



# Mental Health Act 1959

## 1959 CHAPTER 72

### PART IX

#### MISCELLANEOUS AND GENERAL

##### *Supplemental*

#### **139 Provisions as to custody, conveyance and detention**

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

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

- (1) If any person being in legal custody by virtue of section one hundred and thirty-nine of this Act escapes, he may, subject to the provisions of this section, be retaken—
  - (a) in any case, by the person who had his custody immediately before the escape, or by any constable or menial welfare officer;
  - (b) if at the time of the escape he was liable to be detained in a hospital within the meaning of Part IV of this Act, or subject to guardianship under this Act, by any other person who could take him into custody under section forty of this Act if he had absented himself without leave.

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- (2) A person who escapes as aforesaid when liable to be detained or subject to guardianship as mentioned in paragraph (b) of the foregoing subsection (not being a person subject to an order under Part V of this Act restricting his discharge or an order or direction having the like effect as such an order) shall not be retaken under this section after the expiration of the period within which he could be retaken under section forty of this Act if he had absented himself without leave on the day of the escape; and subsection (3) of the said section forty shall apply with the necessary modifications accordingly.
- (3) A person who escapes while being taken to or detained in a place of safety under section one hundred and thirty-five or section one hundred and thirty-six of this Act shall not be retaken under this section after the expiration of the period of seventy-two hours beginning with the time when he escapes or the period during which he is liable to be so detained, whichever expires first.
- (4) This section, so far as it relates to the escape of a person liable to be detained in a hospital within the meaning of Part IV of this Act, shall apply in relation to a person who escapes—
  - (a) while being taken to or from such a hospital in pursuance of regulations under section forty-one of this Act, or of any order, direction or authorisation under Parts V to VII of this Act; or
  - (b) while being taken to or detained in a place of safety in pursuance of an order under Part V of this Act pending his admission to such a hospital,as if he were liable to be detained in that hospital and, if he had not previously been received therein, as if he had been so received.
- (5) In computing for the purposes of sections sixty-three and sixty-four of this Act the period of twenty-eight days therein, mentioned, no account shall be taken of any time during which the patient is at large and liable to be retaken by virtue of this section.
- (6) Section forty-five of this Act shall, with any necessary modifications, apply in relation to a patient who is at large and liable to be retaken by virtue of this section as it applies in relation to a patient who is absent without leave within the meaning of section forty of this Act, and references therein to the said section forty shall be construed accordingly.

#### **141 Protection for acts done in pursuance of this Act**

- (1) No person shall be liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings to which he would have been liable apart from this section in respect of any act purporting to be done in pursuance of this Act or any regulations or rules thereunder, or in, or in pursuance of anything done in, the discharge of functions conferred by any other enactment on the authority having jurisdiction under Part VIII of this Act, unless the act was done in bad faith or without reasonable care.
- (2) No civil or criminal proceedings shall be brought against any person in any court in respect of any such act without the leave of the High Court, and the High Court shall not give leave under this section unless satisfied that there is substantial ground for the contention that the person to be proceeded against has acted in bad faith or without reasonable care.

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- (3) This section does not apply to proceedings for an offence under this Act, being proceedings which, under any provision of this Act, can be instituted only by or with the consent of the Director of Public Prosecutions.
- (4) In this section, references to the High Court shall be construed, in relation to Northern Ireland, as references to a judge of the High Court of Northern Ireland,

#### **142 Default powers of Minister**

- (1) Where the Minister is of opinion, on complaint or otherwise, that a local health authority have failed to carry out functions conferred or imposed on the authority by or under this Act or have in carrying out those functions failed to comply with any regulations relating thereto, he may after such inquiry as he thinks fit make an order declaring the authority to be in default.
- (2) Subsections (3) to (5) of section fifty-seven of the National Health Service Act, 1946 (which relates to orders declaring, among others, a local authority to be in default under that Act) shall apply in relation to an order under this section as they apply in relation to an order under that section.

#### **143 Inquiries**

The Minister may cause an inquiry to be held in any case where he thinks it advisable to do so in connection with any matter arising under this Act, and subsections (2) to (5) of section two hundred and ninety of the Local Government Act, 1933, shall apply to any inquiry held under this Act, except that no local authority shall be ordered to pay costs under subsection (4) of that section in the case of any inquiry unless the authority is a party thereto.

#### **144 Expenses**

- (1) There shall be defrayed out of moneys provided by Parliament—
  - (a) any expenses incurred by the Minister or a Secretary of State under this Act;
  - (b) any sums required for the payment of fees and expenses to medical practitioners acting in relation to a member of the House of Commons under section one hundred and thirty-seven of this Act;
  - (c) any increase attributable to this Act in the sums payable out of moneys provided by Parliament under any other enactment.
- (2) Any sums required for the payment of fees and expenses to medical practitioners acting in relation to a member of the House of Commons of Northern Ireland under section one hundred and thirty-seven of this Act shall be defrayed in such manner as may be provided by the Parliament of Northern Ireland.

#### **145 General provisions as to regulations, orders and rules**

- (1) Any power of the Minister or the Lord Chancellor to make regulations, orders or rules under this Act shall be exercisable by statutory instrument.
- (2) Any Order in Council under this Act and any statutory instrument containing regulations or rules made under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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## 146 Warrants of Secretary of State

Any warrant of a Secretary of State under this Act shall be given under the hand of the Secretary of State or of an Under Secretary of State.

## 147 Interpretation

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

" absent without leave " has the meaning assigned to it by section forty of this Act;

" direction restricting discharge " has the meaning assigned to it by section seventy-four of this Act;

" hospital " means—

(a) any hospital vested in the Minister under the National Health Service Act, 1946;

(b) any accommodation provided by a local authority and used for hospital and specialist services under Part II of that Act; and

(c) any special hospital;

and " hospital within the meaning of Part IV of this Act " has the meaning assigned to it by subsection (2) of section fifty-nine of this Act;

" hospital order " and " guardianship order " have the meanings respectively assigned to them by section sixty of this Act;

" local health authority " has the same meaning as in the National Health Service Act, 1946, and includes a joint board constituted under section nineteen of that Act;

" the managers " has the meaning assigned to it by Part IV of this Act;

" medical practitioner " means a registered medical practitioner within the meaning of the Medical Act, 1956;

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

" mental nursing home " has the meaning assigned to it in Part III of this Act;

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

" Minister " means the Minister of Health;

" nearest relative ", in relation to a patient, has the meaning assigned to it in Part IV of this Act; ;

" order restricting discharge " has the meaning assigned to it by section sixty-five of this Act;

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

" special hospital " has the meaning assigned to it in Part VII of this Act;

" transfer direction " has the meaning assigned to it by section seventy-two of this Act.

(2) Any reference in this Act to any other enactment is a reference thereto as amended, and includes a reference thereto as extended or applied, by or under any other enactment, including this Act.

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- (3) Without prejudice to the last foregoing subsection, any reference in this Act to an enactment of the Parliament of Northern Ireland, or to an enactment which that Parliament has power to amend, shall be construed, in relation to Northern Ireland, as a reference to that enactment as amended by any Act of that Parliament, whether passed before or after this Act.
- (4) In relation to a person who is liable to be detained or subject to guardianship by virtue of an order or direction under Part V of this Act, any reference in this Act to any enactment contained in Part IV of this Act shall be construed as a reference to that enactment as it applies to that person by virtue of the said Part V.
- (5) For the purposes of this Act a person shall be deemed not to have attained the age of sixteen, twenty-one or twenty-five years, as the case may be, until the commencement of the sixteenth, twenty-first or twenty-fifth anniversary of the date of his birth.

#### **148 Transitional provisions**

- (1) The transitional provisions set out in the Sixth Schedule to this Act shall have effect for the purposes of the transition to the provisions of this Act from the law in force before the commencement of this Act.
- (2) For the purposes of Part III of the said Sixth Schedule, an order sending a person to an institution or placing a person under guardianship, made before the ninth day of March, nineteen hundred and fifty-six, on a petition presented under the Mental Deficiency Act, 1913, shall be deemed to be valid notwithstanding that that person may not have been found neglected within the meaning of section two of that Act when that order was made if—
  - (a) that order has been continued, at any time after that date, by order made by the Board of Control under section eleven of that Act after consideration of the reports and certificate required by that section; or
  - (b) the period for which that order was in force on the said date has not expired before the commencement of this Act, but the Board, after considering a report by a medical practitioner qualified to make a special report under the said section eleven, have determined that the patient is not a proper person to be discharged.

#### **149 Minor and consequential amendments and repeals**

- (1) The enactments described in the first column of the Seventh Schedule to this Act shall have effect subject to the amendments specified in the second column of that Schedule, being minor amendments and amendments consequential on the foregoing provisions of this Act.
- (2) The enactments described in the Eighth Schedule to this Act (which include certain obsolete enactments relating to persons of unsound mind) are hereby repealed to the extent specified in the third column of that Schedule.
- (3) Her Majesty may by Order in Council repeal or amend any local enactment so far as appears to Her Majesty to be necessary in consequence of any provision of this Act.
- (4) The repeal by this Act of the Mental Treatment Act, 1930, shall not affect any amendment effected by section twenty of that Act in any enactment not repealed by this Act.

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- (5) The repeal by this Act of the provisions of the Lunacy Act, 1890, and of the Mental Deficiency Act, 1913, relating to the superannuation of officers or employees shall not affect any arrangements for the payment of allowances or other benefits made in accordance with those provisions and in force at the commencement of this Act.

### **150 Application to Scotland**

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

- subsection (5) of section three;
- section ten;
- subsection (5) of section sixty-six;
- sections eighty-one to eighty-four;
- section ninety-one;
- section ninety-three and, so far as applied by that section, sections forty, forty-six and one hundred and forty;
- subsection (4) of section one hundred and ten;
- section one hundred and seventeen and so much of part VIII as is applied in relation to Scotland by that section;
- section one hundred and twenty-nine except so far as it relates to patients subject to guardianship;
- section one hundred and thirty-three;
- sections one hundred and thirty-seven to one hundred and thirty-nine;
- subsection (1) of section one hundred and forty-one;
- section one hundred and forty-five so far as applicable to any Order in Council extending to Scotland;
- section one hundred and forty-six;
- section one hundred and forty-nine except so far as it relates to the amendments and repeals contained in Part I of the Seventh and Eighth Schedules;
- Part II of the Seventh Schedule ;
- Part II of the Eighth Schedule ;

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

### **151 Power of Parliament of Northern Ireland to make consequential amendments of this Act**

Notwithstanding any limitation imposed on the powers of the Parliament of Northern Ireland by the Government of Ireland Act, 1920, that Parliament may by any Act re-enacting (with or without modifications) or amending the law in force in Northern Ireland with respect to persons suffering from mental disorder make such amendments of the provisions of this Act which extend to Northern Ireland (except section ninety and any provision of Part VIII) as may be necessary for the purpose of bringing the said provisions into conformity with the provisions of that Act.

### **152 Application to Northern Ireland**

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

- subsection (5) of section three ;

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sections eighty-five to eighty-eight;  
section ninety;  
section ninety-two;  
section ninety-three and, so far as applied by that section, sections forty, forty-six and one hundred and forty;  
subsection (4) of section one hundred and ten;  
section one hundred and seventeen and so much of Part VIII as is applied in relation to Northern Ireland by that section;  
section one hundred and twenty;  
section one hundred and twenty-nine, except so far as it relates to patients subject to guardianship;  
sections one hundred and thirty-seven to one hundred and thirty-nine;  
section one hundred and forty-one;  
subsection (2) of section one hundred and forty-four ;  
section one hundred and forty-five so far as applicable to any Order in Council extending to Northern Ireland;  
section one hundred and forty-six;  
section one hundred and forty-nine except so far as it relates to the amendments and repeals contained in Part I of the Seventh and Eighth Schedules ;  
section one hundred and fifty-one ;  
the Fourth Schedule;  
Part II of the Seventh Schedule;  
Part II of the Eighth Schedule ;  
but except as aforesaid, and except so far as it relates to the interpretation or commencement of the said provisions, this Act shall not extend to Northern Ireland.

### **153 Commencement**

- (1) This Act (except this section) shall come into operation on such date as the Minister may by order appoint.
- (2) Different dates may be appointed by order under this section for different purposes of this Act; and any reference in any provision of this Act to the commencement of this Act shall, unless otherwise provided by any such order, be construed as a reference to the date on which that provision comes into operation.
- (3) Without prejudice to section thirty-seven of the Interpretation Act, 1889 (which authorises the exercise of statutory powers between the passing and the commencement of an Act conferring them), the following powers, that is to say—
  - (a) the power of the Minister to give directions under subsection (1) of section twenty-eight of the National Health Service Act, 1946, for defining the duties of local health authorities under that section as amended by this Act; and
  - (b) the powers of the Minister and of local health authorities with respect to the submission, approval or making of proposals under section twenty of that Act for modifying in the light of such directions the proposals in force at the passing of this Act for the carrying out of the duties of those authorities under the said section twenty-eight,may be exercised at any time after the passing of this Act.

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#### **154 Short title and application to Stilly Isles**

- (1) This Act may be cited as the Mental Health Act, 1959.
- (2) Subsection (3) of section eighty of the National Health Service Act, 1946 (which provides for the extension of that Act to the Isles of Scilly) shall have effect as if the references to that Act included references to this Act.