different periods to apply in relation to different kinds of standard authorisations.
- (4) Before making regulations under sub-paragraph (2)(b) the Secretary of State must consult all of the following—
- (a) each body required by regulations under paragraph 162 to monitor and report on the operation of this Schedule in relation to England;
  - (b) such other persons as the Secretary of State considers it appropriate to consult.
- (5) Before making regulations under sub-paragraph (2)(b) the National Assembly for Wales must consult all of the following—
- (a) each person or body directed under paragraph 163(2) to carry out any function of the Assembly of monitoring and reporting on the operation of this Schedule in relation to Wales;
  - (b) such other persons as the Assembly considers it appropriate to consult.
- 43 The assessor may include in the assessment recommendations about conditions to which the standard authorisation is, or is not, to be subject in accordance with paragraph 53.
- 44 (1) This paragraph applies if the best interests assessment comes to the conclusion that the relevant person does not meet the best interests requirement.
- (2) If, on the basis of the information taken into account in carrying out the assessment, it appears to the assessor that there is an unauthorised deprivation of liberty, he must include a statement to that effect in the assessment.
- (3) There is an unauthorised deprivation of liberty if the managing authority of the relevant hospital or care home are already depriving the relevant person of his liberty without authority of the kind mentioned in section 4A.
- 45 The duties with which the best interests assessor must comply are subject to the provision included in appointment regulations under Part 10 (in particular, provision made under paragraph 146).

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### **Eligibility assessment**

- 46 An eligibility assessment is an assessment of whether the relevant person meets the eligibility requirement.
- 47 (1) Regulations may—
- (a) require an eligibility assessor to request a best interests assessor to provide relevant eligibility information, and
  - (b) require the best interests assessor, if such a request is made, to provide such relevant eligibility information as he may have.
- (2) In this paragraph—
- “best interests assessor” means any person who is carrying out, or has carried out, a best interests assessment in relation to the relevant person;
  - “eligibility assessor” means a person carrying out an eligibility assessment in relation to the relevant person;
  - “relevant eligibility information” is information relevant to assessing whether or not the relevant person is ineligible by virtue of paragraph 5 of Schedule 1A.

### **No refusals assessment**

- 48 A no refusals assessment is an assessment of whether the relevant person meets the no refusals requirement.

### **Equivalent assessment already carried out**

- 49 (1) The supervisory body are not required by paragraph 33 to secure that a particular kind of assessment (“the required assessment”) is carried out in relation to the relevant person if the following conditions are met.
- (2) The first condition is that the supervisory body have a written copy of an assessment of the relevant person (“the existing assessment”) that has already been carried out.
  - (3) The second condition is that the existing assessment complies with all requirements under this Schedule with which the required assessment would have to comply (if it were carried out).
  - (4) The third condition is that the existing assessment was carried out within the previous 12 months; but this condition need not be met if the required assessment is an age assessment.
  - (5) The fourth condition is that the supervisory body are satisfied that there is no reason why the existing assessment may no longer be accurate.
  - (6) If the required assessment is a best interests assessment, in satisfying themselves as mentioned in sub-paragraph (5), the supervisory body must take into account any information given, or submissions made, by—
    - (a) the relevant person’s representative,
    - (b) any section 39C IMCA, or
    - (c) any section 39D IMCA.
  - (7) It does not matter whether the existing assessment was carried out in connection with a request for a standard authorisation or for some other purpose.

- (8) If, because of this paragraph, the supervisory body are not required by paragraph 33 to secure that the required assessment is carried out, the existing assessment is to be treated for the purposes of this Schedule—
- (a) as an assessment of the same kind as the required assessment, and
  - (b) as having been carried out under paragraph 33 in connection with the request for the standard authorisation.

### **Duty to give authorisation**

- 50 (1) The supervisory body must give a standard authorisation if—
- (a) all assessments are positive, and
  - (b) the supervisory body have written copies of all those assessments.
- (2) The supervisory body must not give a standard authorisation except in accordance with sub-paragraph (1).
- (3) All assessments are positive if each assessment carried out under paragraph 33 has come to the conclusion that the relevant person meets the qualifying requirement to which the assessment relates.

### **Terms of authorisation**

- 51 (1) If the supervisory body are required to give a standard authorisation, they must decide the period during which the authorisation is to be in force.
- (2) That period must not exceed the maximum authorisation period stated in the best interests assessment.
- 52 A standard authorisation may provide for the authorisation to come into force at a time after it is given.
- 53 (1) A standard authorisation may be given subject to conditions.
- (2) Before deciding whether to give the authorisation subject to conditions, the supervisory body must have regard to any recommendations in the best interests assessment about such conditions.
- (3) The managing authority of the relevant hospital or care home must ensure that any conditions are complied with.

### **Form of authorisation**

- 54 A standard authorisation must be in writing.
- 55 (1) A standard authorisation must state the following things—
- (a) the name of the relevant person;
  - (b) the name of the relevant hospital or care home;
  - (c) the period during which the authorisation is to be in force;
  - (d) the purpose for which the authorisation is given;
  - (e) any conditions subject to which the authorisation is given;
  - (f) the reason why each qualifying requirement is met.
- (2) The statement of the reason why the eligibility requirement is met must be framed by reference to the cases in the table in paragraph 2 of Schedule 1A.

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- 56 (1) If the name of the relevant hospital or care home changes, the standard authorisation is to be read as if it stated the current name of the hospital or care home.
- (2) But sub-paragraph (1) is subject to any provision relating to the change of name which is made in any enactment or in any instrument made under an enactment.

#### **Duty to give information about decision**

- 57 (1) This paragraph applies if—
- (a) a request is made for a standard authorisation, and
  - (b) the supervisory body are required by paragraph 50(1) to give the standard authorisation.
- (2) The supervisory body must give a copy of the authorisation to each of the following—
- (a) the relevant person’s representative;
  - (b) the managing authority of the relevant hospital or care home;
  - (c) the relevant person;
  - (d) any section 39A IMCA;
  - (e) every interested person consulted by the best interests assessor.
- (3) The supervisory body must comply with this paragraph as soon as practicable after they give the standard authorisation.

- 58 (1) This paragraph applies if—
- (a) a request is made for a standard authorisation, and
  - (b) the supervisory body are prohibited by paragraph 50(2) from giving the standard authorisation.
- (2) The supervisory body must give notice, stating that they are prohibited from giving the authorisation, to each of the following—
- (a) the managing authority of the relevant hospital or care home;
  - (b) the relevant person;
  - (c) any section 39A IMCA;
  - (d) every interested person consulted by the best interests assessor.
- (3) The supervisory body must comply with this paragraph as soon as practicable after it becomes apparent to them that they are prohibited from giving the authorisation.

#### **Duty to give information about effect of authorisation**

- 59 (1) This paragraph applies if a standard authorisation is given.
- (2) The managing authority of the relevant hospital or care home must take such steps as are practicable to ensure that the relevant person understands all of the following—
- (a) the effect of the authorisation;
  - (b) the right to make an application to the court to exercise its jurisdiction under section 21A;
  - (c) the right under Part 8 to request a review;
  - (d) the right to have a section 39D IMCA appointed;
  - (e) how to have a section 39D IMCA appointed.

- (3) Those steps must be taken as soon as is practicable after the authorisation is given.
- (4) Those steps must include the giving of appropriate information both orally and in writing.
- (5) Any written information given to the relevant person must also be given by the managing authority to the relevant person's representative.
- (6) They must give the information to the representative as soon as is practicable after it is given to the relevant person.
- (7) Sub-paragraph (8) applies if the managing authority is notified that a section 39D IMCA has been appointed.
- (8) As soon as is practicable after being notified, the managing authority must give the section 39D IMCA a copy of the written information given in accordance with sub-paragraph (4).

#### **Records of authorisations**

- 60 A supervisory body must keep a written record of all of the following information—
- (a) the standard authorisations that they have given;
  - (b) the requests for standard authorisations in response to which they have not given an authorisation;
  - (c) in relation to each standard authorisation given: the matters stated in the authorisation in accordance with paragraph 55.

#### **Variation of an authorisation**

- 61 (1) A standard authorisation may not be varied except in accordance with Part 7 or 8.
- (2) This paragraph does not affect the powers of the Court of Protection or of any other court.

#### **Effect of decision about request made under paragraph 25 or 30**

- 62 (1) This paragraph applies where the managing authority request a new standard authorisation under either of the following—
- (a) paragraph 25 (change in place of detention);
  - (b) paragraph 30 (existing authorisation subject to review).
- (2) If the supervisory body are required by paragraph 50(1) to give the new authorisation, the existing authorisation terminates at the time when the new authorisation comes into force.
- (3) If the supervisory body are prohibited by paragraph 50(2) from giving the new authorisation, there is no effect on the existing authorisation's continuation in force.

#### **When an authorisation is in force**

- 63 (1) A standard authorisation comes into force when it is given.
- (2) But if the authorisation provides for it to come into force at a later time, it comes into force at that time.

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- 64 (1) A standard authorisation ceases to be in force at the end of the period stated in the authorisation in accordance with paragraph 55(1)(c).
- (2) But if the authorisation terminates before then in accordance with paragraph 62(2) or any other provision of this Schedule, it ceases to be in force when the termination takes effect.
- (3) This paragraph does not affect the powers of the Court of Protection or of any other court.
- 65 (1) This paragraph applies if a standard authorisation ceases to be in force.
- (2) The supervisory body must give notice that the authorisation has ceased to be in force.
- (3) The supervisory body must give that notice to all of the following—
- (a) the managing authority of the relevant hospital or care home;
  - (b) the relevant person;
  - (c) the relevant person’s representative;
  - (d) every interested person consulted by the best interests assessor.
- (4) The supervisory body must give that notice as soon as practicable after the authorisation ceases to be in force.

**When a request for a standard authorisation is “disposed of”**

- 66 A request for a standard authorisation is to be regarded for the purposes of this Schedule as disposed of if the supervisory body have given—
- (a) a copy of the authorisation in accordance with paragraph 57, or
  - (b) notice in accordance with paragraph 58.

**Right of third party to require consideration of whether authorisation needed**

- 67 For the purposes of paragraphs 68 to 73 there is an unauthorised deprivation of liberty if—
- (a) a person is already a detained resident in a hospital or care home, and
  - (b) the detention of the person is not authorised as mentioned in section 4A.
- 68 (1) If the following conditions are met, an eligible person may request the supervisory body to decide whether or not there is an unauthorised deprivation of liberty.
- (2) The first condition is that the eligible person has notified the managing authority of the relevant hospital or care home that it appears to the eligible person that there is an unauthorised deprivation of liberty.
- (3) The second condition is that the eligible person has asked the managing authority to request a standard authorisation in relation to the detention of the relevant person.
- (4) The third condition is that the managing authority has not requested a standard authorisation within a reasonable period after the eligible person asks it to do so.
- (5) In this paragraph “eligible person” means any person other than the managing authority of the relevant hospital or care home.
- 69 (1) This paragraph applies if an eligible person requests the supervisory body to decide whether or not there is an unauthorised deprivation of liberty.



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- (2) The supervisory body must select and appoint a person to carry out an assessment of whether or not the relevant person is a detained resident.
  - (3) But the supervisory body need not select and appoint a person to carry out such an assessment in either of these cases.
  - (4) The first case is where it appears to the supervisory body that the request by the eligible person is frivolous or vexatious.
  - (5) The second case is where it appears to the supervisory body that—
    - (a) the question of whether or not there is an unauthorised deprivation of liberty has already been decided, and
    - (b) since that decision, there has been no change of circumstances which would merit the question being decided again.
  - (6) The supervisory body must not select and appoint a person to carry out an assessment under this paragraph unless it appears to the supervisory body that the person would be—
    - (a) suitable to carry out a best interests assessment (if one were obtained in connection with a request for a standard authorisation relating to the relevant person), and
    - (b) eligible to carry out such a best interests assessment.
  - (7) The supervisory body must notify the persons specified in sub-paragraph (8)—
    - (a) that the supervisory body have been requested to decide whether or not there is an unauthorised deprivation of liberty;
    - (b) of their decision whether or not to select and appoint a person to carry out an assessment under this paragraph;
    - (c) if their decision is to select and appoint a person, of the person appointed.
  - (8) The persons referred to in sub-paragraph (7) are—
    - (a) the eligible person who made the request under paragraph 68;
    - (b) the person to whom the request relates;
    - (c) the managing authority of the relevant hospital or care home;
    - (d) any section 39A IMCA.
- 70
- (1) Regulations may be made about the period within which an assessment under paragraph 69 must be carried out.
  - (2) Regulations made under paragraph 129(3) apply in relation to the selection and appointment of a person under paragraph 69 as they apply to the selection of a person under paragraph 129 to carry out a best interests assessment.
  - (3) The following provisions apply to an assessment under paragraph 69 as they apply to an assessment carried out in connection with a request for a standard authorisation—
    - (a) paragraph 131 (examination and copying of records);
    - (b) paragraph 132 (representations);
    - (c) paragraphs 134 and 135(1) and (2) (duty to keep records and give copies).
  - (4) The copies of the assessment which the supervisory body are required to give under paragraph 135(2) must be given as soon as practicable after the supervisory body are themselves given a copy of the assessment.

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- 71 (1) This paragraph applies if—
- (a) the supervisory body obtain an assessment under paragraph 69,
  - (b) the assessment comes to the conclusion that the relevant person is a detained resident, and
  - (c) it appears to the supervisory body that the detention of the person is not authorised as mentioned in section 4A.
- (2) This Schedule (including Part 5) applies as if the managing authority of the relevant hospital or care home had, in accordance with Part 4, requested the supervisory body to give a standard authorisation in relation to the relevant person.
- (3) The managing authority of the relevant hospital or care home must supply the supervisory body with the information (if any) which the managing authority would, by virtue of paragraph 31, have had to include in a request for a standard authorisation.
- (4) The supervisory body must notify the persons specified in paragraph 69(8)—
- (a) of the outcome of the assessment obtained under paragraph 69, and
  - (b) that this Schedule applies as mentioned in sub-paragraph (2).
- 72 (1) This paragraph applies if—
- (a) the supervisory body obtain an assessment under paragraph 69, and
  - (b) the assessment comes to the conclusion that the relevant person is not a detained resident.
- (2) The supervisory body must notify the persons specified in paragraph 69(8) of the outcome of the assessment.
- 73 (1) This paragraph applies if—
- (a) the supervisory body obtain an assessment under paragraph 69,
  - (b) the assessment comes to the conclusion that the relevant person is a detained resident, and
  - (c) it appears to the supervisory body that the detention of the person is authorised as mentioned in section 4A.
- (2) The supervisory body must notify the persons specified in paragraph 69(8)—
- (a) of the outcome of the assessment, and
  - (b) that it appears to the supervisory body that the detention is authorised.

## PART 5

### URGENT AUTHORISATIONS

#### **Managing authority to give authorisation**

- 74 Only the managing authority of the relevant hospital or care home may give an urgent authorisation.
- 75 The managing authority may give an urgent authorisation only if they are required to do so by paragraph 76 (as read with paragraph 77).

### **Duty to give authorisation**

- 76 (1) The managing authority must give an urgent authorisation in either of the following cases.
- (2) The first case is where—
- (a) the managing authority are required to make a request under paragraph 24 or 25 for a standard authorisation, and
  - (b) they believe that the need for the relevant person to be a detained resident is so urgent that it is appropriate for the detention to begin before they make the request.
- (3) The second case is where—
- (a) the managing authority have made a request under paragraph 24 or 25 for a standard authorisation, and
  - (b) they believe that the need for the relevant person to be a detained resident is so urgent that it is appropriate for the detention to begin before the request is disposed of.
- (4) References in this paragraph to the detention of the relevant person are references to the detention to which paragraph 24 or 25 relates.
- (5) This paragraph is subject to paragraph 77.
- 77 (1) This paragraph applies where the managing authority have given an urgent authorisation (“the original authorisation”) in connection with a case where a person is, or is to be, a detained resident (“the existing detention”).
- (2) No new urgent authorisation is to be given under paragraph 76 in connection with the existing detention.
- (3) But the managing authority may request the supervisory body to extend the duration of the original authorisation.
- (4) Only one request under sub-paragraph (3) may be made in relation to the original authorisation.
- (5) Paragraphs 84 to 86 apply to any request made under sub-paragraph (3).

### **Terms of authorisation**

- 78 (1) If the managing authority decide to give an urgent authorisation, they must decide the period during which the authorisation is to be in force.
- (2) That period must not exceed 7 days.

### **Form of authorisation**

- 79 An urgent authorisation must be in writing.
- 80 An urgent authorisation must state the following things—
- (a) the name of the relevant person;
  - (b) the name of the relevant hospital or care home;
  - (c) the period during which the authorisation is to be in force;
  - (d) the purpose for which the authorisation is given.

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- 81 (1) If the name of the relevant hospital or care home changes, the urgent authorisation is to be read as if it stated the current name of the hospital or care home.
- (2) But sub-paragraph (1) is subject to any provision relating to the change of name which is made in any enactment or in any instrument made under an enactment.

#### **Duty to keep records and give copies**

- 82 (1) This paragraph applies if an urgent authorisation is given.
- (2) The managing authority must keep a written record of why they have given the urgent authorisation.
- (3) As soon as practicable after giving the authorisation, the managing authority must give a copy of the authorisation to all of the following—
- (a) the relevant person;
  - (b) any section 39A IMCA.

#### **Duty to give information about authorisation**

- 83 (1) This paragraph applies if an urgent authorisation is given.
- (2) The managing authority of the relevant hospital or care home must take such steps as are practicable to ensure that the relevant person understands all of the following—
- (a) the effect of the authorisation;
  - (b) the right to make an application to the court to exercise its jurisdiction under section 21A.
- (3) Those steps must be taken as soon as is practicable after the authorisation is given.
- (4) Those steps must include the giving of appropriate information both orally and in writing.

#### **Request for extension of duration**

- 84 (1) This paragraph applies if the managing authority make a request under paragraph 77 for the supervisory body to extend the duration of the original authorisation.
- (2) The managing authority must keep a written record of why they have made the request.
- (3) The managing authority must give the relevant person notice that they have made the request.
- (4) The supervisory body may extend the duration of the original authorisation if it appears to them that—
- (a) the managing authority have made the required request for a standard authorisation,
  - (b) there are exceptional reasons why it has not yet been possible for that request to be disposed of, and
  - (c) it is essential for the existing detention to continue until the request is disposed of.

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- (5) The supervisory body must keep a written record that the request has been made to them.
- (6) In this paragraph and paragraphs 85 and 86—
- (a) “original authorisation” and “existing detention” have the same meaning as in paragraph 77;
  - (b) the required request for a standard authorisation is the request that is referred to in paragraph 76(2) or (3).
- 85 (1) This paragraph applies if, under paragraph 84, the supervisory body decide to extend the duration of the original authorisation.
- (2) The supervisory body must decide the period of the extension.
- (3) That period must not exceed 7 days.
- (4) The supervisory body must give the managing authority notice stating the period of the extension.
- (5) The managing authority must then vary the original authorisation so that it states the extended duration.
- (6) Paragraphs 82(3) and 83 apply (with the necessary modifications) to the variation of the original authorisation as they apply to the giving of an urgent authorisation.
- (7) The supervisory body must keep a written record of—
- (a) the outcome of the request, and
  - (b) the period of the extension.
- 86 (1) This paragraph applies if, under paragraph 84, the supervisory body decide not to extend the duration of the original authorisation.
- (2) The supervisory body must give the managing authority notice stating—
- (a) the decision, and
  - (b) their reasons for making it.
- (3) The managing authority must give a copy of that notice to all of the following—
- (a) the relevant person;
  - (b) any section 39A IMCA.
- (4) The supervisory body must keep a written record of the outcome of the request.

#### **No variation**

- 87 (1) An urgent authorisation may not be varied except in accordance with paragraph 85.
- (2) This paragraph does not affect the powers of the Court of Protection or of any other court.

#### **When an authorisation is in force**

- 88 An urgent authorisation comes into force when it is given.
- 89 (1) An urgent authorisation ceases to be in force at the end of the period stated in the authorisation in accordance with paragraph 80(c) (subject to any variation in accordance with paragraph 85).

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- (2) But if the required request is disposed of before the end of that period, the urgent authorisation ceases to be in force as follows.
  - (3) If the supervisory body are required by paragraph 50(1) to give the requested authorisation, the urgent authorisation ceases to be in force when the requested authorisation comes into force.
  - (4) If the supervisory body are prohibited by paragraph 50(2) from giving the requested authorisation, the urgent authorisation ceases to be in force when the managing authority receive notice under paragraph 58.
  - (5) In this paragraph—
    - “required request” means the request referred to in paragraph 76(2) or (3);
    - “requested authorisation” means the standard authorisation to which the required request relates.
  - (6) This paragraph does not affect the powers of the Court of Protection or of any other court.
- 90 (1) This paragraph applies if an urgent authorisation ceases to be in force.
- (2) The supervisory body must give notice that the authorisation has ceased to be in force.
  - (3) The supervisory body must give that notice to all of the following—
    - (a) the relevant person;
    - (b) any section 39A IMCA.
  - (4) The supervisory body must give that notice as soon as practicable after the authorisation ceases to be in force.

## PART 6

### ELIGIBILITY REQUIREMENT NOT MET: SUSPENSION OF STANDARD AUTHORISATION

- 91 (1) This Part applies if the following conditions are met.
- (2) The first condition is that a standard authorisation—
    - (a) has been given, and
    - (b) has not ceased to be in force.
  - (3) The second condition is that the managing authority of the relevant hospital or care home are satisfied that the relevant person has ceased to meet the eligibility requirement.
  - (4) But this Part does not apply if the relevant person is ineligible by virtue of paragraph 5 of Schedule 1A (in which case see Part 8).
- 92 The managing authority of the relevant hospital or care home must give the supervisory body notice that the relevant person has ceased to meet the eligibility requirement.
- 93 (1) This paragraph applies if the managing authority give the supervisory body notice under paragraph 92.

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- (2) The standard authorisation is suspended from the time when the notice is given.
- (3) The supervisory body must give notice that the standard authorisation has been suspended to the following persons—
- (a) the relevant person;
  - (b) the relevant person’s representative;
  - (c) the managing authority of the relevant hospital or care home.
- 94 (1) This paragraph applies if, whilst the standard authorisation is suspended, the managing authority are satisfied that the relevant person meets the eligibility requirement again.
- (2) The managing authority must give the supervisory body notice that the relevant person meets the eligibility requirement again.
- 95 (1) This paragraph applies if the managing authority give the supervisory body notice under paragraph 94.
- (2) The standard authorisation ceases to be suspended from the time when the notice is given.
- (3) The supervisory body must give notice that the standard authorisation has ceased to be suspended to the following persons—
- (a) the relevant person;
  - (b) the relevant person’s representative;
  - (c) any section 39D IMCA;
  - (d) the managing authority of the relevant hospital or care home.
- (4) The supervisory body must give notice under this paragraph as soon as practicable after they are given notice under paragraph 94.
- 96 (1) This paragraph applies if no notice is given under paragraph 94 before the end of the relevant 28 day period.
- (2) The standard authorisation ceases to have effect at the end of the relevant 28 day period.
- (3) The relevant 28 day period is the period of 28 days beginning with the day on which the standard authorisation is suspended under paragraph 93.
- 97 The effect of suspending the standard authorisation is that Part 1 ceases to apply for as long as the authorisation is suspended.

## PART 7

### STANDARD AUTHORISATIONS: CHANGE IN SUPERVISORY RESPONSIBILITY

#### Application of this Part

- 98 (1) This Part applies if these conditions are met.
- (2) The first condition is that a standard authorisation—
- (a) has been given, and
  - (b) has not ceased to be in force.

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- (3) The second condition is that there is a change in supervisory responsibility.
- (4) The third condition is that there is not a change in the place of detention (within the meaning of paragraph 25).

- 99 For the purposes of this Part there is a change in supervisory responsibility if—
- (a) one body (“the old supervisory body”) have ceased to be supervisory body in relation to the standard authorisation, and
  - (b) a different body (“the new supervisory body”) have become supervisory body in relation to the standard authorisation.

### **Effect of change in supervisory responsibility**

- 100 (1) The new supervisory body becomes the supervisory body in relation to the authorisation.
- (2) Anything done by or in relation to the old supervisory body in connection with the authorisation has effect, so far as is necessary for continuing its effect after the change, as if done by or in relation to the new supervisory body.
  - (3) Anything which relates to the authorisation and which is in the process of being done by or in relation to the old supervisory body at the time of the change may be continued by or in relation to the new supervisory body.
  - (4) But—
    - (a) the old supervisory body do not, by virtue of this paragraph, cease to be liable for anything done by them in connection with the authorisation before the change; and
    - (b) the new supervisory body do not, by virtue of this paragraph, become liable for any such thing.

## **PART 8**

### STANDARD AUTHORISATIONS: REVIEW

#### **Application of this Part**

- 101 (1) This Part applies if a standard authorisation—
- (a) has been given, and
  - (b) has not ceased to be in force.
- (2) Paragraphs 102 to 122 are subject to paragraphs 123 to 125.

#### **Review by supervisory body**

- 102 (1) The supervisory body may at any time carry out a review of the standard authorisation in accordance with this Part.
- (2) The supervisory body must carry out such a review if they are requested to do so by an eligible person.
  - (3) Each of the following is an eligible person—
    - (a) the relevant person;



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- (b) the relevant person's representative;
- (c) the managing authority of the relevant hospital or care home.

### **Request for review**

- 103 (1) An eligible person may, at any time, request the supervisory body to carry out a review of the standard authorisation in accordance with this Part.
- (2) The managing authority of the relevant hospital or care home must make such a request if one or more of the qualifying requirements appear to them to be reviewable.

### **Grounds for review**

- 104 (1) Paragraphs 105 to 107 set out the grounds on which the qualifying requirements are reviewable.
- (2) A qualifying requirement is not reviewable on any other ground.

### **Non-qualification ground**

- 105 (1) Any of the following qualifying requirements is reviewable on the ground that the relevant person does not meet the requirement—
- (a) the age requirement;
  - (b) the mental health requirement;
  - (c) the mental capacity requirement;
  - (d) the best interests requirement;
  - (e) the no refusals requirement.
- (2) The eligibility requirement is reviewable on the ground that the relevant person is ineligible by virtue of paragraph 5 of Schedule 1A.
- (3) The ground in sub-paragraph (1) and the ground in sub-paragraph (2) are referred to as the non-qualification ground.

### **Change of reason ground**

- 106 (1) Any of the following qualifying requirements is reviewable on the ground set out in sub-paragraph (2)—
- (a) the mental health requirement;
  - (b) the mental capacity requirement;
  - (c) the best interests requirement;
  - (d) the eligibility requirement;
  - (e) the no refusals requirement.
- (2) The ground is that the reason why the relevant person meets the requirement is not the reason stated in the standard authorisation.
- (3) This ground is referred to as the change of reason ground.

### **Variation of conditions ground**

- 107 (1) The best interests requirement is reviewable on the ground that—

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- (a) there has been a change in the relevant person's case, and
  - (b) because of that change, it would be appropriate to vary the conditions to which the standard authorisation is subject.
- (2) This ground is referred to as the variation of conditions ground.
- (3) A reference to varying the conditions to which the standard authorisation is subject is a reference to—
- (a) amendment of an existing condition,
  - (b) omission of an existing condition, or
  - (c) inclusion of a new condition (whether or not there are already any existing conditions).

#### **Notice that review to be carried out**

- 108 (1) If the supervisory body are to carry out a review of the standard authorisation, they must give notice of the review to the following persons—
- (a) the relevant person;
  - (b) the relevant person's representative;
  - (c) the managing authority of the relevant hospital or care home.
- (2) The supervisory body must give the notice—
- (a) before they begin the review, or
  - (b) if that is not practicable, as soon as practicable after they have begun it.
- (3) This paragraph does not require the supervisory body to give notice to any person who has requested the review.

#### **Starting a review**

- 109 To start a review of the standard authorisation, the supervisory body must decide which, if any, of the qualifying requirements appear to be reviewable.

#### **No reviewable qualifying requirements**

- 110 (1) This paragraph applies if no qualifying requirements appear to be reviewable.
- (2) This Part does not require the supervisory body to take any action in respect of the standard authorisation.

#### **One or more reviewable qualifying requirements**

- 111 (1) This paragraph applies if one or more qualifying requirements appear to be reviewable.
- (2) The supervisory body must secure that a separate review assessment is carried out in relation to each qualifying requirement which appears to be reviewable.
- (3) But sub-paragraph (2) does not require the supervisory body to secure that a best interests review assessment is carried out in a case where the best interests requirement appears to the supervisory body to be non-assessable.
- (4) The best interests requirement is non-assessable if—

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- (a) the requirement is reviewable only on the variation of conditions ground, and
  - (b) the change in the relevant person's case is not significant.
- (5) In making any decision whether the change in the relevant person's case is significant, regard must be had to—
- (a) the nature of the change, and
  - (b) the period that the change is likely to last for.

### **Review assessments**

- 112 (1) A review assessment is an assessment of whether the relevant person meets a qualifying requirement.
- (2) In relation to a review assessment—
- (a) a negative conclusion is a conclusion that the relevant person does not meet the qualifying requirement to which the assessment relates;
  - (b) a positive conclusion is a conclusion that the relevant person meets the qualifying requirement to which the assessment relates.
- (3) An age review assessment is a review assessment carried out in relation to the age requirement.
- (4) A mental health review assessment is a review assessment carried out in relation to the mental health requirement.
- (5) A mental capacity review assessment is a review assessment carried out in relation to the mental capacity requirement.
- (6) A best interests review assessment is a review assessment carried out in relation to the best interests requirement.
- (7) An eligibility review assessment is a review assessment carried out in relation to the eligibility requirement.
- (8) A no refusals review assessment is a review assessment carried out in relation to the no refusals requirement.
- 113 (1) In carrying out a review assessment, the assessor must comply with any duties which would be imposed upon him under Part 4 if the assessment were being carried out in connection with a request for a standard authorisation.
- (2) But in the case of a best interests review assessment, paragraphs 43 and 44 do not apply.
- (3) Instead of what is required by paragraph 43, the best interests review assessment must include recommendations about whether — and, if so, how — it would be appropriate to vary the conditions to which the standard authorisation is subject.

### **Best interests requirement reviewable but non-assessable**

- 114 (1) This paragraph applies in a case where—
- (a) the best interests requirement appears to be reviewable, but
  - (b) in accordance with paragraph 111(3), the supervisory body are not required to secure that a best interests review assessment is carried out.

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- (2) The supervisory body may vary the conditions to which the standard authorisation is subject in such ways (if any) as the supervisory body think are appropriate in the circumstances.

**Best interests review assessment positive**

- 115 (1) This paragraph applies in a case where—
- (a) a best interests review assessment is carried out, and
  - (b) the assessment comes to a positive conclusion.
- (2) The supervisory body must decide the following questions—
- (a) whether or not the best interests requirement is reviewable on the change of reason ground;
  - (b) whether or not the best interests requirement is reviewable on the variation of conditions ground;
  - (c) if so, whether or not the change in the person’s case is significant.
- (3) If the supervisory body decide that the best interests requirement is reviewable on the change of reason ground, they must vary the standard authorisation so that it states the reason why the relevant person now meets that requirement.
- (4) If the supervisory body decide that—
- (a) the best interests requirement is reviewable on the variation of conditions ground, and
  - (b) the change in the relevant person’s case is not significant,
- they may vary the conditions to which the standard authorisation is subject in such ways (if any) as they think are appropriate in the circumstances.
- (5) If the supervisory body decide that—
- (a) the best interests requirement is reviewable on the variation of conditions ground, and
  - (b) the change in the relevant person’s case is significant,
- they must vary the conditions to which the standard authorisation is subject in such ways as they think are appropriate in the circumstances.
- (6) If the supervisory body decide that the best interests requirement is not reviewable on—
- (a) the change of reason ground, or
  - (b) the variation of conditions ground,
- this Part does not require the supervisory body to take any action in respect of the standard authorisation so far as the best interests requirement relates to it.

**Mental health, mental capacity, eligibility or no refusals review assessment positive**

- 116 (1) This paragraph applies if the following conditions are met.
- (2) The first condition is that one or more of the following are carried out—
- (a) a mental health review assessment;
  - (b) a mental capacity review assessment;
  - (c) an eligibility review assessment;
  - (d) a no refusals review assessment.

- (3) The second condition is that each assessment carried out comes to a positive conclusion.
- (4) The supervisory body must decide whether or not each of the assessed qualifying requirements is reviewable on the change of reason ground.
- (5) If the supervisory body decide that any of the assessed qualifying requirements is reviewable on the change of reason ground, they must vary the standard authorisation so that it states the reason why the relevant person now meets the requirement or requirements in question.
- (6) If the supervisory body decide that none of the assessed qualifying requirements are reviewable on the change of reason ground, this Part does not require the supervisory body to take any action in respect of the standard authorisation so far as those requirements relate to it.
- (7) An assessed qualifying requirement is a qualifying requirement in relation to which a review assessment is carried out.

#### **One or more review assessments negative**

- 117
- (1) This paragraph applies if one or more of the review assessments carried out comes to a negative conclusion.
  - (2) The supervisory body must terminate the standard authorisation with immediate effect.

#### **Completion of a review**

- 118
- (1) The review of the standard authorisation is complete in any of the following cases.
  - (2) The first case is where paragraph 110 applies.
  - (3) The second case is where—
    - (a) paragraph 111 applies, and
    - (b) paragraph 117 requires the supervisory body to terminate the standard authorisation.
  - (4) In such a case, the supervisory body need not comply with any of the other provisions of paragraphs 114 to 116 which would be applicable to the review (were it not for this sub-paragraph).
  - (5) The third case is where—
    - (a) paragraph 111 applies,
    - (b) paragraph 117 does not require the supervisory body to terminate the standard authorisation, and
    - (c) the supervisory body comply with all of the provisions of paragraphs 114 to 116 (so far as they are applicable to the review).

#### **Variations under this Part**

- 119
- Any variation of the standard authorisation made under this Part must be in writing.

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### **Notice of outcome of review**

- 120 (1) When the review of the standard authorisation is complete, the supervisory body must give notice to all of the following—
- (a) the managing authority of the relevant hospital or care home;
  - (b) the relevant person;
  - (c) the relevant person’s representative;
  - (d) any section 39D IMCA.
- (2) That notice must state—
- (a) the outcome of the review, and
  - (b) what variation (if any) has been made to the authorisation under this Part.

### **Records**

- 121 A supervisory body must keep a written record of the following information—
- (a) each request for a review that is made to them;
  - (b) the outcome of each request;
  - (c) each review which they carry out;
  - (d) the outcome of each review which they carry out;
  - (e) any variation of an authorisation made in consequence of a review.

### **Relationship between review and suspension under Part 6**

- 122 (1) This paragraph applies if a standard authorisation is suspended in accordance with Part 6.
- (2) No review may be requested under this Part whilst the standard authorisation is suspended.
- (3) If a review has already been requested, or is being carried out, when the standard authorisation is suspended, no steps are to be taken in connection with that review whilst the authorisation is suspended.

### **Relationship between review and request for new authorisation**

- 123 (1) This paragraph applies if, in accordance with paragraph 24 (as read with paragraph 29), the managing authority of the relevant hospital or care home make a request for a new standard authorisation which would be in force after the expiry of the existing authorisation.
- (2) No review may be requested under this Part until the request for the new standard authorisation has been disposed of.
- (3) If a review has already been requested, or is being carried out, when the new standard authorisation is requested, no steps are to be taken in connection with that review until the request for the new standard authorisation has been disposed of.
- 124 (1) This paragraph applies if—
- (a) a review under this Part has been requested, or is being carried out, and
  - (b) the managing authority of the relevant hospital or care home make a request under paragraph 30 for a new standard authorisation which would be in force on or before, and after, the expiry of the existing authorisation.

- (2) No steps are to be taken in connection with the review under this Part until the request for the new standard authorisation has been disposed of.
- 125 In paragraphs 123 and 124—
- (a) the existing authorisation is the authorisation referred to in paragraph 101;
  - (b) the expiry of the existing authorisation is the time when it is expected to cease to be in force.

## PART 9

### ASSESSMENTS UNDER THIS SCHEDULE

#### Introduction

- 126 This Part contains provision about assessments under this Schedule.
- 127 An assessment under this Schedule is either of the following—
- (a) an assessment carried out in connection with a request for a standard authorisation under Part 4;
  - (b) a review assessment carried out in connection with a review of a standard authorisation under Part 8.
- 128 In this Part, in relation to an assessment under this Schedule—
- “assessor” means the person carrying out the assessment;
  - “relevant procedure” means—
    - (a) the request for the standard authorisation, or
    - (b) the review of the standard authorisation;
  - “supervisory body” means the supervisory body responsible for securing that the assessment is carried out.

#### Supervisory body to select assessor

- 129 (1) It is for the supervisory body to select a person to carry out an assessment under this Schedule.
- (2) The supervisory body must not select a person to carry out an assessment unless the person—
- (a) appears to the supervisory body to be suitable to carry out the assessment (having regard, in particular, to the type of assessment and the person to be assessed), and
  - (b) is eligible to carry out the assessment.
- (3) Regulations may make provision about the selection, and eligibility, of persons to carry out assessments under this Schedule.
- (4) Sub-paragraphs (5) and (6) apply if two or more assessments are to be obtained for the purposes of the relevant procedure.
- (5) In a case where the assessments to be obtained include a mental health assessment and a best interests assessment, the supervisory body must not select the same person to carry out both assessments.

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- (6) Except as prohibited by sub-paragraph (5), the supervisory body may select the same person to carry out any number of the assessments which the person appears to be suitable, and is eligible, to carry out.
- 130 (1) This paragraph applies to regulations under paragraph 129(3).
- (2) The regulations may make provision relating to a person's—
- (a) qualifications,
  - (b) skills,
  - (c) training,
  - (d) experience,
  - (e) relationship to, or connection with, the relevant person or any other person,
  - (f) involvement in the care or treatment of the relevant person,
  - (g) connection with the supervisory body, or
  - (h) connection with the relevant hospital or care home, or with any other establishment or undertaking.
- (3) The provision that the regulations may make in relation to a person's training may provide for particular training to be specified by the appropriate authority otherwise than in the regulations.
- (4) In sub-paragraph (3) the “appropriate authority” means—
- (a) in relation to England: the Secretary of State;
  - (b) in relation to Wales: the National Assembly for Wales.
- (5) The regulations may make provision requiring a person to be insured in respect of liabilities that may arise in connection with the carrying out of an assessment.
- (6) In relation to cases where two or more assessments are to be obtained for the purposes of the relevant procedure, the regulations may limit the number, kind or combination of assessments which a particular person is eligible to carry out.
- (7) Sub-paragraphs (2) to (6) do not limit the generality of the provision that may be made in the regulations.

### **Examination and copying of records**

- 131 An assessor may, at all reasonable times, examine and take copies of—
- (a) any health record,
  - (b) any record of, or held by, a local authority and compiled in accordance with a social services function, and
  - (c) any record held by a person registered under Part 2 of the Care Standards Act 2000,
- which the assessor considers may be relevant to the assessment which is being carried out.

### **Representations**

- 132 In carrying out an assessment under this Schedule, the assessor must take into account any information given, or submissions made, by any of the following—
- (a) the relevant person's representative;
  - (b) any section 39A IMCA;



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- (c) any section 39C IMCA;
- (d) any section 39D IMCA.

### **Assessments to stop if any comes to negative conclusion**

- 133 (1) This paragraph applies if an assessment under this Schedule comes to the conclusion that the relevant person does not meet one of the qualifying requirements.
- (2) This Schedule does not require the supervisory body to secure that any other assessments under this Schedule are carried out in relation to the relevant procedure.
- (3) The supervisory body must give notice to any assessor who is carrying out another assessment in connection with the relevant procedure that they are to cease carrying out that assessment.
- (4) If an assessor receives such notice, this Schedule does not require the assessor to continue carrying out that assessment.

### **Duty to keep records and give copies**

- 134 (1) This paragraph applies if an assessor has carried out an assessment under this Schedule (whatever conclusions the assessment has come to).
- (2) The assessor must keep a written record of the assessment.
- (3) As soon as practicable after carrying out the assessment, the assessor must give copies of the assessment to the supervisory body.
- 135 (1) This paragraph applies to the supervisory body if they are given a copy of an assessment under this Schedule.
- (2) The supervisory body must give copies of the assessment to all of the following—
- (a) the managing authority of the relevant hospital or care home;
  - (b) the relevant person;
  - (c) any section 39A IMCA;
  - (d) the relevant person’s representative.
- (3) If—
- (a) the assessment is obtained in relation to a request for a standard authorisation, and
  - (b) the supervisory body are required by paragraph 50(1) to give the standard authorisation,
- the supervisory body must give the copies of the assessment when they give copies of the authorisation in accordance with paragraph 57.
- (4) If—
- (a) the assessment is obtained in relation to a request for a standard authorisation, and
  - (b) the supervisory body are prohibited by paragraph 50(2) from giving the standard authorisation,
- the supervisory body must give the copies of the assessment when they give notice in accordance with paragraph 58.

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- (5) If the assessment is obtained in connection with the review of a standard authorisation, the supervisory body must give the copies of the assessment when they give notice in accordance with paragraph 120.
- 136 (1) This paragraph applies to the supervisory body if—
- (a) they are given a copy of a best interests assessment, and
  - (b) the assessment includes, in accordance with paragraph 44(2), a statement that it appears to the assessor that there is an unauthorised deprivation of liberty.
- (2) The supervisory body must notify all of the persons listed in sub-paragraph (3) that the assessment includes such a statement.
- (3) Those persons are—
- (a) the managing authority of the relevant hospital or care home;
  - (b) the relevant person;
  - (c) any section 39A IMCA;
  - (d) any interested person consulted by the best interests assessor.
- (4) The supervisory body must comply with this paragraph when (or at some time before) they comply with paragraph 135.

## PART 10

### RELEVANT PERSON'S REPRESENTATIVE

#### **The representative**

- 137 In this Schedule the relevant person's representative is the person appointed as such in accordance with this Part.
- 138 (1) Regulations may make provision about the selection and appointment of representatives.
- (2) In this Part such regulations are referred to as “appointment regulations”.

#### **Supervisory body to appoint representative**

- 139 (1) The supervisory body must appoint a person to be the relevant person's representative as soon as practicable after a standard authorisation is given.
- (2) The supervisory body must appoint a person to be the relevant person's representative if a vacancy arises whilst a standard authorisation is in force.
- (3) Where a vacancy arises, the appointment under sub-paragraph (2) is to be made as soon as practicable after the supervisory body becomes aware of the vacancy.
- 140 (1) The selection of a person for appointment under paragraph 139 must not be made unless it appears to the person making the selection that the prospective representative would, if appointed—
- (a) maintain contact with the relevant person,
  - (b) represent the relevant person in matters relating to or connected with this Schedule, and

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- (c) support the relevant person in matters relating to or connected with this Schedule.
- 141 (1) Any appointment of a representative for a relevant person is in addition to, and does not affect, any appointment of a donee or deputy.
- (2) The functions of any representative are in addition to, and do not affect—
- (a) the authority of any donee,
  - (b) the powers of any deputy, or
  - (c) any powers of the court.

### **Appointment regulations**

- 142 Appointment regulations may provide that the procedure for appointing a representative may begin at any time after a request for a standard authorisation is made (including a time before the request has been disposed of).
- 143 (1) Appointment regulations may make provision about who is to select a person for appointment as a representative.
- (2) But regulations under this paragraph may only provide for the following to make a selection—
- (a) the relevant person, if he has capacity in relation to the question of which person should be his representative;
  - (b) a donee of a lasting power of attorney granted by the relevant person, if it is within the scope of his authority to select a person;
  - (c) a deputy, if it is within the scope of his authority to select a person;
  - (d) a best interests assessor;
  - (e) the supervisory body.
- (3) Regulations under this paragraph may provide that a selection by the relevant person, a donee or a deputy is subject to approval by a best interests assessor or the supervisory body.
- (4) Regulations under this paragraph may provide that, if more than one selection is necessary in connection with the appointment of a particular representative—
- (a) the same person may make more than one selection;
  - (b) different persons may make different selections.
- (5) For the purposes of this paragraph a best interests assessor is a person carrying out a best interests assessment in connection with the standard authorisation in question (including the giving of that authorisation).
- 144 (1) Appointment regulations may make provision about who may, or may not, be—
- (a) selected for appointment as a representative, or
  - (b) appointed as a representative.
- (2) Regulations under this paragraph may relate to any of the following matters—
- (a) a person's age;
  - (b) a person's suitability;
  - (c) a person's independence;
  - (d) a person's willingness;
  - (e) a person's qualifications.

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145 Appointment regulations may make provision about the formalities of appointing a person as a representative.

146 In a case where a best interests assessor is to select a person to be appointed as a representative, appointment regulations may provide for the variation of the assessor's duties in relation to the assessment which he is carrying out.

### **Monitoring of representatives**

147 Regulations may make provision requiring the managing authority of the relevant hospital or care home to—

- (a) monitor, and
- (b) report to the supervisory body on,

the extent to which a representative is maintaining contact with the relevant person.

### **Termination**

148 Regulations may make provision about the circumstances in which the appointment of a person as the relevant person's representative ends or may be ended.

149 Regulations may make provision about the formalities of ending the appointment of a person as a representative.

### **Suspension of representative's functions**

150 (1) Regulations may make provision about the circumstances in which functions exercisable by, or in relation to, the relevant person's representative (whether under this Schedule or not) may be—

- (a) suspended, and
- (b) if suspended, revived.

(2) The regulations may make provision about the formalities for giving effect to the suspension or revival of a function.

(3) The regulations may make provision about the effect of the suspension or revival of a function.

### **Payment of representative**

151 Regulations may make provision for payments to be made to, or in relation to, persons exercising functions as the relevant person's representative.

### **Regulations under this Part**

152 The provisions of this Part which specify provision that may be made in regulations under this Part do not affect the generality of the power to make such regulations.

### **Effect of appointment of section 39C IMCA**

153 Paragraphs 159 and 160 make provision about the exercise of functions by, or towards, the relevant person's representative during periods when—

- (a) no person is appointed as the relevant person's representative, but
- (b) a person is appointed as a section 39C IMCA.

## PART 11

### IMCAS

#### Application of Part

154 This Part applies for the purposes of this Schedule.

#### The IMCAs

155 A section 39A IMCA is an independent mental capacity advocate appointed under section 39A.

156 A section 39C IMCA is an independent mental capacity advocate appointed under section 39C.

157 A section 39D IMCA is an independent mental capacity advocate appointed under section 39D.

158 An IMCA is a section 39A IMCA or a section 39C IMCA or a section 39D IMCA.

#### Section 39C IMCA: functions

- 159 (1) This paragraph applies if, and for as long as, there is a section 39C IMCA.
- (2) In the application of the relevant provisions, references to the relevant person's representative are to be read as references to the section 39C IMCA.
- (3) But sub-paragraph (2) does not apply to any function under the relevant provisions for as long as the function is suspended in accordance with provision made under Part 10.
- (4) In this paragraph and paragraph 160 the relevant provisions are—
- (a) paragraph 102(3)(b) (request for review under Part 8);
  - (b) paragraph 108(1)(b) (notice of review under Part 8);
  - (c) paragraph 120(1)(c) (notice of outcome of review under Part 8).

- 160 (1) This paragraph applies if—
- (a) a person is appointed as the relevant person's representative, and
  - (b) a person accordingly ceases to hold an appointment as a section 39C IMCA.
- (2) Where a function under a relevant provision has been exercised by, or towards, the section 39C IMCA, there is no requirement for that function to be exercised again by, or towards, the relevant person's representative.

#### Section 39A IMCA: restriction of functions

- 161 (1) This paragraph applies if—
- (a) there is a section 39A IMCA, and
  - (b) a person is appointed under Part 10 to be the relevant person's representative (whether or not that person, or any person subsequently appointed, is currently the relevant person's representative).
- (2) The duties imposed on, and the powers exercisable by, the section 39A IMCA do not apply.

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- (3) The duties imposed on, and the powers exercisable by, any other person do not apply, so far as they fall to be performed or exercised towards the section 39A IMCA.
- (4) But sub-paragraph (2) does not apply to any power of challenge exercisable by the section 39A IMCA.
- (5) And sub-paragraph (3) does not apply to any duty or power of any other person so far as it relates to any power of challenge exercisable by the section 39A IMCA.
- (6) Before exercising any power of challenge, the section 39A IMCA must take the views of the relevant person's representative into account.
- (7) A power of challenge is a power to make an application to the court to exercise its jurisdiction under section 21A in connection with the giving of the standard authorisation.

## PART 12

### MISCELLANEOUS

#### **Monitoring of operation of Schedule**

- 162 (1) Regulations may make provision for, and in connection with, requiring one or more prescribed bodies to monitor, and report on, the operation of this Schedule in relation to England.
- (2) The regulations may, in particular, give a prescribed body authority to do one or more of the following things—
  - (a) to visit hospitals and care homes;
  - (b) to visit and interview persons accommodated in hospitals and care homes;
  - (c) to require the production of, and to inspect, records relating to the care or treatment of persons.
- (3) “Prescribed” means prescribed in regulations under this paragraph.
- 163 (1) Regulations may make provision for, and in connection with, enabling the National Assembly for Wales to monitor, and report on, the operation of this Schedule in relation to Wales.
- (2) The National Assembly may direct one or more persons or bodies to carry out the Assembly's functions under regulations under this paragraph.

#### **Disclosure of information**

- 164 (1) Regulations may require either or both of the following to disclose prescribed information to prescribed bodies—
  - (a) supervisory bodies;
  - (b) managing authorities of hospitals or care homes.
- (2) “Prescribed” means prescribed in regulations under this paragraph.
- (3) Regulations under this paragraph may only prescribe information relating to matters with which this Schedule is concerned.

### **Directions by National Assembly in relation to supervisory functions**

- 165 (1) The National Assembly for Wales may direct a Local Health Board to exercise in relation to its area any supervisory functions which are specified in the direction.
- (2) Directions under this paragraph must not preclude the National Assembly from exercising the functions specified in the directions.
- (3) In this paragraph “supervisory functions” means functions which the National Assembly have as supervisory body, so far as they are exercisable in relation to hospitals (whether NHS or independent hospitals, and whether in Wales or England).
- 166 (1) This paragraph applies where, under paragraph 165, a Local Health Board (“the specified LHB”) is directed to exercise supervisory functions (“delegated functions”).
- (2) The National Assembly for Wales may give directions to the specified LHB about the Board’s exercise of delegated functions.
- (3) The National Assembly may give directions for any delegated functions to be exercised, on behalf of the specified LHB, by a committee, sub-committee or officer of that Board.
- (4) The National Assembly may give directions providing for any delegated functions to be exercised by the specified LHB jointly with one or more other Local Health Boards.
- (5) Where, under sub-paragraph (4), delegated functions are exercisable jointly, the National Assembly may give directions providing for the functions to be exercised, on behalf of the Local Health Boards in question, by a joint committee or joint sub-committee.
- 167 (1) Directions under paragraph 165 must be given in regulations.
- (2) Directions under paragraph 166 may be given—
- (a) in regulations, or
- (b) by instrument in writing.
- 168 The power under paragraph 165 or paragraph 166 to give directions includes power to vary or revoke directions given under that paragraph.

### **Notices**

- 169 Any notice under this Schedule must be in writing.

### **Regulations**

- 170 (1) This paragraph applies to all regulations under this Schedule, except regulations under paragraph 162, 163, 167 or 183.
- (2) It is for the Secretary of State to make such regulations in relation to authorisations under this Schedule which relate to hospitals and care homes situated in England.
- (3) It is for the National Assembly for Wales to make such regulations in relation to authorisations under this Schedule which relate to hospitals and care homes situated in Wales.

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- 171 It is for the Secretary of State to make regulations under paragraph 162.
- 172 It is for the National Assembly for Wales to make regulations under paragraph 163 or 167.
- 173 (1) This paragraph applies to regulations under paragraph 183.
- (2) It is for the Secretary of State to make such regulations in relation to cases where a question as to the ordinary residence of a person is to be determined by the Secretary of State.
- (3) It is for the National Assembly for Wales to make such regulations in relation to cases where a question as to the ordinary residence of a person is to be determined by the National Assembly.

### PART 13

#### INTERPRETATION

#### **Introduction**

- 174 This Part applies for the purposes of this Schedule.

#### **Hospitals and their managing authorities**

- 175 (1) “Hospital” means—
- (a) an NHS hospital, or
  - (b) an independent hospital.
- (2) “NHS hospital” means—
- (a) a health service hospital as defined by section 275 of the National Health Service Act 2006 or section 206 of the National Health Service (Wales) Act 2006, or
  - (b) a hospital as defined by section 206 of the National Health Service (Wales) Act 2006 vested in a Local Health Board.
- (3) “Independent hospital” means a hospital as defined by section 2 of the Care Standards Act 2000 which is not an NHS hospital.
- 176 (1) “Managing authority”, in relation to an NHS hospital, means—
- (a) if the hospital—
    - (i) is vested in the appropriate national authority for the purposes of its functions under the National Health Service Act 2006 or of the National Health Service (Wales) Act 2006, or
    - (ii) consists of any accommodation provided by a local authority and used as a hospital by or on behalf of the appropriate national authority under either of those Acts,

the Primary Care Trust, Strategic Health Authority, Local Health Board or Special Health Authority responsible for the administration of the hospital;
  - (b) if the hospital is vested in a Primary Care Trust, National Health Service trust or NHS foundation trust, that trust;
  - (c) if the hospital is vested in a Local Health Board, that Board.



- (2) For this purpose the appropriate national authority is—
- (a) in relation to England: the Secretary of State;
  - (b) in relation to Wales: the National Assembly for Wales;
  - (c) in relation to England and Wales: the Secretary of State and the National Assembly acting jointly.

177 “Managing authority”, in relation to an independent hospital, means the person registered, or required to be registered, under Part 2 of the Care Standards Act 2000 in respect of the hospital.

#### **Care homes and their managing authorities**

178 “Care home” has the meaning given by section 3 of the Care Standards Act 2000.

179 “Managing authority”, in relation to a care home, means the person registered, or required to be registered, under Part 2 of the Care Standards Act 2000 in respect of the care home.

#### **Supervisory bodies: hospitals**

180 (1) The identity of the supervisory body is determined under this paragraph in cases where the relevant hospital is situated in England.

(2) If a Primary Care Trust commissions the relevant care or treatment, that Trust is the supervisory body.

(3) If the National Assembly for Wales or a Local Health Board commission the relevant care or treatment, the National Assembly are the supervisory body.

(4) In any other case, the supervisory body are the Primary Care Trust for the area in which the relevant hospital is situated.

(5) If a hospital is situated in the areas of two (or more) Primary Care Trusts, it is to be regarded for the purposes of sub-paragraph (4) as situated in whichever of the areas the greater (or greatest) part of the hospital is situated.

181 (1) The identity of the supervisory body is determined under this paragraph in cases where the relevant hospital is situated in Wales.

(2) The National Assembly for Wales are the supervisory body.

(3) But if a Primary Care Trust commissions the relevant care or treatment, that Trust is the supervisory body.

#### **Supervisory bodies: care homes**

182 (1) The identity of the supervisory body is determined under this paragraph in cases where the relevant care home is situated in England or in Wales.

(2) The supervisory body are the local authority for the area in which the relevant person is ordinarily resident.

(3) But if the relevant person is not ordinarily resident in the area of a local authority, the supervisory body are the local authority for the area in which the care home is situated.

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- (4) In relation to England “local authority” means—
- (a) the council of a county;
  - (b) the council of a district for which there is no county council;
  - (c) the council of a London borough;
  - (d) the Common Council of the City of London;
  - (e) the Council of the Isles of Scilly.
- (5) In relation to Wales “local authority” means the council of a county or county borough.
- (6) If a care home is situated in the areas of two (or more) local authorities, it is to be regarded for the purposes of sub-paragraph (3) as situated in whichever of the areas the greater (or greatest) part of the care home is situated.
- 183 (1) Subsections (5) and (6) of section 24 of the National Assistance Act 1948 (deemed place of ordinary residence) apply to any determination of where a person is ordinarily resident for the purposes of paragraph 182 as those subsections apply to such a determination for the purposes specified in those subsections.
- (2) In the application of section 24(6) of the 1948 Act by virtue of sub-paragraph (1), section 24(6) is to be read as if it referred to a hospital vested in a Local Health Board as well as to hospitals vested in the Secretary of State and the other bodies mentioned in section 24(6).
- (3) Any question arising as to the ordinary residence of a person is to be determined by the Secretary of State or by the National Assembly for Wales.
- (4) The Secretary of State and the National Assembly must make and publish arrangements for determining which cases are to be dealt with by the Secretary of State and which are to be dealt with by the National Assembly.
- (5) Those arrangements may include provision for the Secretary of State and the National Assembly to agree, in relation to any question that has arisen, which of them is to deal with the case.
- (6) Regulations may make provision about arrangements that are to have effect before, upon, or after the determination of any question as to the ordinary residence of a person.
- (7) The regulations may, in particular, authorise or require a local authority to do any or all of the following things—
- (a) to act as supervisory body even though it may wish to dispute that it is the supervisory body;
  - (b) to become the supervisory body in place of another local authority;
  - (c) to recover from another local authority expenditure incurred in exercising functions as the supervisory body.

**Same body managing authority and supervisory body**

- 184 (1) This paragraph applies if, in connection with a particular person’s detention as a resident in a hospital or care home, the same body are both—
- (a) the managing authority of the relevant hospital or care home, and
  - (b) the supervisory body.

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- (2) The fact that a single body are acting in both capacities does not prevent the body from carrying out functions under this Schedule in each capacity.
- (3) But, in such a case, this Schedule has effect subject to any modifications contained in regulations that may be made for this purpose.

### **Interested persons**

- 185 Each of the following is an interested person—
- (a) the relevant person’s spouse or civil partner;
  - (b) where the relevant person and another person of the opposite sex are not married to each other but are living together as husband and wife: the other person;
  - (c) where the relevant person and another person of the same sex are not civil partners of each other but are living together as if they were civil partners: the other person;
  - (d) the relevant person’s children and step-children;
  - (e) the relevant person’s parents and step-parents;
  - (f) the relevant person’s brothers and sisters, half-brothers and half-sisters, and stepbrothers and stepsisters;
  - (g) the relevant person’s grandparents;
  - (h) a deputy appointed for the relevant person by the court;
  - (i) a donee of a lasting power of attorney granted by the relevant person.
- 186 (1) An interested person consulted by the best interests assessor is any person whose name is stated in the relevant best interests assessment in accordance with paragraph 40 (interested persons whom the assessor consulted in carrying out the assessment).
- (2) The relevant best interests assessment is the most recent best interests assessment carried out in connection with the standard authorisation in question (whether the assessment was carried out under Part 4 or Part 8).
- 187 Where this Schedule imposes on a person a duty towards an interested person, the duty does not apply if the person on whom the duty is imposed—
- (a) is not aware of the interested person’s identity or of a way of contacting him, and
  - (b) cannot reasonably ascertain it.
- 188 The following table contains an index of provisions defining or otherwise explaining expressions used in this Schedule—

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age assessment	paragraph 34
age requirement	paragraph 13
age review assessment	paragraph 112(3)
appointment regulations	paragraph 138
assessment under this Schedule	paragraph 127
assessor (except in Part 9)	paragraph 33
assessor (in Part 9)	paragraphs 33 and 128

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*Status: This is the original version (as it was originally enacted).*

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authorisation under this Schedule	paragraph 10
best interests (determination of)	section 4
best interests assessment	paragraph 38
best interests requirement	paragraph 16
best interests review assessment	paragraph 112(6)
care home	paragraph 178
change of reason ground	paragraph 106
complete (in relation to a review of a standard authorisation)	paragraph 118
deprivation of a person's liberty	section 64(5) and (6)
deputy	section 16(2)(b)
detained resident	paragraph 6
disposed of (in relation to a request for a standard authorisation)	paragraph 66
eligibility assessment	paragraph 46
eligibility requirement	paragraph 17
eligibility review assessment	paragraph 112(7)
eligible person (in relation to paragraphs 68 to 73)	paragraph 68
eligible person (in relation to Part 8)	paragraph 102(3)
expiry (in relation to an existing authorisation)	paragraph 125(b)
existing authorisation (in Part 8)	paragraph 125(a)
hospital	paragraph 175
IMCA	paragraph 158
in force (in relation to a standard authorisation)	paragraphs 63 and 64
in force (in relation to an urgent authorisation)	paragraphs 88 and 89
ineligible (in relation to the eligibility requirement)	Schedule 1A
interested person	paragraph 185
interested person consulted by the best interests assessor	paragraph 186
lack of capacity	section 2
lasting power of attorney	section 9
managing authority (in relation to a care home)	paragraph 179

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managing authority (in relation to a hospital)	paragraph 176 or 177
maximum authorisation period	paragraph 42
mental capacity assessment	paragraph 37
mental capacity requirement	paragraph 15
mental capacity review assessment	paragraph 112(5)
mental health assessment	paragraph 35
mental health requirement	paragraph 14
mental health review assessment	paragraph 112(4)
negative conclusion	paragraph 112(2)(a)
new supervisory body	paragraph 99(b)
no refusals assessment	paragraph 48
no refusals requirement	paragraph 18
no refusals review assessment	paragraph 112(8)
non-qualification ground	paragraph 105
old supervisory body	paragraph 99(a)
positive conclusion	paragraph 112(2)(b)
purpose of a standard authorisation	paragraph 11(1)
purpose of an urgent authorisation	paragraph 11(2)
qualifying requirements	paragraph 12
refusal (for the purposes of the no refusals requirement)	paragraphs 19 and 20
relevant care or treatment	paragraph 7
relevant hospital or care home	paragraph 7
relevant managing authority	paragraph 26(4)
relevant person	paragraph 7
relevant person's representative	paragraph 137
relevant procedure	paragraph 128
review assessment	paragraph 112(1)
reviewable	paragraph 104
section 39A IMCA	paragraph 155
section 39C IMCA	paragraph 156
section 39D IMCA	paragraph 157
standard authorisation	paragraph 8
supervisory body (except in Part 9)	paragraph 180, 181 or 182

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supervisory body (in Part 9)	paragraph 128 and paragraph 180, 181 or 182
unauthorised deprivation of liberty (in relation to paragraphs 68 to 73)	paragraph 67
urgent authorisation	paragraph 9
variation of conditions ground	paragraph 107”.

## SCHEDULE 8

Section 50

### MENTAL CAPACITY ACT 2005: NEW SCHEDULE 1A

After Schedule 1 to the Mental Capacity Act 2005 (c. 9) insert—

#### “SCHEDULE 1A

#### PERSONS INELIGIBLE TO BE DEPRIVED OF LIBERTY BY THIS ACT

#### PART 1

#### INELIGIBLE PERSONS

#### Application

- 1 This Schedule applies for the purposes of—
- (a) section 16A, and
  - (b) paragraph 17 of Schedule A1.

#### Determining ineligibility

- 2 A person (“P”) is ineligible to be deprived of liberty by this Act (“ineligible”) if—
- (a) P falls within one of the cases set out in the second column of the following table, and
  - (b) the corresponding entry in the third column of the table—or the provision, or one of the provisions, referred to in that entry—provides that he is ineligible.

	<i>Status of P</i>	<i>Determination of ineligibility</i>
<i>Case A</i>	P is— (a) subject to the hospital treatment regime, and (b) detained in a hospital under that regime.	P is ineligible.
<i>Case B</i>	P is—	See paragraphs 3 and 4.

*Status: This is the original version (as it was originally enacted).*

	<i>Status of P</i>	<i>Determination of ineligibility</i>
	(a) subject to the hospital treatment regime, but (b) not detained in a hospital under that regime.	
<i>Case C</i>	P is subject to the community treatment regime.	See paragraphs 3 and 4.
<i>Case D</i>	P is subject to the guardianship regime.	See paragraphs 3 and 5.
<i>Case E</i>	P is— (a) within the scope of the Mental Health Act, but (b) not subject to any of the mental health regimes.	See paragraph 5.

#### **Authorised course of action not in accordance with regime**

- 3 (1) This paragraph applies in cases B, C and D in the table in paragraph 2.
- (2) P is ineligible if the authorised course of action is not in accordance with a requirement which the relevant regime imposes.
- (3) That includes any requirement as to where P is, or is not, to reside.
- (4) The relevant regime is the mental health regime to which P is subject.

#### **Treatment for mental disorder in a hospital**

- 4 (1) This paragraph applies in cases B and C in the table in paragraph 2.
- (2) P is ineligible if the relevant care or treatment consists in whole or in part of medical treatment for mental disorder in a hospital.

#### **P objects to being a mental health patient etc**

- 5 (1) This paragraph applies in cases D and E in the table in paragraph 2.
- (2) P is ineligible if the following conditions are met.
- (3) The first condition is that the relevant instrument authorises P to be a mental health patient.
- (4) The second condition is that P objects—
  - (a) to being a mental health patient, or
  - (b) to being given some or all of the mental health treatment.

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*Status: This is the original version (as it was originally enacted).*

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- (5) The third condition is that a donee or deputy has not made a valid decision to consent to each matter to which P objects.
- (6) In determining whether or not P objects to something, regard must be had to all the circumstances (so far as they are reasonably ascertainable), including the following—
- (a) P's behaviour;
  - (b) P's wishes and feelings;
  - (c) P's views, beliefs and values.
- (7) But regard is to be had to circumstances from the past only so far as it is still appropriate to have regard to them.

## PART 2

### INTERPRETATION

#### **Application**

- 6 This Part applies for the purposes of this Schedule.

#### **Mental health regimes**

- 7 The mental health regimes are—
- (a) the hospital treatment regime,
  - (b) the community treatment regime, and
  - (c) the guardianship regime.

#### **Hospital treatment regime**

- 8 (1) P is subject to the hospital treatment regime if he is subject to—
- (a) a hospital treatment obligation under the relevant enactment, or
  - (b) an obligation under another England and Wales enactment which has the same effect as a hospital treatment obligation.
- (2) But where P is subject to any such obligation, he is to be regarded as not subject to the hospital treatment regime during any period when he is subject to the community treatment regime.
- (3) A hospital treatment obligation is an application, order or direction of a kind listed in the first column of the following table.
- (4) In relation to a hospital treatment obligation, the relevant enactment is the enactment in the Mental Health Act which is referred to in the corresponding entry in the second column of the following table.

<i>Hospital treatment obligation</i>	<i>Relevant enactment</i>
Application for admission for assessment	Section 2
Application for admission for assessment	Section 4



*Status: This is the original version (as it was originally enacted).*

<i>Hospital treatment obligation</i>	<i>Relevant enactment</i>
Application for admission for treatment	Section 3
Order for remand to hospital	Section 35
Order for remand to hospital	Section 36
Hospital order	Section 37
Interim hospital order	Section 38
Order for detention in hospital	Section 44
Hospital direction	Section 45A
Transfer direction	Section 47
Transfer direction	Section 48
Hospital order	Section 51

### **Community treatment regime**

- 9 P is subject to the community treatment regime if he is subject to—
- (a) a community treatment order under section 17A of the Mental Health Act, or
  - (b) an obligation under another England and Wales enactment which has the same effect as a community treatment order.

### **Guardianship regime**

- 10 P is subject to the guardianship regime if he is subject to—
- (a) a guardianship application under section 7 of the Mental Health Act,
  - (b) a guardianship order under section 37 of the Mental Health Act, or
  - (c) an obligation under another England and Wales enactment which has the same effect as a guardianship application or guardianship order.

### **England and Wales enactments**

- 11 (1) An England and Wales enactment is an enactment which extends to England and Wales (whether or not it also extends elsewhere).
- (2) It does not matter if the enactment is in the Mental Health Act or not.

### **P within scope of Mental Health Act**

- 12 (1) P is within the scope of the Mental Health Act if—
- (a) an application in respect of P could be made under section 2 or 3 of the Mental Health Act, and
  - (b) P could be detained in a hospital in pursuance of such an application, were one made.
- (2) The following provisions of this paragraph apply when determining whether an application in respect of P could be made under section 2 or 3 of the Mental Health Act.

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*Status: This is the original version (as it was originally enacted).*

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- (3) If the grounds in section 2(2) of the Mental Health Act are met in P’s case, it is to be assumed that the recommendations referred to in section 2(3) of that Act have been given.
- (4) If the grounds in section 3(2) of the Mental Health Act are met in P’s case, it is to be assumed that the recommendations referred to in section 3(3) of that Act have been given.
- (5) In determining whether the ground in section 3(2)(c) of the Mental Health Act is met in P’s case, it is to be assumed that the treatment referred to in section 3(2)(c) cannot be provided under this Act.

### **Authorised course of action, relevant care or treatment & relevant instrument**

- 13 In a case where this Schedule applies for the purposes of section 16A—
  - “authorised course of action” means any course of action amounting to deprivation of liberty which the order under section 16(2)(a) authorises;
  - “relevant care or treatment” means any care or treatment which—
    - (a) comprises, or forms part of, the authorised course of action, or
    - (b) is to be given in connection with the authorised course of action;
  - “relevant instrument” means the order under section 16(2)(a).
- 14 In a case where this Schedule applies for the purposes of paragraph 17 of Schedule A1—
  - “authorised course of action” means the accommodation of the relevant person in the relevant hospital or care home for the purpose of being given the relevant care or treatment;
  - “relevant care or treatment” has the same meaning as in Schedule A1;
  - “relevant instrument” means the standard authorisation under Schedule A1.
- 15 (1) This paragraph applies where the question whether a person is ineligible to be deprived of liberty by this Act is relevant to either of these decisions—
  - (a) whether or not to include particular provision (“the proposed provision”) in an order under section 16(2)(a);
  - (b) whether or not to give a standard authorisation under Schedule A1.

(2) A reference in this Schedule to the authorised course of action or the relevant care or treatment is to be read as a reference to that thing as it would be if—

  - (a) the proposed provision were included in the order, or
  - (b) the standard authorisation were given.

(3) A reference in this Schedule to the relevant instrument is to be read as follows—

  - (a) where the relevant instrument is an order under section 16(2)(a): as a reference to the order as it would be if the proposed provision were included in it;
  - (b) where the relevant instrument is a standard authorisation: as a reference to the standard authorisation as it would be if it were given.

### **Expressions used in paragraph 5**

- 16 (1) These expressions have the meanings given—

“donee” means a donee of a lasting power of attorney granted by P;  
 “mental health patient” means a person accommodated in a hospital for the purpose of being given medical treatment for mental disorder;  
 “mental health treatment” means the medical treatment for mental disorder referred to in the definition of “mental health patient”.

- (2) A decision of a donee or deputy is valid if it is made—
- (a) within the scope of his authority as donee or deputy, and
  - (b) in accordance with Part 1 of this Act.

### **Expressions with same meaning as in Mental Health Act**

- 17 (1) “Hospital” has the same meaning as in Part 2 of the Mental Health Act.  
 (2) “Medical treatment” has the same meaning as in the Mental Health Act.  
 (3) “Mental disorder” has the same meaning as in Schedule A1 (see paragraph 14).”.

## SCHEDULE 9

Section 50

### AMENDMENTS RELATING TO NEW SECTION 4A OF, & SCHEDULE A1 TO, MENTAL CAPACITY ACT 2005

#### **PART 1**

#### OTHER AMENDMENTS TO MENTAL CAPACITY ACT 2005

##### *Introduction*

- 1 The Mental Capacity Act 2005 (c. 9) is amended as set out in this Part of this Schedule.

##### *New section 21A*

- 2 After section 21 insert—

##### *“Powers of the court in relation to Schedule A1*

#### **21A Powers of court in relation to Schedule A1**

- (1) This section applies if either of the following has been given under Schedule A1—
- (a) a standard authorisation;
  - (b) an urgent authorisation.
- (2) Where a standard authorisation has been given, the court may determine any question relating to any of the following matters—
- (a) whether the relevant person meets one or more of the qualifying requirements;

- (b) the period during which the standard authorisation is to be in force;
  - (c) the purpose for which the standard authorisation is given;
  - (d) the conditions subject to which the standard authorisation is given.
- (3) If the court determines any question under subsection (2), the court may make an order—
- (a) varying or terminating the standard authorisation, or
  - (b) directing the supervisory body to vary or terminate the standard authorisation.
- (4) Where an urgent authorisation has been given, the court may determine any question relating to any of the following matters—
- (a) whether the urgent authorisation should have been given;
  - (b) the period during which the urgent authorisation is to be in force;
  - (c) the purpose for which the urgent authorisation is given.
- (5) Where the court determines any question under subsection (4), the court may make an order—
- (a) varying or terminating the urgent authorisation, or
  - (b) directing the managing authority of the relevant hospital or care home to vary or terminate the urgent authorisation.
- (6) Where the court makes an order under subsection (3) or (5), the court may make an order about a person’s liability for any act done in connection with the standard or urgent authorisation before its variation or termination.
- (7) An order under subsection (6) may, in particular, exclude a person from liability.”

*Section 35: Appointment of independent mental capacity advocates*

- 3 In section 35, in subsection (1) after “relate” insert “or persons who fall within section 39A, 39C or 39D”.

*Section 38: IMCAs and provision of accommodation by NHS body*

- 4 (1) Section 38 is amended as follows.
- (2) After subsection (2) insert—
- “(2A) And this section does not apply if—
- (a) an independent mental capacity advocate must be appointed under section 39A or 39C (whether or not by the NHS body) to represent P, and
  - (b) the hospital or care home in which P is to be accommodated under the arrangements referred to in this section is the relevant hospital or care home under the authorisation referred to in that section.”
- (3) After subsection (9) insert—
- “(10) For the purposes of subsection (1), a person appointed under Part 10 of Schedule A1 to be P’s representative is not, by virtue of that appointment, engaged in providing care or treatment for P in a professional capacity or for remuneration.”

*Section 39: IMCAs and provision of accommodation by local authority*

5 (1) Section 39 is amended as follows.

(2) After subsection (3) insert—

“(3A) And this section does not apply if—

- (a) an independent mental capacity advocate must be appointed under section 39A or 39C (whether or not by the local authority) to represent P, and
- (b) the place in which P is to be accommodated under the arrangements referred to in this section is the relevant hospital or care home under the authorisation referred to in that section.”

(3) After subsection (6) insert—

“(7) For the purposes of subsection (1), a person appointed under Part 10 of Schedule A1 to be P’s representative is not, by virtue of that appointment, engaged in providing care or treatment for P in a professional capacity or for remuneration.”

*New section 39A*

6 After section 39 insert—

**“39A Person becomes subject to Schedule A1**

(1) This section applies if—

- (a) a person (“P”) becomes subject to Schedule A1, and
- (b) the managing authority of the relevant hospital or care home are satisfied that there is no person, other than one engaged in providing care or treatment for P in a professional capacity or for remuneration, whom it would be appropriate to consult in determining what would be in P’s best interests.

(2) The managing authority must notify the supervisory body that this section applies.

(3) The supervisory body must instruct an independent mental capacity advocate to represent P.

(4) Schedule A1 makes provision about the role of an independent mental capacity advocate appointed under this section.

(5) This section is subject to paragraph 161 of Schedule A1.

(6) For the purposes of subsection (1), a person appointed under Part 10 of Schedule A1 to be P’s representative is not, by virtue of that appointment, engaged in providing care or treatment for P in a professional capacity or for remuneration.

**39B Section 39A: supplementary provision**

(1) This section applies for the purposes of section 39A.

(2) P becomes subject to Schedule A1 in any of the following cases.

- (3) The first case is where an urgent authorisation is given in relation to P under paragraph 76(2) of Schedule A1 (urgent authorisation given before request made for standard authorisation).
- (4) The second case is where the following conditions are met.
- (5) The first condition is that a request is made under Schedule A1 for a standard authorisation to be given in relation to P (“the requested authorisation”).
- (6) The second condition is that no urgent authorisation was given under paragraph 76(2) of Schedule A1 before that request was made.
- (7) The third condition is that the requested authorisation will not be in force on or before, or immediately after, the expiry of an existing standard authorisation.
- (8) The expiry of a standard authorisation is the date when the authorisation is expected to cease to be in force.
- (9) The third case is where, under paragraph 69 of Schedule A1, the supervisory body select a person to carry out an assessment of whether or not the relevant person is a detained resident.

### **39C Person unrepresented whilst subject to Schedule A1**

- (1) This section applies if—
  - (a) an authorisation under Schedule A1 is in force in relation to a person (“P”),
  - (b) the appointment of a person as P’s representative ends in accordance with regulations made under Part 10 of Schedule A1, and
  - (c) the managing authority of the relevant hospital or care home are satisfied that there is no person, other than one engaged in providing care or treatment for P in a professional capacity or for remuneration, whom it would be appropriate to consult in determining what would be in P’s best interests.
- (2) The managing authority must notify the supervisory body that this section applies.
- (3) The supervisory body must instruct an independent mental capacity advocate to represent P.
- (4) Paragraph 159 of Schedule A1 makes provision about the role of an independent mental capacity advocate appointed under this section.
- (5) The appointment of an independent mental capacity advocate under this section ends when a new appointment of a person as P’s representative is made in accordance with Part 10 of Schedule A1.
- (6) For the purposes of subsection (1), a person appointed under Part 10 of Schedule A1 to be P’s representative is not, by virtue of that appointment, engaged in providing care or treatment for P in a professional capacity or for remuneration.

### **39D Person subject to Schedule A1 without paid representative**

- (1) This section applies if—
  - (a) an authorisation under Schedule A1 is in force in relation to a person (“P”),
  - (b) P has a representative (“R”) appointed under Part 10 of Schedule A1, and
  - (c) R is not being paid under regulations under Part 10 of Schedule A1 for acting as P’s representative.
- (2) The supervisory body must instruct an independent mental capacity advocate to represent P in any of the following cases.
- (3) The first case is where P makes a request to the supervisory body to instruct an advocate.
- (4) The second case is where R makes a request to the supervisory body to instruct an advocate.
- (5) The third case is where the supervisory body have reason to believe one or more of the following—
  - (a) that, without the help of an advocate, P and R would be unable to exercise one or both of the relevant rights;
  - (b) that P and R have each failed to exercise a relevant right when it would have been reasonable to exercise it;
  - (c) that P and R are each unlikely to exercise a relevant right when it would be reasonable to exercise it.
- (6) The duty in subsection (2) is subject to section 39E.
- (7) If an advocate is appointed under this section, the advocate is, in particular, to take such steps as are practicable to help P and R to understand the following matters—
  - (a) the effect of the authorisation;
  - (b) the purpose of the authorisation;
  - (c) the duration of the authorisation;
  - (d) any conditions to which the authorisation is subject;
  - (e) the reasons why each assessor who carried out an assessment in connection with the request for the authorisation, or in connection with a review of the authorisation, decided that P met the qualifying requirement in question;
  - (f) the relevant rights;
  - (g) how to exercise the relevant rights.
- (8) The advocate is, in particular, to take such steps as are practicable to help P or R—
  - (a) to exercise the right to apply to court, if it appears to the advocate that P or R wishes to exercise that right, or
  - (b) to exercise the right of review, if it appears to the advocate that P or R wishes to exercise that right.
- (9) If the advocate helps P or R to exercise the right of review—

- (a) the advocate may make submissions to the supervisory body on the question of whether a qualifying requirement is reviewable;
- (b) the advocate may give information, or make submissions, to any assessor carrying out a review assessment.

(10) In this section—

“relevant rights” means—

- (a) the right to apply to court, and
- (b) the right of review;

“right to apply to court” means the right to make an application to the court to exercise its jurisdiction under section 21A;

“right of review” means the right under Part 8 of Schedule A1 to request a review.

### **39E Limitation on duty to instruct advocate under section 39D**

- (1) This section applies if an advocate is already representing P in accordance with an instruction under section 39D.
- (2) Section 39D(2) does not require another advocate to be instructed, unless the following conditions are met.
- (3) The first condition is that the existing advocate was instructed—
  - (a) because of a request by R, or
  - (b) because the supervisory body had reason to believe one or more of the things in section 39D(5).
- (4) The second condition is that the other advocate would be instructed because of a request by P.”

#### *Section 40: Exceptions to duty to appoint IMCAs*

- 7
- (1) Section 40 (as substituted by section 49 of this Act) is amended as follows.
  - (2) The provision of section 40 becomes subsection (1) of section 40.
  - (3) In subsection (1) for “or 39(4) or (5)” substitute “, 39(4) or (5), 39A(3), 39C(3) or 39D(2)”.
  - (4) After subsection (1) insert—
 

“(2) A person appointed under Part 10 of Schedule A1 to be P’s representative is not, by virtue of that appointment, a person nominated by P as a person to be consulted in matters to which a duty mentioned in subsection (1) relates.”

#### *Section 42: Codes of practice*

- 8
- (1) Section 42 is amended as follows.
  - (2) In subsection (1), after paragraph (f) insert—
    - “(fa) for the guidance of persons exercising functions under Schedule A1,
    - (fb) for the guidance of representatives appointed under Part 10 of Schedule A1,”.



- (3) In subsection (4), after paragraph (d) insert—
- “(da) in the exercise of functions under Schedule A1,
  - (db) as a representative appointed under Part 10 of Schedule A1,”.

*Section 50: Application to the Court of Protection*

- 9 In section 50, after subsection (1) insert—
- “(1A) Nor is permission required for an application to the court under section 21A by the relevant person’s representative.”

*Section 64: Interpretation*

- 10 (1) Section 64 is amended as follows.
- (2) In subsection (1), insert at the appropriate place—
- ““authorisation under Schedule A1” means either—
- (a) a standard authorisation under that Schedule, or
  - (b) an urgent authorisation under that Schedule.”
- (3) In subsection (1), in the definition of “local authority” after ““local authority”” insert “, except in Schedule A1,”.
- (4) After subsection (4) insert—
- “(5) In this Act, references to deprivation of a person’s liberty have the same meaning as in Article 5(1) of the Human Rights Convention.
- (6) For the purposes of such references, it does not matter whether a person is deprived of his liberty by a public authority or not.”

*Section 65: Rules, regulations and orders*

- 11 (1) Section 65 is amended as follows.
- (2) After subsection (4) insert—
- “(4A) Subsection (2) does not apply to a statutory instrument containing regulations made by the Secretary of State under Schedule A1.
- (4B) If such a statutory instrument contains regulations under paragraph 42(2)(b), 129, 162 or 164 of Schedule A1 (whether or not it also contains other regulations), the instrument may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (4C) Subject to that, such a statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament.”

## PART 2

### AMENDMENTS TO OTHER ACTS

#### *National Assistance Act 1948 (c. 29)*

- 12 (1) Section 47 of the National Assistance Act 1948 (removal to suitable premises of persons in need of care and attention) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) But this section does not apply to a person (“P”) in either of the following cases.
- (1B) The first case is where an order of the Court of Protection authorises the managing authority of a hospital or care home (within the meaning of Schedule A1 to the Mental Capacity Act 2005) to provide P with proper care and attention.
- (1C) The second case is where—
- (a) an authorisation under Schedule A1 to the Mental Capacity Act 2005 is in force, or
- (b) the managing authority of a hospital or care home are under a duty under paragraph 24 of that Schedule to request a standard authorisation, and
- P is, or would be, the relevant person in relation to the authorisation.”
- (3) This paragraph does not extend to Scotland.

#### *Local Authority Social Services Act 1970 (c. 42)*

- 13 (1) Schedule 1 to the Local Authority Social Services Act 1970 (Social Services functions of local authorities) is amended as follows.
- (2) In the entry relating to the Mental Capacity Act 2005 (c. 9), insert the following entries at the appropriate places—

“Section 39A	Instructing independent mental capacity advocate when giving an urgent authorisation, or making a request for a standard authorisation, under Schedule A1 to the Act.”
“Section 39C	Instructing independent mental capacity advocate when no representative for relevant person under Part 10 of Schedule A1 to the Act.”
“Section 39D	Instructing independent mental capacity advocate when representative for relevant person under Part 10 of Schedule A1 to the Act is not being paid.”

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“Schedule A1

Any functions.”

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## SCHEDULE 10

Section 53

### TRANSITIONAL PROVISIONS AND SAVINGS

#### *Interpretation*

- 1 (1) This Schedule is to be read as follows.
- (2) Reference to an enactment is to an enactment contained in this Act, unless otherwise stated.
- (3) Reference to an enactment contained in the 1983 Act includes reference to that enactment as applied by section 40(4) of that Act (patients concerned in criminal proceedings or under sentence).

#### *Authority to detain etc*

- 2 (1) The provisions mentioned in sub-paragraph (4) do not affect—
  - (a) the authority for the detention or guardianship of a person who is liable to be detained or subject to guardianship under the 1983 Act immediately before the date on which those provisions come into force,
  - (b) the 1983 Act in relation to any application, order or direction for admission or removal to a hospital, or any guardianship application or order, made under that Act before that date or the exercise, before that date, of any power to remand,
  - (c) the power to make on or after that date an application for the admission of a person to a hospital, or a guardianship application, where all the recommendations on which the application is to be founded are signed before that date, or
  - (d) the authority for the detention or guardianship of a person in pursuance of such an application.
- (2) But those provisions do apply to the following events occurring on or after that date—
  - (a) any renewal of the authority for the person’s detention or guardianship,
  - (b) any consideration of his case by a Mental Health Review Tribunal, and
  - (c) any decision about the exercise of any power to discharge him from detention or guardianship.
- (3) Sub-paragraph (2)(b) is subject to paragraph 4.
- (4) The provisions are—
  - (a) section 1 and Schedule 1 (removal of categories of mental disorder),
  - (b) section 2 (special provision for persons with learning disability),
  - (c) section 3 (exclusions),
  - (d) section 4 (replacement of “treatability” and “care” tests with appropriate treatment test),
  - (e) section 5 (addition of appropriate treatment test),

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*Status: This is the original version (as it was originally enacted).*

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- (f) section 7 (definition of “medical treatment”), and
- (g) the repeals in Schedule 11 which are consequential on any of those sections or that Schedule.

#### *Consent to treatment*

- 3 (1) The amendments made by section 6 (appropriate treatment test in Part 4 of the 1983 Act) do not affect the application of a certificate under section 57(2)(b) or 58(3)(b) of the 1983 Act given before the date on which the amendments come into force.
- (2) The amendments made by sections 27 and 28 (electro-convulsive therapy, etc.) do not affect the application of a certificate under subsection (3) of section 58 of the 1983 Act which—
- (a) relates to electro-convulsive therapy (by virtue of regulations under subsection (1)(a) of that section), and
  - (b) is given before the date on which those amendments come into force.
- (3) But any certificate under section 58(3)(b) of the 1983 Act that the patient has not consented to electro-convulsive therapy ceases to apply when those amendments come into force.

#### *Reclassification of patients*

- 4 The amendment made by paragraph 13 of Schedule 1 and the repeal in Schedule 11 of section 66(1)(d) and (fb) of the 1983 Act (which concern a patient’s right to apply to a Mental Health Review Tribunal following a report about the form of his mental disorder) do not affect any right to apply in consequence of a report furnished before the date on which the amendment and repeal come into force.

#### *Supervised community treatment*

- 5 Section 32 and the amendments and repeals in Schedules 3 and 11 which are consequential on that section apply to a patient who is liable to be detained under the 1983 Act immediately before the date on which that section and those amendments and repeals come into force, as they apply to a patient who becomes so liable on or after that date.

#### *Nearest relative*

- 6 (1) Subsections (2), (3) and (4)(b) of section 23 (extension of power to appoint acting nearest relative) do not apply to the making of an order under section 29 of the 1983 Act on or after the date on which those provisions come into force, if the application for the order was made before that date.
- (2) Subsections (6) and (7) of section 24 (duration of orders appointing nearest relative) do not affect—
- (a) any order made under section 29 of the 1983 Act before the date on which those subsections come into force, or
  - (b) any order made under that section on or after that date if the application for it was made before that date.
- (3) But subsections (2)(a), (4) and (5) of section 24 (applications for discharge and variation) do apply in relation to an order mentioned in sub-paragraph (2)(a) or (b).

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- (4) Section 25 (restriction of nearest relative's right to apply to tribunal) does not apply in relation to an order mentioned in sub-paragraph (2)(a) or (b).
- 7 (1) If, by virtue of section 26 (civil partners) coming into force, a person ceases to be a patient's nearest relative, this does not affect—
- (a) any application to a Mental Health Review Tribunal under the 1983 Act made by that person, but not determined or withdrawn, before the date on which that section comes into force,
  - (b) any notice under section 25 of that Act given by that person before that date, or
  - (c) any application to a county court under section 30(1) of that Act made by that person, but not determined or withdrawn, before that date.
- (2) But section 26 does apply to the determination on or after that date of any application under section 29 or 30 of the 1983 Act made before that date.

#### *Independent mental health advocates*

- 8 (1) Section 30—
- (a) applies to a patient who is liable to be detained under the 1983 Act immediately before the commencement date as it applies to a patient who becomes so liable on or after that date;
  - (b) applies to a patient who is subject to guardianship under that Act immediately before the commencement date as it applies to a patient who becomes so subject on or after that date;
  - (c) applies to a patient who is a community patient under that Act immediately before the commencement date as it applies to a patient who becomes a community patient on or after that date.
- (2) For the purposes of the provisions inserted by that section, a patient is to be treated as a qualifying patient within section 130C(3) of the 1983 Act if—
- (a) not being a formal patient, he discussed before the commencement date with a registered medical practitioner or approved clinician the possibility of being given a form of treatment to which section 57 of that Act applies, and
  - (b) sub-paragraph (4) or (5) applies in relation to him.
- (3) A patient is also to be treated for those purposes as a qualifying patient within section 130C(3) of the 1983 Act if—
- (a) not having attained the age of 18 years and not being a formal patient, he discussed before the commencement date with a registered medical practitioner or approved clinician the possibility of being given a form of treatment to which section 58A of that Act applies, and
  - (b) sub-paragraph (4) or (5) applies in relation to him.
- (4) This sub-paragraph applies in relation to the patient if, immediately before the commencement date, he has yet to be informed whether or not the treatment is proposed in his case.
- (5) This sub-paragraph applies in relation to the patient if, immediately before the commencement date—
- (a) he has been informed that the treatment is proposed in his case,
  - (b) the proposal has not been withdrawn, and

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- (c) the treatment has not been completed or discontinued.
- (6) A qualifying patient in relation to whom sub-paragraph (4) applies and who is informed on or after the commencement date that the treatment is proposed in his case, or in relation to whom sub-paragraph (5) applies, remains a qualifying patient until—
  - (a) the proposal is withdrawn, or
  - (b) the treatment is completed or discontinued.
- (7) In relation to a patient who is a qualifying patient within section 130C(3) of the 1983 Act by virtue of this paragraph, the responsible person under section 130D of that Act is to be the person with overall responsibility for the patient’s case (and subsection (2) (e) of that section is to be read accordingly).
- (8) Sub-paragraph (9) applies in relation to a patient—
  - (a) who is a qualifying patient within section 130C(2) of the 1983 Act by virtue of being a formal patient immediately before the commencement date, or
  - (b) who is a qualifying patient within section 130C(3) of that Act by virtue of this paragraph.
- (9) The steps to be taken under subsection (1) of section 130D of that Act are to be taken on, or as soon as practicable after, the commencement date (and subsection (3) of that section is to be read accordingly).
- (10) In this paragraph—
  - “approved clinician” has the same meaning as in the 1983 Act,
  - “the commencement date” means the date on which section 30 comes into force, and
  - “formal patient” means a patient who is—
    - (a) liable to be detained under the 1983 Act (otherwise than by virtue of section 4, 5(2) or (4), 135 or 136 of that Act),
    - (b) subject to guardianship under that Act, or
    - (c) a community patient under that Act.

*Applications and references to Mental Health Review Tribunal*

- 9 (1) The amendments made by section 37 apply in relation to a patient who is liable to be detained under the 1983 Act immediately before the date on which the amendments come into force as they apply in relation to one who becomes so liable on or after that date.
- (2) The repeal in paragraph 20(b) of Schedule 3 of the reference in section 69(2)(b) of the 1983 Act to section 45B(2) of that Act (which concerns the right of a patient subject to a hospital direction to apply to a Mental Health Review Tribunal in the period of six months beginning with the date of the direction) does not affect any right to apply by virtue of a hospital direction dated before the date on which the repeal comes into force.

SCHEDULE 11

Section 55

REPEALS AND REVOCATIONS

PART 1

REMOVAL OF CATEGORIES OF MENTAL DISORDER

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Juries Act 1974 (c. 23)	In Schedule 1, paragraph 4(1).
Mental Health Act 1983 (c. 20)	<p>In section 1(2), the definitions of—</p> <ul style="list-style-type: none"><li>(a) “severe mental impairment” and “severely mentally impaired”,</li><li>(b) “mental impairment” and “mentally impaired”, and</li><li>(c) “psychopathic disorder”.</li></ul> <p>In section 7(2)(a), the words “, being mental illness, severe mental impairment, psychopathic disorder or mental impairment and his mental disorder is”.</p> <p>Section 11(6).</p> <p>In section 15(3), the words from “; but this subsection” to the end.</p> <p>Section 16.</p> <p>Section 20(9).</p> <p>Section 21B(8) and (9).</p> <p>In section 37—</p> <ul style="list-style-type: none"><li>(a) in subsection (3), the words “as being a person suffering from mental illness or severe mental impairment”, and</li><li>(b) subsection (7).</li></ul> <p>In section 45A, subsections (10) and (11).</p> <p>Section 47(4).</p> <p>Section 55(3).</p> <p>In section 66(1), paragraphs (d) and (fb) (and the word “or” at the end of those paragraphs).</p> <p>Section 72(5).</p> <p>Section 92(3).</p> <p>In Part 1 of Schedule 1—</p> <ul style="list-style-type: none"><li>(a) in paragraph 2, the word “16,”,</li><li>(b) paragraph 3, and</li><li>(c) in paragraph 6, paragraph (b) (and the word “and” immediately preceding it).</li></ul>

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<i>Reference</i>	<i>Extent of repeal or revocation</i>
	In Schedule 5— (a) in paragraph 37(5), the words from “, and he shall be so treated” to the end, and (b) paragraph 39.
Mental Health (Patients in the Community) Act 1995 (c. 52)	In Schedule 1, paragraph 10(4).
Mental Capacity Act 2005 (c. 9)	In Schedule 4, in paragraph 23(1), the words “(within the meaning of the Mental Health Act)”.
Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078)	In Schedule 1, paragraph 2(8).

## PART 2

### REPLACEMENT OF “TREATABILITY” AND “CARE” TESTS

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Mental Health Act 1983 (c. 20)	In section 3(2), paragraph (b) (and the word “and” at the end of that paragraph).  In section 20(4)— (a) paragraph (b) (and the word “and” at the end of that paragraph), and (b) the words from “but, in the case of mental illness” to the end.  Section 72(2).

## PART 3

### APPROVED CLINICIANS AND RESPONSIBLE CLINICIANS

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Mental Health Act 1983 (c. 20)	Section 20(10).  In section 21B(10), the definition of “appropriate medical officer”.  In section 61(3), the words “to the responsible medical officer”.
Health and Social Care (Community Health and Standards) Act 2003 (c. 43)	In Schedule 4, paragraph 51.
Civil Partnership Act 2004 (c. 33)	In Schedule 27, paragraph 86(a).



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<i>Reference</i>	<i>Extent of repeal or revocation</i>
National Health Service (Consequential Provisions) Act 2006 (c. 43)	In Schedule 1, paragraph 63.

#### PART 4

##### SAFEGUARDS FOR PATIENTS

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Mental Health Act 1983	In section 29— (a) in subsection (2), the words from “but in relation to” to the end, and (b) in subsection (3), the word “or” at the end of paragraph (c).

#### PART 5

##### SUPERVISED COMMUNITY TREATMENT

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Mental Health Act 1983	In section 18(4), the words from “and, in determining” to the end. Sections 25A to 25J. In section 29(3)(d), the words “from hospital or guardianship”. In section 32(2)(c), the words “or to after-care under supervision”. In section 34— (a) in subsection (1), the definitions of “the community responsible medical officer” and “the supervisor”, and (b) subsection (1A). In section 66(1)— (a) paragraphs (ga), (gb) and (gc) (and the word “or” at the end of each of those paragraphs), and (b) in sub-paragraph (i), the words from “or, in the cases” to the end. In section 66(2)— (a) in paragraph (d), the words “and (gb)”, and (b) paragraph (fa). In section 67(1), the words “or to after-care under supervision”.

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<i>Reference</i>	<i>Extent of repeal or revocation</i>
	In section 69(2)(b), the words “45B(2), 46(3),”.
	Section 72(4A).
	In section 76(1), the words from “or to after-care” to “leaves hospital”.
	Section 117(2A).
	Section 127(2A).
	In section 145—
	(a) in subsection (1), the definitions of “the responsible after-care bodies” and “supervision application”, and
	(b) subsection (1A).
	In section 146, the words from “128” to “guardianship”.
	In Part 1 of Schedule 1—
	(a) in paragraph 2, the words “, 25A, 25B”, and
	(b) paragraph 8A.
Mental Health (Patients in the Community) Act 1995 (c. 52)	Section 1(1).
	In Schedule 1—
	(a) in paragraph 2, paragraph (c) (and the word “and” immediately preceding it),
	(b) in paragraph 11, paragraph (a) (and the word “and” at the end of that paragraph), and
	(c) paragraphs 3, 4, 6, 7, 8(2), 10(1) to (3), 12, 13, 18 and 20.
Crime (Sentences) Act 1997 (c. 43)	In Schedule 4, paragraph 12(8).
National Health Service Reform and Health Care Professions Act 2002 (c. 17)	In Schedule 2, paragraphs 43 to 45.
Civil Partnership Act 2004 (c. 33)	In Schedule 27, in paragraph 86, paragraph (b) (and the word “and” immediately preceding it).

## PART 6

### ORGANISATION OF TRIBUNALS

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Mental Health Act 1983 (c. 20)	In section 78(6), the words “, if for any reason he is unable to act,”.
	In section 143(2), the words “or 65”.

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<i>Reference</i>	<i>Extent of repeal or revocation</i>
Health Authorities Act 1995 (c. 17)	In paragraph 4 of Schedule 2, the words “, if for any reason he is unable to act,”. In Schedule 1, paragraph 107(13).

## PART 7

### CROSS-BORDER ARRANGEMENTS

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Mental Health Act 1983	In section 80(1), the words “or subject to guardianship” and the words “or, as the case may be, for receiving him into guardianship”. In section 88(3)— (a) the words “to Scotland or Northern Ireland”, (b) paragraph (a), and (c) in paragraph (b), the words “in Northern Ireland,”. In section 146, the words from “88” to “138”.
Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078)	Articles 1(5), 2 and 3. In Schedule 1, paragraph 2(5).

## PART 8

### RESTRICTED PATIENTS

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Colonial Prisoners Removal Act 1884 (c. 31)	In section 10(3)(a), the words “, made without limitation of time”.
Mental Health Act 1983	In section 41(1), the words “, either without limit of time or during such period as may be specified in the order”. In section 42(4)(b), the words from “, and, if the restriction order was made for a specified period,” to the end. In section 44(3), the words “, made without limitation of time”. In section 81(7), the words “restriction order or” in each place, In section 81A(3)—

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<i>Reference</i>	<i>Extent of repeal or revocation</i>
	(a) the words “restriction order or” in each place, and (b) the words “order or”.
	In section 84(2), the words “, made without limitation of time”.
	In section 91(2), the words “at any time before the end of the period for which those orders would have continued in force”.

## **PART 9**

### MISCELLANEOUS

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Children Act 1989 (c. 41)	In Schedule 13, paragraph 48(5).

## **PART 10**

### DEPRIVATION OF LIBERTY

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Mental Capacity Act 2005 (c. 9)	Section 6(5). Section 11(6). Section 20(13).