

## SCHEDULE 4

Article 10

### Transitional provision in relation to functions under the 1983 Act

**1.** In this Schedule, “regulatory authority” means—

- (a) in relation to England, the Care Quality Commission;
- (b) in relation to Wales, the Welsh Ministers.

**2.—(1)** The appointment by the MHAC(1) of—

- (a) a registered medical practitioner for the purposes of—
  - (i) Part 4 of the 1983 Act (consent to treatment)(2); or
  - (ii) section 118 (practitioners required to certify consent and to give second opinion) of that Act; or
- (b) another person for the purposes of subsection (2)(a) of section 57 of the 1983 Act (persons required to certify consent),

shall be treated on and after the appointed day as an appointment by the regulatory authority.

**(2)** Anything done for the purposes of—

- (a) Part 4 (consent to treatment) or 4A(3) (treatment of community patients not recalled to hospital) of the 1983 Act by a registered medical practitioner appointed for the purposes of Part 4 of that Act by the MHAC; or
- (b) subsection (2)(a) of section 57 of the 1983 Act (treatment requiring consent and a second opinion) by another person appointed by the MHAC,

shall be treated on and after the appointed day as done by a registered medical practitioner or, as the case may be, another person appointed by the regulatory authority for the purposes of Part 4 of that Act.

**3.—(1)** Where a report required to be given to the Secretary of State before the appointed day under subsection (1) of section 61(4) of the 1983 Act (review of treatment), had not been so given, that report shall be given to the regulatory authority.

**(2)** A notice given by the MHAC under subsection (3) of section 61(5) of the 1983 Act shall be treated on and after the appointed day as a notice given by the regulatory authority.

**4.—(1)** Where a report required to be given to the Secretary of State before the appointed day under subsection (4) of section 64H(6) of the 1983 Act (certificates: supplementary provisions) had not been so given, that report shall be given to the Care Quality Commission.

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- (1) Under article 3 of [S.I. 1983/892](#), the MHAC carried out on behalf of the Secretary of State his function of appointing medical practitioners for the purposes of Part 4 and section 118 of the Act and other persons for the purposes of section 57(2)(a) of that Act. It also carried out his functions under sections 61 and 120(1) and (4) of the 1983 Act and the function of giving notice disapplying a Part 4A certificate under section 64H(5) of that Act. In relation to Wales, those functions of the Secretary of State were transferred to the National Assembly for Wales by the [National Assembly for Wales \(Transfer of Functions\) Order 1999 \(1999/672\)](#), article 2, Schedule 1; see the entry in Schedule 1 to that Order for the 1983 Act. Those functions were subsequently transferred to Welsh Ministers by virtue of paragraph 30(1) of Schedule 11 to the Government of Wales Act 2006 (c.32). The effect of such transfers being that the functions of Welsh Ministers under the sections of the 1983 Act referred to above are carried out on their behalf by the Mental Health Act Commission.
  - (2) See sections 57(2)(a), 58(3)(a) and 64C(4)(a) of the 1983 Act. Section 57(2)(a) was amended by the Mental Health Act 2007 (c.12) (“the 2007 Act”), section 12(2)(a). Section 58(3)(a) was amended by the 2007 Act, section 12(3)(a)(i).
  - (3) Part 4A was inserted by the 2007 Act, section 35(1).
  - (4) Subsection (1) was amended by the Mental Health (Patients in the Community) Act 1995 (c.52), section 2(5) and by the 2007 Act, sections 12(4)(a), 28(5)(a) and 34(3).
  - (5) See subsection (3A) of section 61 of the 1983 Act, as inserted by the 2007 Act section 12(4)(d) for the person to whom such notice is to be given.
  - (6) Section 64H was inserted into the 1983 Act by the 2007 Act, section 35(1). No transitional provision is required in relation to Wales because reports in respect of Wales are required to be given to Welsh Ministers both before and after the appointed day.

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(2) Notice given by the MHAC under subsection (5) of section 64H of the 1983 Act shall be treated on and after the appointed day as notice given by the regulatory authority.

5. Provision made before the appointed day by the Secretary of State under subsection (1) of section 119 of the 1983 Act (practitioners approved for Part 4 and section 118 of the 1983 Act) with the approval of the Treasury shall, on and after the appointed day, be treated as provision made by the Care Quality Commission with the approval of the Treasury (7).

6. A review commenced by the MHAC under subsection (1) of section 120(8) of the 1983 Act (general protection of detained patients) but not completed before the appointed day shall be treated on and after the appointed day as if it were commenced by the regulatory authority under subsection (1) of section 120 of the 1983 Act (as substituted by paragraph 8 of Schedule 3 to the Act).

7. Where an arrangement has been made by the MHAC before the appointed day for an authorised person to visit and interview a patient under subsection (1)(a) of section 120 of the 1983 Act but the steps pursuant to that arrangement have not been completed before the appointed day that arrangement shall, on and after the appointed day, be treated as though it were made by the regulatory authority under subsection (3) of section 120 of the 1983 Act (as substituted by paragraph 8 of Schedule 3 to the Act).

8. Where an arrangement was made by the MHAC before the appointed day for an authorised person to investigate any complaint under subsection (1)(b) of section 120 of the 1983 Act but the steps pursuant to that arrangement have not been completed before the appointed day that arrangement shall, on and after the appointed day, be treated as though it were made by the regulatory authority under subsection (4) of section 120 of the 1983 Act (as substituted by paragraph 8 of Schedule 3 to the Act).

9. A requirement to produce any records under subsection (4)(b) of section 120 of the 1983 Act(9) made before the appointed day by a person authorised by the MHAC for the purposes of that provision and which requirement was not complied with by that day shall be treated, on and after the appointed day, as a requirement made by a person authorised by the regulatory authority under subsection (7)(c) of section 120 of the 1983 Act (as substituted by paragraph 8 of Schedule 3 to the Act).

10.—(1) Provision made before the appointed day under subsection (6) of section 120 of the 1983 Act with the approval of the Treasury shall, on and after the appointed day, be treated as provision made by the regulatory authority under subsection (8) of section 120 (as substituted by paragraph 8 of Schedule 3 to the Act).

(2) Provision made before the appointed day under subsection (6) of section 120 of the 1983 Act by Welsh Ministers shall, on and after the appointed day, be treated as provision made by the Welsh Ministers under subsection (8) of section 120 (as substituted by paragraph 8 of Schedule 3 to the Act).

(3) Sub-paragraph (2) does not apply in relation to pensions(10).

11. Where, immediately before the appointed day, a decision fell to be reviewed under subsection (7) of section 121 of the 1983 Act —

(a) the application made under that subsection shall be treated as made under subsection (2) of section 134A of the 1983 Act (as inserted by paragraph 12 of Schedule 3 to the Act); and

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(7) No transitional provision is required in relation to Wales because the functions under section 119(1) were exercisable by Welsh Ministers both before and after the appointed day.

(8) Subsection (1) was amended by the Care Standards Act 2000 (c.14), Schedule 4, paragraph 9(2) and by the 2007 Act, Schedule 3, paragraph 26(2).

(9) Subsection (4) was amended by the Care Standards Act 2000, Schedule 4, paragraph 9(2) and by the 2007 Act, section 14(3) (a) and Schedule 3, paragraph 26(3).

(10) Under Schedule 1 to S.I. 1999/672 provision by Welsh Ministers under section 120(6) of the 1983 Act in relation to pensions required the approval of the Treasury and therefore falls within sub-paragraph (1).

- (b) the review shall be undertaken or, as the case may be, completed by the regulatory authority under section 134A of the 1983 Act.

**12.** On and after the appointed day, a direction made before that day under subsection (8) of section 121 of the 1983 Act shall be treated as a direction made under subsection (3) of section 134A of the 1983 Act.

**13.—(1)** A report under subsection (10) of section 121 of the 1983 Act on the activities of the MHAC in respect of the period between 1st September 2007 and 31st March 2009, shall be published as soon as possible after the appointed day by the Care Quality Commission.

(2) The Care Quality Commission shall send a copy of the report referred to in sub-paragraph (1) to the Secretary of State and the Welsh Ministers.

(3) The Secretary of State shall lay a copy of that report before each House of Parliament.

(4) The Welsh Ministers shall lay a copy of that report before the National Assembly for Wales.

**14.** Section 134A of the 1983 Act<sup>(11)</sup> shall apply in respect of a notice under section 134(6) of that Act given before the appointed day as it does in the case of such a notice given after the appointed day except where an identical application for a review of the decision recorded in that notice has been made before the appointed day under section 121(7) of the 1983 Act.

**15.** Any direction given by the MHAC before the appointed day under paragraph (3) of regulation 30 of the Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008<sup>(12)</sup> shall on and after the appointed day be treated as if given by the Care Quality Commission.

**16.** It shall be the duty of the Care Quality Commission to take such action as may be necessary for the winding up of the affairs of the MHAC including the preparation of the outstanding accounts of the MHAC and the performance of all statutory duties relating to those accounts.

**17.—(1)** In this paragraph—

“the 1993 Act” means the Health Service Commissioners Act 1993<sup>(13)</sup>;

“the Commissioner” means the Health Service Commissioner for England.

(2) Notwithstanding the repeal by this Order of the Health Service Commissioner for England (Mental Health Act Commission) Order 1983<sup>(14)</sup>, the Commissioner may, on or after 1st April 2009—

(a) continue any investigation commenced before that date pursuant to a complaint made in relation to the MHAC under section 3(1) of the 1993 Act<sup>(15)</sup>; or

(b) consider and, where appropriate, investigate in accordance with the 1993 Act, any complaint made in relation to the MHAC under section 3(1) of that Act on or after 1st April 2009.

(3) Where an investigation is continued or commenced under paragraph (2), the Commissioner shall—

(a) where appropriate, afford—

(i) the Care Quality Commission, where the complaint is in relation to England; or

(ii) the Welsh Ministers, where the complaint is in relation to Wales,

an opportunity to comment on any allegations contained in the complaint; and

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<sup>(11)</sup> Section 134A as inserted into the 1983 Act by paragraph 12 of Schedule 3 to the Act.

<sup>(12)</sup> S.I.2008/1184.

<sup>(13)</sup> 1993 c.46.

<sup>(14)</sup> S.I. 1983/1114.

<sup>(15)</sup> Section 3(1) has been amended by the Public Services Ombudsman (Wales) Act 2005, section 39(1) and Schedule 6, paragraphs 27 and 35.

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- (b) send a report of the results of the investigation to—
  - (i) the Care Quality Commission, where the complaint is in relation to England; or
  - (ii) the Welsh Ministers, where the complaint is in relation to Wales.