

# Mental Health Act 1983

## 1983 CHAPTER 20

*An Act to consolidate the law relating to mentally disordered persons.*

[9th May 1983]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Part I Application of Act

#### 1 Application of Act: "mental disorder"

(1) The provisions of this Act shall have effect with respect to the reception, care and treatment of mentally disordered patients, the management of their property and other related matters.

(2) In this Act—

["mental disorder" means any disorder or disability of the mind; and

"mentally disordered" shall be construed accordingly;]

...

...

...

and other expressions shall have the meanings assigned to them in section 145 below.

[(2A) But a person with learning disability shall not be considered by reason of that disability to be—

(a) suffering from mental disorder for the purposes of the provisions mentioned in subsection (2B) below; or

(b) requiring treatment in hospital for mental disorder for the purposes of sections 17E and 50 to 53 below,

unless that disability is associated with abnormally aggressive or seriously irresponsible conduct on his part.

(2B) The provisions are—

(a) sections 3, 7, 17A, 20 and 20A below;

(b) sections 35 to 38, 45A, 47, 48 and 51 below; and

(c) section 72(1)(b) and (c) and (4) below.]

[(3) Dependence on alcohol or drugs is (not considered to be a disorder or disability of the mind for the purposes of subsection (2) above.)

[(4) In subsection (2A) above, “learning disability” means a state of arrested or incomplete development of the mind which includes significant impairment of intelligence and social functioning.]

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, ss 1, 4.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (2): definitions “mental disorder” and “mentally disordered” substituted by the Mental Health Act 2007, s 1(1), (2).

Date in force: 3 November 2008: see SI 2008/1900, art 2(a); for transitional provisions and savings see the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (2): definition ““severe mental impairment” and “severely mentally impaired”” (omitted) repealed by the Mental Health Act 2007, ss 1(1), (3)(a), 55, Sch 11, Pt 1.

Date in force: 3 November 2008: see SI 2008/1900, art 2(a), (p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (2): definition ““mental impairment” and “mentally impaired”” (omitted) repealed by the Mental Health Act 2007, ss 1(1), (3)(b), 55, Sch 11, Pt 1.

Date in force: 3 November 2008: see SI 2008/1900, art 2(a), (p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (2): definition “psychopathic disorder” (omitted) repealed by the Mental Health Act 2007, ss 1(1), (3)(c), 55, Sch 11, Pt 1.

Date in force: 3 November 2008: see SI 2008/1900, art 2(a), (p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-ss (2A), (2B): inserted by the Mental Health Act 2007, s 2(1), (2).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (3): substituted by the Mental Health Act 2007, s 3.

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (4): inserted by the Mental Health Act 2007, s 2(1), (3).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

### See Further

See further, in relation to the application of sub-s (2) above, with modifications, to ACUS patients: the Mental Health Act 2007 (Commencement No 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions) Order 2008, SI 2008/1210, arts 1(2), (4), 3, 6(a).

## Part II

### Compulsory Admission to Hospital and Guardianship

#### *Procedure for hospital admission*

### 2 Admission for assessment

(1) A patient may be admitted to a hospital and detained there for the period allowed by subsection (4) below in pursuance of an application (in this Act referred to as “an application for admission for assessment”) made in accordance with subsections (2) and (3) below.

(2) An application for admission for assessment may be made in respect of a patient on the grounds that—

- (a) he is suffering from mental disorder of a nature or degree which warrants the detention of the patient in a hospital for assessment (or for assessment followed by medical treatment) for at least a limited period; and
- (b) he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons.

(3) An application for admission for assessment shall be founded on the written recommendations in the prescribed form of two registered medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in subsection (2) above are complied with.

(4) Subject to the provisions of section 29(4) below, a patient admitted to hospital in pursuance of an application for admission for assessment may be detained for a period not exceeding 28 days beginning with the day on which he is admitted, but shall not be detained after the expiration of that period unless before it has expired he has become liable to be detained by virtue of a subsequent application, order or direction under the following provisions of this Act.

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 25.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

## 3 Admission for treatment

(1) A patient may be admitted to a hospital and detained there for the period allowed by the following provisions of this Act in pursuance of an application (in this Act referred to as “an application for admission for treatment”) made in accordance with this section.

(2) An application for admission for treatment may be made in respect of a patient on the grounds that—

- (a) he is suffering from [mental disorder] of a nature or degree which makes it appropriate for him to receive medical treatment in a hospital; and
- (b) . . .
- (c) it is necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment and it cannot be provided unless he is detained under this section[; and
- (d) appropriate medical treatment is available for him].

(3) An application for admission for treatment shall be founded on the written recommendations in the prescribed form of two registered medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in subsection (2) above are complied with; and each such recommendation shall include—

- (a) such particulars as may be prescribed of the grounds for that opinion so far as it relates to the conditions set out in paragraphs (a) and [(d)] of that subsection; and

- (b) a statement of the reasons for that opinion so far as it relates to the conditions set out in paragraph (c) of that subsection, specifying whether other methods of dealing with the patient are available and, if so, why they are not appropriate.

[(4) In this Act, references to appropriate medical treatment, in relation to a person suffering from mental disorder, are references to medical treatment which is appropriate in his case, taking into account the nature and degree of the mental disorder and all other circumstances of his case.]

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 26(1)–(3).

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (2): in para (a) words “mental disorder” in square brackets substituted by the Mental Health Act 2007, s 1(4), Sch 1, Pt 1, paras 1, 2.

Date in force: 3 November 2008: see SI 2008/1900, art 2(a); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (2): para (b) repealed by the Mental Health Act 2007, ss 4(1), (2)(a), 55, Sch 11, Pt 2.

Date in force: 3 November 2008: see SI 2008/1900, art 2(b), (p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (2): para (d) and word “; and” immediately preceding it inserted by the Mental Health Act 2007, s 4(1), (2)(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (3): in para (a) reference to “(d)” in square brackets substituted by the Mental Health Act 2007, s 4(1), (2)(c).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (4): inserted by the Mental Health Act 2007, s 4(1), (3).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

## 4 Admission for assessment in cases of emergency

(1) In any case of urgent necessity, an application for admission for assessment may be made in respect of a patient in accordance with the following provisions of this section, and any application so made is in this Act referred to as “an emergency application”.

(2) An emergency application may be made either by an [approved mental health professional] or by the nearest relative of the patient; and every such application shall include a statement that it is of urgent necessity for the patient to be admitted and detained under section 2 above, and that compliance with the provisions of this Part of this Act relating to applications under that section would involve undesirable delay.

(3) An emergency application shall be sufficient in the first instance if founded on one of the medical recommendations required by section 2 above, given, if practicable, by a practitioner who has previous acquaintance with the patient and otherwise complying with the requirements of section 12 below so far

as applicable to a single recommendation, and verifying the statement referred to in subsection (2) above.

(4) An emergency application shall cease to have effect on the expiration of a period of 72 hours from the time when the patient is admitted to the hospital unless—

- (a) the second medical recommendation required by section 2 above is given and received by the managers within that period; and
- (b) that recommendation and the recommendation referred to in subsection (3) above together comply with all the requirements of section 12 below (other than the requirement as to the time of signature of the second recommendation).

(5) In relation to an emergency application, section 11 below shall have effect as if in subsection (5) of that section for the words “the period of 14 days ending with the date of the application” there were substituted the words “the previous 24 hours”.

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 29.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (2): words “approved mental health professional” in square brackets substituted by the Mental Health Act 2007, s 21, Sch 2, paras 1, 2(a).

Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.

Date in force (in relation to Wales): 3 November 2008 see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.

## 5 Application in respect of patient already in hospital

(1) An application for the admission of a patient to a hospital may be made under this Part of this Act notwithstanding that the patient is already an in-patient in that hospital or, in the case of an application for admission for treatment, that the patient is for the time being liable to be detained in the hospital in pursuance of an application for admission for assessment; and where an application is so made the patient shall be treated for the purposes of this Part of this Act as if he had been admitted to the hospital at the time when that application was received by the managers.

(2) If, in the case of a patient who is an in-patient in a hospital, it appears to the registered medical practitioner [or approved clinician] in charge of the treatment of the patient that an application ought to be made under this Part of this Act for the admission of the patient to hospital, he may furnish to the managers a report in writing to that effect; and in any such case the patient may be detained in the hospital for a period of 72 hours from the time when the report is so furnished.

[(3) The registered medical practitioner or approved clinician in charge of the treatment of a patient in a hospital may nominate one (but not more than one) person to act for him under subsection (2) above in his absence.

(3A) For the purposes of subsection (3) above—

- (a) the registered medical practitioner may nominate another registered medical practitioner, or an approved clinician, on the staff of the hospital; and

- (b) the approved clinician may nominate another approved clinician, or a registered medical practitioner, on the staff of the hospital.]

(4) If, in the case of a patient who is receiving treatment for mental disorder as an in-patient in a hospital, it appears to a nurse of the prescribed class—

- (a) that the patient is suffering from mental disorder to such a degree that it is necessary for his health or safety or for the protection of others for him to be immediately restrained from leaving the hospital; and
- (b) that it is not practicable to secure the immediate attendance of a practitioner [or clinician] for the purpose of furnishing a report under subsection (2) above,

the nurse may record that fact in writing; and in that event the patient may be detained in the hospital for a period of six hours from the time when that fact is so recorded or until the earlier arrival at the place where the patient is detained of a practitioner [or clinician] having power to furnish a report under that subsection.

(5) A record made under subsection (4) above shall be delivered by the nurse (or by a person authorised by the nurse in that behalf) to the managers of the hospital as soon as possible after it is made; and where a record is made under that subsection the period mentioned in subsection (2) above shall begin at the time when it is made.

(6) The reference in subsection (1) above to an in-patient does not include an in-patient who is liable to be detained in pursuance of an application under this Part of this Act [or a community patient] and the references in subsections (2) and (4) above do not include an in-patient who is liable to be detained in a hospital under this Part of this Act [or a community patient].

(7) In subsection (4) above “prescribed” means prescribed by an order made by the Secretary of State.

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 30.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (2): words “or approved clinician” in square brackets inserted by the Mental Health Act 2007, s 9(1), (2)(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-ss (3), (3A): substituted, for sub-s (3) as originally enacted, by the Mental Health Act 2007, s 9(1), (2)(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (4): words “or clinician” in square brackets in both places they occur inserted by the Mental Health Act 2007, s 9(1), (2)(c).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (6): words “or a community patient” in square brackets in both places they occur inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 2.

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch

10, paras 1, 5.

### **Transfer of Functions**

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

### **Subordinate Legislation**

Mental Health (Nurses) (England) Order 2008, SI 2008/1207 (made under sub-ss (4), (7)).  
Mental Health (Nurses) (Wales) Order 2008, SI 2008/2441 (made under sub-ss (4), (7)).

## **6 Effect of application for admission**

(1) An application for the admission of a patient to a hospital under this Part of this Act, duly completed in accordance with the provisions of this Part of this Act, shall be sufficient authority for the applicant, or any person authorised by the applicant, to take the patient and convey him to the hospital at any time within the following period, that is to say—

- (a) in the case of an application other than an emergency application, the period of 14 days beginning with the date on which the patient was last examined by a registered medical practitioner before giving a medical recommendation for the purposes of the application;
- (b) in the case of an emergency application, the period of 24 hours beginning at the time when the patient was examined by the practitioner giving the medical recommendation which is referred to in section 4(3) above, or at the time when the application is made, whichever is the earlier.

(2) Where a patient is admitted within the said period to the hospital specified in such an application as is mentioned in subsection (1) above, or, being within that hospital, is treated by virtue of section 5 above as if he had been so admitted, the application shall be sufficient authority for the managers to detain the patient in the hospital in accordance with the provisions of this Act.

(3) Any application for the admission of a patient under this Part of this Act which appears to be duly made and to be founded on the necessary medical recommendations may be acted upon without further proof of the signature or qualification of the person by whom the application or any such medical recommendation is made or given or of any matter of fact or opinion stated in it.

(4) Where a patient is admitted to a hospital in pursuance of an application for admission for treatment, any previous application under this Part of this Act by virtue of which he was liable to be detained in a hospital or subject to guardianship shall cease to have effect.

## **NOTES**

### **Derivation**

This section derived from the Mental Health Act 1959, s 31(1), (2), (3), (5).

### **Initial Commencement**

#### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

## *Guardianship*

## **7 Application for guardianship**

(1) A patient who has attained the age of 16 years may be received into guardianship, for the period allowed by the following provisions of this Act, in pursuance of an application (in this Act referred to as “a guardianship application”) made in accordance with this section.

- (2) A guardianship application may be made in respect of a patient on the grounds that—
- (a) he is suffering from mental disorder. . . of a nature or degree which warrants his reception into guardianship under this section; and
  - (b) it is necessary in the interests of the welfare of the patient or for the protection of other persons that the patient should be so received.
- (3) A guardianship application shall be founded on the written recommendations in the prescribed form of two registered medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in subsection (2) above are complied with; and each such recommendation shall include—
- (a) such particulars as may be prescribed of the grounds for that opinion so far as it relates to the conditions set out in paragraph (a) of that subsection; and
  - (b) a statement of the reasons for that opinion so far as it relates to the conditions set out in paragraph (b) of that subsection.
- (4) A guardianship application shall state the age of the patient or, if his exact age is not known to the applicant, shall state (if it be the fact) that the patient is believed to have attained the age of 16 years.
- (5) The person named as guardian in a guardianship application may be either a local social services authority or any other person (including the applicant himself); but a guardianship application in which a person other than a local social services authority is named as guardian shall be of no effect unless it is accepted on behalf of that person by the local social services authority for the area in which he resides, and shall be accompanied by a statement in writing by that person that he is willing to act as guardian.

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 33(1)–(4).

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (2): in para (a) words omitted repealed by the Mental Health Act 2007, ss 1(4), 55, Sch 1, Pt 1, paras 1, 3, Sch 11, Pt 1.

Date in force: 3 November 2008: see SI 2008/1900, art 2(a), (p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

## 8 Effect of guardianship application, etc

- (1) Where a guardianship application, duly made under the provisions of this Part of this Act and forwarded to the local social services authority within the period allowed by subsection (2) below is accepted by that authority, the application shall, subject to regulations made by the Secretary of State, confer on the authority or person named in the application as guardian, to the exclusion of any other person—
- (a) the power to require the patient to reside at a place specified by the authority or person named as guardian;
  - (b) the power to require the patient to attend at places and times so specified for the purpose of medical treatment, occupation, education or training;

- (c) the power to require access to the patient to be given, at any place where the patient is residing, to any registered medical practitioner, [approved mental health professional] or other person so specified.

(2) The period within which a guardianship application is required for the purposes of this section to be forwarded to the local social services authority is the period of 14 days beginning with the date on which the patient was last examined by a registered medical practitioner before giving a medical recommendation for the purposes of the application.

(3) A guardianship application which appears to be duly made and to be founded on the necessary medical recommendations may be acted upon without further proof of the signature or qualification of the person by whom the application or any such medical recommendation is made or given, or of any matter of fact or opinion stated in the application.

(4) If within the period of 14 days beginning with the day on which a guardianship application has been accepted by the local social services authority the application, or any medical recommendation given for the purposes of the application, is found to be in any respect incorrect or defective, the application or recommendation may, within that period and with the consent of that authority, be amended by the person by whom it was signed; and upon such amendment being made the application or recommendation shall have effect and shall be deemed to have had effect as if it had been originally made as so amended.

(5) Where a patient is received into guardianship in pursuance of a guardianship application, any previous application under this Part of this Act by virtue of which he was subject to guardianship or liable to be detained in a hospital shall cease to have effect.

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 34(1)–(4), (6).

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): in para (c) words “approved mental health professional” in square brackets substituted by the Mental Health Act 2007, s 21, Sch 2, paras 1, 2(b).

Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.

Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.

### Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

## 9 Regulations as to guardianship

- (1) Subject to the provisions of this Part of this Act, the Secretary of State may make regulations—
  - (a) for regulating the exercise by the guardians of patients received into guardianship under this Part of this Act of their powers as such; and
  - (b) for imposing on such guardians, and upon local social services authorities in the case of patients under the guardianship of persons other than local social services authorities, such duties as he considers necessary or expedient in the interests of the patients.

(2) Regulations under this section may in particular make provision for requiring the patients to be visited, on such occasions or at such intervals as may be prescribed by the regulations, on behalf of such local social services authorities as may be so prescribed, and shall provide for the appointment, in the case of every patient subject to the guardianship of a person other than a local social services authority, of a registered medical practitioner to act as the nominated medical attendant of the patient.

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 35.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

### Subordinate Legislation

Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008, SI 2008/1184.  
Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) Regulations 2008, SI 2008/2439.

## 10 Transfer of guardianship in case of death, incapacity, etc of guardian

(1) If any person (other than a local social services authority) who is the guardian of a patient received into guardianship under this Part of this Act—

- (a) dies; or
- (b) gives notice in writing to the local social services authority that he desires to relinquish the functions of guardian,

the guardianship of the patient shall thereupon vest in the local social services authority, but without prejudice to any power to transfer the patient into the guardianship of another person in pursuance of regulations under section 19 below.

(2) If any such person, not having given notice under subsection (1)(b) above, is incapacitated by illness or any other cause from performing the functions of guardian of the patient, those functions may, during his incapacity, be performed on his behalf by the local social services authority or by any other person approved for the purposes by that authority.

(3) If it appears to the county court, upon application made by an [approved mental health professional acting on behalf of the local social services authority], that any person other than a local social services authority having the guardianship of a patient received into guardianship under this Part of this Act has performed his functions negligently or in a manner contrary to the interests of the welfare of the patient, the court may order that the guardianship of the patient be transferred to the local social services authority or to any other person approved for the purpose by that authority.

(4) Where the guardianship of a patient is transferred to a local social services authority or other person by or under this section, subsection (2)(c) of section 19 below shall apply as if the patient had been transferred into the guardianship of that authority or person in pursuance of regulations under that section.

[(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).]

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 42.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (3): words “approved mental health professional acting on behalf of the local social services authority” in square brackets substituted by the Mental Health Act 2007, s 21, Sch 2, paras 1, 3(1), (2).

Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.

Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.

Sub-s (5): inserted by the Mental Health Act 2007, s 21, Sch 2, paras 1, 3(1), (3).

Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.

Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.

### *General provisions as to applications and recommendations*

## 11 General provisions as to applications

(1) Subject to the provisions of this section, an application for admission for assessment, an application for admission for treatment and a guardianship application may be made either by the nearest relative of the patient or by an [approved mental health professional]; and every such application shall specify the qualification of the applicant to make the application.

[(1A) No application mentioned in subsection (1) above shall be made by an approved mental health professional if the circumstances are such that there would be a potential conflict of interest for the purposes of regulations under section 12A below.]

(2) Every application for admission shall be addressed to the managers of the hospital to which admission is sought and every guardianship application shall be forwarded to the local social services authority named in the application as guardian, or, as the case may be, to the local social services authority for the area in which the person so named resides.

(3) Before or within a reasonable time after an application for the admission of a patient for assessment is made by an [approved mental health professional, that professional] shall take such steps as are practicable to inform the person (if any) appearing to be the nearest relative of the patient that the application is to be or has been made and of the power of the nearest relative under section 23(2)(a) below.

[(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) None of the applications mentioned in subsection (1) above shall be made by any person in respect of a patient unless that person has personally seen the patient within the period of 14 days ending with the date of the application.

(6) . . .

(7) Each of the applications mentioned in subsection (1) above shall be sufficient if the recommendations on which it is founded are given either as separate recommendations, each signed by a registered medical practitioner, or as a joint recommendation signed by two such practitioners.

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, ss 26(4), 27(1), (1A), (2)–(4), 33(4), (5).

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): words “approved mental health professional” in square brackets substituted by the Mental Health Act 2007, s 21, Sch 2, paras 1, 4(1), (2).

Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.

Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.

Sub-s (1A): inserted by the Mental Health Act 2007, s 22(1), (2).

Date in force: 3 November 2008: see SI 2008/1900, art 2(e); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (3): words “approved mental health professional, that professional” in square brackets substituted by the Mental Health Act 2007, s 21, Sch 2, paras 1, 4(1), (3).

Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.

Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.

Sub-s (4): substituted by the Mental Health Act 2007, s 21, Sch 2, paras 1, 4(1), (4).

Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.

Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.

Sub-s (6): repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 1.

Date in force: 3 November 2008: see SI 2008/1900, art 2(p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

## 12 General provisions as to medical recommendations

(1) The recommendations required for the purposes of an application for the admission of a patient under this Part of this Act [or a guardianship application] (in this Act referred to as “medical recommendations”) shall be signed on or before the date of the application, and shall be given by practitioners who have personally examined the patient either together or separately, but where they have examined the patient separately not more than five days must have elapsed between the days on which the separate examinations took place.

(2) Of the medical recommendations given for the purposes of any such application, one shall be given by a practitioner approved for the purposes of this section by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder; and unless that practitioner has previous acquaintance with the patient, the other such recommendation shall, if practicable, be given by a registered medical practitioner who has such previous acquaintance.

[(2A) A registered medical practitioner who is an approved clinician shall be treated as also approved for the purposes of this section under subsection (2) above as having special experience as mentioned there.]

[(3) No medical recommendation shall be given for the purposes of an application mentioned in subsection (1) above if the circumstances are such that there would be a potential conflict of interest for the purposes of regulations under section 12A below.]

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, ss 28, 33(5).

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): words “or a guardianship application” in square brackets inserted by the Mental Health Act 2007, s 22(1), (3).

Date in force: 3 November 2008: see SI 2008/1900, art 2(e); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (2A): inserted by the Mental Health Act 2007, s 16.

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (3): substituted, for sub-ss (3)–(7) as originally enacted, by the Mental Health Act 2007, s 22(1), (4).

Date in force: 3 November 2008: see SI 2008/1900, art 2(e); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

### Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

## [12ZA Agreement for exercise of approval function: England]

[(1) The Secretary of State may enter into an agreement with another person for an approval function of the Secretary of State to be exercisable by the Secretary of State concurrently—

- (a) with that other person, and
- (b) if a requirement under section 12ZB has effect, with the other person by whom the function is exercisable under that requirement.

(2) In this section and sections 12ZB and 12ZC, “approval function” means—

- (a) the function under section 12(2), or
- (b) the function of approving persons as approved clinicians.

(3) An agreement under this section may, in particular, provide for an approval function to be

exercisable by the other party—

- (a) in all circumstances or only in specified circumstances;
- (b) in all areas or only in specified areas.

(4) An agreement under this section may provide for an approval function to be exercisable by the other party—

- (a) for a period specified in the agreement, or
- (b) for a period determined in accordance with the agreement.

(5) The other party to an agreement under this section must comply with such instructions as the Secretary of State may give with respect to the exercise of the approval function.

(6) An instruction under subsection (5) may require the other party to cease to exercise the function to such extent as the instruction specifies.

(7) The agreement may provide for the Secretary of State to pay compensation to the other party in the event of an instruction such as is mentioned in subsection (6) being given.

(8) An instruction under subsection (5) may be given in such form as the Secretary of State may determine.

(9) The Secretary of State must publish instructions under subsection (5) in such form as the Secretary of State may determine; but that does not apply to an instruction such as is mentioned in subsection (6).

(10) An agreement under this section may provide for the Secretary of State to make payments to the other party; and the Secretary of State may make payments to other persons in connection with the exercise of an approval function by virtue of this section.]

## **NOTES**

### **Amendment**

Inserted by the Health and Social Care Act 2012, s 38(1).

Date in force: 1 April 2013; see SI 2013/160, art 2.

### **[12ZB Requirement to exercise approval functions: England]**

[(1) The Secretary of State may impose a requirement on the National Health Service Commissioning Board (“the Board”) or a Special Health Authority for an approval function of the Secretary of State to be exercisable by the Secretary of State concurrently—

- (a) with the Board or (as the case may be) Special Health Authority, and
- (b) if an agreement under section 12ZA has effect, with the other person by whom the function is exercisable under that agreement.

(2) The Secretary of State may, in particular, require the body concerned to exercise an approval function—

- (a) in all circumstances or only in specified circumstances;
- (b) in all areas or only in specified areas.

- (3) The Secretary of State may require the body concerned to exercise an approval function—
- (a) for a period specified in the requirement, or
  - (b) for a period determined in accordance with the requirement.
- (4) Where a requirement under subsection (1) is imposed, the Board or (as the case may be) Special Health Authority must comply with such instructions as the Secretary of State may give with respect to the exercise of the approval function.
- (5) An instruction under subsection (4) may be given in such form as the Secretary of State may determine.
- (6) The Secretary of State must publish instructions under subsection (4) in such form as the Secretary of State may determine.
- (7) Where the Board or a Special Health Authority has an approval function by virtue of this section, the function is to be treated for the purposes of the National Health Service Act 2006 as a function that it has under that Act.
- (8) The Secretary of State may make payments in connection with the exercise of an approval function by virtue of this section.]

## NOTES

### Amendment

Inserted by the Health and Social Care Act 2012, s 38(1).  
Date in force: 1 April 2013: see SI 2013/160, art 2.

### [12ZC Provision of information for the purposes of section 12ZA or 12ZB]

- [(1) A relevant person may provide another person with such information as the relevant person considers necessary or appropriate for or in connection with—
- (a) the exercise of an approval function; or
  - (b) the exercise by the Secretary of State of the power—
    - (i) to enter into an agreement under section 12ZA;
    - (ii) to impose a requirement under section 12ZB; or
    - (iii) to give an instruction under section 12ZA(5) or 12ZB(4).
- (2) The relevant persons are—
- (a) the Secretary of State;
  - (b) a person who is a party to an agreement under section 12ZA; or
  - (c) if the Secretary of State imposes a requirement under section 12ZB on the National Health Service Commissioning Board or a Special Health Authority, the Board or (as the case may be) Special Health Authority.
- (3) This section, in so far as it authorises the provision of information by one relevant person to another relevant person, has effect notwithstanding any rule of common law which would otherwise prohibit or restrict the provision.

(4) In this section, “information” includes documents and records.]

## NOTES

### Amendment

Inserted by the Health and Social Care Act 2012, s 38(1).

Date in force: 1 April 2013: see SI 2013/160, art 2.

### [12A Conflicts of interest]

[(1) The appropriate national authority may make regulations as to the circumstances in which there would be a potential conflict of interest such that—

- (a) an approved mental health professional shall not make an application mentioned in section 11(1) above;
- (b) a registered medical practitioner shall not give a recommendation for the purposes of an application mentioned in section 12(1) above.

(2) Regulations under subsection (1) above may make—

- (a) provision for the prohibitions in paragraphs (a) and (b) of that subsection to be subject to specified exceptions;
- (b) different provision for different cases; and
- (c) transitional, consequential, incidental or supplemental provision.

(3) In subsection (1) above, “the appropriate national authority” means—

- (a) in relation to applications in which admission is sought to a hospital in England or to guardianship applications in respect of which the area of the relevant local social services authority is in England, the Secretary of State;
- (b) in relation to applications in which admission is sought to a hospital in Wales or to guardianship applications in respect of which the area of the relevant local social services authority is in Wales, the Welsh Ministers.

(4) References in this section to the relevant local social services authority, in relation to a guardianship application, are references to the local social services authority named in the application as guardian or (as the case may be) the local social services authority for the area in which the person so named resides.]

## NOTES

### Amendment

Inserted by the Mental Health Act 2007, s 22(1), (5).

Date in force: 1 April 2008: see SI 2008/745, art 3(c).

### Subordinate Legislation

Mental Health (Conflicts of Interest) (England) Regulations 2008, SI 2008/1205.

Mental Health (Conflicts of Interest) (Wales) Regulations 2008, SI 2008/2440.

### [13 Duty of approved mental health professionals to make applications for admission or guardianship]

[(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.]

(2) Before making an application for the admission of a patient to hospital an [approved mental health professional] shall interview the patient in a suitable manner and satisfy himself that detention in a hospital is in all the circumstances of the case the most appropriate way of providing the care and medical treatment of which the patient stands in need.

[(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.]

(4) It shall be the duty of a local social services authority, if so required by the nearest relative of a patient residing in their area, to [make arrangements under subsection (1) above for an approved mental health professional to consider the patient's case] with a view to making an application for his admission to hospital; and if in any such case [that professional] decides not to make an application he shall inform the nearest relative of his reasons in writing.

(5) Nothing in this section shall be construed as authorising or requiring an application to be made by an [approved mental health professional] in contravention of the provisions of section 11(4) above [or of regulations under section 12A above], or as restricting the power of [a local social services authority to make arrangements with an approved mental health professional to consider a patient's case or of] an [approved mental health professional] to make any application under this Act.

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 54.

### Initial Commencement

#### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

## Amendment

- Section heading: substituted by the Mental Health Act 2007, s 21, Sch 2, paras 1, 5(1).  
Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.  
Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.
- Sub-ss (1), (1A)–(1C); substituted, for sub-s (1) as originally enacted, by the Mental Health Act 2007, s 21, Sch 2, paras 1, 5(1), (2).  
Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.  
Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.
- Sub-s (2): words “approved mental health professional” in square brackets substituted by the Mental Health Act 2007, s 21, Sch 2, paras 1, 5(1), (3).  
Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.  
Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.
- Sub-s (3): substituted by the Mental Health Act 2007, s 21, Sch 2, paras 1, 5(1), (4).  
Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.  
Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.
- Sub-s (4): words from “make arrangements under” to “the patient’s case” in square brackets substituted by the Mental Health Act 2007, s 21, Sch 2, paras 1, 5(1), (5)(a).  
Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.  
Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.
- Sub-s (4): words “that professional” in square brackets substituted by the Mental Health Act 2007, s 21, Sch 2, paras 1, 5(1), (5)(b).  
Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.  
Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.
- Sub-s (5): words “approved mental health professional” in square brackets in both places they occur substituted by the Mental Health Act 2007, s 21, Sch 2, paras 1, 5(1), (6)(a).  
Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.  
Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.
- Sub-s (5): words “or of regulations under section 12A above” in square brackets inserted by the Mental Health Act 2007, s 22(1), (6).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(e); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.
- Sub-s (5): words from “a local social” to “case or of” in square brackets inserted by the Mental Health Act 2007, s 21, Sch 2, paras 1, 5(1), (6)(b).  
Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.  
Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.

## 14 Social reports

Where a patient is admitted to a hospital in pursuance of an application (other than an emergency application) made under this Part of this Act by his nearest relative, the managers of the hospital shall as

soon as practicable give notice of that fact to the local social services authority for the area in which the patient resided immediately before his admission; and that authority shall as soon as practicable arrange for [an approved mental health professional] . . . to interview the patient and provide the managers with a report on his social circumstances.

## NOTES

### Derivation

This section derived from the Mental Health (Amendment) Act 1982, s 17.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Words “an approved mental health professional” in square brackets substituted by the Mental Health Act 2007, s 21, Sch 2, paras 1, 6.

Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.

Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.

Words omitted repealed by the Children Act 2004, s 64, Sch 5, Pt 4.

Date in force (in relation to England): 1 April 2005: see SI 2005/394, art 2(2)(g).

Date in force (in relation to Wales): 1 April 2006: see SI 2006/885, art 2(2)(h).

## 15 Rectification of applications and recommendations

(1) If within the period of 14 days beginning with the day on which a patient has been admitted to a hospital in pursuance of an application for admission for assessment or for treatment the application, or any medical recommendation given for the purposes of the application, is found to be in any respect incorrect or defective, the application or recommendation may, within that period and with the consent of the managers of the hospital, be amended by the person by whom it was signed; and upon such amendment being made the application or recommendation shall have effect and shall be deemed to have had effect as if it had been originally made as so amended.

(2) Without prejudice to subsection (1) above, if within the period mentioned in that subsection it appears to the managers of the hospital that one of the two medical recommendations on which an application for the admission of a patient is founded is insufficient to warrant the detention of the patient in pursuance of the application, they may, within that period, give notice in writing to that effect to the applicant; and where any such notice is given in respect of a medical recommendation, that recommendation shall be disregarded, but the application shall be, and shall be deemed always to have been, sufficient if—

- (a) a fresh medical recommendation complying with the relevant provisions of this Part of this Act (other than the provisions relating to the time of signature and the interval between examinations) is furnished to the managers within that period; and
- (b) that recommendation, and the other recommendation on which the application is founded, together comply with those provisions.

(3) Where the medical recommendations upon which an application for admission is founded are, taken together, insufficient to warrant the detention of the patient in pursuance of the application, a notice under subsection (2) above may be given in respect of either of those recommendations. . .

(4) Nothing in this section shall be construed as authorising the giving of notice in respect of an application made as an emergency application, or the detention of a patient admitted in pursuance of such an application, after the period of 72 hours referred to in section 4(4) above, unless the conditions

set out in paragraphs (a) and (b) of that section are complied with or would be complied with apart from any error or defect to which this section applies.

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 32.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (3): words omitted repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 1.

Date in force: 3 November 2008: see SI 2008/1900, art 2(p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

*Position of patients subject to detention or guardianship*

16 . . .

. . .

## NOTES

### Amendment

Repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 1.

Date in force: 3 November 2008: see SI 2008/1900, art 2(p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

## 17 Leave of absence from hospital

(1) The [responsible clinician] may grant to any patient who is for the time being liable to be detained in a hospital under this Part of this Act leave to be absent from the hospital subject to such conditions (if any) as [that clinician] considers necessary in the interests of the patient or for the protection of other persons.

(2) Leave of absence may be granted to a patient under this section either indefinitely or on specified occasions or for any specified period; and where leave is so granted for a specified period, that period may be extended by further leave granted in the absence of the patient.

[(2A) But longer-term leave may not be granted to a patient unless the responsible clinician first considers whether the patient should be dealt with under section 17A instead.

(2B) For these purposes, longer-term leave is granted to a patient if—

- (a) leave of absence is granted to him under this section either indefinitely or for a specified period of more than seven consecutive days; or
- (b) a specified period is extended under this section such that the total period for which leave of absence will have been granted to him under this section exceeds seven consecutive days.]

(3) Where it appears to the [responsible clinician] that it is necessary so to do in the interests of the patient or for the protection of other persons, he may, upon granting leave of absence under this section, direct that the patient remain in custody during his absence; and where leave of absence is so granted the patient may be kept in the custody of any officer on the staff of the hospital, or of any other person authorised in writing by the managers of the hospital or, if the patient is required in accordance with conditions imposed on the grant of leave of absence to reside in another hospital, of any officer on the

staff of that other hospital.

(4) In any case where a patient is absent from a hospital in pursuance of leave of absence granted under this section, and it appears to the [responsible clinician] that it is necessary so to do in the interests of the patient's health or safety or for the protection of other persons, [that clinician] may, subject to subsection (5) below, by notice in writing given to the patient or to the person for the time being in charge of the patient, revoke the leave of absence and recall the patient to the hospital.

(5) A patient to whom leave of absence is granted under this section shall not be recalled under subsection (4) above after he has ceased to be liable to be detained under this Part of this Act . . .

[(6) Subsection (7) below applies to a person who is granted leave by or by virtue of a provision—

- (a) in force in Scotland, Northern Ireland, any of the Channel Islands or the Isle of Man; and
- (b) corresponding to subsection (1) above.

(7) For the purpose of giving effect to a direction or condition imposed by virtue of a provision corresponding to subsection (3) above, the person may be conveyed to a place in, or kept in custody or detained at a place of safety in, England and Wales by a person authorised in that behalf by the direction or condition.]

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 39.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): words "responsible clinician" in square brackets substituted by the Mental Health Act 2007, s 9(1), (3)(a)(i).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (1): words "that clinician" in square brackets substituted by the Mental Health Act 2007, s 9(1), (3)(a)(ii).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-ss (2A), (2B): inserted by the Mental Health Act 2007, s 33(1), (2).

Date in force: 3 November 2008: see SI 2008/1900, art 2(j); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (3): words "responsible clinician" in square brackets substituted by the Mental Health Act 2007, s 9(1), (3)(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (4): words "responsible clinician" in square brackets substituted by the Mental Health Act 2007, s 9(1), (3)(c)(i).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (4): words "that clinician" in square brackets substituted by the Mental Health Act 2007, s 9(1), (3)(c)(ii).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (5): words omitted repealed by the Mental Health (Patients in the Community) Act 1995, s 3(1), (3).

Sub-ss (6), (7): inserted by the Mental Health Act 2007, s 39(1).  
Date in force: 1 October 2007: see SI 2007/2798, art 2(c).

### **[17A Community treatment orders]**

- (1) The responsible clinician may by order in writing discharge a detained patient from hospital subject to his being liable to recall in accordance with section 17E below.
- (2) A detained patient is a patient who is liable to be detained in a hospital in pursuance of an application for admission for treatment.
- (3) An order under subsection (1) above is referred to in this Act as a “community treatment order”.
- (4) The responsible clinician may not make a community treatment order unless—
- (a) in his opinion, the relevant criteria are met; and
  - (b) an approved mental health professional states in writing—
    - (i) that he agrees with that opinion; and
    - (ii) that it is appropriate to make the order.
- (5) The relevant criteria are—
- (a) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment;
  - (b) it is necessary for his health or safety or for the protection of other persons that he should receive such treatment;
  - (c) subject to his being liable to be recalled as mentioned in paragraph (d) below, such treatment can be provided without his continuing to be detained in a hospital;
  - (d) it is necessary that the responsible clinician should be able to exercise the power under section 17E(1) below to recall the patient to hospital; and
  - (e) appropriate medical treatment is available for him.
- (6) In determining whether the criterion in subsection (5)(d) above is met, the responsible clinician 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 not 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).
- (7) In this Act—
- “community patient” means a patient in respect of whom a community treatment order is in force;
- “the community treatment order”, in relation to such a patient, means the community treatment order in force in respect of him; and
- “the responsible hospital”, in relation to such a patient, means the hospital in which he was liable to be detained immediately before the community treatment order was made, subject to section 19A below.]

### **NOTES**

## **Amendment**

Inserted by the Mental Health Act 2007, s 32(1), (2).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

## **See Further**

See further, in relation to the application of this section, with modifications, to ACUS patients and ACUS community patients: the Mental Health Act 2007 (Commencement No 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions) Order 2008, SI 2008/1210, arts 1(2), (4), 3, 6(b), 10, 11(a).

## **[17B Conditions]**

[(1) A community treatment order shall specify conditions to which the patient is to be subject while the order remains in force.

(2) But, subject to subsection (3) below, the order may specify conditions only if the responsible clinician, with the agreement of the approved mental health professional mentioned in section 17A(4)(b) above, thinks them necessary or appropriate for one or more of the following purposes—

- (a) ensuring that the patient receives medical treatment;
- (b) preventing risk of harm to the patient's health or safety;
- (c) protecting other persons.

(3) The order shall specify—

- (a) a condition that the patient make himself available for examination under section 20A below; and
- (b) a condition that, if it is proposed to give a certificate under Part 4A of this Act [that falls within section 64C(4) below] in his case, he make himself available for examination so as to enable the certificate to be given.

(4) The responsible clinician may from time to time by order in writing vary the conditions specified in a community treatment order.

(5) He may also suspend any conditions specified in a community treatment order.

(6) If a community patient fails to comply with a condition specified in the community treatment order by virtue of subsection (2) above, that fact may be taken into account for the purposes of exercising the power of recall under section 17E(1) below.

(7) But nothing in this section restricts the exercise of that power to cases where there is such a failure.]

## **NOTES**

### **Amendment**

Inserted by the Mental Health Act 2007, s 32(1), (2).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (3): in para (b) words "that falls within section 64C(4) below" in square brackets inserted by the Health and Social Care Act 2012, s 299(1), (6).

Date in force: 1 June 2012: see SI 2012/1319, art 2(1), (2).

**See Further**

See further, in relation to the application of sub-s (2) above, with modifications, to ACUS patients: the Mental Health Act 2007 (Commencement No 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions) Order 2008, SI 2008/1210, arts 1(2), (4), 3, 6(c).

**[17C Duration of community treatment order]**

[A community treatment order shall remain in force until—

- (a) the period mentioned in section 20A(1) below (as extended under any provision of this Act) expires, but this is subject to sections 21 and 22 below;
- (b) the patient is discharged in pursuance of an order under section 23 below or a direction under section 72 below;
- (c) the application for admission for treatment in respect of the patient otherwise ceases to have effect; or
- (d) the order is revoked under section 17F below,

whichever occurs first.]

**NOTES****Amendment**

Inserted by the Mental Health Act 2007, s 32(1), (2).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

**See Further**

See further, in relation to the application of this section, with modifications, to ACUS community patients: the Mental Health Act 2007 (Commencement No 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions) Order 2008, SI 2008/1210, arts 1(2), (4), 10, 11(b).

**[17D Effect of community treatment order]**

[(1) The application for admission for treatment in respect of a patient shall not cease to have effect by virtue of his becoming a community patient.

(2) But while he remains a community patient—

- (a) the authority of the managers to detain him under section 6(2) above in pursuance of that application shall be suspended; and
- (b) reference (however expressed) in this or any other Act, or in any subordinate legislation (within the meaning of the Interpretation Act 1978), to patients liable to be detained, or detained, under this Act shall not include him.

(3) And section 20 below shall not apply to him while he remains a community patient.

(4) Accordingly, authority for his detention shall not expire during any period in which that authority is suspended by virtue of subsection (2)(a) above.]

**NOTES****Amendment**

Inserted by the Mental Health Act 2007, s 32(1), (2).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

### **See Further**

See further, in relation to the application of this section, with modifications, to ACUS community patients: the Mental Health Act 2007 (Commencement No 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions) Order 2008, arts 1(2), (4), 10, 11(c).

### **[17E Power to recall to hospital]**

- [(1) The responsible clinician may recall a community patient to hospital if in his opinion—
- (a) the patient requires medical treatment in hospital for his mental disorder; and
  - (b) there would be a risk of harm to the health or safety of the patient or to other persons if the patient were not recalled to hospital for that purpose.
- (2) The responsible clinician may also recall a community patient to hospital if the patient fails to comply with a condition specified under section 17B(3) above.
- (3) The hospital to which a patient is recalled need not be the responsible hospital.
- (4) Nothing in this section prevents a patient from being recalled to a hospital even though he is already in the hospital at the time when the power of recall is exercised; references to recalling him shall be construed accordingly.
- (5) The power of recall under subsections (1) and (2) above shall be exercisable by notice in writing to the patient.
- (6) A notice under this section recalling a patient to hospital shall be sufficient authority for the managers of that hospital to detain the patient there in accordance with the provisions of this Act.]

### **NOTES**

#### **Amendment**

Inserted by the Mental Health Act 2007, s 32(1), (2).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

### **[17F Powers in respect of recalled patients]**

- [(1) This section applies to a community patient who is detained in a hospital by virtue of a notice recalling him there under section 17E above.
- (2) The patient may be transferred to another hospital in such circumstances and subject to such conditions as may be prescribed in regulations made by the Secretary of State (if the hospital in which the patient is detained is in England) or the Welsh Ministers (if that hospital is in Wales).
- (3) If he is so transferred to another hospital, he shall be treated for the purposes of this section (and section 17E above) as if the notice under that section were a notice recalling him to that other hospital and as if he had been detained there from the time when his detention in hospital by virtue of the notice first began.
- (4) The responsible clinician may by order in writing revoke the community treatment order if—
- (a) in his opinion, the conditions mentioned in section 3(2) above are satisfied in respect of the

- patient; and
- (b) an approved mental health professional states in writing—
- (i) that he agrees with that opinion; and
  - (ii) that it is appropriate to revoke the order.
- (5) The responsible clinician may at any time release the patient under this section, but not after the community treatment order has been revoked.
- (6) If the patient has not been released, nor the community treatment order revoked, by the end of the period of 72 hours, he shall then be released.
- (7) But a patient who is released under this section remains subject to the community treatment order.
- (8) In this section—
- (a) “the period of 72 hours” means the period of 72 hours beginning with the time when the patient’s detention in hospital by virtue of the notice under section 17E above begins; and
  - (b) references to being released shall be construed as references to being released from that detention (and accordingly from being recalled to hospital).]

## NOTES

### Amendment

Inserted by the Mental Health Act 2007, s 32(1), (2).

Date in force (for the purposes of making regulations): 1 April 2008: see SI 2008/745, art 2(c)(i).

Date in force (for remaining purposes): 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

### Subordinate Legislation

Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008, SI 2008/1184.  
Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) Regulations 2008, SI 2008/2439.

### [17G Effect of revoking community treatment order]

- [(1) This section applies if a community treatment order is revoked under section 17F above in respect of a patient.
- (2) Section 6(2) above shall have effect as if the patient had never been discharged from hospital by virtue of the community treatment order.
- (3) The provisions of this or any other Act relating to patients liable to be detained (or detained) in pursuance of an application for admission for treatment shall apply to the patient as they did before the community treatment order was made, unless otherwise provided.
- (4) If, when the order is revoked, the patient is being detained in a hospital other than the responsible hospital, the provisions of this Part of this Act shall have effect as if—
- (a) the application for admission for treatment in respect of him were an application for admission to that other hospital; and

- (b) he had been admitted to that other hospital at the time when he was originally admitted in pursuance of the application.

(5) But, in any case, section 20 below shall have effect as if the patient had been admitted to hospital in pursuance of the application for admission for treatment on the day on which the order is revoked.]

## NOTES

### Amendment

Inserted by the Mental Health Act 2007, s 32(1), (2).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

### See Further

See further, in relation to the application of this section, with modifications, to ACUS community patients: the Mental Health Act 2007 (Commencement No 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions) Order 2008, SI 2008/1210, arts 1(2), (4), 10, 11(d).

## 18 Return and readmission of patients absent without leave

(1) Where a patient who is for the time being liable to be detained under this Part of this Act in a hospital—

- (a) absents himself from the hospital without leave granted under section 17 above; or
- (b) fails to return to the hospital on any occasion on which, or at the expiration of any period for which, leave of absence was granted to him under that section, or upon being recalled under that section; or
- (c) absents himself without permission from any place where he is required to reside in accordance with conditions imposed on the grant of leave of absence under that section,

he may, subject to the provisions of this section, be taken into custody and returned to the hospital or place 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 managers of the hospital.

(2) Where the place referred to in paragraph (c) of subsection (1) above is a hospital other than the one in which the patient is for the time being liable to be detained, the references in that subsection to an officer on the staff of the hospital and the managers of the hospital shall respectively include references to an officer on the staff of the first-mentioned hospital and the managers of that hospital.

[(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) Where a patient who is for the time being subject to guardianship under this Part of this Act absents himself without the leave of the guardian from the place at which he is required by the guardian to reside, he may, subject to the provisions of this section, be taken into custody and returned to that place by any officer on the staff of a local social services authority, by any constable, or by any person authorised in writing by the guardian or a local social services authority.

[(4) patient shall not be taken into custody under this section after the later of—

- (a) the end of the period of six months beginning with the first day of his absence without leave;

and

- (b) the end of the period for which (apart from section 21 below) he is liable to be detained or subject to guardianship [or, in the case of a community patient, the community treatment order is in force];

...]

[(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) A patient shall not be taken into custody under this section if the period for which he is liable to be detained is that specified in section 2(4), 4(4) or 5(2) or (4) above and that period has expired.

(6) In this Act “absent without leave” means absent from any hospital or other place and liable to be taken into custody and returned under this section, and related expressions shall be construed accordingly.

[(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.]

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 40.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): words “approved mental health professional” in square brackets substituted by the Mental Health Act 2007, s 21, Sch 2, paras 1, 7(a).

Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.

Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.

Sub-s (2A): inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 3(1), (2).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (4): substituted by the Mental Health (Patients in the Community) Act 1995, s 2(1).

Sub-s (4): in para (b) words “or, in the case of a community patient, the community treatment order is in force” in square brackets inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 3(1), (3)(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch

10, paras 1, 5.

Sub-s (4): words omitted repealed by the Mental Health Act 2007, ss 32(4), 55, Sch 3, paras 1, 3(1), (3)(b), Sch 11, Pt 5.

Date in force: 3 November 2008: see SI 2008/1210, art 2(d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-ss (4A), (4B): inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 3(1), (4).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (7): inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 3(1), (5).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

## 19 Regulations as to transfer of patients

(1) In such circumstances and subject to such conditions as may be prescribed by regulations made by the Secretary of State—

- (a) a patient who is for the time being liable to be detained in a hospital by virtue of an application under this Part of this Act may be transferred to another hospital or into the guardianship of a local social services authority or of any person approved by such an authority;
- (b) a patient who is for the time being subject to the guardianship of a local social services authority or other person by virtue of an application under this Part of this Act may be transferred into the guardianship of another local social services authority or person, or be transferred to a hospital.

(2) Where a patient is transferred in pursuance of regulations under this section, the provisions of this Part of this Act (including this subsection) shall apply to him as follows, that is to say—

- (a) in the case of a patient who is liable to be detained in a hospital by virtue of an application for admission for assessment or for treatment and is transferred to another hospital, as if the application were an application for admission to that other hospital and as if the patient had been admitted to that other hospital at the time when he was originally admitted in pursuance of the application;
- (b) in the case of a patient who is liable to be detained in a hospital by virtue of such an application and is transferred into guardianship, as if the application were a guardianship application duly accepted at the said time;
- (c) in the case of a patient who is subject to guardianship by virtue of a guardianship application and is transferred into the guardianship of another authority or person, as if the application were for his reception into the guardianship of that authority or person and had been accepted at the time when it was originally accepted;
- (d) in the case of a patient who is subject to guardianship by virtue of a guardianship application and is transferred to a hospital, as if the guardianship application were an application for admission to that hospital for treatment and as if the patient had been admitted to the hospital at the time when the application was originally accepted.

(3) Without prejudice to subsections (1) and (2) above, any patient who is for the time being liable to be detained under this Part of this Act in a hospital vested in the Secretary of State for the purposes of his functions under the [National Health Service Act 2006, in a hospital vested in the Welsh Ministers for the purposes of their functions under the National Health Service (Wales) Act 2006, in any accommodation

used under either of those Acts] by the managers of such a hospital [or in a hospital vested in a National Health Service trust][,] [NHS foundation trust or] [Local Health Board] [. . .], may at any time be removed to any other such hospital or accommodation [which is managed by the managers of, or is vested in the National Health Service trust[,], [NHS foundation trust or] [Local Health Board] [. . .] for, the first-mentioned hospital]; and paragraph (a) of subsection (2) above shall apply in relation to a patient so removed as it applies in relation to a patient transferred in pursuance of regulations made under this section.

(4) Regulations made under this section may make provision for regulating the conveyance to their destination of patients authorised to be transferred or removed in pursuance of the regulations or under subsection (3) above.

## **NOTES**

### **Derivation**

This section derived from the Mental Health Act 1982, s 41(1) - (4).

### **Initial Commencement**

#### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### **Amendment**

Sub-s (3): words from “National Health Service Act 2006,” to “of those Acts” in square brackets substituted by the National Health Service (Consequential Provisions) Act 2006, s 2, Sch 1, paras 63, 64.

Date in force: 1 March 2007: see the National Health Service (Consequential Provisions) Act 2006, s 8(2).

Sub-s (3): words “or in a hospital vested in a National Health Service trust” in square brackets inserted by the National Health Service and Community Care Act 1990, s 66(1), Sch 9, para 24(2).

Sub-s (3): words “, NHS foundation trust” in square brackets in both places they occur inserted by the Health and Social Care (Community Health and Standards) Act 2003, s 34, Sch 4, paras 50, 52.

Date in force: 1 April 2004: see SI 2004/759, art 2.

Sub-s (3): words “NHS foundation trust or” in square brackets substituted by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 24, 25(a).

Date in force (in so far as is necessary for enabling the exercise of any power to make an order or regulations or to give directions): 27 March 2012: see the Health and Social Care Act 2012, s 306(1)(d).

Date in force (for remaining purposes): 1 April 2013: see SI 2013/160, art 2.

Sub-s (3): words “, Local Health Board” in square brackets in both places they occur inserted by the Mental Health Act 2007, s 46(1), (2).

Date in force: 1 October 2007: see SI 2007/2798, art 2(g).

Sub-s (3): words omitted inserted by SI 2000/90, art 3(1), Sch 1, para 16(1), (3).

Date in force: 8 February 2000: see SI 2000/90, art 1.

Sub-s (3): words omitted repealed by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 24, 25(b).

Date in force: 1 April 2013: see SI 2013/160, art 2.

Sub-s (3): words from “which is managed by” to “the first-mentioned hospital” in square brackets substituted by the National Health Service and Community Care Act 1990, s 66(1), Sch 9, para 24(2).

### **Transfer of Functions**

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3) provides that, subject to art 2(b)–(f) of the 1999 Order, functions of a Minister of the Crown under this section are, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales. Sch 1 to the 1999 Order further provides that, in relation to this transfer of functions, references to a

hospital vested in the Secretary of State for the purposes of his functions under the National Health Service Act 1977 shall have effect as if they included a reference to a hospital vested in the Assembly for the purposes of its functions under the 1977 Act.

#### **Subordinate Legislation**

Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008, SI 2008/1184 (made under sub-ss (1), (4)).

Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) Regulations 2008, SI 2008/2439 (made under sub-ss (1), (4)).

#### **[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.]

#### **NOTES**

##### **Amendment**

Inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 4; for transitional provisions and savings see s 53, Sch 10, paras 1, 5 thereto.

Date in force (for the purposes of making regulations): 1 April 2008: see SI 2008/745, art 2(c)(ii).

Date in force (for remaining purposes): 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

##### **Subordinate Legislation**

Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008, SI 2008/1184 (made under sub-s (1)).

Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) Regulations 2008, SI 2008/2439.

Mental Health (Hospital, Guardianship and Treatment) (England) (Amendment) Regulations 2008, SI 2008/2560 (made under sub-s (1)).

*[Duration of authority and discharge]*

#### **NOTES**

##### **Amendment**

Cross-heading: substituted by the Mental Health Act 2007, s 32(1), (3).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

#### **20 Duration of authority**

(1) Subject to the following provisions of this Part of this Act, a patient admitted to hospital in pursuance of an application for admission for treatment, and a patient placed under guardianship in pursuance of a guardianship application, may be detained in a hospital or kept under guardianship for a period not exceeding six months beginning with the day on which he was so admitted, or the day on which the guardianship application was accepted, as the case may be, but shall not be so detained or kept for any longer period unless the authority for his detention or guardianship is renewed under this section.

(2) Authority for the detention or guardianship of a patient may, unless the patient has previously been discharged [under section 23 below], be renewed—

- (a) from the expiration of the period referred to in subsection (1) above, for a further period of six months;
- (b) from the expiration of any period of renewal under paragraph (a) above, for a further period of one year,

and so on for periods of one year at a time.

(3) Within the period of two months ending on the day on which a patient who is liable to be detained in pursuance of an application for admission for treatment would cease under this section to be so liable in default of the renewal of the authority for his detention, it shall be the duty of the [responsible clinician]—

- (a) to examine the patient; and
- (b) if it appears to him that the conditions set out in subsection (4) below are satisfied, to furnish to the managers of the hospital where the patient is detained a report to that effect in the prescribed form;

and where such a report is furnished in respect of a patient the managers shall, unless they discharge the patient [under section 23 below], cause him to be informed.

(4) The conditions referred to in subsection (3) above are that—

- (a) the patient is suffering from [mental disorder] of a nature or degree which makes it appropriate for him to receive medical treatment in a hospital; and
- (b) . . .
- (c) it is necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment and that it cannot be provided unless he continues to be detained; [and
- (d) appropriate medical treatment is available for him]

. . . .

(5) Before furnishing a report under subsection (3) above the [responsible clinician] shall consult one or more other persons who have been professionally concerned with the patient's medical treatment.

[(5A) But the responsible clinician may not furnish a report under subsection (3) above unless a person—

- (a) who has been professionally concerned with the patient's medical treatment; but
- (b) who belongs to a profession other than that to which the responsible clinician belongs,

states in writing that he agrees that the conditions set out in subsection (4) above are satisfied.]

(6) Within the period of two months ending with the day on which a patient who is subject to guardianship under this Part of this Act would cease under this section to be so liable in default of the renewal of the authority for his guardianship, it shall be the duty of the [appropriate practitioner]—

- (a) to examine the patient; and
- (b) if it appears to him that the conditions set out in subsection (7) below are satisfied, to furnish to the guardian and, where the guardian is a person other than a local social services authority, to the responsible local social services authority a report to that effect in the prescribed form;

and where such a report is furnished in respect of a patient, the local social services authority shall, unless they discharge the patient [under section 23 below], cause him to be informed.

(7) The conditions referred to in subsection (6) above are that—

- (a) the patient is suffering from [mental disorder] of a nature or degree which warrants his reception into guardianship; and
- (b) it is necessary in the interests of the welfare of the patient or for the protection of other persons that the patient should remain under guardianship.

(8) Where a report is duly furnished under subsection (3) or (6) above, the authority for the detention or guardianship of the patient shall be thereby renewed for the period prescribed in that case by subsection (2) above.

(9) . . .

(10) . . .

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 43.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (2): words “under section 23 below” in square brackets inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 5(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (3): words “responsible clinician” in square brackets substituted by the Mental Health Act 2007, s 9(1), (4)(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (3): words “under section 23 below” in square brackets inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 5(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (4): in para (a) words “mental disorder” in square brackets substituted by the Mental Health

- Act 2007, s 1(4), Sch 1, Pt 1, paras 1, 4(a).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(a); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.
- Sub-s (4): para (b) repealed by the Mental Health Act 2007, ss 4(1), (4)(a), 55, Sch 11, Pt 2.  
Date in force: 3 November 2008: see SI 2008/1900, art 2(b), (p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.
- Sub-s (4): para (d) and word “and” immediately preceding it inserted by the Mental Health Act 2007, s 4(1), (4)(b).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.
- Sub-s (4): words omitted repealed by the Mental Health Act 2007, ss 4(1), (4)(c), 55, Sch 11, Pt 2.  
Date in force: 3 November 2008: see SI 2008/1900, art 2(b), (p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.
- Sub-s (5): words “responsible clinician” in square brackets substituted by the Mental Health Act 2007, s 9(1), (4)(a).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.
- Sub-s (5A): inserted by the Mental Health Act 2007, s 9(1), (4)(b).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.
- Sub-s (6): words “appropriate practitioner” in square brackets substituted by the Mental Health Act 2007, s 9(1), (4)(c).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.
- Sub-s (6): words “under section 23 below” in square brackets inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 5(b).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.
- Sub-s (7): in para (a) words “mental disorder” in square brackets substituted by the Mental Health Act 2007, s 1(4), Sch 1, Pt 1, paras 1, 4(b).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(a); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.
- Sub-s (9): repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 1.  
Date in force: 3 November 2008: see SI 2008/1900, art 2(p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.
- Sub-s (10): repealed by the Mental Health Act 2007, ss 9(1), (4)(d), 55, Sch 11, Pt 3.  
Date in force: 3 November 2008: see SI 2008/1900, art 2(b), (p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

## **[20A Community treatment period]**

- [(1) Subject to the provisions of this Part of this Act, a community treatment order shall cease to be in force on expiry of the period of six months beginning with the day on which it was made.
- (2) That period is referred to in this Act as “the community treatment period”.
- (3) The community treatment period may, unless the order has previously ceased to be in force, be extended—

- (a) from its expiration for a period of six months;
- (b) from the expiration of any period of extension under paragraph (a) above for a further period of one year,

and so on for periods of one year at a time.

(4) Within the period of two months ending on the day on which the order would cease to be in force in default of an extension under this section, it shall be the duty of the responsible clinician—

- (a) to examine the patient; and
- (b) if it appears to him that the conditions set out in subsection (6) below are satisfied and if a statement under subsection (8) below is made, to furnish to the managers of the responsible hospital a report to that effect in the prescribed form.

(5) Where such a report is furnished in respect of the patient, the managers shall, unless they discharge him under section 23 below, cause him to be informed.

(6) The conditions referred to in subsection (4) above are that—

- (a) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment;
- (b) it is necessary for his health or safety or for the protection of other persons that he should receive such treatment;
- (c) subject to his continuing to be liable to be recalled as mentioned in paragraph (d) below, such treatment can be provided without his being detained in a hospital;
- (d) it is necessary that the responsible clinician should continue to be able to exercise the power under section 17E(1) above to recall the patient to hospital; and
- (e) appropriate medical treatment is available for him.

(7) In determining whether the criterion in subsection (6)(d) above is met, the responsible clinician 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).

(8) The statement referred to in subsection (4) above is a statement in writing by an approved mental health professional—

- (a) that it appears to him that the conditions set out in subsection (6) above are satisfied; and
- (b) that it is appropriate to extend the community treatment period.

(9) Before furnishing a report under subsection (4) above the responsible clinician shall consult one or more other persons who have been professionally concerned with the patient's medical treatment.

(10) Where a report is duly furnished under subsection (4) above, the community treatment period shall be thereby extended for the period prescribed in that case by subsection (3) above.]

## **NOTES**

### **Amendment**

Inserted by the Mental Health Act 2007, s 32(1), (3).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

### **[20B Effect of expiry of community treatment order]**

[(1) A community patient shall be deemed to be discharged absolutely from liability to recall under this Part of this Act, and the application for admission for treatment cease to have effect, on expiry of the community treatment order, if the order has not previously ceased to be in force.

(2) For the purposes of subsection (1) above, a community treatment order expires on expiry of the community treatment period as extended under this Part of this Act, but this is subject to sections 21 and 22 below.]

### **NOTES**

#### **Amendment**

Inserted by the Mental Health Act 2007, s 32(1), (3).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

#### **See Further**

See further, in relation to the application of this section, with modifications, to ACUS community patients: the Mental Health Act 2007 (Commencement No 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions) Order 2008, SI 2008/1210, arts 1(2), (4), 10, 11(e).

### **[21 Special provisions as to patients absent without leave]**

[(1) Where a patient is absent without leave—

- (a) on the day on which (apart from this section) he would cease to be liable to be detained or subject to guardianship under this Part of this Act [or, in the case of a community patient, the community treatment order would cease to be in force]; or
- (b) within the period of one week ending with that day,

he shall not cease to be so liable or subject[, or the order shall not cease to be in force,] until the relevant time.

(2) For the purposes of subsection (1) above the relevant time—

- (a) where the patient is taken into custody under section 18 above, is the end of the period of one week beginning with the day on which he is returned to the hospital or place where he ought to be;
- (b) where the patient returns himself to the hospital or place where he ought to be within the period during which he can be taken into custody under section 18 above, is the end of the period of one week beginning with the day on which he so returns himself; and
- (c) otherwise, is the end of the period during which he can be taken into custody under section 18 above.

[(3) Where a patient is absent without leave on the day on which (apart from this section) the managers would be required under section 68 below to refer the patient's case to [the appropriate tribunal], that requirement shall not apply unless and until—

- (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.]

[(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.]]

## NOTES

### Derivation

This section, as originally enacted, derived from the Mental Health Act 1959, s 45.

### Extent

This section does not extend to Scotland.

### Amendment

Substituted, together with ss 21A, 21B, for s 21 as originally enacted, by the Mental Health (Patients in the Community) Act 1995, s 2(2).

Sub-s (1): in para (a) words from “or, in the case” to “be in force” in square brackets inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 6(1), (2)(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (1): words “, or the order shall not cease to be in force,” in square brackets inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 6(1), (2)(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (3): inserted by the Mental Health Act 2007, s 37(1), (2).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 9(1).

Sub-s (3): words “the appropriate Tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 40.

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-ss (4), (5): inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 6(1), (3).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

## [21A Patients who are taken into custody or return within 28 days]

[(1) This section applies where a patient who is absent without leave is taken into custody under section 18 above, or returns himself to the hospital or place where he ought to be, not later than the end

of the period of 28 days beginning with the first day of his absence without leave.

(2) Where the period for which the patient is liable to be detained or subject to guardianship is extended by section 21 above, any examination and report to be made and furnished in respect of the patient under section 20(3) or (6) above may be made and furnished within the period as so extended.

(3) Where the authority for the detention or guardianship of the patient is renewed by virtue of subsection (2) above after the day on which (apart from section 21 above) that authority would have expired, the renewal shall take effect as from that day.

[(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.]

## NOTES

### Extent

This section does not extend to Scotland.

### Amendment

Substituted, together with ss 21, 21B, for s 21 as originally enacted, by the Mental Health (Patients in the Community) Act 1995, s 2(2).

Sub-ss (4), (5): inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 7.

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

### [21B Patients who are taken into custody or return after more than 28 days]

[(1) This section applies where a patient who is absent without leave is taken into custody under section 18 above, or returns himself to the hospital or place where he ought to be, later than the end of the period of 28 days beginning with the first day of his absence without leave.

(2) It shall be the duty of the [appropriate practitioner], within the period of one week beginning with the day on which the patient is returned or returns himself to the hospital or place where he ought to be [(his “return day”)]—

- (a) to examine the patient; and
- (b) if it appears to him that the relevant conditions are satisfied, to furnish to the appropriate body a report to that effect in the prescribed form;

and where such a report is furnished in respect of the patient the appropriate body shall cause him to be informed.

(3) Where the patient is liable to be detained [or is a community patient] (as opposed to subject to guardianship), the [appropriate practitioner] shall, before furnishing a report under subsection (2) above, consult—

- (a) one or more other persons who have been professionally concerned with the patient's medical treatment; and
- (b) an [approved mental health professional].

[(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.]

[(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.]

(5) Where the patient would (apart from section 21 above) have ceased to be liable to be detained or subject to guardianship on or before the day on which a report is duly furnished in respect of him under subsection (2) above, the report shall renew the authority for his detention or guardianship for the period prescribed in that case by section 20(2) above.

(6) Where the authority for the detention or guardianship of the patient is renewed by virtue of subsection (5) above—

- (a) the renewal shall take effect as from the day on which (apart from section 21 above and that subsection) the authority would have expired; and
- (b) if (apart from this paragraph) the renewed authority would expire on or before the day on which the report is furnished, the report shall further renew the authority, as from the day on which it would expire, for the period prescribed in that case by section 20(2) above.

[(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) Where the authority for the detention or guardianship of the patient would expire 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 20(3) or (6) above; and the reference in this subsection to authority includes any authority renewed under subsection (5) above by the report.

[(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) . . .

(9) . . .

(10) In this section—

. . .

[“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]

[“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].]

## NOTES

### Extent

This section does not extend to Scotland.

### Amendment

Substituted, together with ss 21, 21A, for s 21 as originally enacted, by the Mental Health (Patients in the Community) Act 1995, s 2(2).

Sub-s (2): words “appropriate practitioner” in square brackets substituted by the Mental Health Act 2007, s 9(1), (5)(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (2): words “(his “return day”)” in square brackets inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 8(1), (2).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (3): words “or is a community patient” in square brackets inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 8(1), (3).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (3): words “appropriate practitioner” in square brackets substituted by the Mental Health Act 2007, s 9(1), (5)(a).

- Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.
- Sub-s (3): in para (b) words “approved mental health professional” in square brackets substituted by the Mental Health Act 2007, s 21, Sch 2, paras 1, 7(b).  
Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.  
Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.
- Sub-s (4): substituted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 8(1), (4).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.
- Sub-s (4A): inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 8(1), (5).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.
- Sub-ss (6A), (6B): inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 8(1), (6).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.
- Sub-s (7A): inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 8(1), (7).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.
- Sub-ss (8), (9): repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 1.  
Date in force: 3 November 2008: see SI 2008/1900, art 2(p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.
- Sub-s (10): definition “appropriate medical officer” (omitted) repealed by the Mental Health Act 2007, ss 9(1), (5)(b), 55, Sch 11, Pt 3.  
Date in force: 3 November 2008: see SI 2008/1900, art 2(b), (p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.
- Sub-s (10): definition “the appropriate body” substituted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 8(1), (8)(a).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.
- Sub-s (10): definition “the relevant conditions” substituted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 8(1), (8)(b).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

## **[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—
- (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.]

## **NOTES**

### **Derivation**

This section as originally enacted derived from the Mental Health Act 1959, s 46.

### **Amendment**

Substituted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 9.

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

## 23 Discharge of patients

(1) Subject to the provisions of this section and section 25 below, a patient who is for the time being liable to be detained or subject to guardianship under this Part of this Act shall cease to be so liable or subject if an order in writing discharging him [absolutely from detention or guardianship is made in accordance with this section].

[(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”.]

(2) An order for discharge may be made in respect of a patient—

(a) where the patient is liable to be detained in a hospital in pursuance of an application for admission for assessment or for treatment by the [responsible clinician], by the managers or by the nearest relative of the patient;

(b) where the patient is subject to guardianship, by the [responsible clinician], by the responsible local social services authority or by the nearest relative of the patient;

[(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].

(3) . . .

[(3A) . . .]

(4) The powers conferred by this section on any authority [trust][, board] [(other than an NHS foundation trust)] or body of persons may be exercised [subject to subsection (3) below] by any three or more members of that authority [trust][, board] or body authorised by them in that behalf or by three or more members of a committee or sub-committee of that authority [trust][, board] or body which has been authorised by them in that behalf.

[(5) The reference in subsection (4) above to the members of an authority, trust[, board] or body or the members of a committee or sub-committee of an authority, trust[, board] or body,—

(a) in the case of [a [[Local Health Board] [or Special Health Authority] . . .]] or a committee or sub-committee of [a [[Local Health Board] [or Special Health Authority] . . .]], is a reference only to the chairman of the authority[. . . or board] and [such members (of the authority. . . , board, committee or sub-committee), as the case may be] as are not also officers of the authority[. . . or board] within the meaning of [the National Health Service Act 2006 or the National Health Service (Wales) Act 2006]; and

(b) in the case of a National Health Service trust or a committee or sub-committee of such a trust, is a reference only to the chairman of the trust and such directors or (in the case of a committee or sub-committee) members as are not also employees of the trust.]

[(6) The powers conferred by this section on any NHS foundation trust may be exercised by any three or more [persons authorised by the board of the trust in that behalf each of whom is neither an executive director of the board nor an employee of the trust].]

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 47.

## **Initial Commencement**

### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

## **Amendment**

Sub-s (1): words “absolutely from detention or guardianship is made in accordance with this section” in square brackets substituted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 10(1), (2).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-ss (1A), (1B): inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 10(1), (3).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (2): in paras (a), (b) words “responsible clinician” in square brackets substituted by the Mental Health Act 2007, s 9(1), (6).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (2): para (c) inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 10(1), (4).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-ss (3), (3A): repealed by the Health and Social Care Act 2012, s 39(1).

Date in force: 1 July 2012: see SI 2012/1319, art 2(1), (3).

Sub-s (3A): inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 10(1), (6).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (4): word “trust” in square brackets in each place it occurs inserted by the National Health Service and Community Care Act 1990, s 66(1), Sch 9, para 24(3)(b).

Sub-s (4): word “, board” in square brackets in each place it occurs inserted by SI 2007/961, art 3, Schedule, para 13(1), (2)(b).

Date in force: 1 April 2007: see SI 2007/961, art 1(1).

Sub-s (4): words “(other than an NHS foundation trust)” in square brackets inserted by the Health and Social Care (Community Health and Standards) Act 2003, s 34, Sch 4, paras 50, 53(b).

Date in force: 1 April 2004: see SI 2004/759, art 2.

Sub-s (4): words “subject to subsection (3) below” in square brackets inserted by the National Health Service and Community Care Act 1990, s 66(1), Sch 9, para 24(3)(b).

Sub-s (5): inserted by the National Health Service and Community Care Act 1990, s 66(1), Sch 9, para 24(3)(c).

Sub-s (5): word “, board” in square brackets in both places it occurs inserted by SI 2007/961, art 3, Schedule, para 13(1), (2)(c).

Date in force: 1 April 2007: see SI 2007/961, art 1(1).

Sub-s (5): in para (a) words in square brackets beginning with the word “a” in both places they occur substituted by SI 2000/90, art 3(1), Sch 1, para 16(1), (4)(b)(i).

Date in force: 8 February 2000: see SI 2000/90, art 1.

Sub-s (5): in para (a) words “Local Health Board” in square brackets in both places they occur substituted by SI 2007/961, art 3, Schedule, para 13(1), (2)(d)(i).

Date in force: 1 April 2007: see SI 2007/961, art 1(1).

Sub-s (5): in para (a) words “or Special Health Authority” in square brackets in both places they occur substituted by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 24, 26(a).

Date in force (in so far as is necessary for enabling the exercise of any power to make an order or regulations or to give directions): 27 March 2012: see the Health and Social Care

Act 2012, s 306(1)(d).

Date in force (for remaining purposes): 1 April 2013: see SI 2013/160, art 2.

Sub-s (5): in para (a) first and second words omitted repealed by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 24, 26(b).

Date in force: 1 April 2013: see SI 2013/160, art 2.

Sub-s (5): in para (a) words in square brackets ending in the words “or board” in both places they occur substituted by SI 2007/961, art 3, Schedule, para 13(1), (2)(d)(ii).

Date in force: 1 April 2007: see SI 2007/961, art 1(1).

Sub-s (5): in para (a) third, fourth and final words omitted repealed by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 24, 26(c).

Date in force: 1 April 2013: see SI 2013/160, art 2.

Sub-s (5): in para (a) words in square brackets beginning with the words “such members (of the authority)” substituted by SI 2007/961, art 3, Schedule, para 13(1), (2)(d)(iii).

Date in force: 1 April 2007: see SI 2007/961, art 1(1).

Sub-s (5): in para (a) words “the National Health Service Act 2006 or the National Health Service (Wales) Act 2006” in square brackets substituted by the National Health Service (Consequential Provisions) Act 2006, s 2, Sch 1, paras 62, 65.

Date in force: 1 March 2007: see the National Health Service (Consequential Provisions) Act 2006, s 8(2).

Sub-s (6): inserted by the Health and Social Care (Community Health and Standards) Act 2003, s 34, Sch 4, paras 50, 53(c).

Date in force: 1 April 2004: see SI 2004/759, art 2.

Sub-s (6): words from “persons authorised” to “employee of the trust” in square brackets substituted by the Mental Health Act 2007, s 45(1).

Date in force: 24 July 2007: see SI 2007/2156, art 2.

### **Transfer of Functions**

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3). Sch 1 to the 1999 Order (as amended) further provides that sub-ss (4) and (5) above shall not apply to the exercise by the Assembly of the powers conferred by this section.

### **24 Visiting and examination of patients**

(1) For the purpose of advising as to the exercise by the nearest relative of a patient who is liable to be detained or subject to guardianship under this Part of this Act[, or who is a community patient,] of any power to order his discharge, any registered medical practitioner [or approved clinician] authorised by or on behalf of the nearest relative of the patient may, at any reasonable time, visit the patient and examine him in private.

(2) Any registered medical practitioner [or approved clinician] authorised for the purposes of subsection (1) above to visit and examine a patient may require the production of and inspect any records relating to the detention or treatment of the patient in any hospital [or to any after-care services provided for the patient under section 117 below.]

(3) ...

(4) ...

### **NOTES**

#### **Derivation**

This section derived from the Mental Health Act 1959, s 37.

#### **Initial Commencement**

*Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### **Amendment**

Sub-s (1): words “, or who is a community patient,” in square brackets inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 11(1), (2).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (1): words “or approved clinician” in square brackets inserted by the Mental Health Act 2007, s 9(1), (7).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (2): words “or approved clinician” in square brackets inserted by the Mental Health Act 2007, s 9(1), (7).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (2): words “or to any after-care services provided for the patient under section 117 below” in square brackets inserted by the Mental Health (Patients in the Community) Act 1995, s 1(2), Sch 1, para 1.

Sub-ss (3), (4): repealed by the Health and Social Care Act 2012, s 39(2).

Date in force: 1 July 2012: see SI 2012/1319, art 2(1), (3).

### **Transfer of Functions**

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3).

### **25 Restrictions on discharge by nearest relative**

(1) An order for the discharge of a patient who is liable to be detained in a hospital shall not be made [under section 23 above] by his nearest relative except after giving not less than 72 hours' notice in writing to the managers of the hospital; and if, within 72 hours after such notice has been given, the [responsible clinician] furnishes to the managers a report certifying that in the opinion of [that clinician] the patient, if discharged, would be likely to act in a manner dangerous to other persons or to himself,—

- (a) any order for the discharge of the patient made by that relative in pursuance of the notice shall be of no effect; and
- (b) no further order for the discharge of the patient shall be made by that relative during the period of six months beginning with the date of the report.

[(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.]

(2) In any case where a report under subsection (1) above is furnished in respect of a patient who is liable to be detained in pursuance of an application for admission for treatment[, or in respect of a community patient,] the managers shall cause the nearest relative of the patient to be informed.

### **NOTES**

#### **Derivation**

This section derived from the Mental Health Act 1959, s 48(2), (3).

#### **Initial Commencement**

##### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5

hereof.

#### **Amendment**

Sub-s (1): words “under section 23 above” in square brackets inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 12(1), (2).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (1): words “responsible clinician” in square brackets substituted by the Mental Health Act 2007, s 9(1), (8)(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (1): words “that clinician” in square brackets substituted by the Mental Health Act 2007, s 9(1), (8)(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (1A): inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 12(1), (3).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (2): words “, or in respect of a community patient,” in square brackets inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 12(1), (4); for transitional provisions and savings see s 53, Sch 10, paras 1, 5 thereto.

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

[. . .]

#### **NOTES**

##### **Amendment**

Inserted by the Mental Health (Patients in the Community) Act 1995, s 1(1).

Repealed by the Mental Health Act 2007, ss 36(1), (2), 55, Sch 11, Pt 5.

Date in force: 3 November 2008: see SI 2008/1210, art 2(c), (d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

[25A . . .]

[. . .]

#### **NOTES**

##### **Amendment**

Inserted by the Mental Health (Patients in the Community) Act 1995, s 1(1).

Repealed by the Mental Health Act 2007, ss 36(1), (2), 55, Sch 11, Pt 5.

Date in force: 3 November 2008: see SI 2008/1210, art 2(c), (d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

[25B . . .]

[. . .]

#### **NOTES**

##### **Amendment**

Inserted by the Mental Health (Patients in the Community) Act 1995, s 1(1).

Repealed by the Mental Health Act 2007, ss 36(1), (2), 55, Sch 11, Pt 5.  
Date in force: 3 November 2008: see SI 2008/1210, art 2(c), (d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

**[25C . . .]**

[. . .]

## **NOTES**

### **Amendment**

Inserted by the Mental Health (Patients in the Community) Act 1995, s 1(1).  
Repealed by the Mental Health Act 2007, ss 36(1), (2), 55, Sch 11, Pt 5.  
Date in force: 3 November 2008: see SI 2008/1210, art 2(c), (d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

**[25D . . .]**

[. . .]

## **NOTES**

### **Amendment**

Inserted by the Mental Health (Patients in the Community) Act 1995, s 1(1).  
Repealed by the Mental Health Act 2007, ss 36(1), (2), 55, Sch 11, Pt 5.  
Date in force: 3 November 2008: see SI 2008/1210, art 2(c), (d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

**[25E . . .]**

[. . .]

## **NOTES**

### **Amendment**

Inserted by the Mental Health (Patients in the Community) Act 1995, s 1(1).  
Repealed by the Mental Health Act 2007, ss 36(1), (2), 55, Sch 11, Pt 5.  
Date in force: 3 November 2008: see SI 2008/1210, art 2(c), (d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

**[25F . . .]**

[. . .]

## **NOTES**

### **Amendment**

Inserted by the Mental Health (Patients in the Community) Act 1995, s 1(1).  
Repealed by the Mental Health Act 2007, ss 36(1), (2), 55, Sch 11, Pt 5.  
Date in force: 3 November 2008: see SI 2008/1210, art 2(c), (d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

**[25G . . .]**

[. . .]

## NOTES

### Amendment

Inserted by the Mental Health (Patients in the Community) Act 1995, s 1(1).

Repealed by the Mental Health Act 2007, ss 36(1), (2), 55, Sch 11, Pt 5.

Date in force: 3 November 2008: see SI 2008/1210, art 2(c), (d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

[25H . . .]

[. . .]

## NOTES

### Amendment

Inserted by the Mental Health (Patients in the Community) Act 1995, s 1(1).

Repealed by the Mental Health Act 2007, ss 36(1), (2), 55, Sch 11, Pt 5.

Date in force: 3 November 2008: see SI 2008/1210, art 2(c), (d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

[25I . . .]

[. . .]

## NOTES

### Amendment

Inserted by the Mental Health (Patients in the Community) Act 1995, s 1(1).

Repealed by the Mental Health Act 2007, ss 36(1), (2), 55, Sch 11, Pt 5.

Date in force: 3 November 2008: see SI 2008/1210, art 2(c), (d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

[25J . . .]

[. . .]

## NOTES

### Amendment

Inserted by the Mental Health (Patients in the Community) Act 1995, s 1(1).

Repealed by the Mental Health Act 2007, ss 36(1), (2), 55, Sch 11, Pt 5.

Date in force: 3 November 2008: see SI 2008/1210, art 2(c), (d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

### *Functions of relatives of patients*

## 26 Definition of “relative” and “nearest relative”

(1) In this Part of this Act “relative” means any of the following persons:—

- (a) husband or wife [or civil partner];
- (b) son or daughter;

- (c) father or mother;
- (d) brother or sister;
- (e) grandparent;
- (f) grandchild;
- (g) uncle or aunt;
- (h) nephew or niece.

(2) In deducing relationships for the purposes of this section, any relationship of the half-blood shall be treated as a relationship of the whole blood, and an illegitimate person shall be treated as the legitimate child of

- [(a) his mother, and
- (b) if his father has parental responsibility for him within the meaning of section 3 of the Children Act 1989, his father.]

(3) In this Part of this Act, subject to the provisions of this section and to the following provisions of this Part of this Act, the “nearest relative” means the person first described in subsection (1) above who is for the time being surviving, relatives of the whole blood being preferred to relatives of the same description of the half-blood and the elder or eldest of two or more relatives described in any paragraph of that subsection being preferred to the other or others of those relatives, regardless of sex.

(4) Subject to the provisions of this section and to the following provisions of this Part of this Act, where the patient ordinarily resides with or is cared for by one or more of his relatives (or, if he is for the time being an in-patient in a hospital, he last ordinarily resided with or was cared for by one or more of his relatives) his nearest relative shall be determined—

- (a) by giving preference to that relative or those relatives over the other or others; and
- (b) as between two or more such relatives, in accordance with subsection (3) above.

(5) Where the person who, under subsection (3) or (4) above, would be the nearest relative of a patient—

- (a) in the case of a patient ordinarily resident in the United Kingdom, the Channel Islands or the Isle of Man, is not so resident; or
- (b) is the husband or wife [or civil partner] of the patient, but is permanently separated from the patient, either by agreement or under an order of a court, or has deserted or has been deserted by the patient for a period which has not come to an end; or
- (c) is a person other than the husband, wife, [civil partner,] father or mother of the patient, and is for the time being under 18 years of age; . . .
- (d) . . .

the nearest relative of the patient shall be ascertained as if that person were dead.

(6) In this section “husband”[, “wife” and “civil partner” include a person who is living with the patient as the patient’s husband or wife or as if they were civil partners], as the case may be (or, if the patient is for the time being an in-patient in a hospital, was so living until the patient was admitted), and has been or had been so living for a period of not less than six months; but a person shall not be treated by virtue of

this subsection as the nearest relative of a married patient [or a patient in a civil partnership unless the husband, wife or civil partner] of the patient is disregarded by virtue of paragraph (b) of subsection (5) above.

(7) A person, other than a relative, with whom the patient ordinarily resides (or, if the patient is for the time being an in-patient in a hospital, last ordinarily resided before he was admitted), and with whom he has or had been ordinarily residing for a period of not less than five years, shall be treated for the purposes of this Part of this Act as if he were a relative but—

- (a) shall be treated for the purposes of subsection (3) above as if mentioned last in subsection (1) above; and
- (b) shall not be treated by virtue of this subsection as the nearest relative of a married patient [or a patient in a civil partnership unless the husband, wife or civil partner] of the patient is disregarded by virtue of paragraph (b) of subsection (5) above.

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 49.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): in para (a) words “or civil partner” in square brackets inserted by the Mental Health Act 2007, s 26(1), (2).

Date in force: 1 December 2007: see SI 2007/2798, art 3; for transitional provisions and savings see the Mental Health Act 2007, s 53, Sch 10, paras 1, 7.

Sub-s (2): paras (a), (b) substituted by SI 1991/1881, art 3.

Sub-s (5): in para (b) words “or civil partner” in square brackets inserted by the Mental Health Act 2007, s 26(1), (3)(a).

Date in force: 1 December 2007: see SI 2007/2798, art 3; for transitional provisions and savings see the Mental Health Act 2007, s 53, Sch 10, paras 1, 7.

Sub-s (5): in para (c) words “civil partner,” in square brackets inserted by the Mental Health Act 2007, s 26(1), (3)(b).

Date in force: 1 December 2007: see SI 2007/2798, art 3; for transitional provisions and savings see the Mental Health Act 2007, s 53, Sch 10, paras 1, 7.

Sub-s (5): para (d) and word omitted immediately preceding it repealed by the Children Act 1989, s 108(6), (7), Sch 14, paras 1, 27, Sch 15.

Sub-s (6): words from “, “wife” and “civil partner”” to “were civil partners” in square brackets substituted by the Mental Health Act 2007, s 26(1), (4)(a).

Date in force: 1 December 2007: see SI 2007/2798, art 3; for transitional provisions and savings see the Mental Health Act 2007, s 53, Sch 10, paras 1, 7.

Sub-s (6): words from “or a patient” to “or civil partner” in square brackets substituted by the Mental Health Act 2007, s 26(1), (4)(b).

Date in force: 1 December 2007: see SI 2007/2798, art 3; for transitional provisions and savings see the Mental Health Act 2007, s 53, Sch 10, paras 1, 7.

Sub-s (7): in para (b) words from “or a patient” to “or civil partner” in square brackets substituted by the Mental Health Act 2007, s 26(1), (5).

Date in force: 1 December 2007: see SI 2007/2798, art 3; for transitional provisions and savings see the Mental Health Act 2007, s 53, Sch 10, paras 1, 7.

## [27 Children and young persons in care]

[Where—

- (a) a patient who is a child or young person is in the care of a local authority by virtue of a care order within the meaning of the Children Act 1989; or
- (b) the rights and powers of a parent of a patient who is a child or young person are vested in a local authority by virtue of section 16 of the Social Work (Scotland) Act 1968,

the authority shall be deemed to be the nearest relative of the patient in preference to any person except the patient's husband or wife [or civil partner] (if any).]

## NOTES

### Derivation

This section, as originally enacted, derived from the Mental Health Act 1959, s 50.

### Amendment

Substituted by the Children Act 1989, s 108(5), (6), Sch 13, para 48(1), Sch 14, para 1.

Words "or civil partner" in square brackets inserted by the Mental Health Act 2007, s 26(6).

Date in force: 1 December 2007: see SI 2007/2798, art 3; for transitional provisions and savings see the Mental Health Act 2007, s 53, Sch 10, paras 1, 7.

## 28 Nearest relative of minor under guardianship, etc

[(1) Where—

- (a) a guardian has been appointed for a person who has not attained the age of eighteen years; or
- (b) a [person is named in a child arrangements] order (as defined by section 8 of the Children Act 1989) [as a person with whom a person who has not attained the age of eighteen years is to live],

the guardian (or guardians, where there is more than one) or the person [so named (or the persons so named, where there is more than one)] shall, to the exclusion of any other person, be deemed to be his nearest relative.]

(2) Subsection (5) of section 26 above shall apply in relation to a person who is, or who is one of the persons, deemed to be the nearest relative of a patient by virtue of this section as it applies in relation to a person who would be the nearest relative under subsection (3) of that section.

[(3) In this section "guardian" [includes a special guardian (within the meaning of the Children Act 1989), but] does not include a guardian under this Part of this Act.]

(4) In this section "court" includes a court in Scotland or Northern Ireland, and "enactment" includes an enactment of the Parliament of Northern Ireland, a Measure of the Northern Ireland Assembly and an Order in Council under Schedule 1 of the Northern Ireland Act 1974.

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 51.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-ss (1), (3): substituted by the Children Act 1989, s 108(5), (6), Sch 13, para 48, Sch 14.

Sub-s (1): in para (b) words "person is named in a child arrangements" in square brackets substituted by the Children and Families Act 2014, s 12(4), Sch 2, Pt 2, para 46(a)(i).

Date in force: 22 April 2014: see SI 2014/889, art 4(b), (f).

Sub-s (1): in para (b) words “as a person” to “is to live” in square brackets substituted by the Children and Families Act 2014, s 12(4), Sch 2, Pt 2, para 46(a)(ii).

Date in force: 22 April 2014: see SI 2014/889, art 4(b), (f).

Sub-s (1): words “so named (or the persons so named, where there is more than one)” in square brackets substituted by the Children and Families Act 2014, s 12(4), Sch 2, Pt 2, para 46(b).

Date in force: 22 April 2014: see SI 2014/889, art 4(b), (f).

Sub-s (3): words “includes a special guardian (within the meaning of the Children Act 1989), but” in square brackets inserted by the Adoption and Children Act 2002, s 139(1), Sch 3, para 41.

Date in force: 30 December 2005: see SI 2005/2213, art 2(o).

### **Modification**

The Northern Ireland Act 1998 makes new provision for the government of Northern Ireland for the purpose of implementing the Belfast Agreement (the agreement reached at multi-party talks on Northern Ireland and set out in Command Paper 3883). As a consequence of that Act, any reference in this section to the Parliament of Northern Ireland or the Assembly established under the Northern Ireland Assembly Act 1973, s 1, certain office-holders and Ministers, and any legislative act and certain financial dealings thereof, shall, for the period specified, be construed in accordance with Sch 12, paras 1–11 to the 1998 Act.

### **29 Appointment by court of acting nearest relative**

(1) The county court may, upon application made in accordance with the provisions of this section in respect of a patient, by order direct that the functions of the nearest relative of the patient under this Part of this Act and sections 66 and 69 below shall, during the continuance in force of the order, be exercisable by [the person specified in the order].

[(1A) If the court decides to make an order on an application under subsection (1) above, the following rules have effect for the purposes of specifying a person in the order—

- (a) if a person is nominated in the application to act as the patient’s nearest relative and that person is, in the opinion of the court, a suitable person to act as such and is willing to do so, the court shall specify that person (or, if there are two or more such persons, such one of them as the court thinks fit);
- (b) otherwise, the court shall specify such person as is, in its opinion, a suitable person to act as the patient’s nearest relative and is willing to do so.]

(2) An order under this section may be made on the application of—

[(za) the patient;]

- (a) any relative of the patient;
- (b) any other person with whom the patient is residing (or, if the patient is then an in-patient in a hospital, was last residing before he was admitted); or
- (c) an [approved mental health professional];

...

(3) An application for an order under this section may be made upon any of the following grounds, that is to say—

- (a) that the patient has no nearest relative within the meaning of this Act, or that it is not reasonably practicable to ascertain whether he has such a relative, or who that relative is;
- (b) that the nearest relative of the patient is incapable of acting as such by reason of mental

- disorder or other illness;
- (c) that the nearest relative of the patient unreasonably objects to the making of an application for admission for treatment or a guardianship application in respect of the patient; . . .
  - (d) that the nearest relative of the patient has exercised without due regard to the welfare of the patient or the interests of the public his power to discharge the patient . . . under this Part of this Act, or is likely to do so[; or
  - (e) that the nearest relative of the patient is otherwise not a suitable person to act as such].

(4) If, immediately before the expiration of the period for which a patient is liable to be detained by virtue of an application for admission for assessment, an application under this section, which is an application made on the ground specified in subsection (3)(c) or (d) above, is pending in respect of the patient, that period shall be extended—

- (a) in any case, until the application under this section has been finally disposed of; and
- (b) if an order is made in pursuance of the application under this section, for a further period of seven days;

and for the purposes of this subsection an application under this section shall be deemed to have been finally disposed of at the expiration of the time allowed for appealing from the decision of the court or, if notice of appeal has been given within that time, when the appeal has been heard or withdrawn, and “pending” shall be construed accordingly.

(5) An order made on the ground specified in subsection [(3)(a), (b) or (e)] above may specify a period for which it is to continue in force unless previously discharged under section 30 below.

(6) While an order made under this section is in force, the provisions of this Part of this Act (other than this section and section 30 below) and sections 66, 69, 132(4) and 133 below shall apply in relation to the patient as if for any reference to the nearest relative of the patient there were substituted a reference to the person having the functions of that relative and (without prejudice to section 30 below) shall so apply notwithstanding that the person who was the patient’s nearest relative when the order was made is no longer his nearest relative; but this subsection shall not apply to section 66 below in the case mentioned in paragraph (h) of subsection (1) of that section.

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 52(1)–(5).

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): words “the person specified in the order” in square brackets substituted by the Mental Health Act 2007, s 23(1), (2).

Date in force: 3 November 2008: see SI 2008/1900, art 2(f); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 6(1).

Sub-s (1A): inserted by the Mental Health Act 2007, s 23(1), (3).

Date in force: 3 November 2008: see SI 2008/1900, art 2(f); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 6(1).

Sub-s (2): para (za) inserted by the Mental Health Act 2007, s 23(1), (4)(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(f); for transitional provisions and

savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (2): in para (c) words “approved mental health professional” in square brackets substituted by the Mental Health Act 2007, s 21, Sch 2, paras 1, 7(c).

Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.

Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.

Sub-s (2): words omitted repealed by the Mental Health Act 2007, ss 23(1), (4)(b), 55, Sch 11, Pt 4.

Date in force: 3 November 2008: see SI 2008/1900, art 2(f), (p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 6(1).

Sub-s (3): in para (c) word omitted repealed by the Mental Health Act 2007, ss 23(1), (5)(a), 55, Sch 11, Pt 4.

Date in force: 3 November 2008: see SI 2008/1900, art 2(f), (p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (3): in para (d) words omitted repealed by the Mental Health Act 2007, ss 32(4), 55, Sch 3, paras 1, 13, Sch 11, Pt 5.

Date in force: 3 November 2008: see SI 2008/1210, art 2(d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (3): para (e) and word “; or” immediately preceding it inserted by the Mental Health Act 2007, s 23(1), (5)(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(f); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (5): words “(3)(a), (b) or (e)” in square brackets substituted by the Mental Health Act 2007, s 23(1), (6).

Date in force: 3 November 2008: see SI 2008/1900, art 2(f); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

### **30 Discharge and variation of orders under s 29**

(1) An order made under section 29 above in respect of a patient may be discharged by the county court upon application made—

- (a) in any case, by [the patient or] the person having the functions of the nearest relative of the patient by virtue of the order;
- (b) where the order was made on the ground specified in paragraph (a)[, (b) or (e)] of section 29(3) above, or where the person who was the nearest relative of the patient when the order was made has ceased to be his nearest relative, on the application of the nearest relative of the patient.

[(1A) But, in the case of an order made on the ground specified in paragraph (e) of section 29(3) above, an application may not be made under subsection (1)(b) above by the person who was the nearest relative of the patient when the order was made except with leave of the county court.]

(2) An order made under section 29 above in respect of a patient may be varied by the county court, on the application of [the patient or of] the person having the functions of the nearest relative by virtue of the order or on the application of an [approved mental health professional], by substituting [another person for the person having those functions].

[(2A) If the court decides to vary an order on an application under subsection (2) above, the following rules have effect for the purposes of substituting another person—

- (a) if a person is nominated in the application to act as the patient’s nearest relative and that

- person is, in the opinion of the court, a suitable person to act as such and is willing to do so, the court shall specify that person (or, if there are two or more such persons, such one of them as the court thinks fit);
- (b) otherwise, the court shall specify such person as is, in its opinion, a suitable person to act as the patient's nearest relative and is willing to do so.]
- (3) If the person having the functions of the nearest relative of a patient by virtue of an order under section 29 above dies—
- (a) subsections (1) and (2) above shall apply as if for any reference to that person there were substituted a reference to any relative of the patient, and
- (b) until the order is discharged or varied under those provisions the functions of the nearest relative under this Part of this Act and sections 66 and 69 below shall not be exercisable by any person.
- (4) [An order made on the ground specified in paragraph (c) or (d) of section 29(3) above shall, unless previously discharged under subsection (1) above, cease to have effect as follows]—
- [(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].
- [(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).]
- [(4B) An order made on the ground specified in paragraph (a), (b) or (e) of section 29(3) above shall—
- (a) if a period was specified under section 29(5) above, cease to have effect on expiry of that period, unless previously discharged under subsection (1) above;
- (b) if no such period was specified, remain in force until it is discharged under subsection (1) above.]
- (5) The discharge or variation under this section of an order made under section 29 above shall not affect the validity of anything previously done in pursuance of the order.

## NOTES

## **Derivation**

This section derived from the Mental Health Act 1959, s 53.

## **Initial Commencement**

### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

## **Amendment**

Sub-s (1): in para (a) words “the patient or” in square brackets inserted by the Mental Health Act 2007, s 24(1), (2)(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(f); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 6(2), (3).

Sub-s (1): in para (b) words “, (b) or (e)” in square brackets substituted by the Mental Health Act 2007, s 24(1), (2)(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(f); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (1A): inserted by the Mental Health Act 2007, s 24(1), (3).

Date in force: 3 November 2008: see SI 2008/1900, art 2(f); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (2): words “the patient or of” in square brackets inserted by the Mental Health Act 2007, s 24(1), (4)(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(f); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 6(2), (3).

Sub-s (2): words “approved mental health professional” in square brackets substituted by the Mental Health Act 2007, s 21, Sch 2, paras 1, 7(d).

Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.

Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.

Sub-s (2): words “another person for the person having those functions” in square brackets substituted by the Mental Health Act 2007, s 24(1), (4)(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(f); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 6(2), (3).

Sub-s (2A): inserted by the Mental Health Act 2007, s 24(1), (5).

Date in force: 3 November 2008: see SI 2008/1900, art 2(f); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 6(2), (3).

Sub-s (4): words from “An order made” to “effect as follows” in square brackets substituted by the Mental Health Act 2007, s 24(1), (6).

Date in force: 3 November 2008: see SI 2008/1900, art 2(f); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 6(2).

Sub-s (4): paras (a), (b) substituted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 14(1), (2).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (4A): inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 14(1), (3).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (4B): inserted by the Mental Health Act 2007, s 24(1), (7).

Date in force: 3 November 2008: see SI 2008/1900, art 2(f); for transitional provisions and

savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 6(2).

### *Supplemental*

## **31 Procedure on applications to county court**

[Rules of court] which relate to applications authorised by this Part of this Act to be made to [the county court] may make provision—

- (a) for the hearing and determination of such applications otherwise than in open court;
- (b) for the admission on the hearing of such applications of evidence of such descriptions as may be specified in the rules notwithstanding anything to the contrary in any enactment or rule of law relating to the admissibility of evidence;
- (c) for the visiting and interviewing of patients in private by or under the directions of the court.

## **NOTES**

### **Derivation**

This section derived from the Mental Health Act 1959, s 55.

### **Initial Commencement**

#### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### **Amendment**

Words “Rules of court” in square brackets substituted by the Crime and Courts Act 2013, s 17(5), Sch 9, Pt 3, para 112.

Date in force: 22 April 2014: see SI 2014/954, art 2(c); for transitional provision see art 3.

Words “the county court” in square brackets substituted by the Crime and Courts Act 2013, s 17(5), Sch 9, Pt 3, para 52(1)(b), (2).

Date in force: 22 April 2014: see SI 2014/954, art 2(c); for transitional provision see art 3.

## **32 Regulations for purposes of Part II**

(1) The Secretary of State may make regulations for prescribing anything which, under this Part of this Act, is required or authorised to be prescribed, and otherwise for carrying this Part of this Act into full effect.

(2) Regulations under this section may in particular make provision—

- (a) for prescribing the form of any application, recommendation, report, order, notice or other document to be made or given under this Part of this Act;
- (b) for prescribing the manner in which any such application, recommendation, report, order, notice or other document may be proved, and for regulating the service of any such application, report, order or notice;
- (c) for requiring [such bodies as may be prescribed by the regulations] to keep such registers or other records as may be [so prescribed] in respect of patients liable to be detained or subject to guardianship [. . .] under this Part of this Act [or community patients], and to furnish or make available to those patients, and their relatives, such written statements of their rights and powers under this Act as may be so prescribed;
- (d) for the determination in accordance with the regulations of the age of any person whose exact age cannot be ascertained by reference to the registers kept under the Births and

Deaths Registration Act 1953; and

- (e) for enabling the functions under this Part of this Act of the nearest relative of a patient to be performed, in such circumstances and subject to such conditions (if any) as may be prescribed by the regulations, by any person authorised in that behalf by that relative;

and for the purposes of this Part of this Act any application, report or notice the service of which is regulated under paragraph (b) above shall be deemed to have been received by or furnished to the authority or person to whom it is authorised or required to be furnished, addressed or given if it is duly served in accordance with the regulations.

(3) Without prejudice to subsections (1) and (2) above, but subject to section 23(4) [and (6)] above, regulations under this section may determine the manner in which functions under this Part of this Act of the managers of hospitals, local social services authorities, [[Local Health Board], Special Health Authorities[. . .]], National Health Service trusts or NHS foundation trusts]] are to be exercised, and such regulations may in particular specify the circumstances in which, and the conditions subject to which, any such functions may be performed by officers of or other persons acting on behalf of those managers[, boards,] [authorities and trusts].

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 56.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (2): in para (c) words “such bodies as may be prescribed by the regulations” and “so prescribed” in square brackets substituted by the Mental Health (Patients in the Community) Act 1995, s 1(2), Sch 1, para 2.

Sub-s (2): in para (c) words omitted in square brackets inserted by the Mental Health (Patients in the Community) Act 1995, s 1(2), Sch 1, para 2.

Sub-s (2): in para (c) words omitted repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 5. Date in force: 3 November 2008: see SI 2008/1210, art 2(d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (2): in para (c) words “or community patients” in square brackets inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 15.

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (3): words “and (6)” in square brackets inserted by the Mental Health Act 2007, s 45(2).

Date in force: 24 July 2007: see SI 2007/2156, art 2.

Sub-s (3): words in square brackets ending with the words “Special Health Authorities” substituted by the Health Authorities Act 1995, s 2(1), Sch 1, para 107(4).

Sub-s (3): words “Local Health Board” in square brackets substituted by SI 2007/961, art 3, Schedule, para 13(1), (7)(a).

Date in force: 1 April 2007: see SI 2007/961, art 1(1).

Sub-s (3): words omitted inserted by SI 2000/90, art 3(1), Sch 1, para 16(1), (6).

Date in force: 8 February 2000: see SI 2000/90, art 1.

Sub-s (3): words omitted repealed by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 24, 27.

Date in force: 1 April 2013: see SI 2013/160, art 2.

Sub-s (3): words “, National Health Service trusts or NHS foundation trusts” in square brackets substituted by the Health and Social Care (Community Health and Standards) Act 2003, s 34, Sch

4, paras 50, 55.

Date in force: 1 April 2004: see SI 2004/759, art 2.

Sub-s (3): word “, boards,” in square brackets inserted by SI 2007/961, art 3, Schedule, para 13(1), (7)(b).

Date in force: 1 April 2007: see SI 2007/961, art 1(1).

Sub-s (3): words “authorities and trusts” in square brackets substituted by the National Health Service and Community Care Act 1990, s 66(1), Sch 9, para 24(5).

### **Transfer of Functions**

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

### **Subordinate Legislation**

Mental Health (Hospital and Guardianship) (Welsh Forms) Regulations 1971, SI 1971/178.

Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008, SI 2008/1184 (made under sub-ss (1)–(3)).

Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) Regulations 2008, SI 2008/2439 (made under sub-ss (1)–(3)).

Mental Health (Hospital, Guardianship and Treatment) (England) (Amendment) Regulations 2008, SI 2008/2560 (made under sub-ss (1), (2)).

### **33 Special provisions as to wards of court**

(1) An application for the admission to hospital of a minor who is a ward of court may be made under this Part of this Act with the leave of the court; and section 11(4) above shall not apply in relation to an application so made.

(2) Where a minor who is a ward of court is liable to be detained in a hospital by virtue of an application for admission under this Part of this Act [or is a community patient], any power exercisable under this Part of this Act or under section 66 below in relation to the patient by his nearest relative shall be exercisable by or with the leave of the court.

(3) Nothing in this Part of this Act shall be construed as authorising the making of a guardianship application in respect of a minor who is a ward of court, or the transfer into guardianship of any such minor.

[(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.]

### **NOTES**

#### **Derivation**

This section derived from the Mental Health Act 1959, ss 58, 147(2).

#### **Initial Commencement**

##### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

#### **Amendment**

Sub-s (2): words “or is a community patient” in square brackets inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 16(1), (2).

Date in force: 3 November 2008: see SI 2008/1210, art 2(b); for savings and transitional provisions see arts 1(2), (4), 3, 4, 6, 8, 9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (4): inserted by the Mental Health (Patients in the Community) Act 1995, s 1(2), Sch 1, para 3.

Sub-s (4): substituted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 16(1), (3).

Date in force: 3 November 2008: see SI 2008/1210, art 2(b); for savings and transitional provisions see arts 1(2), (4), 3, 4, 6, 8, 9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

### See Further

See further: the Care Act 2014, s 75(7), Sch 4, para 1(1), (10), (11).

## 34 Interpretation of Part II

(1) In this Part of this Act—

["the appropriate practitioner" means—

(a) in the case of a patient who is subject to the guardianship of a person other than a local social services authority, the nominated medical attendant of the patient; and

(b) in any other case, the responsible clinician;]

[. . .]

"the nominated medical attendant", in relation to a patient who is subject to the guardianship of a person other than a local social services authority, means the person appointed in pursuance of regulations made under section 9(2) above to act as the medical attendant of the patient;

["registered establishment" means an establishment which would not, apart from subsection (2) below, be a hospital for the purposes of this Part and which—

(a) in England, is a hospital as defined by section 275 of the National Health Service Act 2006 that is used for the carrying on of a regulated activity, within the meaning of Part 1 of the Health and Social Care Act 2008, which relates to the assessment or medical treatment of mental disorder and in respect of which a person is registered under Chapter 2 of that Part; and

(b) in Wales, is an establishment in respect of which a person is registered under Part 2 of the Care Standards Act 2000 as an independent hospital in which treatment or nursing (or both) are provided for persons liable to be detained under this Act;]

["the responsible clinician" means—

(a) in relation to a patient liable to be detained by virtue of an application for admission for assessment or an application for admission for treatment, or a community patient, the approved clinician with overall responsibility for the patient's case;

(b) in relation to a patient subject to guardianship, the approved clinician authorised by the responsible local social services authority to act (either generally or in any particular case or for any particular purpose) as the responsible clinician;]

[. . .].

[(1A) . . .]

(2) Except where otherwise expressly provided, this Part of this Act applies in relation to [a registered

establishment], as it applies in relation to a hospital, and references in this Part of this Act to a hospital, and any reference in this Act to a hospital to which this Part of this Act applies, shall be construed accordingly.

(3) In relation to a patient who is subject to guardianship in pursuance of a guardianship application, any reference in this Part of this Act to the responsible local social services authority is a reference—

- (a) where the patient is subject to the guardianship of a local social services authority, to that authority;
- (b) where the patient is subject to the guardianship of a person other than a local social services authority, to the local social services authority for the area in which that person resides.

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 59.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): definition “the appropriate practitioner” inserted by the Mental Health Act 2007, s 9(1), (9).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (1): definition “the community responsible medical officer” (omitted) inserted by the Mental Health (Patients in the Community) Act 1995, s 1(2), Sch 1, para 4(2).

Sub-s (1): definition “the community responsible medical officer” (omitted) repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 5.

Date in force: 3 November 2008: see SI 2008/1210, art 2(d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof.

Sub-s (1): definition “registered establishment” substituted by SI 2010/813, art 5(1), (3).

Date in force: 1 October 2010: see SI 2010/813, art 1.

Sub-s (1): definition “the responsible clinician” substituted, for definition “the responsible medical officer” as originally enacted, by the Mental Health Act 2007, s 9(1), (10).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (1): definition “the supervisor” (omitted) inserted by the Mental Health (Patients in the Community) Act 1995, s 1(2), Sch 1, para 4(4).

Sub-s (1): definition “the supervisor” (omitted) repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 5.

Date in force: 3 November 2008: see SI 2008/1210, art 2(d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof.

Sub-s (1A): inserted by the Mental Health (Patients in the Community) Act 1995, s 1(2), Sch 1, para 4(5).

Sub-s (1A): repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 5.

Date in force: 3 November 2008: see SI 2008/1210, art 2(d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof.

Sub-s (2): words “a registered establishment” in square brackets substituted by the Care Standards Act 2000, s 116, Sch 4, para 9(1), (4)(b).

Date in force (in relation to England): 1 April 2002: see SI 2001/4150, art 3(3)(a); for transitional provisions see SI 2001/4150, arts 3(2), 4(1), (3), (4) and SI 2002/1493, art 4 (as amended by SI 2002/1493, art 6).

Date in force (in relation to Wales): 1 April 2002: see SI 2002/920, art 3(3)(d); for transitional provisions see arts 2, 3(2), (4), (6)–(10), Sch 1 thereto.

Part III  
Patients concerned in Criminal Proceedings or under Sentence

*Remands to hospital*

**35 Remand to hospital for report on accused's mental condition**

- (1) Subject to the provisions of this section, the Crown Court or a magistrates' court may remand an accused person to a hospital specified by the court for a report on his mental condition.
- (2) For the purposes of this section an accused person is—
- (a) in relation to the Crown Court, any person who is awaiting trial before the court for an offence punishable with imprisonment or who has been arraigned before the court for such an offence and has not yet been sentenced or otherwise dealt with for the offence on which he has been arraigned;
  - (b) in relation to a magistrates' court, any person who has been convicted by the court of an offence punishable on summary conviction with imprisonment and any person charged with such an offence if the court is satisfied that he did the act or made the omission charged or he has consented to the exercise by the court of the powers conferred by this section.
- (3) Subject to subsection (4) below, the powers conferred by this section may be exercised if—
- (a) the court is satisfied, on the written or oral evidence of a registered medical practitioner, that there is reason to suspect that the accused person is suffering from [mental disorder]; and
  - (b) the court is of the opinion that it would be impracticable for a report on his mental condition to be made if he were remanded on bail;

but those powers shall not be exercised by the Crown Court in respect of a person who has been convicted before the court if the sentence for the offence of which he has been convicted is fixed by law.

(4) The court shall not remand an accused person to a hospital under this section unless satisfied, on the written or oral evidence of the [approved clinician] who would be responsible for making the report or of some other person representing the managers of the hospital, that arrangements have been made for his admission to that hospital and for his admission to it within the period of seven days beginning with the date of the remand; and if the court is so satisfied it may, pending his admission, give directions for his conveyance to and detention in a place of safety.

(5) Where a court has remanded an accused person under this section it may further remand him if it appears to the court, on the written or oral evidence of the [approved clinician] responsible for making the report, that a further remand is necessary for completing the assessment of the accused person's mental condition.

(6) The power of further remanding an accused person under this section may be exercised by the court without his being brought before the court if he is represented by [an authorised person who] is given an opportunity of being heard.

(7) An accused person shall not be remanded or further remanded under this section for more than 28 days at a time or for more than 12 weeks in all; and the court may at any time terminate the remand if it appears to the court that it is appropriate to do so.

(8) An accused person remanded to hospital under this section shall be entitled to obtain at his own expense an independent report on his mental condition from a registered medical practitioner [or approved clinician] chosen by him and to apply to the court on the basis of it for his remand to be

terminated under subsection (7) above.

- (9) Where an accused person is remanded under this section—
- (a) a constable or any other person directed to do so by the court shall convey the accused person to the hospital specified by the court within the period mentioned in subsection (4) above; and
  - (b) the managers of the hospital shall admit him within that period and thereafter detain him in accordance with the provisions of this section.
- (10) If an accused person absconds from a hospital to which he has been remanded under this section, or while being conveyed to or from that hospital, he may be arrested without warrant by any constable and shall, after being arrested, be brought as soon as practicable before the court that remanded him; and the court may thereupon terminate the remand and deal with him in any way in which it could have dealt with him if he had not been remanded under this section.

## NOTES

### Derivation

This section derived from the Mental Health (Amendment) Act 1982, s 29.

### Initial Commencement

#### *To be appointed*

To be appointed: see s 149(3).

### Appointment

Appointment: 1 October 1984: see SI 1984/1357, art 2.

### Amendment

Sub-s (3): in para (a) words “mental disorder” in square brackets substituted by the Mental Health Act 2007, s 1(4), Sch 1, Pt 1, paras 1, 5.

Date in force: 3 November 2008: see SI 2008/1900, art 2(a); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (4): words “approved clinician” in square brackets substituted by the Mental Health Act 2007, s 10(1), (2)(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (5): words “approved clinician” in square brackets substituted by the Mental Health Act 2007, s 10(1), (2)(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (6): words “an authorised person who” in square brackets substituted by the Legal Services Act 2007, s 208(1), Sch 21, paras 53, 54.

Date in force: 1 January 2010: see SI 2009/3250, art 2(h).

Sub-s (8): words “or approved clinician” in square brackets inserted by the Mental Health Act 2007, s 10(1), (2)(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

### See Further

See further, in respect of the application of this section with modifications in relation to a case where the Armed Forces Act 2006, s 169 applies but the court has not yet made a hospital order or a restriction order: the Armed Forces Act 2006, s 169(8), Sch 4, para 3.

## 36 Remand of accused person to hospital for treatment

- (1) Subject to the provisions of this section, the Crown Court may, instead of remanding an accused

person in custody, remand him to a hospital specified by the court if satisfied, on the written or oral evidence of two registered medical practitioners, that—

[(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;] [and

(b) appropriate medical treatment is available for him].

(2) For the purposes of this section an accused person is any person who is in custody awaiting trial before the Crown Court for an offence punishable with imprisonment (other than an offence the sentence for which is fixed by law) or who at any time before sentence is in custody in the course of a trial before that court for such an offence.

(3) The court shall not remand an accused person under this section to a hospital unless it is satisfied, on the written or oral evidence of the [approved clinician who would have overall responsibility for his case] or of some other person representing the managers of the hospital, that arrangements have been made for his admission to that hospital and for his admission to it within the period of seven days beginning with the date of the remand; and if the court is so satisfied it may, pending his admission, give directions for his conveyance to and detention in a place of safety.

(4) Where a court has remanded an accused person under this section it may further remand him if it appears to the court, on the written or oral evidence of the [responsible clinician], that a further remand is warranted.

(5) The power of further remanding an accused person under this section may be exercised by the court without his being brought before the court if he is represented by [an authorised person who] is given an opportunity of being heard.

(6) An accused person shall not be remanded or further remanded under this section for more than 28 days at a time or for more than 12 weeks in all; and the court may at any time terminate the remand if it appears to the court that it is appropriate to do so.

(7) An accused person remanded to hospital under this section shall be entitled to obtain at his own expense an independent report on his mental condition from a registered medical practitioner [or approved clinician] chosen by him and to apply to the court on the basis of it for his remand to be terminated under subsection (6) above.

(8) Subsections (9) and (10) of section 35 above shall have effect in relation to a remand under this section as they have effect in relation to a remand under that section.

## **NOTES**

### **Derivation**

This section derived from the Mental Health (Amendment) Act 1982, s 30 (1), (2), (4)–(9).

### **Initial Commencement**

#### ***To be appointed***

To be appointed: see s 149(3).

### **Appointment**

Appointment: 1 October 1984: see SI 1984/1357, art 2.

### **Amendment**

Sub-s (1): para (a) substituted by the Mental Health Act 2007, s 1(4), Sch 1, Pt 1, paras 1, 6.

Date in force: 3 November 2008: see SI 2008/1900, art 2(a); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (1): para (b) and word “and” immediately preceding it inserted by the Mental Health Act

2007, s 5(1), (2).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (3): words “approved clinician who would have overall responsibility for his case” in square brackets substituted by the Mental Health Act 2007, s 10(1), (3)(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (4): words “responsible clinician” in square brackets substituted by the Mental Health Act 2007, s 10(1), (3)(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (5): words “an authorised person who” in square brackets substituted by the Legal Services Act 2007, s 208(1), Sch 21, paras 53, 55.

Date in force: 1 January 2010: see SI 2009/3250, art 2(h).

Sub-s (7): words “or approved clinician” in square brackets inserted by the Mental Health Act 2007, s 10(1), (3)(c).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

### See Further

See further, in respect of the application of this section with modifications in relation to a case where the Armed Forces Act 2006, s 169 applies but the court has not yet made a hospital order or a restriction order: the Armed Forces Act 2006, s 169(8), Sch 4, para 4.

### *Hospital and guardianship orders*

## **37 Powers of courts to order hospital admission or guardianship**

(1) Where a person is convicted before the Crown Court of an offence punishable with imprisonment other than an offence the sentence for which is fixed by law [. . . .], or is convicted by a magistrates’ court of an offence punishable on summary conviction with imprisonment, and the conditions mentioned in subsection (2) below are satisfied, the court may by order authorise his admission to and detention in such hospital as may be specified in the order or, as the case may be, place him under the guardianship of a local social services authority or of such other person approved by a local social services authority as may be so specified.

[(1A) In the case of an offence the sentence for which would otherwise fall to be imposed—

[(za) under section [1(2B) or] 1A(5) of the Prevention of Crime Act 1953,]

(a) under section 51A(2) of the Firearms Act 1968,

[(aa) under section [139(6B), 139A(5B) or] 139AA(7) of the Criminal Justice Act 1988,]

(b) under section 110(2) or 111(2) of the Powers of Criminal Courts (Sentencing) Act 2000, . . .

[(ba) under section 224A of the Criminal Justice Act 2003,]

(c) under *any of sections 225 to 228* [section 225(2) or 226(2)] of the Criminal Justice Act 2003, [or

(d) under section 29(4) or (6) of the Violent Crime Reduction Act 2006 (minimum sentences in certain cases of using someone to mind a weapon),]

nothing in those provisions shall prevent a court from making an order under subsection (1) above for the admission of the offender to a hospital.

(1B) References in subsection (1A) above to a sentence falling to be imposed under any of the provisions mentioned in that subsection are to be read in accordance with section 305(4) of the Criminal Justice Act 2003.]

(2) The conditions referred to in subsection (1) above are that—

- (a) the court is satisfied, on the written or oral evidence of two registered medical practitioners, that the offender is suffering from [mental disorder] and that either—
  - (i) the mental disorder from which the offender is suffering is of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment and [appropriate medical treatment is available for him; or]
  - (ii) in the case of an offender who has attained the age of 16 years, the mental disorder is of a nature or degree which warrants his reception into guardianship under this Act; and
- (b) the court is of the opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the offender, and to the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of an order under this section.

(3) Where a person is charged before a magistrates' court with any act or omission as an offence and the court would have power, on convicting him of that offence, to make an order under subsection (1) above in his case . . . , then, if the court is satisfied that the accused did the act or made the omission charged, the court may, if it thinks fit, make such an order without convicting him.

(4) An order for the admission of an offender to a hospital (in this Act referred to as "a hospital order") shall not be made under this section unless the court is satisfied on the written or oral evidence of the [approved clinician who would have overall responsibility for his case] or of some other person representing the managers of the hospital that arrangements have been made for his admission to that hospital . . . , and for his admission to it within the period of 28 days beginning with the date of the making of such an order; and the court may, pending his admission within that period, give such directions as it thinks fit for his conveyance to and detention in a place of safety.

(5) If within the said period of 28 days it appears to the Secretary of State that by reason of an emergency or other special circumstances it is not practicable for the patient to be received into the hospital specified in the order, he may give directions for the admission of the patient to such other hospital as appears to be appropriate instead of the hospital so specified; and where such directions are given—

- (a) the Secretary of State shall cause the person having the custody of the patient to be informed, and
- (b) the hospital order shall have effect as if the hospital specified in the directions were substituted for the hospital specified in the order.

(6) An order placing an offender under the guardianship of a local social services authority or of any other person (in this Act referred to as "a guardianship order") shall not be made under this section unless the court is satisfied that that authority or person is willing to receive the offender into guardianship.

(7) . . .

(8) Where an order is made under this section, the court [shall not—

- (a) pass sentence of imprisonment or impose a fine or make a [community order (within the

- meaning of Part 12 of the Criminal Justice Act 2003)] [or a youth rehabilitation order (within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008)] in respect of the offence,
- (b) if the order under this section is a hospital order, make a referral order (within the meaning of [the Powers of Criminal Courts (Sentencing) Act 2000]) in respect of the offence, or
  - (c) make in respect of the offender [. . . or an order under section 150 of that Act (binding over of parent or guardian)],

but the court may make any other order which it] has power to make apart from this section; and for the purposes of this subsection “sentence of imprisonment” includes any sentence or order for detention.

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, ss 60, 64.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): words (omitted) in square brackets inserted by the Crime (Sentences) Act 1997, s 55, Sch 4, para 12(1).

Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(l), (2)(f).

Sub-s (1): words omitted repealed by the Criminal Justice Act 2003, s 304, Sch 32, Pt 1, paras 37, 38(a).

Date in force: 4 April 2005: see SI 2005/950, art 2(1), Sch 1, para 42(1), (18); for savings see Sch 2, paras 5, 6(a) thereof.

Sub-ss (1A), (1B): substituted by the Criminal Justice Act 2003, s 304, Sch 32, Pt 1, paras 37, 38(b).

Date in force: 4 April 2005: see SI 2005/950, art 2(1), Sch 1, para 42(1), (18); for savings see Sch 2, paras 5, 6(a) thereof.

Sub-s (1A): para (za) inserted by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, s 142(3), Sch 26, para 2(1), (2).

Date in force: 3 December 2012: see SI 2012/2770, art 2(a), (f).

Sub-s (1A): in para (za) words “1(2B) or” in square brackets inserted by the Criminal Justice and Courts Act 2015, s 28(8), Sch 5, para 1(a).

Date in force: 17 July 2015: see SI 2015/1463, art 2(b).

Sub-s (1A): para (aa) inserted by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, s 142(3), Sch 26, para 2(1), (3).

Date in force: 3 December 2012: see SI 2012/2770, art 2(a), (f).

Sub-s (1A): in para (aa) words “139(6B), 139A(5B) or” in square brackets inserted by the Criminal Justice and Courts Act 2015, s 28(8), Sch 5, para 1(b).

Date in force: 17 July 2015: see SI 2015/1463, art 2(b).

Sub-s (1A): in para (b) word “or” in italics repealed by the Violent Crime Reduction Act 2006, ss 49, 65, Sch 1, para 2, Sch 5.

Date in force: 6 April 2007: see SI 2007/858, art 2(g), (m), (n)(iii).

Sub-s (1A): para (ba) inserted by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, s 122(3), Sch 19, Pt 1, para 1.

Date in force: 3 December 2012: see SI 2012/2906, art 2(q).

Sub-s (1A): in para (c) words “any of sections 225 to 228” in italics repealed and subsequent words in square brackets substituted by the Criminal Justice and Immigration Act 2008, s 148, Sch 26, Pt 2, para 8.

Date in force: to be appointed: see the Criminal Justice and Immigration Act 2008, s 153(7).

Sub-s (1A): para (d) and word “or” immediately preceding it inserted by the Violent Crime

Reduction Act 2006, s 49, Sch 1, para 2.

Date in force: 6 April 2007: see SI 2007/858, art 2(g).

Sub-s (2): in para (a) words “mental disorder” in square brackets substituted by the Mental Health Act 2007, s 1(4), Sch 1, Pt 1, paras 1, 7(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(a); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (2): in para (a)(i) words “appropriate medical treatment is available for him; or” in square brackets substituted by the Mental Health Act 2007, s 4(1), (5).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (3): words omitted repealed by the Mental Health Act 2007, ss 1(4), 55, Sch 1, Pt 1, paras 1, 7(b), Sch 11, Pt 1.

Date in force: 3 November 2008: see SI 2008/1900, art 2(a), (p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (4): words “approved clinician who would have overall responsibility for his case” in square brackets substituted by the Mental Health Act 2007, s 10(1), (4).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (4): words omitted repealed by the Crime (Sentences) Act 1997, ss 55, 56(2), Sch 4, para 12(3), Sch 6.

Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(l), (2)(f).

Sub-s (7): repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 1.

Date in force: 3 November 2008: see SI 2008/1900, art 2(p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (8): words from “shall not—” to “order which it” in square brackets substituted by the Youth Justice and Criminal Evidence Act 1999, s 67, Sch 4, para 11.

Date in force: 26 June 2000: see SI 2000/1587, art 2(b).

Sub-s (8): in para (a) words “community order (within the meaning of Part 12 of the Criminal Justice Act 2003)” in square brackets substituted by the Criminal Justice Act 2003, s 304, Sch 32, Pt 1, paras 37, 38(c).

Date in force: 4 April 2005: see SI 2005/950, art 2(1), Sch 1, para 42(1), (18); for savings see Sch 2, paras 5, 6(a) thereof.

Sub-s (8): in para (a) words from “or a youth” to “Criminal Justice and Immigration Act 2008” in square brackets inserted by the Criminal Justice and Immigration Act 2008, s 6(2), Sch 4, Pt 1, para 30(a).

Date in force: 30 November 2009: see SI 2009/3074, art 2(f), (k), (p)(v), (t)(i); for transitional provisions and savings see the Criminal Justice and Immigration Act 2008, s 148(2), Sch 27, Pt 1, paras 1(1), 5.

Sub-s (8): in para (b) words “the Powers of Criminal Courts (Sentencing) Act 2000” in square brackets substituted by the Powers of Criminal Courts (Sentencing) Act 2000, Sch 9, paras 90(1), (6)(a).

Date in force: 25 August 2000: see the Powers of Criminal Courts (Sentencing) Act 2000, ss 165(3), 168(1), Sch 11, Pt III, para 11(4).

Sub-s (8): in para (c) words in square brackets ending with the words “or an order under section 150 of that Act (binding over of parent or guardian)” in square brackets substituted by the Powers of Criminal Courts (Sentencing) Act 2000, Sch 9, paras 90(1), (6)(b).

Date in force: 25 August 2000: see the Powers of Criminal Courts (Sentencing) Act 2000, ss 165(3), 168(1), Sch 11, Pt III, para 11(4).

Sub-s (8): in para (c) words omitted repealed by the Criminal Justice and Immigration Act 2008, ss 6(2), 149, Sch 4, Pt 1, para 30(b), Sch 28, Pt 1.

Date in force: 30 November 2009: see SI 2009/3074, art 2(f), (k), (l), (p)(v), (t)(i), (u)(viii); for transitional provisions and savings see the Criminal Justice and Immigration Act 2008, s

148(2), Sch 27, Pt 1, paras 1(1), 5.

### **Modification**

The Criminal Justice and Court Services Act 2000, s 43(1) provides that, an order under the Powers of Criminal Courts (Sentencing) Act 2000, s 41(1) (probation orders), whenever made, is to be referred to as a community rehabilitation order. Section 43(4) of the Criminal Justice and Court Services Act 2000 further provides that, references in any enactment, instrument or document to a probation order, are to an order under any provision corresponding to the Powers of Criminal Courts (Sentencing) Act 2000, s 41(1) which is repealed by that Act, and include (where the context allows) an order under that subsection. References to a probation order in this section should be construed accordingly.

### **See Further**

See further, in respect of the application of this section with modifications for the purposes of the power to make hospital orders under the Armed Forces Act 2006, s 169(2)(a): the Armed Forces Act 2006, s 169(8), Sch 4, para 1.

### **Transfer of Functions**

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

## **38 Interim hospital orders**

(1) Where a person is convicted before the Crown Court of an offence punishable with imprisonment (other than an offence the sentence for which is fixed by law) or is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment and the court before or by which he is convicted is satisfied, on the written or oral evidence of two registered medical practitioners—

- (a) that the offender is suffering from [mental disorder]; and
- (b) that there is reason to suppose that the mental disorder from which the offender is suffering is such that it may be appropriate for a hospital order to be made in his case,

the court may, before making a hospital order or dealing with him in some other way, make an order (in this Act referred to as "an interim hospital order") authorising his admission to such hospital as may be specified in the order and his detention there in accordance with this section.

(2) In the case of an offender who is subject to an interim hospital order the court may make a hospital order without his being brought before the court if he is represented by [an authorised person who] is given an opportunity of being heard.

(3) At least one of the registered medical practitioners whose evidence is taken into account under subsection (1) above shall be employed at the hospital which is to be specified in the order.

(4) An interim hospital order shall not be made for the admission of an offender to a hospital unless the court is satisfied, on the written or oral evidence of the [approved clinician who would have overall responsibility for his case] or of some other person representing the managers of the hospital, that arrangements have been made for his admission to that hospital and for his admission to it within the period of 28 days beginning with the date of the order; and if the court is so satisfied the court may, pending his admission, give directions for his conveyance to and detention in a place of safety.

(5) An interim hospital order—

- (a) shall be in force for such period, not exceeding 12 weeks, as the court may specify when making the order; but
- (b) may be renewed for further periods of not more than 28 days at a time if it appears to the

court, on the written or oral evidence of the [responsible clinician], that the continuation of the order is warranted;

but no such order shall continue in force for more than [twelve months] in all and the court shall terminate the order if it makes a hospital order in respect of the offender or decides after considering the written or oral evidence of the [responsible clinician] to deal with the offender in some other way.

(6) The power of renewing an interim hospital order may be exercised without the offender being brought before the court if he is represented by counsel or a solicitor and his counsel or solicitor is given an opportunity of being heard.

(7) If an offender absconds from a hospital in which he is detained in pursuance of an interim hospital order, or while being conveyed to or from such a hospital, he may be arrested without warrant by a constable and shall, after being arrested, be brought as soon as practicable before the court that made the order; and the court may thereupon terminate the order and deal with him in any way in which it could have dealt with him if no such order had been made.

## **NOTES**

### **Derivation**

This section derived from the Mental Health (Amendment) Act 1982, s 31(1)–(6), (8).

### **Initial Commencement**

#### ***To be appointed***

To be appointed: see s 149(3).

### **Appointment**

Appointment: 1 October 1984: see SI 1984/1357, art 2.

### **Amendment**

Sub-s (1): in para (a) words “mental disorder” in square brackets substituted by the Mental Health Act 2007, s 1(4), Sch 1, Pt 1, paras 1, 8.

Date in force: 3 November 2008: see SI 2008/1900, art 2(a); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (2): words “an authorised person who” in square brackets substituted by the Legal Services Act 2007, s 208(1), Sch 21, paras 53, 56.

Date in force: 1 January 2010: see SI 2009/3250, art 2(h).

Sub-s (4): words “approved clinician who would have overall responsibility for his case” in square brackets substituted by the Mental Health Act 2007, s 10(1), (5)(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (5): words “responsible clinician” in square brackets in both places they occur substituted by the Mental Health Act 2007, s 10(1), (5)(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (5): words “twelve months” in square brackets substituted by the Crime (Sentences) Act 1997, s 49(1).

Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(k).

### **See Further**

See further, in respect of the application of this section with modifications in relation to a case where the Armed Forces Act 2006, s 169 applies but the court has not yet made a hospital order or a restriction order: the Armed Forces Act 2006, s 169(8), Sch 4, para 5.

## **39 Information as to hospitals**

(1) Where a court is minded to make a hospital order or interim hospital order in respect of any person it may request—

- (a) the [clinical commissioning group or] [. . .] [Local Health Board] for [the area] in which that person resides or last resided; or
- (b) [the National Health Service Commissioning Board or] [the National Assembly for Wales or any other] [clinical commissioning group or] [. . .] [Local Health Board] that appears to the court to be appropriate,

to furnish the court with such information as [that [clinical commissioning group or] [. . .] [Local Health Board] or [the National Health Service Commissioning Board or the] National Assembly for Wales] have] or can reasonably obtain with respect to the hospital or hospitals (if any) in [their area] or elsewhere at which arrangements could be made for the admission of that person in pursuance of the order, and [that [clinical commissioning group or] [. . .] [Local Health Board] or [the National Health Service Commissioning Board or the] National Assembly for Wales] shall] comply with any such request.

[(1ZA) A request under this section to the National Health Service Commissioning Board may relate only to services or facilities the provision of which the Board arranges.]

[(1A) In relation to a person who has not attained the age of 18 years, subsection (1) above shall have effect as if the reference to the making of a hospital order included a reference to a remand under section 35 or 36 above or the making of an order under section 44 below.

(1B) Where the person concerned has not attained the age of 18 years, the information which may be requested under subsection (1) above includes, in particular, information about the availability of accommodation or facilities designed so as to be specially suitable for patients who have not attained the age of 18 years.]

(2) . . .

## NOTES

### Derivation

This section derived from the Mental Health (Amendment) Act 1982, s 32.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): in para (a) words “clinical commissioning group or” in square brackets inserted by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 24, 28(1), (2)(b).

Date in force (in so far as is necessary for enabling the exercise of any power to make an order or regulations or to give directions): 27 March 2012: see the Health and Social Care Act 2012, s 306(1)(d).

Date in force (for remaining purposes): 1 April 2013: see SI 2013/160, art 2.

Sub-s (1): words omitted in each place they occur inserted by the National Health Service Reform and Health Care Professions Act 2002, s 2(5), Sch 2, Pt 2, paras 42, 46.

Date in force: 1 October 2002: see SI 2002/2478, art 3(1)(d).

Sub-s (1): words omitted in each place they occur repealed by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 24, 28(1), (2)(a).

Date in force: 1 April 2013: see SI 2013/160, art 2.

Sub-s (1): words “Local Health Board” in square brackets in each place they occur substituted by SI 2007/961, art 3, Schedule, para 13(1), (8)(a).

Date in force: 1 April 2007: see SI 2007/961, art 1(1).

Sub-s (1): in para (a) words “the area” in square brackets substituted by the Health Authorities Act 1995, s 2(1), Sch 1, para 107(1), (5)(ii).

Sub-s (1): in para (b) words “the National Health Service Commissioning Board or” in square brackets inserted by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 24, 28(1), (2)(c).

- Date in force (in so far as is necessary for enabling the exercise of any power to make an order or regulations or to give directions): 27 March 2012: see the Health and Social Care Act 2012, s 306(1)(d).
- Date in force (for remaining purposes): 1 April 2013: see SI 2013/160, art 2.
- Sub-s (1): in para (b) words “the National Assembly for Wales or any other” in square brackets substituted by SI 2007/961, art 3, Schedule, para 13(1), (8)(b).
- Date in force: 1 April 2007: see SI 2007/961, art 1(1).
- Sub-s (1): in para (b) words “clinical commissioning group or” in square brackets inserted by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 24, 28(1), (2)(d).
- Date in force (in so far as is necessary for enabling the exercise of any power to make an order or regulations or to give directions): 27 March 2012: see the Health and Social Care Act 2012, s 306(1)(d).
- Date in force (for remaining purposes): 1 April 2013: see SI 2013/160, art 2.
- Sub-s (1): words in square brackets beginning with the word “that” substituted by the Health Authorities Act 1995, s 2(1), Sch 1, para 107(1), (5)(a)(iii).
- Sub-s (1): words “clinical commissioning group or” in square brackets inserted by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 24, 28(1), (2)(e).
- Date in force (in so far as is necessary for enabling the exercise of any power to make an order or regulations or to give directions): 27 March 2012: see the Health and Social Care Act 2012, s 306(1)(d).
- Date in force (for remaining purposes): 1 April 2013: see SI 2013/160, art 2.
- Sub-s (1): words “or National Assembly for Wales” in square brackets in both places they occur inserted by SI 2007/961, art 3, Schedule, para 13(1), (8)(c), (d).
- Date in force: 1 April 2007: see SI 2007/961, art 1(1).
- Sub-s (1): words “the National Health Service Commissioning Board or the” in square brackets in both places they occur inserted by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 24, 28(1), (2)(f).
- Date in force (in so far as is necessary for enabling the exercise of any power to make an order or regulations or to give directions): 27 March 2012: see the Health and Social Care Act 2012, s 306(1)(d).
- Date in force (for remaining purposes): 1 April 2013: see SI 2013/160, art 2.
- Sub-s (1): words “their area” in square brackets substituted by the Health Authorities Act 1995, s 2(1), Sch 1, para 107(1), (5)(a)(iv).
- Sub-s (1): words in square brackets beginning with the word “that” substituted by the Health Authorities Act 1995, s 2(1), Sch 1, para 107(1), (5)(a)(v).
- Sub-s (1): words “clinical commissioning group or” in square brackets inserted by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 24, 28(1), (2)(g).
- Date in force (in so far as is necessary for enabling the exercise of any power to make an order or regulations or to give directions): 27 March 2012: see the Health and Social Care Act 2012, s 306(1)(d).
- Date in force (for remaining purposes): 1 April 2013: see SI 2013/160, art 2.
- Sub-s (1ZA): inserted by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 24, 28(1), (3).
- Date in force (in so far as is necessary for enabling the exercise of any power to make an order or regulations or to give directions): 27 March 2012: see the Health and Social Care Act 2012, s 306(1)(d).
- Date in force (for remaining purposes): 1 April 2013: see SI 2013/160, art 2.
- Sub-ss (1A), (1B): inserted by the Mental Health Act 2007, s 31(1), (2).
- Date in force: 3 November 2008: see SI 2008/1900, art 2(h); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.
- Sub-s (2): repealed by the Health Authorities Act 1995, ss 2(1), 5(1), Sch 1, para 107(5), Sch 3.

### **[39A Information to facilitate guardianship orders]**

[Where a court is minded to make a guardianship order in respect of any offender, it may request the local social services authority for the area in which the offender resides or last resided, or any other local social services authority that appears to the court to be appropriate—

- (a) to inform the court whether it or any other person approved by it is willing to receive the offender into guardianship; and
- (b) if so, to give such information as it reasonably can about how it or the other person could be expected to exercise in relation to the offender the powers conferred by section 40(2) below;

and that authority shall comply with any such request.]

## NOTES

### Amendment

Inserted by the Criminal Justice Act 1991, s 27(1).

### 40 Effect of hospital orders, guardianship orders and interim hospital orders

- (1) A hospital order shall be sufficient authority—
  - (a) for a constable, an [approved mental health professional] or any other person directed to do so by the court to convey the patient to the hospital specified in the order within a period of 28 days; and
  - (b) for the managers of the hospital to admit him at any time within that period and thereafter detain him in accordance with the provisions of this Act.
- (2) A guardianship order shall confer on the authority or person named in the order as guardian the same powers as a guardianship application made and accepted under Part II of this Act.
- (3) Where an interim hospital order is made in respect of an offender—
  - (a) a constable or any other person directed to do so by the court shall convey the offender to the hospital specified in the order within the period mentioned in section 38(4) above; and
  - (b) the managers of the hospital shall admit him within that period and thereafter detain him in accordance with the provisions of section 38 above.
- (4) A patient who is admitted to a hospital in pursuance of a hospital order, or placed under guardianship by a guardianship order, shall, subject to the provisions of this subsection, be treated for the purposes of the provisions of this Act mentioned in Part I of Schedule 1 to this Act as if he had been so admitted or placed on the date of the order in pursuance of an application for admission for treatment or a guardianship application, as the case may be, duly made under Part II of this Act, but subject to any modifications of those provisions specified in that Part of that Schedule.
- (5) Where a patient is admitted to a hospital in pursuance of a hospital order, or placed under guardianship by a guardianship order, any previous application, hospital order or guardianship order by virtue of which he was liable to be detained in a hospital or subject to guardianship shall cease to have effect; but if the first-mentioned order, or the conviction on which it was made, is quashed on appeal, this subsection shall not apply and section 22 above shall have effect as if during any period for which the patient was liable to be detained or subject to guardianship under the order, he had been detained in custody as mentioned in that section.
- [(6) Where—
  - (a) a patient admitted to a hospital in pursuance of a hospital order is absent without leave;
  - (b) a warrant to arrest him has been issued under section 72 of the Criminal Justice Act 1967; and
  - (c) he is held pursuant to the warrant in any country or territory other than the United Kingdom,

any of the Channel Islands and the Isle of Man,

he shall be treated as having been taken into custody under section 18 above on first being so held.]

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 63(1)–(3), (5) and the Mental Health (Amendment) Act 1982, s 31(7).

### Initial Commencement

#### *Specified date*

Sub-ss (1), (2), (4), (5): Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

#### *To be appointed*

Sub-s (3): To be appointed: see s 149(3).

### Appointment

Sub-s (3): Appointment: 1 October 1984: see SI 1984/1357, art 2.

### Extent

This section does not extend to Scotland.

### Amendment

Sub-s (1): in para (a) words “approved mental health professional” in square brackets substituted by the Mental Health Act 2007, s 21, Sch 2, paras 1, 7(e).

Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.

Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.

Sub-s (6): inserted by the Mental Health (Patients in the Community) Act 1995, s 2(4).

## *Restriction orders*

### **41 Power of higher courts to restrict discharge from hospital**

(1) Where a hospital order is made in respect of an offender by the Crown Court, and it appears to the court, having regard to the nature of the offence, the antecedents of the offender and the risk of his committing further offences if set at large, that it is necessary for the protection of the public from serious harm so to do, the court may, subject to the provisions of this section, further order that the offender shall be subject to the special restrictions set out in this section. . . ; and an order under this section shall be known as “a restriction order”.

(2) A restriction order shall not be made in the case of any person unless at least one of the registered medical practitioners whose evidence is taken into account by the court under section 37(2)(a) above has given evidence orally before the court.

(3) The special restrictions applicable to a patient in respect of whom a restriction order is in force are as follows—

(a) none of the provisions of Part II of this Act relating to the duration, renewal and expiration of authority for the detention of patients shall apply, and the patient shall continue to be liable to be detained by virtue of the relevant hospital order until he is duly discharged under the said Part II or absolutely discharged under section 42, 73, 74 or 75 below;

[(aa) none of the provisions of Part II of this Act relating to [community treatment orders and community patients] shall apply;]

(b) no application shall be made to [the appropriate tribunal] in respect of a patient under section 66 or 69(1) below;

- (c) the following powers shall be exercisable only with the consent of the Secretary of State, namely—
- (i) power to grant leave of absence to the patient under section 17 above;
  - (ii) power to transfer the patient in pursuance of regulations under section 19 above [or in pursuance of subsection (3) of that section]; and
  - (iii) power to order the discharge of the patient under section 23 above;

and if leave of absence is granted under the said section 17 power to recall the patient under that section shall vest in the Secretary of State as well as the [responsible clinician]; and

- (d) the power of the Secretary of State to recall the patient under the said section 17 and power to take the patient into custody and return him under section 18 above may be exercised at any time;

and in relation to any such patient section 40(4) above shall have effect as if it referred to Part II of Schedule 1 to this Act instead of Part I of that Schedule.

(4) A hospital order shall not cease to have effect under section 40(5) above if a restriction order in respect of the patient is in force at the material time.

(5) Where a restriction order in respect of a patient ceases to have effect while the relevant hospital order continues in force, the provisions of section 40 above and Part I of Schedule 1 to this Act shall apply to the patient as if he had been admitted to the hospital in pursuance of a hospital order (without a restriction order) made on the date on which the restriction order ceased to have effect.

(6) While a person is subject to a restriction order the [responsible clinician] shall at such intervals (not exceeding one year) as the Secretary of State may direct examine and report to the Secretary of State on that person; and every report shall contain such particulars as the Secretary of State may require.

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 65 and the Mental Health (Amendment) Act 1982, s 28 (3).

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): words omitted repealed by the Mental Health Act 2007, ss 40(1), 55, Sch 11, Pt 8.  
Date in force: 1 October 2007: see SI 2007/2798, art 2(d).

Sub-s (3): para (aa) inserted by the Mental Health (Patients in the Community) Act 1995, s 1(2), Sch 1, para 5.

Sub-s (3): in para (aa) words “community treatment orders and community patients” in square brackets substituted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 17.

Date in force: 3 November 2008: see SI 2008/1210, art 2(b); for savings and transitional provisions see arts 1(2), (4), 3, 4, 6, 8, 9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (3): in para (b) words “the appropriate tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 40, 41.

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (3): in para (c)(ii) words from “or in” to “that section” in square brackets inserted by the Crime (Sentences) Act 1997, s 49(2).

Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(k).

Sub-s (3): in para (c) words “responsible clinician” in square brackets substituted by the Mental Health Act 2007, s 10(1), (6).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (6): words “responsible clinician” in square brackets substituted by the Mental Health Act 2007, s 10(1), (6).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

#### **See Further**

See further, in respect of the application of sub-s (1) above with modifications for the purposes of the power to make restriction orders under the Armed Forces Act 2006, s 169(2)(a): the Armed Forces Act 2006, s 169(8), Sch 4, para 2.

#### **Transfer of Functions**

Transfer of functions to and from the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 provided that all functions of a Minister of the Crown under this section were, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales. As a consequence of the amendment of Sch 1 to the 1999 Order by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(b), the functions transferred to the Assembly by the 1999 Order ceased to be exercisable by the Assembly and instead (by virtue of art 5 of the 2000 Order) became exercisable by the Minister of the Crown by whom they were exercisable, in relation to Wales, immediately before 1 July 1999.

#### **42 Powers of Secretary of State in respect of patients subject to restriction orders**

(1) If the Secretary of State is satisfied that in the case of any patient a restriction order is no longer required for the protection of the public from serious harm, he may direct that the patient cease to be subject to the special restrictions set out in section 41(3) above; and where the Secretary of State so directs, the restriction order shall cease to have effect, and section 41(5) above shall apply accordingly.

(2) At any time while a restriction order is in force in respect of a patient, the Secretary of State may, if he thinks fit, by warrant discharge the patient from hospital, either absolutely or subject to conditions; and where a person is absolutely discharged under this subsection, he shall thereupon cease to be liable to be detained by virtue of the relevant hospital order, and the restriction order shall cease to have effect accordingly.

(3) The Secretary of State may at any time during the continuance in force of a restriction order in respect of a patient who has been conditionally discharged under subsection (2) above by warrant recall the patient to such hospital as may be specified in the warrant.

(4) Where a patient is recalled as mentioned in subsection (3) above—

- (a) if the hospital specified in the warrant is not the hospital from which the patient was conditionally discharged, the hospital order and the restriction order shall have effect as if the hospital specified in the warrant were substituted for the hospital specified in the hospital order;
- (b) in any case, the patient shall be treated for the purposes of section 18 above as if he had absented himself without leave from the hospital specified in the warrant. . . .

(5) If a restriction order in respect of a patient ceases to have effect after the patient has been conditionally discharged under this section, the patient shall, unless previously recalled under subsection (3) above, be deemed to be absolutely discharged on the date when the order ceases to have effect, and shall cease to be liable to be detained by virtue of the relevant hospital order accordingly.

(6) The Secretary of State may, if satisfied that the attendance at any place in Great Britain of a patient who is subject to a restriction order is desirable in the interests of justice or for the purposes of any public inquiry, direct him to be taken to that place; and where a patient is directed under this subsection to be taken to any place he shall, unless the Secretary of State otherwise directs, be kept in custody while being so taken, while at that place and while being taken back to the hospital in which he is liable to be detained.

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 66 (1)–(5).

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (4): in para (b) words omitted repealed by the Mental Health Act 2007, ss 40(2), 55, Sch 11, Pt 8.

Date in force: 1 October 2007: see SI 2007/2798, art 2(d).

### Transfer of Functions

Transfer of functions to and from the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 provided that all functions of a Minister of the Crown under this section were, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales. As a consequence of the amendment of Sch 1 to the 1999 Order by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(b), the functions transferred to the Assembly by the 1999 Order ceased to be exercisable by the Assembly and instead (by virtue of art 5 of the 2000 Order) became exercisable by the Minister of the Crown by whom they were exercisable, in relation to Wales, immediately before 1 July 1999.

## 43 Power of magistrates' courts to commit for restriction order

(1) If in the case of a person of or over the age of 14 years who is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment—

- (a) the conditions which under section 37(1) above are required to be satisfied for the making of a hospital order are satisfied in respect of the offender; but
- (b) it appears to the court, having regard to the nature of the offence, the antecedents of the offender and the risk of his committing further offences if set at large, that if a hospital order is made a restriction order should also be made,

the court may, instead of making a hospital order or dealing with him in any other manner, commit him in custody to the Crown Court to be dealt with in respect of the offence.

(2) Where an offender is committed to the Crown Court under this section, the Crown Court shall inquire into the circumstances of the case and may—

- (a) if that court would have power so to do under the foregoing provisions of this Part of this Act upon the conviction of the offender before that court of such an offence as is described in section 37(1) above, make a hospital order in his case, with or without a restriction order;
- (b) if the court does not make such an order, deal with the offender in any other manner in which the magistrates' court might have dealt with him.

(3) The Crown Court shall have the same power to make orders under sections 35, 36 and 38 above

in the case of a person committed to the court under this section as the Crown Court has under those sections in the case of an accused person within the meaning of section 35 or 36 above or of a person convicted before that court as mentioned in section 38 above.

[(4) The powers of a magistrates' court under section 3 or 3B of the Powers of Criminal Courts (Sentencing) Act 2000 (which enable such a court to commit an offender to the Crown Court where the court is of the opinion, or it appears to the court, as mentioned in the section in question) shall also be exercisable by a magistrates' court where it is of that opinion (or it so appears to it) unless a hospital order is made in the offender's case with a restriction order.]

(5) *The power of the Crown Court to make a hospital order, with or without a restriction order, in the case of a person convicted before that court of an offence may, in the same circumstances and subject to the same conditions, be exercised by such a court in the case of a person committed to the court under section 5 of the Vagrancy Act 1824 (which provides for the committal to the Crown Court of persons who are incorrigible rogues within the meaning of that section).*

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 67.

### Initial Commencement

#### **Specified date**

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (4): substituted by the Criminal Justice Act 2003, s 41, Sch 3, Pt 2, para 55(1), (2).

Date in force (for certain purposes): 18 June 2012: see SI 2012/1320, art 4(1)(a), (c)(iii)–(v); for savings see art 5 thereof.

Date in force (for certain purposes): 5 November 2012: see SI 2012/2574, art 2(1)(a), (c), (2), (3), Schedule; for savings and effect see arts 3, 4 thereof.

Date in force (for remaining purposes): 28 May 2013: see SI 2013/1103, art 2(1)(a), (c), (2)–(4); for savings see arts 3, 4 thereof.

Sub-s (5): repealed by the Criminal Justice Act 2003, s 332, Sch 37, Pt 9.

Date in force: to be appointed: see the Criminal Justice Act 2003, s 336(3).

## 44 Committal to hospital under s 43

(1) Where an offender is committed under section 43(1) above and the magistrates' court by which he is committed is satisfied on written or oral evidence that arrangements have been made for the admission of the offender to a hospital in the event of an order being made under this section, the court may, instead of committing him in custody, by order direct him to be admitted to that hospital, specifying it, and to be detained there until the case is disposed of by the Crown Court, and may give such directions as it thinks fit for his production from the hospital to attend the Crown Court by which his case is to be dealt with.

(2) The evidence required by subsection (1) above shall be given by the [approved clinician who would have overall responsibility for the offender's case] or by some other person representing the managers of the hospital in question.

(3) The power to give directions under section 37(4) above, section 37(5) above and section 40(1) above shall apply in relation to an order under this section as they apply in relation to a hospital order, but as if references to the period of 28 days mentioned in section 40(1) above were omitted; and subject as aforesaid an order under this section shall, until the offender's case is disposed of by the Crown Court, have the same effect as a hospital order together with a restriction order. . .

## NOTES

## **Derivation**

This section derived from the Mental Health Act 1959, s 68.

## **Initial Commencement**

### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

## **Amendment**

Sub-s (2): words “approved clinician who would have overall responsibility for the offender’s case” in square brackets substituted by the Mental Health Act 2007, s 10(1), (7).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (3): words omitted repealed by the Mental Health Act 2007, ss 40(3)(a), 55, Sch 11, Pt 8.

Date in force: 1 October 2007: see SI 2007/2798, art 2(d); for effect see the Mental Health Act 2007, s 40(7).

## **45 Appeals from magistrates' courts**

(1) Where on the trial of an information charging a person with an offence a magistrates' court makes a hospital order or guardianship order in respect of him without convicting him, he shall have the same right of appeal against the order as if it had been made on his conviction; and on any such appeal the Crown Court shall have the same powers as if the appeal had been against both conviction and sentence.

(2) An appeal by a child or young person with respect to whom any such order has been made, whether the appeal is against the order or against the finding upon which the order was made, may be brought by him or by his parent or guardian on his behalf.

## **NOTES**

### **Derivation**

This section derived from the Mental Health Act 1959, s 70(1), (3).

### **Initial Commencement**

#### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

*[Hospital and limitation directions]*

## **NOTES**

### **Amendment**

Inserted by the Crime (Sentences) Act 1997, s 46.

Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(i).

## **[45A Power of higher courts to direct hospital admission]**

[(1) This section applies where, in the case of a person convicted before the Crown Court of an offence the sentence for which is not fixed by law—

(a) the conditions mentioned in subsection (2) below are fulfilled; and

(b) . . . , the court considers making a hospital order in respect of him before deciding to impose a sentence of imprisonment (“the relevant sentence”) in respect of the offence.

(2) The conditions referred to in subsection (1) above are that the court is satisfied, on the written or oral evidence of two registered medical practitioners—

- (a) that the offender is suffering from [mental disorder];
  - (b) that the mental disorder from which the offender is suffering is of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment; and
  - [(c) that appropriate medical treatment is available for him].
- (3) The court may give both of the following directions, namely—
- (a) a direction that, instead of being removed to and detained in a prison, the offender be removed to and detained in such hospital as may be specified in the direction (in this Act referred to as a “hospital direction”); and
  - (b) a direction that the offender be subject to the special restrictions set out in section 41 above (in this Act referred to as a “limitation direction”).
- (4) A hospital direction and a limitation direction shall not be given in relation to an offender unless at least one of the medical practitioners whose evidence is taken into account by the court under subsection (2) above has given evidence orally before the court.
- (5) A hospital direction and a limitation direction shall not be given in relation to an offender unless the court is satisfied on the written or oral evidence of the [approved clinician who would have overall responsibility for his case], or of some other person representing the managers of the hospital that arrangements have been made—
- (a) for his admission to that hospital; and
  - (b) for his admission to it within the period of 28 days beginning with the day of the giving of such directions;
- and the court may, pending his admission within that period, give such directions as it thinks fit for his conveyance to and detention in a place of safety.
- (6) If within the said period of 28 days it appears to the Secretary of State that by reason of an emergency or other special circumstances it is not practicable for the patient to be received into the hospital specified in the hospital direction, he may give instructions for the admission of the patient to such other hospital as appears to be appropriate instead of the hospital so specified.
- (7) Where such instructions are given—
- (a) the Secretary of State shall cause the person having the custody of the patient to be informed, and
  - (b) the hospital direction shall have effect as if the hospital specified in the instructions were substituted for the hospital specified in the hospital direction.
- (8) Section 38(1) and (5) and section 39 above shall have effect as if any reference to the making of a hospital order included a reference to the giving of a hospital direction and a limitation direction.
- (9) A hospital direction and a limitation direction given in relation to an offender shall have effect not only as regards the relevant sentence but also (so far as applicable) as regards any other sentence of imprisonment imposed on the same or a previous occasion.
- (10) . . .
- (11) . . .]

## NOTES

### Amendment

Inserted by the Crime (Sentences) Act 1997, s 46.

Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(i).

Sub-s (1): in para (b) words omitted repealed by the Criminal Justice Act 2003, ss 304, 332, Sch 32, Pt 1, paras 37, 39, Sch 37, Pt 7.

Date in force: 4 April 2005: see SI 2005/950, art 2(1), Sch 1, paras 42(1), (18), 44(1), (4)(g).

Sub-s (2): in para (a) words “mental disorder” in square brackets substituted by the Mental Health Act 2007, s 1(4), Sch 1, Pt 1, paras 1, 9.

Date in force: 3 November 2008: see SI 2008/1900, art 2(a); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (2): para (c) substituted by the Mental Health Act 2007, s 4(1), (6).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (5): words “approved clinician who would have overall responsibility for his case” in square brackets substituted by the Mental Health Act 2007, s 10(1), (8).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-ss (10), (11): repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 1.

Date in force: 3 November 2008: see SI 2008/1900, art 2(p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

### Transfer of Functions

Transfer of functions to and from the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 provided that all functions of a Minister of the Crown under this section were, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales. As a consequence of the amendment of Sch 1 to the 1999 Order by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(b), the functions under sub-ss (10) and (11) transferred to the Assembly by the 1999 Order ceased to be exercisable by the Assembly and instead (by virtue of art 5 of the 2000 Order) became exercisable by the Minister of the Crown by whom they were exercisable, in relation to Wales, immediately before 1 July 1999.

### [45B Effect of hospital and limitation directions]

[(1) A hospital direction and a limitation direction shall be sufficient authority—

- (a) for a constable or any other person directed to do so by the court to convey the patient to the hospital specified in the hospital direction within a period of 28 days; and
- (b) for the managers of the hospital to admit him at any time within that period and thereafter detain him in accordance with the provisions of this Act.

[(2) With respect to any person—

- (a) a hospital direction shall have effect as a transfer direction; and
- (b) a limitation direction shall have effect as a restriction direction.

[(3) While a person is subject to a hospital direction and a limitation direction the [responsible clinician] shall at such intervals (not exceeding one year) as the Secretary of State may direct examine and report to the Secretary of State on that person; and every report shall contain such particulars as the Secretary of State may require.]

## NOTES

### Amendment

Inserted by the Crime (Sentences) Act 1997, s 46.

Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(i).

Sub-s (3): words “responsible clinician” in square brackets substituted by the Mental Health Act 2007, s 10(1), (9)(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

### Transfer of Functions

Transfer of functions to and from the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 provided that all functions of a Minister of the Crown under this section were, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales. As a consequence of the amendment of Sch 1 to the 1999 Order by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(b), the functions transferred to the Assembly by the 1999 Order ceased to be exercisable by the Assembly and instead (by virtue of art 5 of the 2000 Order) became exercisable by the Minister of the Crown by whom they were exercisable, in relation to Wales, immediately before 1 July 1999.

...

## NOTES

### Amendment

Repealed by the Armed Forces Act 1996, s 35(2), Sch 7, Pt III.

Date in force: 29 April 2005: see SI 2005/1119, art 2.

46 ...

...

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 71(2)–(4).

### Amendment

Repealed by the Armed Forces Act 1996, s 35(2), Sch 7, Pt III.

Date in force: 29 April 2005: see SI 2005/1119, art 2.

### Transfer of Functions

Transfer of functions to and from the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 provided that all functions of a Minister of the Crown under this section were, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales. As a consequence of the amendment of Sch 1 to the 1999 Order by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(b), the functions transferred to the Assembly by the 1999 Order ceased to be exercisable by the Assembly and instead (by virtue of art 5 of the 2000 Order) became exercisable by the Minister of the Crown by whom they were exercisable, in relation to Wales, immediately before 1 July 1999.

*Transfer to hospital of prisoners, etc*

## 47 Removal to hospital of persons serving sentences of imprisonment, etc

(1) If in the case of a person serving a sentence of imprisonment the Secretary of State is satisfied, by reports from at least two registered medical practitioners—

- (a) that the said person is suffering from [mental disorder]; and
- (b) that the mental disorder from which that person is suffering is of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment[; and
- (c) that appropriate medical treatment is available for him];

the Secretary of State may, if he is of the opinion having regard to the public interest and all the circumstances that it is expedient so to do, by warrant direct that that person be removed to and detained in such hospital . . . as may be specified in the direction; and a direction under this section shall be known as “a transfer direction”.

(2) A transfer direction shall cease to have effect at the expiration of the period of 14 days beginning with the date on which it is given unless within that period the person with respect to whom it was given has been received into the hospital specified in the direction.

(3) A transfer direction with respect to any person shall have the same effect as a hospital order made in his case.

(4) . . .

(5) References in this Part of this Act to a person serving a sentence of imprisonment include references—

- (a) to a person detained in pursuance of any sentence or order for detention made by a court in criminal proceedings [or service disciplinary proceedings] (other than an order [made in consequence of a finding of insanity or unfitness to stand trial] [or a sentence of service detention within the meaning of the Armed Forces Act 2006]);
- (b) to a person committed to custody under section 115(3) of the Magistrates’ Courts Act 1980 (which relates to persons who fail to comply with an order to enter into recognisances to keep the peace or be of good behaviour); and
- (c) to a person committed by a court to a prison or other institution to which the Prison Act 1952 applies in default of payment of any sum adjudged to be paid on his conviction.

[(6) In subsection (5)(a) “service disciplinary proceedings” means proceedings in respect of a service offence within the meaning of the Armed Forces Act 2006.]

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, ss 72(1)–(3), (5), (6), 80(7).

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): in para (a) words “mental disorder” in square brackets substituted by the Mental Health Act 2007, s 1(4), Sch 1, Pt 1, paras 1, 10.

Date in force: 3 November 2008: see SI 2008/1900, art 2(a); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (1): para (c) and word “; and” immediately preceding it substituted by the Mental Health Act 2007, s 4(1), (7).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and

savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (1): words omitted repealed by the Crime (Sentences) Act 1997, ss 49(3), 56(2), Sch 6.  
Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(k).

Sub-s (4): repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 1.

Date in force: 3 November 2008: see SI 2008/1900, art 2(p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (5): in para (a) words “or service disciplinary proceedings” in square brackets inserted by the Armed Forces Act 2006, s 378(1), Sch 16, para 97(1), (2)(a).

Date in force (for certain purposes): 28 March 2009: see SI 2009/812, art 3(a), (b).

Date in force (for remaining purposes): 31 October 2009: see SI 2009/1167, art 4.

Sub-s (5): in para (a) words from “made in consequence” to “to stand trial” in square brackets substituted by the Domestic Violence, Crime and Victims Act 2004, s 58(1), Sch 10, para 18.

Date in force: 31 March 2005: see SI 2005/579, art 3(f), (g), (j), (k); for transitional and transitory provisions see the Domestic Violence, Crime and Victims Act 2004, s 59, Sch 12, para 8(1), (2)(d).

Sub-s (5): in para (a) words from “or a sentence” to “Armed Forces Act 2006” in square brackets inserted by the Armed Forces Act 2006, s 378(1), Sch 16, para 97(1), (2)(b).

Date in force (for certain purposes): 28 March 2009: see SI 2009/812, art 3(a), (b).

Date in force (for remaining purposes): 31 October 2009: see SI 2009/1167, art 4.

Sub-s (6): inserted by the Armed Forces Act 2006, s 378(1), Sch 16, para 97(1), (3).

Date in force (for certain purposes): 28 March 2009: see SI 2009/812, art 3(a), (b).

Date in force (for remaining purposes): 31 October 2009: see SI 2009/1167, art 4.

#### **See Further**

See further, the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009, SI 2009/1059, art 205, Sch 1, para 25, which provides that the reference to service disciplinary proceedings includes proceedings in respect of an SDA offence and the reference to a sentence of service detention includes an SDA sentence of service detention.

#### **Transfer of Functions**

Transfer of functions to and from the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 provided that all functions of a Minister of the Crown under this section were, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales. As a consequence of the amendment of Sch 1 to the 1999 Order by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(b), the functions transferred to the Assembly by the 1999 Order ceased to be exercisable by the Assembly and instead (by virtue of art 5 of the 2000 Order) became exercisable by the Minister of the Crown by whom they were exercisable, in relation to Wales, immediately before 1 July 1999.

#### **48 Removal to hospital of other prisoners**

(1) If in the case of a person to whom this section applies the Secretary of State is satisfied by the same reports as are required for the purposes of section 47 above that—

- [(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
- (c) appropriate medical treatment is available for him;]

the Secretary of State shall have the same power of giving a transfer direction in respect of him under that section as if he were serving a sentence of imprisonment.

(2) This section applies to the following persons, that is to say—

- (a) persons detained in a prison *or remand centre*, not being persons serving a sentence of imprisonment or persons falling within the following paragraphs of this subsection;
- (b) persons remanded in custody by a magistrates' court;
- (c) civil prisoners, that is to say, persons committed by a court to prison for a limited term . . . , who are not persons falling to be dealt with under section 47 above;
- (d) persons detained under the Immigration Act 1971 [or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State)].

(3) Subsections (2) [and (3)] of section 47 above shall apply for the purposes of this section and of any transfer direction given by virtue of this section as they apply for the purposes of that section and of any transfer direction under that section.

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 73.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): paras (a), (b) substituted by the Mental Health Act 2007, s 1(4), Sch 1, Pt 1, paras 1, 11(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(a); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (1): para (c) and word "and" immediately preceding it inserted by the Mental Health Act 2007, s 5(1), (3).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (2): in para (a) words "or remand centre" in italics repealed by the Criminal Justice and Court Services Act 2000, ss 74, 75, Sch 7, Pt II, paras 72, 73, Sch 8.

Date in force: to be appointed: see the Criminal Justice and Court Services Act 2000, s 80(1).

Sub-s (2): in para (c) words omitted repealed by the Statute Law (Repeals) Act 2004.

Date in force: 22 July 2004: (no specific commencement provision).

Sub-s (2): in para (d) words "or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State)" in square brackets inserted by the Nationality, Immigration and Asylum Act 2002, s 62(10)(a).

Date in force: 10 February 2003: see SI 2003/1, art 2, Schedule.

Sub-s (3): words "and (3)" in square brackets substituted by the Mental Health Act 2007, s 1(4), Sch 1, Pt 1, paras 1, 11(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(a); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

### Transfer of Functions

Transfer of functions to and from the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 provided that all functions of a Minister of the Crown under this section were, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales. As a consequence of the amendment of Sch 1 to the 1999 Order by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(b), the functions transferred to the Assembly by the 1999 Order ceased to

be exercisable by the Assembly and instead (by virtue of art 5 of the 2000 Order) became exercisable by the Minister of the Crown by whom they were exercisable, in relation to Wales, immediately before 1 July 1999.

#### **49 Restriction on discharge of prisoners removed to hospital**

(1) Where a transfer direction is given in respect of any person, the Secretary of State, if he thinks fit, may by warrant further direct that that person shall be subject to the special restrictions set out in section 41 above; and where the Secretary of State gives a transfer direction in respect of any such person as is described in paragraph (a) or (b) of section 48(2) above, he shall also give a direction under this section applying those restrictions to him.

(2) A direction under this section shall have the same effect as a restriction order made under section 41 above and shall be known as “a restriction direction”.

(3) While a person is subject to a restriction direction the [responsible clinician] shall at such intervals (not exceeding one year) as the Secretary of State may direct examine and report to the Secretary of State on that person; and every report shall contain such particulars as the Secretary of State may require.

#### **NOTES**

##### **Derivation**

This section derived from the Mental Health Act 1959, s 74 and the Mental Health (Amendment) Act 1982, s 28(3).

##### **Initial Commencement**

###### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

##### **Amendment**

Sub-s (3): words “responsible clinician” in square brackets substituted by the Mental Health Act 2007, s 10(1), (9)(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

##### **Transfer of Functions**

Transfer of functions to and from the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 provided that all functions of a Minister of the Crown under this section were, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales. As a consequence of the amendment of Sch 1 to the 1999 Order by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(b), the functions transferred to the Assembly by the 1999 Order ceased to be exercisable by the Assembly and instead (by virtue of art 5 of the 2000 Order) became exercisable by the Minister of the Crown by whom they were exercisable, in relation to Wales, immediately before 1 July 1999.

#### **50 Further provisions as to prisoners under sentence**

(1) Where a transfer direction and a restriction direction have been given in respect of a person serving a sentence of imprisonment and before [his release date] the Secretary of State is notified by the [responsible clinician], any other [approved clinician] or [the appropriate tribunal] that that person no longer requires treatment in hospital for mental disorder or that no effective treatment for his disorder can be given in the hospital to which he has been removed, the Secretary of State may—

- (a) by warrant direct that he be remitted to any prison or other institution in which he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed; or

- (b) exercise any power of releasing him on licence or discharging him under supervision which could have been exercisable if he had been remitted to such a prison or institution as aforesaid,

and on his arrival in the prison or other institution or, as the case may be, his release or discharge as aforesaid, the transfer direction and the restriction direction shall cease to have effect.

[(2) A restriction direction in the case of a person serving a sentence of imprisonment shall cease to have effect, if it has not previously done so, on his release date.

(3) In this section, references to a person's release date are to the day (if any) on which he would be entitled to be released (whether unconditionally or on licence) from any prison or other institution in which he might have been detained if the transfer direction had not been given; and in determining that day there shall be disregarded—

- (a) any powers that would be exercisable by the Parole Board [or a recall adjudicator (as defined in section 239A of the Criminal Justice Act 2003)] if he were detained in such a prison or other institution, and
- (b) any practice of the Secretary of State in relation to the early release under discretionary powers of persons detained in such a prison or other institution.]

(4) For the purposes of section 49(2) of the Prison Act 1952 (which provides for discounting from the sentences of certain prisoners periods while they are unlawfully at large) a patient who, having been transferred in pursuance of a transfer direction from any such institution as is referred to in that section, is at large in circumstances in which he is liable to be taken into custody under any provision of this Act, shall be treated as unlawfully at large and absent from that institution.

[(5) The preceding provisions of this section shall have effect as if—

- (a) the reference in subsection (1) to a transfer direction and a restriction direction having been given in respect of a person serving a sentence of imprisonment included a reference to a hospital direction and a limitation direction having been given in respect of a person sentenced to imprisonment;
- (b) the reference in subsection (2) to a restriction direction included a reference to a limitation direction; and
- (c) references in subsections (3) and (4) to a transfer direction included references to a hospital direction.]

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 75.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): words "his release date" in square brackets substituted by the Criminal Justice Act 2003, s 294(1), (2).

Date in force: 20 January 2004: see SI 2004/81, art 2(1), (2)(b).

Sub-s (1): words "responsible clinician" in square brackets substituted by the Mental Health Act 2007, s 11(1), (2)(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and

savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (1): words “approved clinician” in square brackets substituted by the Mental Health Act 2007, s 11(1), (2)(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (1): words “the appropriate tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 42.

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-ss (2), (3): substituted by the Criminal Justice Act 2003, s 294(1), (3).

Date in force: 20 January 2004: see SI 2004/81, art 2(1), (2)(b).

Sub-s (3): in para (a) words from “or a recall” to “Criminal Justice Act 2003)” in square brackets inserted by the Criminal Justice and Courts Act 2015, s 8(3), Sch 3, paras 1, 2.

Date in force: to be appointed: see the Criminal Justice and Courts Act 2015, s 95(1).

Sub-s (5): inserted by the Crime (Sentences) Act 1997, s 55, Sch 4, para 12(5).

Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(l), (2)(f).

### **Transfer of Functions**

Transfer of functions to and from the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 provided that all functions of a Minister of the Crown under this section were, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales. As a consequence of the amendment of Sch 1 to the 1999 Order by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(b), the functions transferred to the Assembly by the 1999 Order ceased to be exercisable by the Assembly and instead (by virtue of art 5 of the 2000 Order) became exercisable by the Minister of the Crown by whom they were exercisable, in relation to Wales, immediately before 1 July 1999.

### **51 Further provisions as to detained persons**

(1) This section has effect where a transfer direction has been given in respect of any such person as is described in paragraph (a) of section 48(2) above and that person is in this section referred to as “the detainee”.

(2) The transfer direction shall cease to have effect when the detainee’s case is disposed of by the court having jurisdiction to try or otherwise deal with him, but without prejudice to any power of that court to make a hospital order or other order under this Part of this Act in his case.

(3) If the Secretary of State is notified by the [responsible clinician], any other [approved clinician] or [the appropriate tribunal] at any time before the detainee’s case is disposed of by that court—

- (a) that the detainee no longer requires treatment in hospital for mental disorder; or
- (b) that no effective treatment for his disorder can be given at the hospital to which he has been removed,

the Secretary of State may by warrant direct that he be remitted to any place where he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed, and on his arrival at the place to which he is so remitted the transfer direction shall cease to have effect.

(4) If (no direction having been given under subsection (3) above) the court having jurisdiction to try or otherwise deal with the detainee is satisfied on the written or oral evidence of the [responsible clinician]—

- (a) that the detainee no longer requires treatment in hospital for mental disorder; or
- (b) that no effective treatment for his disorder can be given at the hospital to which he has been removed,

the court may order him to be remitted to any such place as is mentioned in subsection (3) above or[, subject to section 25 of the Criminal Justice and Public Order Act 1994,] released on bail and on his arrival at that place or, as the case may be, his release on bail the transfer direction shall cease to have effect.

(5) If (no direction or order having been given or made under subsection (3) or (4) above) it appears to the court having jurisdiction to try or otherwise deal with the detainee—

- (a) that it is impracticable or inappropriate to bring the detainee before the court; and
- (b) that the conditions set out in subsection (6) below are satisfied,

the court may make a hospital order (with or without a restriction order) in his case in his absence and, in the case of a person awaiting trial, without convicting him.

(6) A hospital order may be made in respect of a person under subsection (5) above if the court—

- (a) is satisfied, on the written or oral evidence of at least two registered medical practitioners, that—

[(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;] [and

(ii) appropriate medical treatment is available for him; and]

- (b) is of the opinion, after considering any depositions or other documents required to be sent to the proper officer of the court, that it is proper to make such an order.

(7) Where a person committed to the Crown Court to be dealt with under section 43 above is admitted to a hospital in pursuance of an order under section 44 above, subsections (5) and (6) above shall apply as if he were a person subject to a transfer direction.

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 76.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (3): words “responsible clinician” in square brackets substituted by the Mental Health Act 2007, s 11(1), (3)(a)(i).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (3): words “approved clinician” in square brackets substituted by the Mental Health Act 2007, s 11(1), (3)(a)(ii).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (3): words “the appropriate tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 43.

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (4): words “responsible clinician” in square brackets substituted by the Mental Health Act 2007, s 11(1), (3)(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (4): words “, subject to section 25 of the Criminal Justice and Public Order Act 1994,” in square brackets inserted by the Criminal Justice and Public Order Act 1994, s 168(2), Sch 10, para 51.

Sub-s (6): para (a)(i) substituted by the Mental Health Act 2007, s 1(4), Sch 1, Pt 1, paras 1, 12.

Date in force: 3 November 2008: see SI 2008/1900, art 2(a); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (6): para (a)(ii) and word “and” immediately preceding it inserted by the Mental Health Act 2007, s 5(1), (4).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

### **Transfer of Functions**

Transfer of functions to and from the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 provided that all functions of a Minister of the Crown under this section were, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales. As a consequence of the amendment of Sch 1 to the 1999 Order by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(b), the functions transferred to the Assembly by the 1999 Order ceased to be exercisable by the Assembly and instead (by virtue of art 5 of the 2000 Order) became exercisable by the Minister of the Crown by whom they were exercisable, in relation to Wales, immediately before 1 July 1999.

### **52 Further provisions as to persons remanded by magistrates’ courts**

(1) This section has effect where a transfer direction has been given in respect of any such person as is described in paragraph (b) of section 48(2) above; and that person is in this section referred to as “the accused”.

(2) Subject to subsection (5) below, the transfer direction shall cease to have effect on the expiration of the period of remand unless the accused is [sent] in custody to the Crown Court for trial or to be otherwise dealt with.

(3) Subject to subsection (4) below, the power of further remanding the accused under section 128 of the Magistrates’ Courts Act 1980 may be exercised by the court without his being brought before the court; and if the court further remands the accused in custody (whether or not he is brought before the court) the period of remand shall, for the purposes of this section, be deemed not to have expired.

(4) The court shall not under subsection (3) above further remand the accused in his absence unless he has appeared before the court within the previous six months.

(5) If the magistrates’ court is satisfied, on the written or oral evidence of the [responsible clinician]—

(a) that the accused no longer requires treatment in hospital for mental disorder; or

(b) that no effective treatment for his disorder can be given in the hospital to which he has been removed,

the court may direct that the transfer direction shall cease to have effect notwithstanding that the period of remand has not expired or that the accused is [sent] to the Crown Court as mentioned in subsection (2) above.

(6) If the accused is [sent] to the Crown Court as mentioned in subsection (2) above and the transfer direction has not ceased to have effect under subsection (5) above, section 51 above shall apply as if the transfer direction given in his case were a direction given in respect of a person falling within that section.

(7) The magistrates' court may, in the absence of the accused, [send him to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998] if—

- (a) the court is satisfied, on the written or oral evidence of the [responsible clinician], that the accused is unfit to take part in the proceedings; and
- (b) . . . , the accused is represented by [an authorised person].

## NOTES

### Derivation

This section derived from the Mental Health (Amendment) Act 1982, s 26.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (2): word “sent” in square brackets substituted by the Criminal Justice Act 2003, s 41, Sch 3, Pt 2, para 55(1), (3)(a).

Date in force (in relation to cases sent for trial under the Crime and Disorder Act 1998, ss 51 or 51A(3)(d)): 9 May 2005: see SI 2005/1267, art 2(1), (2)(a), Schedule, Pt 1, para 1(1)(k).

Date in force (for certain purposes): 18 June 2012: see SI 2012/1320, art 4(1)(a), (c)(iii)–(v); for savings see art 5 thereof.

Date in force (for certain purposes): 5 November 2012: see SI 2012/2574, art 2(1)(a), (c), (2), (3), Schedule; for savings and effect see arts 3, 4 thereof.

Date in force (for remaining purposes): 28 May 2013: see SI 2013/1103, art 2(1)(a), (c), (2)–(4); for savings see arts 3, 4 thereof.

Sub-s (5): words “responsible clinician” in square brackets substituted by the Mental Health Act 2007, s 11(1), (4).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (5): word “sent” in square brackets substituted by the Criminal Justice Act 2003, s 41, Sch 3, Pt 2, para 55(1), (3)(b).

Date in force (in relation to cases sent for trial under the Crime and Disorder Act 1998, ss 51 or 51A(3)(d)): 9 May 2005: see SI 2005/1267, art 2(1), (2)(a), Schedule, Pt 1, para 1(1)(k).

Date in force (for certain purposes): 18 June 2012: see SI 2012/1320, art 4(1)(a), (c)(iii)–(v); for savings see art 5 thereof.

Date in force (for certain purposes): 5 November 2012: see SI 2012/2574, art 2(1)(a), (c), (2), (3), Schedule; for savings and effect see arts 3, 4 thereof.

Date in force (for remaining purposes): 28 May 2013: see SI 2013/1103, art 2(1)(a), (c), (2)–(4); for savings see arts 3, 4 thereof.

Sub-s (6): word “sent” in square brackets substituted by the Criminal Justice Act 2003, s 41, Sch 3, Pt 2, para 55(1), (3)(c).

Date in force (in relation to cases sent for trial under the Crime and Disorder Act 1998, ss 51 or 51A(3)(d)): 9 May 2005: see SI 2005/1267, art 2(1), (2)(a), Schedule, Pt 1, para 1(1)(k).

Date in force (for certain purposes): 18 June 2012: see SI 2012/1320, art 4(1)(a), (c)(iii)–(v); for savings see art 5 thereof.

Date in force (for certain purposes): 5 November 2012: see SI 2012/2574, art 2(1)(a), (c), (2), (3), Schedule; for savings and effect see arts 3, 4 thereof.

Date in force (for remaining purposes): 28 May 2013: see SI 2013/1103, art 2(1)(a), (c), (2)–(4); for savings see arts 3, 4 thereof.

Sub-s (7): words “send him to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998” in square brackets substituted by the Criminal Justice Act 2003, s 41, Sch 3, Pt 2, para 55(1), (3)(d).

Date in force: 9 May 2005: see SI 2005/1267, art 2(1), (2)(a), Schedule, Pt 1, para 1(1)(k).

Sub-s (7): in para (a) words “responsible clinician” in square brackets substituted by the Mental

Health Act 2007, s 11(1), (4).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (7): in para (b) words omitted repealed by the Criminal Justice Act 2003, ss 41, 332, Sch 3, Pt 2, para 55(1), (3)(d), Sch 37, Pt 4.

Date in force: 9 May 2005: see SI 2005/1267, art 2(1), (2)(a), Schedule, Pt 1, para 1(1)(k).

Sub-s (7): in para (b) words “an authorised person” in square brackets substituted by the Legal Services Act 2007, s 208(1), Sch 21, paras 53, 57.

Date in force: 1 January 2010: see SI 2009/3250, art 2(h).

### **53 Further provisions as to civil prisoners and persons detained under the [Immigration Acts]**

(1) Subject to subsection (2) below, a transfer direction given in respect of any such person as is described in paragraph (c) or (d) of section 48(2) above shall cease to have effect on the expiration of the period during which he would, but for his removal to hospital, be liable to be detained in the place from which he was removed.

(2) Where a transfer direction and a restriction direction have been given in respect of any such person as is mentioned in subsection (1) above, then, if the Secretary of State is notified by the [responsible clinician], any other [approved clinician] or [the appropriate tribunal] at any time before the expiration of the period there mentioned—

- (a) that that person no longer requires treatment in hospital for mental disorder; or
- (b) that no effective treatment for his disorder can be given in the hospital to which he has been removed,

the Secretary of State may by warrant direct that he be remitted to any place where he might have been detained if he had not been removed to hospital, and on his arrival at the place to which he is so remitted the transfer direction and the restriction direction shall cease to have effect.

### **NOTES**

#### **Derivation**

This section derived from the Mental Health (Amendment) Act 1982, s 27.

#### **Initial Commencement**

##### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

#### **Amendment**

Section heading: words “Immigration Acts” in square brackets substituted by the Nationality, Immigration and Asylum Act 2002, s 62(10)(b).

Date in force: 10 February 2003: see SI 2003/1, art 2, Schedule.

Sub-s (2): words “responsible clinician” in square brackets substituted by the Mental Health Act 2007, s 11(1), (5)(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (2): words “approved clinician” in square brackets substituted by the Mental Health Act 2007, s 11(1), (5)(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (2): words “the appropriate tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 44.

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

#### **Transfer of Functions**

Transfer of functions to and from the National Assembly for Wales: the National Assembly for

Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 provided that all functions of a Minister of the Crown under this section were, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales. As a consequence of the amendment of Sch 1 to the 1999 Order by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(b), the functions transferred to the Assembly by the 1999 Order ceased to be exercisable by the Assembly and instead (by virtue of art 5 of the 2000 Order) became exercisable by the Minister of the Crown by whom they were exercisable, in relation to Wales, immediately before 1 July 1999.

### *Supplemental*

#### **54 Requirements as to medical evidence**

(1) The registered medical practitioner whose evidence is taken into account under section 35(3)(a) above and at least one of the registered medical practitioners whose evidence is taken into account under sections 36(1), 37(2)(a), 38(1), [45A(2)] and 51(6)(a) above and whose reports are taken into account under sections 47(1) and 48(1) above shall be a practitioner approved for the purposes of section 12 above by the Secretary of State[, or by another person by virtue of section 12ZA or 12ZB above,] as having special experience in the diagnosis or treatment of mental disorder.

[(2) For the purposes of any provision of this Part of this Act under which a court may act on the written evidence of any person, a report in writing purporting to be signed by that person may, subject to the provisions of this section, be received in evidence without proof of the following—

- (a) the signature of the person; or
- (b) his having the requisite qualifications or approval or authority or being of the requisite description to give the report.

(2A) But the court may require the signatory of any such report to be called to give oral evidence.]

(3) Where, in pursuance of a direction of the court, any such report is tendered in evidence otherwise than by or on behalf of the person who is the subject of the report, then—

- (a) if that person is represented by [an authorised person], a copy of the report shall be given to [that authorised person];
- (b) if that person is not so represented, the substance of the report shall be disclosed to him or, where he is a child or young person, to his parent or guardian if present in court; and
- (c) except where the report relates only to arrangements for his admission to a hospital, that person may require the signatory of the report to be called to give oral evidence, and evidence to rebut the evidence contained in the report may be called by or on behalf of that person.

#### **NOTES**

##### **Derivation**

Sub-s (1) derived from the Mental Health Act 1959, ss 60(1), 62(1), 72(4), 73(3), 76(3) and the Mental Health (Amendment) Act 1982, ss 29(3)(a), 30(3), 31(3); sub-ss (2), (3) derived from the Mental Health (Amendment) Act 1982, s 33.

##### **Initial Commencement**

###### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

##### **Amendment**

Sub-s (1): number “45A(2)” in square brackets inserted by the Crime (Sentences) Act 1997, s 55, Sch 4, para 12(6).

Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(l), (2)(f).

Sub-s (1): words “, or by another person by virtue of section 12ZA or 12ZB above,” in square brackets inserted by the Health and Social Care Act 2012, s 38(2).

Date in force: 1 April 2013: see SI 2013/160, art 2.

Sub-ss (2), (2A): substituted, for sub-s (2) as originally enacted, by the Mental Health Act 2007, s 11(1), (6).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (3): in para (a) words “an authorised person” in square brackets substituted by the Legal Services Act 2007, s 208(1), Sch 21, paras 53, 58(a).

Date in force: 1 January 2010: see SI 2009/3250, art 2(h).

Sub-s (3): in para (a) words “that authorised person” in square brackets substituted by the Legal Services Act 2007, s 208(1), Sch 21, paras 53, 58(b).

Date in force: 1 January 2010: see SI 2009/3250, art 2(h).

### **Modification**

Certain functions of a Minister of the Crown under this Act are, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3). Sch 1 to the 1999 Order (as amended) further provides that sub-s (1) above shall have effect, in relation to such transfer, as if references to a registered medical practitioner approved for the purposes of s 12 by the Secretary of State (including references to be construed as such) included a reference to such a practitioner approved by the Assembly.

### **See Further**

Sub-s (3): see further, in respect of the application of s 37(2)(a) hereof in relation to an offender’s mental condition: see the Criminal Justice Act 2003, s 207(5).

### **[54A Reduction of period for making hospital orders]**

[(1) The Secretary of State may by order reduce the length of the periods mentioned in sections 37(4) and (5) and 38(4) above.

(2) An order under subsection (1) above may make such consequential amendments of sections 40(1) and 44(3) above as appear to the Secretary of State to be necessary or expedient.]

### **NOTES**

#### **Amendment**

Inserted by the Criminal Justice Act 1991, s 27(2).

#### **Transfer of Functions**

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

### **55 Interpretation of Part III**

(1) In this Part of this Act—

[“authorised person” means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience (within the meaning of that Act);]

“child” and “young person” have the same meaning as in the Children and Young Persons Act 1933;

“civil prisoner” has the meaning given to it by section 48(2)(c) above;

“guardian”, in relation to a child or young person, has the same meaning as in the Children and Young Persons Act 1933;

“place of safety”, in relation to a person who is not a child or young person, means any police station, prison or remand centre, or any hospital the managers of which are willing temporarily to receive him, and in relation to a child or young person has the same meaning as in the Children and Young Persons Act 1933;

[“responsible clinician”, in relation to a person liable to be detained in a hospital within the meaning of Part 2 of this Act, means the approved clinician with overall responsibility for the patient’s case].

(2) Any reference in this Part of this Act to an offence punishable on summary conviction with imprisonment shall be construed without regard to any prohibition or restriction imposed by or under any enactment relating to the imprisonment of young offenders.

(3) . . .

(4) Any reference to a hospital order, a guardianship order or a restriction order in section 40(2), (4) or (5), section 41(3) to (5), or section 42 above or section 69(1) below shall be construed as including a reference to any order or direction under this Part of this Act having the same effect as the first-mentioned order; and the exceptions and modifications set out in Schedule 1 to this Act in respect of the provisions of this Act described in that Schedule accordingly include those which are consequential on the provisions of this subsection.

(5) Section 34(2) above shall apply for the purposes of this Part of this Act as it applies for the purposes of Part II of this Act.

(6) References in this Part of this Act to persons serving a sentence of imprisonment shall be construed in accordance with section 47(5) above.

(7) Section 99 of the Children and Young Persons Act 1933 (which relates to the presumption and determination of age) shall apply for the purposes of this Part of this Act as it applies for the purposes of that Act.

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 80.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): definition “authorised person” inserted by the Legal Services Act 2007, s 208(1), Sch 21, paras 53, 59.

Date in force: 1 January 2010: see SI 2009/3250, art 2(h).

Sub-s (1): definition “responsible clinician” substituted, for definition “responsible medical officer” as originally enacted, by the Mental Health Act 2007, s 11(1), (7).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (3): repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 1.

Date in force: 3 November 2008: see SI 2008/1900, art 2(p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

## Part IV Consent to Treatment

### **[56 Patients to whom Part 4 applies]**

- (1) Section 57 and, so far as relevant to that section, sections 59 to 62 below apply to any patient.
- (2) Subject to that and to subsection (5) below, this Part of this Act applies to a patient only if he falls within subsection (3) or (4) below.
- (3) A patient falls within this subsection if he is liable to be detained under this Act but not if—
- (a) he is so liable by virtue of an emergency application and the second medical recommendation referred to in section 4(4)(a) above has not been given and received;
  - (b) he is so liable by virtue of section 5(2) or (4) or 35 above or section 135 or 136 below or by virtue of a direction for his detention in a place of safety under section 37(4) or 45A(5) above; or
  - (c) he has been conditionally discharged under section 42(2) above or section 73 or 74 below and he is not recalled to hospital.
- (4) A patient falls within this subsection if—
- (a) he is a community patient; and
  - (b) he is recalled to hospital under section 17E above.
- (5) Section 58A and, so far as relevant to that section, sections 59 to 62 below also apply to any patient who—
- (a) does not fall within subsection (3) above;
  - (b) is not a community patient; and
  - (c) has not attained the age of 18 years.]

### **NOTES**

#### **Derivation**

This section as originally enacted derived from the Mental Health (Amendment) Act 1982, ss 42(1), 50.

#### **Amendment**

Substituted by the Mental Health Act 2007, s 34(1), (2).

Date in force: 3 November 2008: see SI 2008/1900, art 2(j); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

### **57 Treatment requiring consent and a second opinion**

- (1) This section applies to the following forms of medical treatment for mental disorder—
- (a) any surgical operation for destroying brain tissue or for destroying the functioning of brain tissue; and
  - (b) such other forms of treatment as may be specified for the purposes of this section by regulations made by the Secretary of State.

- (2) Subject to section 62 below, a patient shall not be given any form of treatment to which this section applies unless he has consented to it and—
- (a) a registered medical practitioner appointed for the purposes of this Part of this Act by [the regulatory authority] (not being the [responsible clinician (if there is one) or the person in charge of the treatment in question]) and two other persons appointed for the purposes of this paragraph by [the regulatory authority] (not being registered medical practitioners) have certified in writing that the patient is capable of understanding the nature, purpose and likely effects of the treatment in question and has consented to it; and
  - (b) the registered medical practitioner referred to in paragraph (a) above has certified in writing that [it is appropriate for the treatment to be given].
- (3) Before giving a certificate under subsection (2)(b) above the registered medical practitioner concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment [but, of those persons—
- (a) one shall be a nurse and the other shall be neither a nurse nor a registered medical practitioner; and
  - (b) neither shall be the responsible clinician (if there is one) or the person in charge of the treatment in question].
- (4) Before making any regulations for the purpose of this section the Secretary of State shall consult such bodies as appear to him to be concerned.

## NOTES

### Derivation

This section derived from the Mental Health (Amendment) Act 1982, s 43.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (2): in para (a) words “the regulatory authority” in both places they occur in square brackets substituted by the Health and Social Care Act 2008, s 52(5), Sch 3, paras 1, 2.

Date in force: 1 April 2009: see SI 2009/462, art 2(1), Sch 1, para 33.

Sub-s (2): in para (a) words from “responsible clinician (if” to “treatment in question” in square brackets substituted by the Mental Health Act 2007, s 12(1), (2)(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (2): in para (b) words “it is appropriate for the treatment to be given” in square brackets substituted by the Mental Health Act 2007, s 6(1), (2)(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (3): words from “but, of those” to “treatment in question” in square brackets substituted by the Mental Health Act 2007, s 12(1), (2)(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

### Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

### Subordinate Legislation

Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008, SI 2008/1184 (made under sub-s (1)(b)).

Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) Regulations 2008, SI 2008/2439 (made under sub-s (1)(b)).

## **58 Treatment requiring consent or a second opinion**

- (1) This section applies to the following forms of medical treatment for mental disorder—
- (a) such forms of treatment as may be specified for the purposes of this section by regulations made by the Secretary of State;
  - (b) the administration of medicine to a patient by any means (not being a form of treatment specified under paragraph (a) above or section 57 above [or section 58A(1)(b) below]) at any time during a period for which he is liable to be detained as a patient to whom this Part of this Act applies if three months or more have elapsed since the first occasion in that period when medicine was administered to him by any means for his mental disorder.
- (2) The Secretary of State may by order vary the length of the period mentioned in subsection (1)(b) above.
- (3) Subject to section 62 below, a patient shall not be given any form of treatment to which this section applies unless—
- (a) he has consented to that treatment and either the [approved clinician in charge of it] or a registered medical practitioner appointed for the purposes of this Part of this Act by [the regulatory authority] has certified in writing that the patient is capable of understanding its nature, purpose and likely effects and has consented to it; or
  - (b) a registered medical practitioner appointed as aforesaid (not being the [responsible clinician or the approved clinician in charge of the treatment in question]) has certified in writing that the patient is not capable of understanding the nature, purpose and likely effects of that treatment or [being so capable] has not consented to it but that [it is appropriate for the treatment to be given].
- (4) Before giving a certificate under subsection (3)(b) above the registered medical practitioner concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment [but, of those persons—
- (a) one shall be a nurse and the other shall be neither a nurse nor a registered medical practitioner; and
  - (b) neither shall be the responsible clinician or the approved clinician in charge of the treatment in question].
- (5) Before making any regulations for the purposes of this section the Secretary of State shall consult such bodies as appear to him to be concerned.

## **NOTES**

### **Derivation**

This section derived from the Mental Health (Amendment) Act 1982, s 44.

### **Initial Commencement**

#### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### **Amendment**

Sub-s (1): in para (b) words “or section 58A(1)(b) below” in square brackets inserted by the Mental Health Act 2007, s 28(1), (2)(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(g); for transitional provisions and savings see art 3, Schedule, paras 1, 12, 13 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 3(2), (3).

Sub-s (3): in para (a) words “approved clinician in charge of it” in square brackets substituted by the Mental Health Act 2007, s 12(1), (3)(a)(i).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (3): in para (a) words “the regulatory authority” in square brackets substituted by the Health and Social Care Act 2008, s 52(5), Sch 3, paras 1, 3.

Date in force: 1 April 2009: see SI 2009/462, art 2(1), Sch 1, para 33.

Sub-s (3): in para (b) words “responsible clinician or the approved clinician in charge of the treatment in question” in square brackets substituted by the Mental Health Act 2007, s 12(1), (3)(a)(ii).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (3): in para (b) words “being so capable” in square brackets inserted by the Mental Health Act 2007, s 28(1), (2)(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(g); for transitional provisions and savings see art 3, Schedule, paras 1, 12, 13 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 3(2), (3).

Sub-s (3): in para (b) words “it is appropriate for the treatment to be given” in square brackets substituted by the Mental Health Act 2007, s 6(1), (2)(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (4): words from “but, of those” to “treatment in question” in square brackets substituted by the Mental Health Act 2007, s 12(1), (3)(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

### **Transfer of Functions**

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

### **[58A Electro-convulsive therapy, etc]**

[(1) This section applies to the following forms of medical treatment for mental disorder—

- (a) electro-convulsive therapy; and
- (b) such other forms of treatment as may be specified for the purposes of this section by regulations made by the appropriate national authority.

(2) Subject to section 62 below, a patient shall not be given any form of treatment to which this section applies unless he falls within subsection (3), (4) or (5) below.

(3) A patient falls within this subsection if—

- (a) he has attained the age of 18 years;
- (b) he has consented to the treatment in question; and
- (c) either the approved clinician in charge of it or a registered medical practitioner appointed as mentioned in section 58(3) above has certified in writing that the patient is capable of

understanding the nature, purpose and likely effects of the treatment and has consented to it.

(4) A patient falls within this subsection if—

- (a) he has not attained the age of 18 years; but
- (b) he has consented to the treatment in question; and
- (c) a registered medical practitioner appointed as aforesaid (not being the approved clinician in charge of the treatment) has certified in writing—
  - (i) that the patient is capable of understanding the nature, purpose and likely effects of the treatment and has consented to it; and
  - (ii) that it is appropriate for the treatment to be given.

(5) A patient falls within this subsection if a registered medical practitioner appointed as aforesaid (not being the responsible clinician (if there is one) or the approved clinician in charge of the treatment in question) has certified in writing—

- (a) that the patient is not capable of understanding the nature, purpose and likely effects of the treatment; but
- (b) that it is appropriate for the treatment to be given; and
- (c) that giving him the treatment would not conflict with—
  - (i) an advance decision which the registered medical practitioner concerned is satisfied is valid and applicable; or
  - (ii) a decision made by a donee or deputy or by the Court of Protection.

(6) Before giving a certificate under subsection (5) above the registered medical practitioner concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment but, of those persons—

- (a) one shall be a nurse and the other shall be neither a nurse nor a registered medical practitioner; and
- (b) neither shall be the responsible clinician (if there is one) or the approved clinician in charge of the treatment in question.

(7) This section shall not by itself confer sufficient authority for a patient who falls within section 56(5) above to be given a form of treatment to which this section applies if he is not capable of understanding the nature, purpose and likely effects of the treatment (and cannot therefore consent to it).

(8) Before making any regulations for the purposes of this section, the appropriate national authority shall consult such bodies as appear to it to be concerned.

(9) In this section—

- (a) a reference to an advance decision is to an advance decision (within the meaning of the Mental Capacity Act 2005) made by the patient;
- (b) "valid and applicable", in relation to such a decision, means valid and applicable to the treatment in question in accordance with section 25 of that Act;
- (c) a reference to a donee is to a donee of a lasting power of attorney (within the meaning of

section 9 of that Act) created by the patient, where the donee is acting within the scope of his authority and in accordance with that Act; and

- (d) a reference to a deputy is to a deputy appointed for the patient by the Court of Protection under section 16 of that Act, where the deputy is acting within the scope of his authority and in accordance with that Act.

(10) In this section, “the appropriate national authority” means—

- (a) in a case where the treatment in question would, if given, be given in England, the Secretary of State;
- (b) in a case where the treatment in question would, if given, be given in Wales, the Welsh Ministers.]

## NOTES

### Amendment

Inserted by the Mental Health Act 2007, s 27.

Date in force: 3 November 2008: see SI 2008/1900, art 2(g); for transitional provisions and savings see art 3, Schedule, paras 1, 12, 13 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 3(2), (3).

### Subordinate Legislation

Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008, SI 2008/1184 (made under sub-s (1)(b)).

Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) Regulations 2008, SI 2008/2439 (made under sub-s (1)(b)).

## 59 Plans of treatment

Any consent or certificate under section 57[, 58 or 58A] above may relate to a plan of treatment under which the patient is to be given (whether within a specified period or otherwise) one or more of the forms of treatment to which that section applies.

## NOTES

### Derivation

This section derived from the Mental Health (Amendment) Act 1982, s 45.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Words “, 58 or 58A” in square brackets substituted by the Mental Health Act 2007, s 28(1), (3).

Date in force: 3 November 2008: see SI 2008/1900, art 2(g); for transitional provisions and savings see art 3, Schedule, paras 1, 12, 13 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 3(2), (3).

## 60 Withdrawal of consent

(1) Where the consent of a patient to any treatment has been given for the purposes of section 57[, 58 or 58A] above, the patient may, subject to section 62 below, at any time before the completion of the treatment withdraw his consent, and those sections shall then apply as if the remainder of the treatment were a separate form of treatment.

[(1A) Subsection (1B) below applies where—

- (a) the consent of a patient to any treatment has been given for the purposes of section 57, 58 or 58A above; but
- (b) before the completion of the treatment, the patient ceases to be capable of understanding its nature, purpose and likely effects.

(1B) The patient shall, subject to section 62 below, be treated as having withdrawn his consent, and those sections shall then apply as if the remainder of the treatment were a separate form of treatment.

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

- (a) a certificate has been given under section 58 or 58A above that a patient is not capable of understanding the nature, purpose and likely effects of the treatment to which the certificate applies; but
- (b) before the completion of the treatment, the patient becomes capable of understanding its nature, purpose and likely effects.

(1D) The certificate shall, subject to section 62 below, cease to apply to the treatment and those sections shall then apply as if the remainder of the treatment were a separate form of treatment.]

(2) Without prejudice to the application of [subsections (1) to (1D)] above to any treatment given under the plan of treatment to which a patient has consented, a patient who has consented to such a plan may, subject to section 62 below, at any time withdraw his consent to further treatment, or to further treatment of any description, under the plan.

## NOTES

### Derivation

This section derived from the Mental Health (Amendment) Act 1982, s 46.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): words “, 58 or 58A” in square brackets substituted by the Mental Health Act 2007, s 28(1), (4).

Date in force: 3 November 2008: see SI 2008/1900, art 2(g); for transitional provisions and savings see art 3, Schedule, paras 1, 12, 13 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 3(2), (3).

Sub-ss (1A)–(1D): inserted by the Mental Health Act 2007, s 29(1), (2).

Date in force: 3 November 2008: see SI 2008/1900, art 2(g); for transitional provisions and savings see art 3, Schedule, paras 1, 12, 13 thereto.

Sub-s (2): words “subsections (1) to (1D)” in square brackets substituted by the Mental Health Act 2007, s 29(1), (3).

Date in force: 3 November 2008: see SI 2008/1900, art 2(g); for transitional provisions and savings see art 3, Schedule, paras 1, 12, 13 thereto.

## 61 Review of treatment

(1) Where a patient is given treatment in accordance with section 57(2)[, 58(3)(b) or 58A(4) or (5)] above[, or by virtue of section 62A below in accordance with a Part 4A certificate (within the meaning of that section) [that falls within section 64C(4) below],] a report on the treatment and the patient’s condition shall be given [by the approved clinician in charge of the treatment] to [the regulatory authority]—

- (a) on the next occasion on which the [responsible clinician] furnishes a report [under section

- 20(3)[, 20A(4) or 21B(2) above in respect] of the patient]; and
- (b) at any other time if so required by [the regulatory authority].

(2) In relation to a patient who is subject to a restriction order[, limitation direction] or restriction direction subsection (1) above shall have effect as if paragraph (a) required the report to be made—

- (a) in the case of treatment in the period of six months beginning with the date of the order or direction, at the end of that period;
- (b) in the case of treatment at any subsequent time, on the next occasion on which the [responsible clinician] makes a report in respect of the patient under section 41(6)[, 45B(3)] or 49(3) above.

(3) [The regulatory authority] may at any time give notice . . . directing that, subject to section 62 below, a certificate given in respect of a patient under section 57(2)[, 58(3)(b) or 58A(4) or (5)] above shall not apply to treatment given to him [(whether in England or Wales)] after a date specified in the notice and sections 57[, 58 and 58A] above shall then apply to any such treatment as if that certificate had not been given.

[(3A) The notice under subsection (3) above shall be given to the approved clinician in charge of the treatment.]

## NOTES

### Derivation

This section derived from the Mental Health (Amendment) Act 1982, s 47.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Extent

This section does not extend to Scotland.

### Amendment

Sub-s (1): words “, 58(3)(b) or 58A(4) or (5)” in square brackets substituted by the Mental Health Act 2007, s 28(1), (5)(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(g); for transitional provisions and savings see art 3, Schedule, paras 1, 12, 13 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 3(2), (3).

Sub-s (1): words from “, or by virtue” to “of that section),” in square brackets inserted by the Mental Health Act 2007, s 34(1), (3)(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(j); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (1): words “that falls within section 64C(4) below” in square brackets inserted by the Health and Social Care Act 2012, s 299(1), (7).

Date in force: 1 June 2012: see SI 2012/1319, art 2(1), (2).

Sub-s (1): words “by the approved clinician in charge of the treatment” in square brackets substituted by the Mental Health Act 2007, s 12(1), (4)(a)(i).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (1): words “the regulatory authority” in square brackets substituted by the Health and Social Care Act 2008, s 52(5), Sch 3, paras 1, 4(1), (2).

Date in force: 1 April 2009: see SI 2009/462, art 2(1), Sch 1, para 33.

Sub-s (1): in para (a) words “responsible clinician” in square brackets substituted by the Mental Health Act 2007, s 12(1), (4)(a)(ii).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and

savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (1): in para (a) words from “under section 20(3)” to “of the patient” in square brackets substituted by the Mental Health (Patients in the Community) Act 1995, s 2(5).

Sub-s (1): in para (a) words “, 20A(4) or 21B(2) above in respect” in square brackets substituted by the Mental Health Act 2007, s 34(1), (3)(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(j); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (1): in para (b) words “the regulatory authority” in square brackets substituted by the Health and Social Care Act 2008, s 52(5), Sch 3, paras 1, 4(1), (2).

Date in force: 1 April 2009: see SI 2009/462, art 2(1), Sch 1, para 33.

Sub-s (2): words “, limitation direction” in square brackets inserted by the Crime (Sentences) Act 1997, s 55, Sch 4, para 12(7)(a).

Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(l), (2)(f).

Sub-s (2): in para (b) words “responsible clinician” in square brackets substituted by the Mental Health Act 2007, s 12(1), (4)(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (2): in para (b) reference to “, 45B(3)” in square brackets inserted by the Crime (Sentences) Act 1997, s 55, Sch 4, para 12(7)(b).

Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(l), (2)(f).

Sub-s (3): words “the regulatory authority” in square brackets substituted by the Health and Social Care Act 2008, s 52(5), Sch 3, paras 1, 4(1), (2).

Date in force: 1 April 2009: see SI 2009/462, art 2(1), Sch 1, para 33.

Sub-s (3): words omitted repealed by the Mental Health Act 2007, ss 12(1), (4)(c), 55, Sch 11, Pt 3.

Date in force: 3 November 2008: see SI 2008/1900, art 2(b), (p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (3): words “, 58(3)(b) or 58A(4) or (5)” in square brackets substituted by the Mental Health Act 2007, s 28(1), (5)(b)(i).

Date in force: 3 November 2008: see SI 2008/1900, art 2(g); for transitional provisions and savings see art 3, Schedule, paras 1, 12, 13 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 3(2), (3).

Sub-s (3): words “(whether in England or Wales)” in square brackets inserted by the Health and Social Care Act 2008, s 52(5), Sch 3, paras 1, 4(1), (3).

Date in force: 1 April 2009: see SI 2009/462, art 2(1), Sch 1, para 33.

Sub-s (3): words “, 58 and 58A” in square brackets substituted by the Mental Health Act 2007, s 28(1), (5)(b)(ii).

Date in force: 3 November 2008: see SI 2008/1900, art 2(g); for transitional provisions and savings see art 3, Schedule, paras 1, 12, 13 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 3(2), (3).

Sub-s (3A): inserted by the Mental Health Act 2007, s 12(1), (4)(d).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

### **Transfer of Functions**

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

### **62 Urgent treatment**

(1) Sections 57 and 58 above shall not apply to any treatment—

- (a) which is immediately necessary to save the patient’s life; or
- (b) which (not being irreversible) is immediately necessary to prevent a serious deterioration of his condition; or

- (c) which (not being irreversible or hazardous) is immediately necessary to alleviate serious suffering by the patient; or
- (d) which (not being irreversible or hazardous) is immediately necessary and represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or to others.

[(1A) Section 58A above, in so far as it relates to electro-convulsive therapy by virtue of subsection (1)(a) of that section, shall not apply to any treatment which falls within paragraph (a) or (b) of subsection (1) above.

(1B) Section 58A above, in so far as it relates to a form of treatment specified by virtue of subsection (1)(b) of that section, shall not apply to any treatment which falls within such of paragraphs (a) to (d) of subsection (1) above as may be specified in regulations under that section.

(1C) For the purposes of subsection (1B) above, the regulations—

- (a) may make different provision for different cases (and may, in particular, make different provision for different forms of treatment);
- (b) may make provision which applies subject to specified exceptions; and
- (c) may include transitional, consequential, incidental or supplemental provision.]

(2) Sections 60 and 61(3) above shall not preclude the continuation of any treatment or of treatment under any plan pending compliance with section 57[, 58 or 58A] above if the [approved clinician in charge of the treatment] considers that the discontinuance of the treatment or of treatment under the plan would cause serious suffering to the patient.

(3) For the purposes of this section treatment is irreversible if it has unfavourable irreversible physical or psychological consequences and hazardous if it entails significant physical hazard.

## NOTES

### Derivation

This section derived from the Mental Health (Amendment) Act 1982, s 48.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-ss (1A)–(1C): inserted by the Mental Health Act 2007, s 28(1), (6).

Date in force: 3 November 2008: see SI 2008/1900, art 2(g); for transitional provisions and savings see art 3, Schedule, paras 1, 12, 13 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 3(2), (3).

Sub-s (2): words “, 58 or 58A” in square brackets substituted by the Mental Health Act 2007, s 28(1), (7).

Date in force: 3 November 2008: see SI 2008/1900, art 2(g); for transitional provisions and savings see art 3, Schedule, paras 1, 12, 13 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 3(2), (3).

Sub-s (2): words “approved clinician in charge of the treatment” in square brackets substituted by the Mental Health Act 2007, s 12(1), (5).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

## [62A Treatment on recall of community patient or revocation of order]

[(1) This section applies where—

- (a) a community patient is recalled to hospital under section 17E above; or
- (b) a patient is liable to be detained under this Act following the revocation of a community treatment order under section 17F above in respect of him.

(2) For the purposes of section 58(1)(b) above, the patient is to be treated as if he had remained liable to be detained since the making of the community treatment order.

(3) But section 58 above does not apply to treatment given to the patient if—

- (a) the certificate requirement is met for the purposes of section 64C or 64E below; or
- (b) as a result of section 64B(4) or 64E(4) below, the certificate requirement would not apply (were the patient a community patient not recalled to hospital under section 17E above).

(4) Section 58A above does not apply to treatment given to the patient if there is authority to give the treatment, and the certificate requirement is met, for the purposes of section 64C or 64E below.

(5) In a case where this section applies [and the Part 4A certificate falls within section 64C(4) below], the certificate requirement is met only in so far as—

- (a) the Part 4A certificate expressly provides that it is appropriate for one or more specified forms of treatment to be given to the patient in that case (subject to such conditions as may be specified); or
- (b) a notice having been given under subsection (5) of section 64H below, treatment is authorised by virtue of subsection (8) of that section.

(6) Subsection (5) above shall not preclude the continuation of any treatment, or of treatment under any plan, pending compliance with section 58 or 58A above [or 64B or 64E below] if the approved clinician in charge of the treatment considers that the discontinuance of the treatment, or of the treatment under the plan, would cause serious suffering to the patient.

[(6A) In a case where this section applies and the certificate requirement is no longer met for the purposes of section 64C(4A) below, the continuation of any treatment, or of treatment under any plan, pending compliance with section 58 or 58A above or 64B or 64E below shall not be precluded if the approved clinician in charge of the treatment considers that the discontinuance of the treatment, or of treatment under the plan, would cause serious suffering to the patient.]

(7) In a case where subsection (1)(b) above applies, subsection (3) above only applies pending compliance with section 58 above.

(8) In subsection (5) above—

“Part 4A certificate” has the meaning given in section 64H below; and

“specified”, in relation to a Part 4A certificate, means specified in the certificate.]

## NOTES

### Amendment

Inserted by the Mental Health Act 2007, s 34(1), (4).

Date in force: 3 November 2008: see SI 2008/1900, art 2(j); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (5): words “and the Part 4A certificate falls within section 64C(4) below” in square brackets

inserted by the Health and Social Care Act 2012, s 299(1), (8).

Date in force: 1 June 2012: see SI 2012/1319, art 2(1), (2).

Sub-s (6): words “or 64B or 64E below” in square brackets inserted by the Health and Social Care Act 2012, s 299(1), (9).

Date in force: 1 June 2012: see SI 2012/1319, art 2(1), (2).

Sub-s (6A): inserted by the Health and Social Care Act 2012, s 299(1), (10).

Date in force: 1 June 2012: see SI 2012/1319, art 2(1), (2).

## **63 Treatment not requiring consent**

The consent of a patient shall not be required for any medical treatment given to him for the mental disorder from which he is suffering[, not being a form of treatment to which section 57, 58 or 58A above applies,] if the treatment is given by or under the direction of the [approved clinician in charge of the treatment].

### **NOTES**

#### **Derivation**

This section derived from the Mental Health (Amendment) Act 1982, s 49.

#### **Initial Commencement**

##### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

#### **Amendment**

Words from “, not being a” to “58A above applies,” in square brackets substituted by the Mental Health Act 2007, s 28(1), (8).

Date in force: 3 November 2008: see SI 2008/1900, art 2(g); for transitional provisions and savings see art 3, Schedule, paras 1, 12, 13 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 3(2), (3).

Words “approved clinician in charge of the treatment” in square brackets substituted by the Mental Health Act 2007, s 12(1), (6).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

## **64 Supplementary provisions for Part IV**

(1) In this Part of this Act [“the responsible clinician” means the approved clinician with overall responsibility for the case] of the patient in question and “hospital” includes a [registered establishment].

[(1A) References in this Part of this Act to the approved clinician in charge of a patient’s treatment shall, where the treatment in question is a form of treatment to which section 57 above applies, be construed as references to the person in charge of the treatment.]

[(1B) References in this Part of this Act to the approved clinician in charge of a patient’s treatment shall, where the treatment in question is a form of treatment to which section 58A above applies and the patient falls within section 56(5) above, be construed as references to the person in charge of the treatment.

(1C) Regulations made by virtue of section 32(2)(d) above apply for the purposes of this Part as they apply for the purposes of Part 2 of this Act.]

(2) Any certificate for the purposes of this Part of this Act shall be in such form as may be prescribed by regulations made by the Secretary of State.

[(3) For the purposes of this Part of this Act, it is appropriate for treatment to be given to a patient if the treatment is appropriate in his case, taking into account the nature and degree of the mental disorder

from which he is suffering and all other circumstances of his case.]

## NOTES

### Derivation

This section derived from the Mental Health (Amendment) Act 1982, s 42(2), (3).

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): words “the responsible clinician” means the approved clinician with overall responsibility for the case” in square brackets substituted by the Mental Health Act 2007, s 12(1), (7)(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (1): words “registered establishment” in square brackets substituted by the Care Standards Act 2000, s 116, Sch 4, para 9(1), (2).

Date in force (in relation to England): 1 April 2002: see SI 2001/4150, art 3(3)(a); for transitional provisions see SI 2001/4150, arts 3(2), 4(1), (3), (4) and SI 2002/1493, art 4 (as amended by SI 2002/1493, art 6).

Date in force (in relation to Wales): 1 April 2002: see SI 2002/920, art 3(3)(d); for transitional provisions see arts 2, 3(2), (4), (6)–(10), Sch 1 thereto.

Sub-s (1A): inserted by the Mental Health Act 2007, s 12(1), (7)(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-ss (1B), (1C): inserted by the Mental Health Act 2007, s 28(1), (9).

Date in force: 3 November 2008: see SI 2008/1900, art 2(g); for transitional provisions and savings see art 3, Schedule, paras 1, 12, 13 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 3(2), (3).

Sub-s (3): inserted by the Mental Health Act 2007, s 6(1), (3).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

### Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

### Subordinate Legislation

Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008, SI 2008/1184 (made under sub-s (2)).

Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) Regulations 2008, SI 2008/2439 (made under sub-s (2)).

## [Part 4A

## Treatment of Community Patients Not Recalled to Hospital]

## NOTES

### Amendment

Inserted by the Mental Health Act 2007, s 35(1).

Date in force (for certain purposes): 1 April 2008: see SI 2008/745, arts 2(d), 3(e).

Date in force (for remaining purposes): 3 November 2008: see SI 2008/1900, art 2(k).

### [64A Meaning of “relevant treatment”]

[In this Part of this Act “relevant treatment”, in relation to a patient, means medical treatment which—

- (a) is for the mental disorder from which the patient is suffering; and
- (b) is not a form of treatment to which section 57 above applies.]

## **NOTES**

### **Amendment**

Inserted by the Mental Health Act 2007, s 35(1).

Date in force: 3 November 2008: see SI 2008/1900, art 2(k).

### **[64B Adult community patients]**

- [(1) This section applies to the giving of relevant treatment to a community patient who—
- (a) is not recalled to hospital under section 17E above; and
  - (b) has attained the age of 16 years.
- (2) The treatment may not be given to the patient unless—
- (a) there is authority to give it to him; and
  - (b) if it is section 58 type treatment or section 58A type treatment, the certificate requirement is met.
- (3) But the certificate requirement does not apply if—
- (a) giving the treatment to the patient is authorised in accordance with section 64G below; or
  - (b) the treatment is immediately necessary and—
    - (i) the patient has capacity to consent to it and does consent to it; or
    - (ii) a donee or deputy or the Court of Protection consents to the treatment on the patient's behalf.
- (4) Nor does the certificate requirement apply in so far as the administration of medicine to the patient at any time during the period of one month beginning with the day on which the community treatment order is made is section 58 type treatment.
- (5) The reference in subsection (4) above to the administration of medicine does not include any form of treatment specified under section 58(1)(a) above.]

## **NOTES**

### **Amendment**

Inserted by the Mental Health Act 2007, s 35(1).

Date in force: 3 November 2008: see SI 2008/1900, art 2(k).

### **[64C Section 64B: supplemental]**

- [(1) This section has effect for the purposes of section 64B above.
- (2) There is authority to give treatment to a patient if—
- (a) he has capacity to consent to it and does consent to it;
  - (b) a donee or deputy or the Court of Protection consents to it on his behalf; or

(c) giving it to him is authorised in accordance with section 64D or 64G below.

(3) Relevant treatment is section 58 type treatment or section 58A type treatment if, at the time when it is given to the patient, section 58 or 58A above (respectively) would have applied to it, had the patient remained liable to be detained at that time (rather than being a community patient).

(4) The certificate requirement is met in respect of treatment to be given to a patient if—

(a) a registered medical practitioner appointed for the purposes of Part 4 of this Act (not being the responsible clinician or the person in charge of the treatment) has certified in writing that it is appropriate for the treatment to be given or for the treatment to be given subject to such conditions as may be specified in the certificate; and

(b) if conditions are so specified, the conditions are satisfied.

[(4A) Where there is authority to give treatment by virtue of subsection (2)(a), the certificate requirement is also met in respect of the treatment if the approved clinician in charge of the treatment has certified in writing that the patient has capacity to consent to the treatment and has consented to it.

(4B) But, if the patient has not attained the age of 18, subsection (4A) does not apply to section 58A type treatment.]

(5) In a case where the treatment is section 58 type treatment, treatment is immediately necessary if—

(a) it is immediately necessary to save the patient's life; or

(b) it is immediately necessary to prevent a serious deterioration of the patient's condition and is not irreversible; or

(c) it is immediately necessary to alleviate serious suffering by the patient and is not irreversible or hazardous; or

(d) it is immediately necessary, represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or others and is not irreversible or hazardous.

(6) In a case where the treatment is section 58A type treatment by virtue of subsection (1)(a) of that section, treatment is immediately necessary if it falls within paragraph (a) or (b) of subsection (5) above.

(7) In a case where the treatment is section 58A type treatment by virtue of subsection (1)(b) of that section, treatment is immediately necessary if it falls within such of paragraphs (a) to (d) of subsection (5) above as may be specified in regulations under that section.

(8) For the purposes of subsection (7) above, the regulations—

(a) may make different provision for different cases (and may, in particular, make different provision for different forms of treatment);

(b) may make provision which applies subject to specified exceptions; and

(c) may include transitional, consequential, incidental or supplemental provision.

(9) Subsection (3) of section 62 above applies for the purposes of this section as it applies for the purposes of that section.]

## NOTES

## **Amendment**

Inserted by the Mental Health Act 2007, s 35(1).

Date in force: 3 November 2008: see SI 2008/1900, art 2(k).

Sub-ss (4A), (4B): inserted by the Health and Social Care Act 2012, s 299(1), (2).

Date in force: 1 June 2012: see SI 2012/1319, art 2(1), (2).

### **[64D Adult community patients lacking capacity]**

[(1) A person is authorised to give relevant treatment to a patient as mentioned in section 64C(2)(c) above if the conditions in subsections (2) to (6) below are met.

(2) The first condition is that, before giving the treatment, the person takes reasonable steps to establish whether the patient lacks capacity to consent to the treatment.

(3) The second condition is that, when giving the treatment, he reasonably believes that the patient lacks capacity to consent to it.

(4) The third condition is that—

- (a) he has no reason to believe that the patient objects to being given the treatment; or
- (b) he does have reason to believe that the patient so objects, but it is not necessary to use force against the patient in order to give the treatment.

(5) The fourth condition is that—

- (a) he is the person in charge of the treatment and an approved clinician; or
- (b) the treatment is given under the direction of that clinician.

(6) The fifth condition is that giving the treatment does not conflict with—

- (a) an advance decision which he is satisfied is valid and applicable; or
- (b) a decision made by a donee or deputy or the Court of Protection.

(7) In this section—

- (a) reference to an advance decision is to an advance decision (within the meaning of the Mental Capacity Act 2005) made by the patient; and
- (b) “valid and applicable”, in relation to such a decision, means valid and applicable to the treatment in question in accordance with section 25 of that Act.]

## **NOTES**

### **Amendment**

Inserted by the Mental Health Act 2007, s 35(1).

Date in force: 3 November 2008: see SI 2008/1900, art 2(k).

### **[64E Child community patients]**

[(1) This section applies to the giving of relevant treatment to a community patient who—

- (a) is not recalled to hospital under section 17E above; and
- (b) has not attained the age of 16 years.

- (2) The treatment may not be given to the patient unless—
- (a) there is authority to give it to him; and
  - (b) if it is section 58 type treatment or section 58A type treatment, the certificate requirement is met.
- (3) But the certificate requirement does not apply if—
- (a) giving the treatment to the patient is authorised in accordance with section 64G below; or
  - (b) in a case where the patient is competent to consent to the treatment and does consent to it, the treatment is immediately necessary.
- (4) Nor does the certificate requirement apply in so far as the administration of medicine to the patient at any time during the period of one month beginning with the day on which the community treatment order is made is section 58 type treatment.
- (5) The reference in subsection (4) above to the administration of medicine does not include any form of treatment specified under section 58(1)(a) above.
- (6) For the purposes of subsection (2)(a) above, there is authority to give treatment to a patient if—
- (a) he is competent to consent to it and he does consent to it; or
  - (b) giving it to him is authorised in accordance with section 64F or 64G below.
- (7) Subsections [(3) to (4A) and (5) to (9)] of section 64C above have effect for the purposes of this section as they have effect for the purposes of section 64B above; and for the purpose of this subsection, subsection (4A) of section 64C above has effect as if—
- (a) the references to treatment were references only to section 58 type treatment,
  - (b) the reference to subsection (2)(a) of section 64C were a reference to subsection (6)(a) of this section, and
  - (c) the reference to capacity to consent were a reference to competence to consent].
- (8) Regulations made by virtue of section 32(2)(d) above apply for the purposes of this section as they apply for the purposes of Part 2 of this Act.]

## NOTES

### Amendment

Inserted by the Mental Health Act 2007, s 35(1).

Date in force: 3 November 2008: see SI 2008/1900, art 2(k).

Sub-s (7): words “(3) to (4A) and (5) to (9)” in square brackets substituted by the Health and Social Care Act 2012, s 299(1), (3)(a).

Date in force: 1 June 2012: see SI 2012/1319, art 2(1), (2).

Sub-s (7): words from “; and for the” to “competence to consent” in square brackets inserted by the Health and Social Care Act 2012, s 299(1), (3)(b).

Date in force: 1 June 2012: see SI 2012/1319, art 2(1), (2).

### [64F Child community patients lacking competence]

- [(1) A person is authorised to give relevant treatment to a patient as mentioned in section 64E(6)(b) above if the conditions in subsections (2) to (5) below are met.

- (2) The first condition is that, before giving the treatment, the person takes reasonable steps to establish whether the patient is competent to consent to the treatment.
- (3) The second condition is that, when giving the treatment, he reasonably believes that the patient is not competent to consent to it.
- (4) The third condition is that—
- (a) he has no reason to believe that the patient objects to being given the treatment; or
  - (b) he does have reason to believe that the patient so objects, but it is not necessary to use force against the patient in order to give the treatment.
- (5) The fourth condition is that—
- (a) he is the person in charge of the treatment and an approved clinician; or
  - (b) the treatment is given under the direction of that clinician.]

## **NOTES**

### **Amendment**

Inserted by the Mental Health Act 2007, s 35(1).

Date in force: 3 November 2008: see SI 2008/1900, art 2(k).

### **[64FA Withdrawal of consent]**

- [(1) Where the consent of a patient to any treatment has been given as mentioned in section 64C(2)(a) above for the purposes of section 64B or 64E above, the patient may at any time before the completion of the treatment withdraw his consent, and those sections shall then apply as if the remainder of the treatment were a separate form of treatment.
- (2) Subsection (3) below applies where—
- (a) the consent of a patient to any treatment has been given as mentioned in section 64C(2)(a) above for the purposes of section 64B or 64E above; but
  - (b) before the completion of the treatment, the patient loses capacity or (as the case may be) competence to consent to the treatment.
- (3) The patient shall be treated as having withdrawn his consent and section 64B or (as the case may be) section 64E above shall then apply as if the remainder of the treatment were a separate form of treatment.
- (4) Without prejudice to the application of subsections (1) to (3) above to any treatment given under the plan of treatment to which a patient has consented, a patient who has consented to such a plan may at any time withdraw his consent to further treatment, or to further treatment of any description, under the plan.
- (5) This section shall not preclude the continuation of any treatment, or of treatment under any plan, pending compliance with section 58, 58A, 64B or 64E above if the approved clinician in charge of the treatment considers that the discontinuance of the treatment, or of treatment under the plan, would cause serious suffering to the patient.]

## **NOTES**

### **Amendment**

Inserted by the Health and Social Care Act 2012, s 299(1), (4).

Date in force: 1 June 2012: see SI 2012/1319, art 2(1), (2).

**[64G Emergency treatment for patients lacking capacity or competence]**

[(1) A person is also authorised to give relevant treatment to a patient as mentioned in section 64C(2)(c) or 64E(6)(b) above if the conditions in subsections (2) to (4) below are met.

(2) The first condition is that, when giving the treatment, the person reasonably believes that the patient lacks capacity to consent to it or, as the case may be, is not competent to consent to it.

(3) The second condition is that the treatment is immediately necessary.

(4) The third condition is that if it is necessary to use force against the patient in order to give the treatment—

- (a) the treatment needs to be given in order to prevent harm to the patient; and
- (b) the use of such force is a proportionate response to the likelihood of the patient's suffering harm, and to the seriousness of that harm.

(5) Subject to subsections (6) to (8) below, treatment is immediately necessary if—

- (a) it is immediately necessary to save the patient's life; or
- (b) it is immediately necessary to prevent a serious deterioration of the patient's condition and is not irreversible; or
- (c) it is immediately necessary to alleviate serious suffering by the patient and is not irreversible or hazardous; or
- (d) it is immediately necessary, represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or others and is not irreversible or hazardous.

(6) Where the treatment is section 58A type treatment by virtue of subsection (1)(a) of that section, treatment is immediately necessary if it falls within paragraph (a) or (b) of subsection (5) above.

(7) Where the treatment is section 58A type treatment by virtue of subsection (1)(b) of that section, treatment is immediately necessary if it falls within such of paragraphs (a) to (d) of subsection (5) above as may be specified in regulations under section 58A above.

(8) For the purposes of subsection (7) above, the regulations—

- (a) may make different provision for different cases (and may, in particular, make different provision for different forms of treatment);
- (b) may make provision which applies subject to specified exceptions; and
- (c) may include transitional, consequential, incidental or supplemental provision.

(9) Subsection (3) of section 62 above applies for the purposes of this section as it applies for the purposes of that section.]

**NOTES**

**Amendment**

Inserted by the Mental Health Act 2007, s 35(1).

Date in force: 3 November 2008: see SI 2008/1900, art 2(k).

## **[64H Certificates: supplementary provisions]**

(1) A certificate under section 64B(2)(b) or 64E(2)(b) above (a “Part 4A certificate”) may relate to a plan of treatment under which the patient is to be given (whether within a specified period or otherwise) one or more forms of section 58 type treatment or section 58A type treatment.

(2) A Part 4A certificate shall be in such form as may be prescribed by regulations made by the appropriate national authority[; and the regulations may make different provision for the different descriptions of Part 4A certificate].

(3) Before giving a Part 4A certificate [that falls within section 64C(4) above], the registered medical practitioner concerned shall consult two other persons who have been professionally concerned with the patient’s medical treatment but, of those persons—

- (a) at least one shall be a person who is not a registered medical practitioner; and
- (b) neither shall be the patient’s responsible clinician or the person in charge of the treatment in question.

(4) Where a patient is given treatment in accordance with a Part 4A certificate [that falls within section 64C(4) above], a report on the treatment and the patient’s condition shall be given by the person in charge of the treatment to the [regulatory authority] if required by that authority.

(5) The [regulatory authority] may at any time give notice directing that a Part 4A certificate [that falls within section 64C(4) above] shall not apply to treatment given to a patient after a date specified in the notice, and the relevant section shall then apply to any such treatment as if that certificate had not been given.

(6) The relevant section is—

- (a) if the patient is not recalled to hospital in accordance with section 17E above, section 64B or 64E above;
- (b) if the patient is so recalled or is liable to be detained under this Act following revocation of the community treatment order under section 17F above—
  - (i) section 58 above, in the case of section 58 type treatment;
  - (ii) section 58A above, in the case of section 58A type treatment;

(subject to section 62A(2) above).

(7) The notice under subsection (5) above shall be given to the person in charge of the treatment in question.

(8) Subsection (5) above shall not preclude the continuation of any treatment or of treatment under any plan pending compliance with the relevant section if the person in charge of the treatment considers that the discontinuance of the treatment or of treatment under the plan would cause serious suffering to the patient.

(9) In this section, “the appropriate national authority” means—

- (a) in relation to community patients in respect of whom the responsible hospital is in England, the Secretary of State;
- (b) in relation to community patients in respect of whom the responsible hospital is in Wales, the Welsh Ministers.]

## NOTES

### Amendment

Inserted by the Mental Health Act 2007, s 35(1).

Date in force (for certain purposes): 1 April 2008: see SI 2008/745, arts 2(d), 3(e).

Date in force (for remaining purposes): 3 November 2008: see SI 2008/1900, art 2(k).

Sub-s (2): words from “; and the regulations” to “Part 4A certificate” in square brackets inserted by the Health and Social Care Act 2012, s 299(1), (5)(a).

Date in force: 1 June 2012: see SI 2012/1319, art 2(1), (2).

Sub-s (3): words “that falls within section 64C(4) above” in square brackets inserted by the Health and Social Care Act 2012, s 299(1), (5)(b).

Date in force: 1 June 2012: see SI 2012/1319, art 2(1), (2).

Sub-s (4): words “that falls within section 64C(4) above” in square brackets inserted by the Health and Social Care Act 2012, s 299(1), (5)(b).

Date in force: 1 June 2012: see SI 2012/1319, art 2(1), (2).

Sub-s (4): words “regulatory authority” in square brackets substituted by the Health and Social Care Act 2008, s 52(5), Sch 3, paras 1, 5.

Date in force: 1 April 2009: see SI 2009/462, art 2(1), Sch 1, para 33.

Sub-s (5): words “regulatory authority” in square brackets substituted by the Health and Social Care Act 2008, s 52(5), Sch 3, paras 1, 5.

Date in force: 1 April 2009: see SI 2009/462, art 2(1), Sch 1, para 33.

Sub-s (5): words “that falls within section 64C(4) above” in square brackets inserted by the Health and Social Care Act 2012, s 299(1), (5)(b).

Date in force: 1 June 2012: see SI 2012/1319, art 2(1), (2).

### Subordinate Legislation

Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008, SI 2008/1184 (made under sub-s (2)).

Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) Regulations 2008, SI 2008/2439 (made under sub-s (2)).

Mental Health (Hospital, Guardianship and Treatment) (England) (Amendment) Regulations 2012, SI 2012/1118 (made under sub-s (2)).

### [64I Liability for negligence]

[Nothing in section 64D, 64F or 64G above excludes a person’s civil liability for loss or damage, or his criminal liability, resulting from his negligence in doing anything authorised to be done by that section.]

## NOTES

### Amendment

Inserted by the Mental Health Act 2007, s 35(1).

Date in force: 3 November 2008: see SI 2008/1900, art 2(k).

### [64J Factors to be considered in determining whether patient objects to treatment]

[(1) In assessing for the purposes of this Part whether he has reason to believe that a patient objects to treatment, a person shall consider all the circumstances so far as they are reasonably ascertainable, including the patient’s behaviour, wishes, feelings, views, beliefs and values.

(2) But circumstances from the past shall be considered only so far as it is still appropriate to consider them.]

## NOTES

### Amendment

Inserted by the Mental Health Act 2007, s 35(1).

Date in force: 3 November 2008: see SI 2008/1900, art 2(k).

#### **[64K Interpretation of Part 4A]**

- [(1) This Part of this Act is to be construed as follows.
- (2) References to a patient who lacks capacity are to a patient who lacks capacity within the meaning of the Mental Capacity Act 2005.
- (3) References to a patient who has capacity are to be read accordingly.
- (4) References to a donee are to a donee of a lasting power of attorney (within the meaning of section 9 of the Mental Capacity Act 2005) created by the patient, where the donee is acting within the scope of his authority and in accordance with that Act.
- (5) References to a deputy are to a deputy appointed for the patient by the Court of Protection under section 16 of the Mental Capacity Act 2005, where the deputy is acting within the scope of his authority and in accordance with that Act.
- (6) Reference to the responsible clinician shall be construed as a reference to the responsible clinician within the meaning of Part 2 of this Act.
- (7) References to a hospital include a registered establishment.
- (8) Section 64(3) above applies for the purposes of this Part of this Act as it applies for the purposes of Part 4 of this Act.]

#### **NOTES**

##### **Amendment**

Inserted by the Mental Health Act 2007, s 35(1).

Date in force: 3 November 2008: see SI 2008/1900, art 2(k).

## **Part V** **Mental Health Review Tribunals**

### *Constitution etc*

#### **65 Mental Health Review [Tribunals for Wales]**

- [(1) There shall [be a Mental Health Review Tribunal for Wales].
- (1A) The purpose of [that tribunal] is to deal with applications and references by and in respect of patients under the provisions of this Act.]
- (2) The provisions of Schedule 2 to this Act shall have effect with respect to the constitution of [the Mental Health Review Tribunal for Wales].
- (3) Subject to the provisions of Schedule 2 to this Act, and to rules made by the Lord Chancellor under this Act, the jurisdiction of [the Mental Health Review Tribunal for Wales] may be exercised by any three or more of its members, and references in this Act to [the Mental Health Review Tribunal for Wales] shall be construed accordingly.
- [(4) The Welsh Ministers may pay to the members of the Mental Health Review Tribunal for Wales such remuneration and allowances as they may determine, and defray the expenses of that tribunal to such amount as they may determine, and may provide for that tribunal such officers and servants, and such accommodation, as that tribunal may require.]

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 3(1)–(4).

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Section heading: words “Tribunal for Wales” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 45(a).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-ss (1), (1A): substituted, for sub-ss (1), (1A)–(1C) as substituted by the Health Authorities Act 1995, s 2(1), Sch 1, para 107(6) (sub-s (1) as originally enacted), by the Mental Health Act 2007, s 38(1), (2).

Date in force: 3 November 2008: see SI 2008/1900, art 2(m).

Sub-s (1): words “be a Mental Health Review Tribunal for Wales” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 45(b).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (1A): words “that tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 45(c).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (2): words “the Mental Health Review Tribunal for Wales” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 45(d).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (3): words “the Mental Health Review Tribunal for Wales” in square brackets in both places they occur substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 45(e).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (4): substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 45(f).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

### See Further

See further, in relation to the transfer of functions under this section to the First-tier Tribunal: the Transfer of Tribunal Functions Order 2008, SI 2008/2833, arts 3–5, 9(2), Sch 1, Table 1, Sch 2, Tables 1–3, Sch 4.

### Transfer of Functions

Functions of the Secretary of State and the Treasury, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

#### *Applications and references concerning Part II patients*

### 66 Applications to tribunals

(1) Where—

- (a) a patient is admitted to a hospital in pursuance of an application for admission for assessment; or
- (b) a patient is admitted to a hospital in pursuance of an application for admission for treatment; or
- (c) a patient is received into guardianship in pursuance of a guardianship application; or
- [(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]

- (d) . . .
- (e) a patient is transferred from guardianship to a hospital in pursuance of regulations made under section 19 above; or
- (f) a report is furnished under section 20 above in respect of a patient and the patient is not discharged [under section 23 above]; or
- [(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]
- [(fa) a report is furnished under subsection (2) of section 21B above in respect of a patient and subsection (5) of that section applies (or subsections (5) and (6)(b) of that section apply) in the case of the report; or
- [(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]
- (fb) . . .]
- (g) a report is furnished under section 25 above in respect of a patient who is detained in pursuance of an application for admission for treatment [or a community patient]; or
- [(ga) . . .
- (gb) . . .
- (gc) . . .]
- (h) an order is made under section 29 above [on the ground specified in paragraph (c) or (d) of subsection (3) of that section] in respect of a patient who is or subsequently becomes liable to be detained or subject to guardianship under Part II of this Act [or who is a community patient],

an application may be made to [the appropriate tribunal] within the relevant period—

- (i) by the patient (except in the cases mentioned in paragraphs (g) and (h) above) . . ., and
  - (ii) in the cases mentioned in paragraphs (g) and (h) above, by his nearest relative.
- (2) In subsection (1) above “the relevant period” means—
- (a) in the case mentioned in paragraph (a) of that subsection, 14 days beginning with the day on which the patient is admitted as so mentioned;
  - (b) in the case mentioned in paragraph (b) of that subsection, six months beginning with the day on which the patient is admitted as so mentioned;
  - (c) in the [case mentioned in paragraph (c)] of that subsection, six months beginning with the day on which the application is accepted;
  - [(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;]

- (d) [in the case mentioned in paragraph (g)] . . . of that subsection, 28 days beginning with the day on which the applicant is informed that the report has been furnished;
- (e) in the case mentioned in paragraph (e) of that subsection, six months beginning with the day on which the patient is transferred;
- (f) in the case mentioned in paragraph (f) [or (fa) of that subsection, the period or periods] for which authority for the patient's detention or guardianship is renewed by virtue of the report;
- [(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;]
- [(fa) . . .]
- (g) in the case mentioned in paragraph (h) of that subsection, 12 months beginning with the date of the order, and in any subsequent period of 12 months during which the order continues in force.

[(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.]

(3) Section 32 above shall apply for the purposes of this section as it applies for the purposes of Part II of this Act.

[(4) In this Act "the appropriate tribunal" means the First-tier Tribunal or the Mental Health Review Tribunal for Wales.

(5) For provision determining to which of those tribunals applications by or in respect of a patient under this Act shall be made, see section 77(3) and (4) below.]

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, ss 31(3A), (4), 34(5), 38(2), 41(5), 43(6), 48(3), 52(6) and the Mental Health (Amendment) Act 1982, s 41.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Extent

This section does not extend to Scotland.

### Amendment

Sub-s (1): paras (ca), (cb) inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 18(1), (2)(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (1): para (d) repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 1.

Date in force: 3 November 2008: see SI 2008/1900, art 2(p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (1): in para (f) words "under section 23 above" in square brackets inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 18(1), (2)(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

- Sub-s (1): para (fza) inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 18(1), (2)(c).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.
- Sub-s (1): para (fa) inserted by the Mental Health (Patients in the Community) Act 1995, s 2(6)(a).
- Sub-s (1): para (faa) inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 18(1), (2)(d).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.
- Sub-s (1): para (fb) inserted by the Mental Health (Patients in the Community) Act 1995, s 2(6)(a).
- Sub-s (1): para (fb) repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 1.  
Date in force: 3 November 2008: see SI 2008/1900, art 2(p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.
- Sub-s (1): in para (g) words “or a community patient” in square brackets inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 18(1), (2)(e).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.
- Sub-s (1): paras (ga)–(gc) inserted by the Mental Health (Patients in the Community) Act 1995, s 1(2), Sch 1, para 7(1), (2).
- Sub-s (1): paras (ga)–(gc) repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 5.  
Date in force: 3 November 2008: see SI 2008/1210, art 2(d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.
- Sub-s (1): in para (h) words from “on the ground” to “of that section” in square brackets inserted by the Mental Health Act 2007, s 25.  
Date in force: 3 November 2008: see SI 2008/1900, art 2(f); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 6(2), (4).
- Sub-s (1): in para (h) words “or who is a community patient” in square brackets inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 18(1), (2)(f).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.
- Sub-s (1): words “the appropriate tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 46(a).  
Date in force: 3 November 2008: see SI 2008/2833, art 1(1).
- Sub-s (1): in para (i) words omitted repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 5.  
Date in force: 3 November 2008: see SI 2008/1210, art 2(d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.
- Sub-s (2): in para (c) words “case mentioned in paragraph (c)” in square brackets substituted by the Mental Health Act 2007, s 36(1), (3).  
Date in force: 3 November 2008: see SI 2008/1210, art 2(c); for savings and transitional provisions see arts 1(2), (4), 3, 4, 6–9 thereof.
- Sub-s (2): paras (ca), (cb) inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 18(1), (3)(a).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.
- Sub-s (2): in para (d) words “in the case mentioned in paragraph (g)” in square brackets substituted by the Mental Health Act 2007, s 1(4), Sch 1, Pt 1, paras 1, 13.  
Date in force: 3 November 2008: see SI 2008/1210, art 2(a); for savings and transitional provisions see arts 1(2), (4), 3, 4, 6, 8, 9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2, 4.

- Sub-s (2): in para (d) words omitted repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 5.  
Date in force: 3 November 2008: see SI 2008/1210, art 2(d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.
- Sub-s (2): in para (f) words “or (fa) of that subsection, the period or periods” in square brackets substituted by the Mental Health (Patients in the Community) Act 1995, ss 1(2), 2(6)(b), Sch 1, para 7(4).
- Sub-s (2): para (fza) inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 18(1), (3)(b).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.
- Sub-s (2): para (fa) inserted by the Mental Health (Patients in the Community) Act 1995, ss 1(2), 2(6)(b), Sch 1, para 7(4).
- Sub-s (2): para (fa) repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 5.  
Date in force: 3 November 2008: see SI 2008/1210, art 2(d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.
- Sub-s (2A): inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 18(1), (4).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.
- Sub-ss (4), (5): inserted by SI 2008/2833, art 9(1), Sch 3, paras 39, 46(b).  
Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

## **67 References to tribunals by Secretary of State concerning Part II patients**

(1) The Secretary of State may, if he thinks fit, at any time refer to [the appropriate tribunal] the case of any patient who is liable to be detained or subject to guardianship [. . .] under Part II of this Act [or of any community patient].

(2) For the purpose of furnishing information for the purposes of a reference under subsection (1) above any registered medical practitioner [or approved clinician] authorised by or on behalf of the patient may, at any reasonable time, visit the patient and examine him in private and require the production of and inspect any records relating to the detention or treatment of the patient in any hospital [or to any after-care services provided for the patient under section 117 below].

(3) Section 32 above shall apply for the purposes of this section as it applies for the purposes of Part II of this Act.

### **NOTES**

#### **Derivation**

This section derived from the Mental Health Act 1959, s 57.

#### **Initial Commencement**

##### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

#### **Extent**

This section does not extend to Scotland.

#### **Amendment**

Sub-s (1): words “the appropriate tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 47.

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (1): words omitted in square brackets inserted by the Mental Health (Patients in the Community) Act 1995, s 1(2), Sch 1, para 8(1), (2).

Sub-s (1): words omitted repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 5.

Date in force: 3 November 2008: see SI 2008/1210, art 2(d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (1): words “or of any community patient” in square brackets inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 19.

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (2): words “or approved clinician” in square brackets inserted by the Mental Health Act 2007, s 13(1), (2)(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b).

Sub-s (2): words “or to any after-care services provided for the patient under section 117 below” in square brackets inserted by the Mental Health (Patients in the Community) Act 1995, s 1(2), Sch 1, para 8(1), (3).

### **Transfer of Functions**

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

### **[68 Duty of managers of hospitals to refer cases to tribunal]**

[(1) This section applies in respect of the following patients—

- (a) a patient who is admitted to a hospital in pursuance of an application for admission for assessment;
- (b) a patient who is admitted to a hospital in pursuance of an application for admission for treatment;
- (c) a community patient;
- (d) a patient whose community treatment order is revoked under section 17F above;
- (e) a patient who is transferred from guardianship to a hospital in pursuance of regulations made under section 19 above.

(2) On expiry of the period of six months beginning with the applicable day, the managers of the hospital shall refer the patient’s case to [the appropriate tribunal].

(3) But they shall not do so if during that period—

- (a) any right has been exercised by or in respect of the patient by virtue of any of paragraphs (b), (ca), (cb), (e), (g) and (h) of section 66(1) above;
- (b) a reference has been made in respect of the patient under section 67(1) above, not being a reference made while the patient is or was liable to be detained in pursuance of an application for admission for assessment; or
- (c) a reference has been made in respect of the patient under subsection (7) below.

(4) A person who applies to a tribunal but subsequently withdraws his application shall be treated for these purposes as not having exercised his right to apply, and if he withdraws his application on a date after expiry of the period mentioned in subsection (2) above, the managers shall refer the patient’s case as soon as possible after that date.

(5) In subsection (2) above, “the applicable day” means—

- (a) in the case of a patient who is admitted to a hospital in pursuance of an application for admission for assessment, the day on which the patient was so admitted;
- (b) in the case of a patient who is admitted to a hospital in pursuance of an application for admission for treatment—
  - (i) the day on which the patient was so admitted; or
  - (ii) if, when he was so admitted, he was already liable to be detained in pursuance of an application for admission for assessment, the day on which he was originally admitted in pursuance of the application for admission for assessment;
- (c) in the case of a community patient or a patient whose community treatment order is revoked under section 17F above, the day mentioned in sub-paragraph (i) or (ii), as the case may be, of paragraph (b) above;
- (d) in the case of a patient who is transferred from guardianship to a hospital, the day on which he was so transferred.

(6) The managers of the hospital shall also refer the patient's case to [the appropriate tribunal] if a period of more than three years (or, if the patient has not attained the age of 18 years, one year) has elapsed since his case was last considered by such a tribunal, whether on his own application or otherwise.

(7) If, in the case of a community patient, the community treatment order is revoked under section 17F above, the managers of the hospital shall also refer the patient's case to [the appropriate tribunal] as soon as possible after the order is revoked.

(8) For the purposes of furnishing information for the purposes of a reference under this section, a registered medical practitioner or approved clinician authorised by or on behalf of the patient may at any reasonable time—

- (a) visit and examine the patient in private; and
- (b) require the production of and inspect any records relating to the detention or treatment of the patient in any hospital or any after-care services provided for him under section 117 below.

(9) Reference in this section to the managers of the hospital—

- (a) in relation to a community patient, is to the managers of the responsible hospital;
- (b) in relation to any other patient, is to the managers of the hospital in which he is liable to be detained.]

## **NOTES**

### **Derivation**

This section as originally enacted derived from the Mental Health (Amendment) Act 1982, s 40(1)–(5).

### **Extent**

This section does not extend to Scotland.

### **Amendment**

Substituted, together with s 68A, for this section as originally enacted, by the Mental Health Act 2007, s 37(1), (3).

Date in force: 3 November 2008: see SI 2008/1900, art 2(l); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 9(1).

Sub-s (2): words “the appropriate tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 48.

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (6): words “the appropriate tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 48.

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (7): words “the appropriate tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 48.

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

#### **[68A Power to reduce periods under section 68]**

[(1) The appropriate national authority may from time to time by order amend subsection (2) or (6) of section 68 above so as to substitute for a period mentioned there such shorter period as is specified in the order.

(2) The order may include such transitional, consequential, incidental or supplemental provision as the appropriate national authority thinks fit.

(3) The order may, in particular, make provision for a case where—

- (a) a patient in respect of whom subsection (1) of section 68 above applies is, or is about to be, transferred from England to Wales or from Wales to England; and
- (b) the period by reference to which subsection (2) or (6) of that section operates for the purposes of the patient's case is not the same in one territory as it is in the other.

(4) A patient is transferred from one territory to the other if—

- (a) he is transferred from a hospital, or from guardianship, in one territory to a hospital in the other in pursuance of regulations made under section 19 above;
- (b) he is removed under subsection (3) of that section from a hospital or accommodation in one territory to a hospital or accommodation in the other;
- (c) he is a community patient responsibility for whom is assigned from a hospital in one territory to a hospital in the other in pursuance of regulations made under section 19A above; [or]
- (d) on the revocation of a community treatment order in respect of him under section 17F above he is detained in a hospital in the territory other than the one in which the responsible hospital was situated; . . .
- (e) . . .

(5) Provision made by virtue of subsection (3) above may require or authorise the managers of a hospital determined in accordance with the order to refer the patient's case to [the appropriate tribunal].

(6) In so far as making provision by virtue of subsection (3) above, the order—

- (a) may make different provision for different cases;
- (b) may make provision which applies subject to specified exceptions.

(7) Where the appropriate national authority for one territory makes an order under subsection (1) above, the appropriate national authority for the other territory may by order make such provision in consequence of the order as it thinks fit.

(8) An order made under subsection (7) above may, in particular, make provision for a case within subsection (3) above (and subsections (4) to (6) above shall apply accordingly).

(9) In this section, “the appropriate national authority” means—

- (a) in relation to a hospital in England, the Secretary of State;
- (b) in relation to a hospital in Wales, the Welsh Ministers.]

## NOTES

### Amendment

Substituted, together with s 68, for s 68 as originally enacted, by the Mental Health Act 2007, s 37(1), (3).

Date in force: 3 November 2008: see SI 2008/1900, art 2(l); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 9(1).

Sub-s (4): in para (c) word “or” in square brackets inserted by the Health and Social Care Act 2012, s 42(2)(a).

Date in force: 1 July 2012: see SI 2012/1319, art 2(1), (3); for effect see the Health and Social Care Act 2012, s 42(5).

Sub-s (4): in para (d) word omitted repealed by the Health and Social Care Act 2012, s 42(2)(b); for savings see s 42(5) thereof.

Date in force: 1 July 2012: see SI 2012/1319, art 2(1), (3); for savings see the Health and Social Care Act 2012, s 42(5).

Sub-s (4): para (e) repealed by the Health and Social Care Act 2012, s 42(2)(c).

Date in force: 1 July 2012: see SI 2012/1319, art 2(1), (3); for savings see the Health and Social Care Act 2012, s 42(5).

Sub-s (5): words “the appropriate tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 49.

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

### *Applications and references concerning Part III patients*

## **69 Applications to tribunals concerning patients subject to hospital and guardianship orders**

(1) Without prejudice to any provision of section 66(1) above as applied by section 40(4) above, an application to [the appropriate tribunal] may also be made—

[(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;] and

(b) in respect of a patient placed under guardianship by a guardianship order—

(i) by the patient, within the period of six months beginning with the date of the order;

(ii) by the nearest relative of the patient, within the period of 12 months beginning with the date of the order and in any subsequent period of 12 months.

(2) Where a person detained in a hospital—

(a) is treated as subject to a hospital order[, hospital direction] or transfer direction by virtue of section 41(5) above [or section 80B(2), 82(2) or 85(2) below]; or

(b) is subject to a direction having the same effect as a hospital order by virtue of section [. . .]

47(3) or 48(3) above,

then, without prejudice to any provision of Part II of this Act as applied by section 40 above, that person may make an application to [the appropriate tribunal] in the period of six months beginning with the date of the order or direction mentioned in paragraph (a) above or, as the case may be, the date of the direction mentioned in paragraph (b) above.

[(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.]

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 63(3A), (4) and the Mental Health (Amendment) Act 1982, ss 20(3), 41.

### Initial Commencement

#### **Specified date**

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): words “the appropriate tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 50.

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (1): para (a) substituted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 20(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (2): in para (a) words “, hospital direction” in square brackets inserted by the Mental Health Act 2007, s 39(2), Sch 5, Pt 2, para 18(a).

Date in force: 1 October 2007: see SI 2007/2798, art 2(c)(vii).

Sub-s (2): in para (a) words “or section 80B(2), 82(2) or 85(2) below” in square brackets substituted by the Mental Health Act 2007, s 39(2), Sch 5, Pt 2, para 18(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(n).

Sub-s (2): in para (b) reference omitted in square brackets inserted by the Crime (Sentences) Act 1997, s 55, Sch 4, para 12(8).

Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(l), (2)(f).

Sub-s (2): in para (b) reference omitted repealed by the Mental Health Act 2007, ss 32(4), 55, Sch 3, paras 1, 20(b), Sch 11, Pt 5.

Date in force: 3 November 2008: see SI 2008/1210, art 2(d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof and the Mental Health Act 2007, s 53, Sch 10,

paras 1, 5, 9(2).

Sub-s (2): words “the appropriate tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 50.

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-ss (3)–(5): inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 20(c).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

## **70 Applications to tribunals concerning restricted patients**

A patient who is a restricted patient within the meaning of section 79 below and is detained in a hospital may apply to [the appropriate tribunal]—

- (a) in the period between the expiration of six months and the expiration of 12 months beginning with the date of the relevant hospital order[, hospital direction] or transfer direction; and
- (b) in any subsequent period of 12 months.

### **NOTES**

#### **Derivation**

This section derived from the Mental Health (Amendment) Act 1982, Sch 1, para 2.

#### **Initial Commencement**

##### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

#### **Amendment**

Words “the appropriate tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 51.

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Words “, hospital direction” in square brackets inserted by the Crime (Sentences) Act 1997, s 55, Sch 4, para 12(9).

Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(l), (2)(f).

## **71 References by Secretary of State concerning restricted patients**

(1) The Secretary of State may at any time refer the case of a restricted patient to [the appropriate tribunal].

(2) The Secretary of State shall refer to [the appropriate tribunal] the case of any restricted patient detained in a hospital whose case has not been considered by such a tribunal, whether on his own application or otherwise, within the last three years.

(3) The Secretary of State may by order vary the length of the period mentioned in subsection (2) above.

[(3A) An order under subsection (3) above may include such transitional, consequential, incidental or supplemental provision as the Secretary of State thinks fit.]

(4) Any reference under subsection (1) above in respect of a patient who has been conditionally discharged and not recalled to hospital shall be made to the tribunal for the area in which the patient resides.

(5) . . .

(6) . . .

## NOTES

### Derivation

This section derived from the Mental Health (Amendment) Act 1982, Sch 1, paras 3, 9(5), (6).

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): words “the appropriate tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 52.

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (2): words “the appropriate tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 52.

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (3A): inserted by the Mental Health Act 2007, s 37(1), (4).

Date in force: 3 November 2008: see SI 2008/1900, art 2(l); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 9(1).

Sub-ss (5), (6): repealed by the Domestic Violence, Crime and Victims Act 2004, s 58(1), (2), Sch 10, para 20, Sch 11.

Date in force: 31 March 2005: see SI 2005/579, art 3(f)–(h), (i)(vi), (j), (k); for transitional and transitory provisions see the Domestic Violence, Crime and Victims Act 2004, s 59, Sch 12, para 8(1), (2)(d).

### Transfer of Functions

Transfer of functions to and from the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 provided that all functions of a Minister of the Crown under this section were, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales. As a consequence of the amendment of Sch 1 to the 1999 Order by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(b), the functions transferred to the Assembly by the 1999 Order ceased to be exercisable by the Assembly and instead (by virtue of art 5 of the 2000 Order) became exercisable by the Minister of the Crown by whom they were exercisable, in relation to Wales, immediately before 1 July 1999.

### *Discharge of patients*

## 72 Powers of tribunals

[(1) Where application is made to [the appropriate tribunal] by or in respect of a patient who is liable to be detained under this Act [or is a community patient], the tribunal may in any case direct that the patient be discharged, and—

(a) the tribunal shall direct the discharge of a patient liable to be detained under section 2 above if [it is] not satisfied—

(i) that he is then suffering from mental disorder or from mental disorder of a nature or degree which warrants his detention in a hospital for assessment (or for assessment followed by medical treatment) for at least a limited period; or

(ii) that his detention as aforesaid is justified in the interests of his own health or safety or with a view to the protection of other persons;

(b) the tribunal shall direct the discharge of a patient liable to be detained otherwise than under

section 2 above if [it is] not satisfied—

(i) that he is then suffering from [mental disorder or from mental disorder] of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment; or

(ii) that it is necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment; or

[(iia) that appropriate medical treatment is available for him; or]

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

[(c) the tribunal shall direct the discharge of a community patient if [it is] 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.]

[(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).]

(2) . . .

(3) A tribunal may under subsection (1) above direct the discharge of a patient on a future date specified in the direction; and where a tribunal [does not] direct the discharge of a patient under that subsection the tribunal may—

(a) with a view to facilitating his discharge on a future date, recommend that he be granted leave of absence or transferred to another hospital or into guardianship; and

(b) further consider his case in the event of any such recommendation not being complied with.

[(3A) Subsection (1) above does not require a tribunal to direct the discharge of a patient just because [it thinks] 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.]

(4) Where application is made to [the appropriate tribunal] by or in respect of a patient who is subject to guardianship under this Act, the tribunal may in any case direct that the patient be discharged, and shall so direct if [it is] satisfied—

- (a) that he is not then suffering from [mental disorder]; or
- (b) that it is not necessary in the interests of the welfare of the patient, or for the protection of other persons, that the patient should remain under such guardianship.

[(4A) . . .]

(5) . . .

(6) Subsections (1) to [(4)] above apply in relation to references to a [the appropriate tribunal] as they apply in relation to applications made to [the appropriate tribunal] by or in respect of a patient.

(7) Subsection (1) above shall not apply in the case of a restricted patient except as provided in sections 73 and 74 below.

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 123 and the Mental Health (Amendment) Act 1982, Sch 1, para 4.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Extent

This section does not extend to Scotland.

### Amendment

Sub-s (1): substituted by SI 2001/3712, art 3.

Date in force: 26 November 2001 (in relation to any determination made by a Mental Health Review Tribunal on or after that date): see SI 2001/3712, art 2(1), (2).

Sub-s (1): words “the appropriate tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 53(a).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (1): words “or is a community patient” in square brackets inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 21(1), (2)(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (1): in para (a) words “it is” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 53(b).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (1): in para (b) words “it is” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 53(b).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (1): in para (b)(i) words “mental disorder or from mental disorder” in square brackets substituted by the Mental Health Act 2007, s 1(4), Sch 1, Pt 1, paras 1, 14(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(a); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (1): para (b)(iia) inserted by the Mental Health Act 2007, s 4(1), (8)(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch

- 10, paras 1, 2.
- Sub-s (1): para (c) inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 21(1), (2)(b).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.
- Sub-s (1): in para (c) words “it is” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 53(b).  
Date in force: 3 November 2008: see SI 2008/2833, art 1(1).
- Sub-s (1A): inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 21(1), (3).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.
- Sub-s (2): repealed by the Mental Health Act 2007, ss 4(1), (8)(b), 55, Sch 11, Pt 2.  
Date in force: 3 November 2008: see SI 2008/1900, art 2(b), (p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.
- Sub-s (3): words “does not” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 53(c).  
Date in force: 3 November 2008: see SI 2008/2833, art 1(1).
- Sub-s (3A): inserted by the Mental Health (Patients in the Community) Act 1995, s 1(2), Sch 1, para 10(1), (2).
- Sub-s (3A): substituted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 21(1), (4).  
Date in force: 3 November 2008: see SI 2008/1210, art 2(b); for savings and transitional provisions see arts 1(2), (4), 3, 4, 6, 8, 9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.
- Sub-s (3A): words “it thinks” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 53(d).  
Date in force: 3 November 2008: see SI 2008/2833, art 1(1).
- Sub-s (4): words “the appropriate tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 53(a).  
Date in force: 3 November 2008: see SI 2008/2833, art 1(1).
- Sub-s (4): words “it is” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 53(b).  
Date in force: 3 November 2008: see SI 2008/2833, art 1(1).
- Sub-s (4): in para (a) words “mental disorder” in square brackets substituted by the Mental Health Act 2007, s 1(4), Sch 1, Pt 1, paras 1, 14(b).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(a); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.
- Sub-s (4A): inserted by the Mental Health (Patients in the Community) Act 1995, s 1(2), Sch 1, para 10(1), (3).
- Sub-s (4A): repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 5.  
Date in force: 3 November 2008: see SI 2008/1210, art 2(d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.
- Sub-s (5): repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 1.  
Date in force: 3 November 2008: see SI 2008/1900, art 2(p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.
- Sub-s (6): reference to “(4)” in square brackets substituted by the Mental Health Act 2007, s 1(4), Sch 1, Pt 1, paras 1, 14(c).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(a); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.
- Sub-s (6): words “the appropriate tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 53(a).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).  
Sub-s (6): words “the appropriate tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 53(e).  
Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

### **73 Power to discharge restricted patients**

[(1) Where an application to [the appropriate tribunal] is made by a restricted patient who is subject to a restriction order, or where the case of such a patient is referred to [the appropriate tribunal], the tribunal shall direct the absolute discharge of the patient if—

- (a) [the tribunal is] not satisfied as to the matters mentioned in paragraph (b)(i)[, (ii) or (ia)] of section 72(1) above; and
- (b) [the tribunal is] satisfied that it is not appropriate for the patient to remain liable to be recalled to hospital for further treatment.

(2) Where in the case of any such patient as is mentioned in subsection (1) above—

- (a) paragraph (a) of that subsection applies; but
- (b) paragraph (b) of that subsection does not apply,

the tribunal shall direct the conditional discharge of the patient.]

(3) Where a patient is absolutely discharged under this section he shall thereupon cease to be liable to be detained by virtue of the relevant hospital order, and the restriction order shall cease to have effect accordingly.

(4) Where a patient is conditionally discharged under this section—

- (a) he may be recalled by the Secretary of State under subsection (3) of section 42 above as if he had been conditionally discharged under subsection (2) of that section; and
- (b) the patient shall comply with such conditions (if any) as may be imposed at the time of discharge by the tribunal or at any subsequent time by the Secretary of State.

(5) The Secretary of State may from time to time vary any condition imposed (whether by the tribunal or by him) under subsection (4) above.

(6) Where a restriction order in respect of a patient ceases to have effect after he has been conditionally discharged under this section the patient shall, unless previously recalled, be deemed to be absolutely discharged on the date when the order ceases to have effect and shall cease to be liable to be detained by virtue of the relevant hospital order.

(7) A tribunal may defer a direction for the conditional discharge of a patient until such arrangements as appear to the tribunal to be necessary for that purpose have been made to [its satisfaction]; and where by virtue of any such deferment no direction has been given on an application or reference before the time when the patient's case comes before the tribunal on a subsequent application or reference, the previous application or reference shall be treated as one on which no direction under this section can be given.

(8) This section is without prejudice to section 42 above.

### **NOTES**

#### **Derivation**

This section derived from the Mental Health (Amendment) Act 1982, Sch 1, para 5.

### **Initial Commencement**

#### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### **Amendment**

Sub-ss (1), (2): substituted by SI 2001/3712, art 4.

Date in force: 26 November 2001 (in relation to any determination made by a Mental Health Review Tribunal on or after that date): see SI 2001/3712, art 2(1), (2).

Sub-s (1): words “the appropriate tribunal” in square brackets in both places they occur substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 54(a)(i), (ii).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (1): in paras (a), (b) words “the tribunal is” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 54(a)(iii).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (1): in para (a) words “, (ii) or (iia)” in square brackets substituted by the Mental Health Act 2007, s 4(1), (9).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (7): words “its satisfaction” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 54(b).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

### **Transfer of Functions**

Transfer of functions to and from the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 provided that all functions of a Minister of the Crown under this section were, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales. As a consequence of the amendment of Sch 1 to the 1999 Order by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(b), the functions transferred to the Assembly by the 1999 Order ceased to be exercisable by the Assembly and instead (by virtue of art 5 of the 2000 Order) became exercisable by the Minister of the Crown by whom they were exercisable, in relation to Wales, immediately before 1 July 1999.

## **74 Restricted patients subject to restriction directions**

(1) Where an application to [the appropriate tribunal] is made by a restricted patient who is subject to [a limitation direction or] restriction direction, or where the case of such a patient is referred to [the appropriate tribunal] the tribunal—

- (a) shall notify the Secretary of State whether, in [its] opinion, the patient would, if subject to a restriction order, be entitled to be absolutely or conditionally discharged under section 73 above; and
- (b) if [the tribunal notifies] him that the patient would be entitled to be conditionally discharged, may recommend that in the event of his not being discharged under this section he should continue to be detained in hospital.

(2) If in the case of a patient not falling within subsection (4) below—

- (a) the tribunal [notifies] the Secretary of State that the patient would be entitled to be absolutely or conditionally discharged; and
- (b) within the period of 90 days beginning with the date of that notification the Secretary of State gives notice to the tribunal that the patient may be so discharged,

the tribunal shall direct the absolute or, as the case may be, the conditional discharge of the patient.

(3) Where a patient continues to be liable to be detained in a hospital at the end of the period referred to in subsection (2)(b) above because the Secretary of State has not given the notice there mentioned, the managers of the hospital shall, unless [the tribunal has] made a recommendation under subsection (1)(b) above, transfer the patient to a prison or other institution in which he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed.

(4) If, in the case of a patient who is subject to a transfer direction under section 48 above, the tribunal [notifies] the Secretary of State that the patient would be entitled to be absolutely or conditionally discharged, the Secretary of State shall, unless [the tribunal has] made a recommendation under subsection (1)(b) above, by warrant direct that the patient be remitted to a prison or other institution in which he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed.

(5) Where a patient is transferred or remitted under subsection (3) or (4) above [the relevant hospital direction and the limitation direction or, as the case may be,] the relevant transfer direction and the restriction direction shall cease to have effect on his arrival in the prison or other institution.

[(5A) Where [the tribunal has] made a recommendation under subsection (1)(b) above in the case of a patient who is subject to a restriction direction or a limitation direction—

- (a) the fact that the restriction direction or limitation direction remains in force does not prevent the making of any application or reference to the Parole Board [or a recall adjudicator] by or in respect of him or the exercise by him of any power to require the Secretary of State to refer his case to the Parole Board [or a recall adjudicator], and
- (b) if the Parole Board [or a recall adjudicator] make a direction or recommendation by virtue of which the patient would become entitled to be released (whether unconditionally or on licence) from any prison or other institution in which he might have been detained if he had not been removed to hospital, the restriction direction or limitation direction shall cease to have effect at the time when he would become entitled to be so released.]

(6) Subsections (3) to (8) of section 73 above shall have effect in relation to this section as they have effect in relation to that section, taking references to the relevant hospital order and the restriction order as references to [the hospital direction and the limitation direction or, as the case may be, to] the transfer direction and the restriction direction.

(7) This section is without prejudice to sections 50 to 53 above in their application to patients who are not discharged under this section.

[(8) In this section “recall adjudicator” has the meaning given in section 239A of the Criminal Justice Act 2003.]

## NOTES

### Derivation

This section derived from the Mental Health (Amendment) Act 1982, Sch 1, para 6.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): words “the appropriate tribunal” in square brackets in both places they occur substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 55(a)(i), (ii).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (1): words “a limitation direction or” in square brackets inserted by the Crime (Sentences) Act 1997, s 55, Sch 4, para 12(10).

Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(l), (2)(f).

Sub-s (1): in para (a) word “its” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 55(a)(iii).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (1): in para (b) words “the tribunal notifies” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 55(a)(iv).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (2): in para (a) word “notifies” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 55(b).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (3): words “the tribunal has” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 55(c).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (4): word “notifies” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 55(b).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (4): words “the tribunal has” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 55(c).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (5): words from “the relevant” to “case may be,” in square brackets inserted by the Crime (Sentences) Act 1997, s 55, Sch 4, para 12(11).

Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(l), (2)(f).

Sub-s (5A): inserted by the Criminal Justice Act 2003, s 295.

Date in force: 20 January 2004: see SI 2004/81, art 2(1), (2)(b).

Sub-s (5A): words “the tribunal has” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 55(c).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (5A): words “or a recall adjudicator” in square brackets in each place they occur inserted by the Criminal Justice and Courts Act 2015, s 8(3), Sch 3, paras 1, 3(1), (2).

Date in force: to be appointed: see the Criminal Justice and Courts Act 2015, s 95(1).

Sub-s (6): words from “the hospital” to “be, to” in square brackets inserted by the Crime (Sentences) Act 1997, s 55, Sch 4, para 12(12).

Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(l), (2)(f).

Sub-s (8): inserted by the Criminal Justice and Courts Act 2015, s 8(3), Sch 3, paras 1, 3(1), (3).

Date in force: to be appointed: see the Criminal Justice and Courts Act 2015, s 95(1).

## **Transfer of Functions**

Transfer of functions to and from the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 provided that all functions of a Minister of the Crown under this section were, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales. As a consequence of the amendment of Sch 1 to the 1999 Order by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(b), the functions transferred to the Assembly by the 1999 Order ceased to be exercisable by the Assembly and instead (by virtue of art 5 of the 2000 Order) became exercisable by the Minister of the Crown by whom they were exercisable, in relation to Wales, immediately before 1 July 1999.

## **75 Applications and references concerning conditionally discharged restricted patients**

(1) Where a restricted patient has been conditionally discharged under section 42(2), 73 or 74 above and is subsequently recalled to hospital—

- (a) the Secretary of State shall, within one month of the day on which the patient returns or is returned to hospital, refer his case to [the appropriate tribunal]; and

- (b) section 70 above shall apply to the patient as if the relevant hospital order[, hospital direction] or transfer direction had been made on that day.

(2) Where a restricted patient has been conditionally discharged as aforesaid but has not been recalled to hospital he may apply to [the appropriate tribunal]—

- (a) in the period between the expiration of 12 months and the expiration of two years beginning with the date on which he was conditionally discharged; and
- (b) in any subsequent period of two years.

(3) Sections 73 and 74 above shall not apply to an application under subsection (2) above but on any such application the tribunal may—

- (a) vary any condition to which the patient is subject in connection with his discharge or impose any condition which might have been imposed in connection therewith; or
- (b) direct that the restriction order[, limitation direction] or restriction direction to which he is subject shall cease to have effect;

and if the tribunal [gives] a direction under paragraph (b) above the patient shall cease to be liable to be detained by virtue of the relevant hospital order[, hospital direction] or transfer direction.

## NOTES

### Derivation

This section derived from the Mental Health (Amendment) Act 1982, Sch 1, para 7(1), (2), (4).

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): in para (a) words “the appropriate tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 56(a).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (1): in para (b) words “, hospital direction” in square brackets inserted by the Crime (Sentences) Act 1997, s 55, Sch 4, para 12(13).

Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(l), (2)(f).

Sub-s (2): words “the appropriate tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 56(a).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (3): in para (b) words “, limitation direction” in square brackets inserted by the Mental Health Act 2007, s 41(a).

Date in force: 1 October 2007: see SI 2007/2798, art 2(e).

Sub-s (3): word “gives” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 56(b).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (3): words “, hospital direction” in square brackets inserted by the Mental Health Act 2007, s 41(b).

Date in force: 1 October 2007: see SI 2007/2798, art 2(e).

### Transfer of Functions

Transfer of functions to and from the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 provided that all functions of a Minister of the Crown under this section were, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales. As a consequence of the amendment of Sch 1 to the 1999 Order by the National Assembly for Wales (Transfer of Functions) Order 2000, SI

2000/253, art 4, Sch 3(b), the functions transferred to the Assembly by the 1999 Order ceased to be exercisable by the Assembly and instead (by virtue of art 5 of the 2000 Order) became exercisable by the Minister of the Crown by whom they were exercisable, in relation to Wales, immediately before 1 July 1999.

### *General*

## **76 Visiting and examination of patients**

(1) For the purpose of advising whether an application to [the appropriate tribunal] should be made by or in respect of a patient who is liable to be detained or subject to guardianship [. . .] under Part II of this Act [or a community patient,] or of furnishing information as to the condition of a patient for the purposes of such an application, any registered medical practitioner [or approved clinician] authorised by or on behalf of the patient or other person who is entitled to make or has made the application—

- (a) may at any reasonable time visit the patient and examine him in private, and
- (b) may require the production of and inspect any records relating to the detention or treatment of the patient in any hospital [or to any after-care services provided for the patient under section 117 below].

(2) Section 32 above shall apply for the purposes of this section as it applies for the purposes of Part II of this Act.

## **NOTES**

### **Derivation**

This section derived from the Mental Health Act 1959, s 37(1).

### **Initial Commencement**

#### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### **Extent**

This section does not extend to Scotland.

### **Amendment**

Sub-s (1): words “the appropriate tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 57.

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (1): words omitted in square brackets inserted by the Mental Health (Patients in the Community) Act 1995, s 1(2), Sch 1, para 11(a).

Sub-s (1): words omitted repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 5.

Date in force: 3 November 2008: see SI 2008/1210, art 2(d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (1): words “or a community patient,” in square brackets inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 22.

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (1): words “or approved clinician” in square brackets inserted by the Mental Health Act 2007, s 13(1), (2)(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b).

Sub-s (1): in para (b) words “or to any after-care services provided for the patient under section 117 below” in square brackets inserted by the Mental Health (Patients in the Community) Act 1995, s 1(2), Sch 1, para 11(b).

## 77 General provisions concerning tribunal applications

- (1) No application shall be made to [the appropriate tribunal by or in respect of a patient under this Act] except in such cases and at such times as are expressly provided by this Act.
- (2) Where under this Act any person is authorised to make an application to [the appropriate tribunal] within a specified period, not more than one such application shall be made by that person within that period but for that purpose there shall be disregarded any application which is withdrawn in accordance with [Tribunal Procedure Rules or] rules made under section 78 below.
- (3) Subject to subsection (4) below an application to [a tribunal] authorised to be made by or in respect of a patient under this Act shall be made by notice in writing addressed—
- [(a) in the case of a patient who is liable to be detained in a hospital, [to the First-tier Tribunal where that hospital is in England and to the Mental Health Review Tribunal for Wales where that hospital is in Wales];
  - (b) in the case of a community patient, [to the First-tier Tribunal where the responsible hospital is in England and to the Mental Health Review Tribunal for Wales where that hospital is in Wales];
  - (c) in the case of a patient subject to guardianship, [to the First-tier Tribunal where the patient resides in England and to the Mental Health Review Tribunal for Wales where the patient resides in Wales]].
- (4) Any application under section 75(2) above shall be made [to the First-tier Tribunal where the patient resides in England and to the Mental Health Review Tribunal for Wales where the patient resides in Wales].

### NOTES

#### Derivation

This section derived from the Mental Health Act 1959, s 122, and the Mental Health (Amendment) Act 1982, Sch 1, para 7(3).

#### Initial Commencement

##### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

#### Extent

This section does not extend to Scotland.

#### Amendment

Sub-s (1): words “the appropriate tribunal by or in respect of a patient under this Act” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 58(a).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (2): words “the appropriate tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 58(b).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (2): words “Tribunal Procedure Rules or” in square brackets inserted by SI 2009/1307, art 5(1), (2), Sch 1, paras 160, 161.

Date in force: 1 June 2009: see SI 2009/1307, art 1; for transitional and savings provisions see art 5(6), Sch 5 thereto.

Sub-s (3): words “a tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 58(c)(i).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (3): paras (a)–(c) substituted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 23.

Date in force: 3 November 2008: see SI 2008/1210, art 2(b); for savings and transitional

provisions see arts 1(2), (4), 3, 4, 6, 8, 9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (3): in para (a) words from “to the First-tier” to “is in Wales” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 58(c)(ii).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (3): in para (b) words from “to the First-tier” to “is in Wales” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 58(c)(iii).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (3): in para (c) words from “to the First-tier” to “resides in Wales” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 58(c)(iv).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (4): words from “to the First-tier” to “resides in Wales” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 58(d).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

## **78 Procedure of [Mental Health Review Tribunal for Wales]**

(1) The Lord Chancellor may make rules with respect to the making of applications to [the Mental Health Review Tribunal for Wales] and with respect to the proceedings of [that tribunal] and matters incidental to or consequential on such proceedings.

(2) Rules made under this section may in particular make provision—

- (a) for enabling [the tribunal], or the *chairman* [President] of [the tribunal], to postpone the consideration of any application by or in respect of a patient, or of any such application of any specified class, until the expiration of such period (not exceeding 12 months) as may be specified in the rules from the date on which an application by or in respect of the same patient was last considered and determined [under this Act by the tribunal or the First-tier Tribunal];
- [(b) for the transfer of proceedings to or from the Mental Health Review Tribunal for Wales in any case where, after the making of the application, the patient is moved into or out of Wales;]
- (c) for restricting the persons qualified to serve as members of [the tribunal] for the consideration of any application, or of an application of any specified class;
- (d) for enabling [the tribunal] to dispose of an application without a formal hearing where such a hearing is not requested by the applicant or it appears to the tribunal that such a hearing would be detrimental to the health of the patient;
- (e) for enabling [the tribunal] to exclude members of the public, or any specified class of members of the public, from any proceedings of the tribunal, or to prohibit the publication of reports of any such proceedings or the names of any persons concerned in such proceedings;
- (f) for regulating the circumstances in which, and the persons by whom, applicants and patients in respect of whom applications are made to [the tribunal] may, if not desiring to conduct their own case, be represented for the purposes of those applications;
- (g) for regulating the methods by which information relevant to an application may be obtained by or furnished to the tribunal, and in particular for authorising the members of [the tribunal], or any one or more of them, to visit and interview in private any patient by or in respect of whom an application has been made;
- (h) for making available to any applicant, and to any patient in respect of whom an application is made to [the tribunal], copies of any documents obtained by or furnished to the tribunal in connection with the application, and a statement of the substance of any oral information so

obtained or furnished except where the tribunal considers it undesirable in the interests of the patient or for other special reasons;

- (i) for requiring [the tribunal], if so requested in accordance with the rules, to furnish such statements of the reasons for any decision given by the tribunal as may be prescribed by the rules, subject to any provision made by the rules for withholding such a statement from a patient or any other person in cases where the tribunal considers that furnishing it would be undesirable in the interests of the patient or for other special reasons;
- (j) for conferring on the [tribunal] such ancillary powers as the Lord Chancellor thinks necessary for the purposes of the exercise of [its] functions under this Act;
- (k) for enabling any functions of [the tribunal] which relate to matters preliminary or incidental to an application to be performed by the *chairman* [President] of the tribunal.

(3) Subsections (1) and (2) above apply in relation to references to [the Mental Health Review Tribunal for Wales] as they apply in relation to applications to [that tribunal] by or in respect of patients.

(4) Rules under this section may make provision as to the procedure to be adopted in cases concerning restricted patients and, in particular—

- (a) for restricting the persons qualified to serve as *president* [chairman] of [the tribunal] for the consideration of an application or reference relating to a restricted patient;
- [(b) for the transfer of proceedings to or from the tribunal in any case where, after the making of a reference or application in accordance with section 71(4) or 77(4) above, the patient begins or ceases to reside in Wales].

(5) Rules under this section may be so framed as to apply to all applications or references or to applications or references of any specified class and may make different provision in relation to different cases.

(6) Any functions conferred on the *chairman* [President] of [the Mental Health Review Tribunal for Wales] by rules under this section may . . . be exercised by another member of that tribunal appointed by him for the purpose.

(7) [The Mental Health Review Tribunal for Wales] may pay allowances in respect of travelling expenses, subsistence and loss of earnings to any person attending the tribunal as an applicant or witness, to the patient who is the subject of the proceedings if he attends otherwise than as the applicant or a witness and to any person (other than [an authorised person (within the meaning of Part 3)]) who attends as the representative of an applicant.

(8) . . .

(9) [Part I of the Arbitration Act 1996] shall not apply to any proceedings before [the Mental Health Review Tribunal for Wales] except so far as any provisions of that Act may be applied, with or without modifications, by rules made under this section.

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 124, and the Mental Health (Amendment) Act 1982, s 39(6), (7), Sch 1, para 8(1).

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

## Amendment

Section heading: words “Mental Health Review Tribunal for Wales” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 59(1).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (1): words “the Mental Health Review Tribunal for Wales” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 59(2)(a).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (1): words “that tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 59(2)(b).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (2): words “the tribunal” in square brackets in each place they occur substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 59(1), (3)(a).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (2): in para (a) word “chairman” in italics repealed and subsequent word in square brackets substituted by the Mental Health Act 2007, s 38(1), (3)(a).

Date in force: to be appointed: see the Mental Health Act 2007, s 56(1).

Sub-s (2): in para (a) words “under this Act by the tribunal or the First-tier Tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 59(3)(b).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (2): para (b) substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 59(3)(c).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (2): in para (j) word “tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 59(3)(d)(i).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (2): word “its” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 59(3)(d)(ii).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (2): in para (k) word “chairman” in italics repealed and subsequent word in square brackets substituted by the Mental Health Act 2007, s 38(1), (3)(a).

Date in force: to be appointed: see the Mental Health Act 2007, s 56(1).

Sub-s (3): words “the Mental Health Review Tribunal for Wales” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 58(4)(a).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (3): words “that tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 59(4)(b).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (4): in para (a) word “president” in italics repealed and subsequent word in square brackets substituted by the Mental Health Act 2007, s 38(1), (3)(d).

Date in force: to be appointed: see the Mental Health Act 2007, s 56(1).

Sub-s (4): words “the tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 59(5)(a).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (4): para (b) substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 59(5)(b).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (6): word “chairman” in italics repealed and subsequent word in square brackets substituted by the Mental Health Act 2007, s 38(1), (3)(a).

Date in force: to be appointed: see the Mental Health Act 2007, s 56(1).

Sub-s (6): words “the Mental Health Review Tribunal for Wales” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 59(6).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (6): words omitted repealed by the Mental Health Act 2007, ss 38(1), (3)(e), 55, Sch 11, Pt 6.

Date in force (in relation to Wales): 3 November 2008: see SI 2008/1900, art 2(m).

Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(p).

Sub-s (7): words “The Mental Health Review Tribunal for Wales” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 59(7).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).  
Sub-s (7): words “an authorised person (within the meaning of Part 3)” in square brackets substituted by the Legal Services Act 2007, s 208(1), Sch 21, paras 53, 60.  
Date in force: 1 January 2010: see SI 2009/3250, art 2(h).  
Sub-s (8): repealed by SI 2008/2833, art 9(1), Sch 3, paras 39, 59(8).  
Date in force: 3 November 2008: see SI 2008/2833, art 1(1); for transitional savings see art 9(2), Sch 4, para 7(1) thereto.  
Sub-s (9): words “Part I of the Arbitration Act 1996” in square brackets substituted by the Arbitration Act 1996, s 107(1), Sch 3, para 40.  
Sub-s (9): words “the Mental Health Review Tribunal for Wales” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 59(9).  
Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

### **Subordinate Legislation**

Mental Health Review Tribunal for Wales Rules 2008, SI 2008/2705.  
Legal Services Act 2007 (Consequential Amendments) Order 2009, SI 2009/3348.

### **[78A Appeal from the Mental Health Review Tribunal for Wales to the Upper Tribunal]**

[(1) A party to any proceedings before the Mental Health Review Tribunal for Wales may appeal to the Upper Tribunal on any point of law arising from a decision made by the Mental Health Review Tribunal for Wales in those proceedings.

(2) An appeal may be brought under subsection (1) above only if, on an application made by the party concerned, the Mental Health Review Tribunal for Wales or the Upper Tribunal has given its permission for the appeal to be brought.

(3) Section 12 of the Tribunals, Courts and Enforcement Act 2007 (proceedings on appeal to the Upper Tribunal) applies in relation to appeals to the Upper Tribunal under this section as it applies in relation to appeals to it under section 11 of that Act, but as if references to the First-tier Tribunal were references to the Mental Health Review Tribunal for Wales.]

### **NOTES**

#### **Amendment**

Inserted by SI 2008/2833, art 9(1), Sch 3, paras 39, 60.  
Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

### **79 Interpretation of Part V**

(1) In this Part of this Act “restricted patient” means a patient who is subject to a restriction order[, limitation direction] or restriction direction and this Part of this Act shall, subject to the provisions of this section, have effect in relation to any person who—

- [(a) is treated by virtue of any enactment as subject to a hospital order and a restriction order; or]
- (b) . . .
- [(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),]

as it has effect in relation to a restricted patient.

(2) Subject to the following provisions of this section, in this Part of this Act “the relevant hospital order”[, “the relevant hospital direction”] and “the relevant transfer direction”, in relation to a restricted patient, mean the hospital order[, the hospital direction] or transfer direction by virtue of which he is liable to be detained in a hospital.

(3) In the case of a person within paragraph (a) of subsection (1) above, references in this Part of this Act to the relevant hospital order or restriction order shall be construed as references to the direction referred to in that paragraph.

(4) In the case of a person within paragraph (b) of subsection (1) above, references in this Part of this Act to the relevant hospital order or restriction order shall be construed as references to the order under the provisions mentioned in that paragraph.

(5) In the case of a person within paragraph (c) of subsection (1) above, references in this Part of this Act to the relevant hospital order, [the relevant hospital direction,] the relevant transfer direction, the restriction order[, the limitation direction] or the restriction direction or to a transfer direction under section 48 above shall be construed as references to the hospital order, [hospital direction,] transfer direction, restriction order, [limitation direction,] restriction direction or transfer direction under that section to which that person is treated as subject by virtue of the provisions mentioned in that paragraph.

[(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.]

(6) In this Part of this Act, unless the context otherwise requires, “hospital” means a hospital[, and “the responsible clinician” means the responsible clinician,] within the meaning of Part II of this Act.

[(7) . . .]

## NOTES

### Derivation

Sub-ss (1)–(5) derived from the Mental Health (Amendment) Act 1982, Sch 1, paras 1, 9(1)–(4), (7); sub-s (6) derived from the Mental Health Act 1959, ss 59(2), 80(5), and the Mental Health (Amendment) Act 1982, s 40(6), Sch 1, para 1.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Extent

This section does not extend to Scotland.

### Amendment

Sub-s (1): words “, limitation direction” in square brackets inserted by the Crime (Sentences) Act 1997, s 55, Sch 4, para 12(14).

- Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(l), (2)(f).
- Sub-s (1): para (a) substituted by the Domestic Violence, Crime and Victims Act 2004, s 58(1), Sch 10, para 21(a).  
Date in force: 31 March 2005: see SI 2005/579, art 3(f), (g); for transitional and transitory provisions see the Domestic Violence, Crime and Victims Act 2004, s 59, Sch 12, para 8(1), (2)(d).
- Sub-s (1): para (b) repealed by the Domestic Violence, Crime and Victims Act 2004, s 58(1), (2), Sch 10, para 21(b), Sch 11.  
Date in force: 31 March 2005: see SI 2005/579, art 3(f)–(h), (i)(vi), (j), (k); for transitional and transitory provisions see the Domestic Violence, Crime and Victims Act 2004, s 59, Sch 12, para 8(1), (2)(d).
- Sub-s (1): para (c) substituted by the Mental Health Act 2007, s 39(2), Sch 5, Pt 2, para 19(1), (2).  
Date in force: 1 October 2007: see SI 2007/2798, art 2(c)(viii).
- Sub-s (2): words “, “the relevant hospital direction”” in square brackets inserted by the Crime (Sentences) Act 1997, s 55, Sch 4, para 12(15)(a).  
Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(l), (2)(f).
- Sub-s (2): words “, the hospital direction” in square brackets inserted by the Crime (Sentences) Act 1997, s 55, Sch 4, para 12(15)(b).  
Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(l), (2)(f).
- Sub-s (5): words “the relevant hospital direction,” in square brackets inserted by the Mental Health Act 2007, s 39(2), Sch 5, Pt 2, para 19(1), (3)(a).  
Date in force: 1 October 2007: see SI 2007/2798, art 2(c)(viii).
- Sub-s (5): words “, the limitation direction” in square brackets inserted by the Mental Health Act 2007, s 39(2), Sch 5, Pt 2, para 19(1), (3)(b).  
Date in force: 1 October 2007: see SI 2007/2798, art 2(c)(viii).
- Sub-s (5): words “hospital direction,” in square brackets inserted by the Mental Health Act 2007, s 39(2), Sch 5, Pt 2, para 19(1), (3)(c).  
Date in force: 1 October 2007: see SI 2007/2798, art 2(c)(viii).
- Sub-s (5): words “limitation direction,” in square brackets inserted by the Mental Health Act 2007, s 39(2), Sch 5, Pt 2, para 19(1), (3)(d).  
Date in force: 1 October 2007: see SI 2007/2798, art 2(c)(viii).
- Sub-ss (5A)–(5C): inserted by the Mental Health Act 2007, s 39(2), Sch 5, Pt 2, para 19(1), (4).  
Date in force: 1 October 2007: see SI 2007/2798, art 2(c)(viii).
- Sub-s (6): words “, and “the responsible clinician” means the responsible clinician,” in square brackets substituted by the Mental Health Act 2007, s 13(1), (3).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(b).
- Sub-s (7): inserted by the Health Authorities Act 1995, s 2(1), Sch 1, para 107(7).
- Sub-s (7): repealed by SI 2008/2833, art 9(1), Sch 3, paras 39, 61.  
Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

## Part VI

### Removal and Return of Patients within United Kingdom, etc

*[Removal to and from Scotland]*

#### NOTES

##### Amendment

- Cross-heading: substituted by the Mental Health Act 2007, s 39(2), Sch 5, Pt 1, paras 1, 2.  
Date in force: 1 April 2008: see SI 2008/745, art 3(f).

#### 80 Removal of patients to Scotland

- (1) If it appears to the Secretary of State, in the case of a patient who is for the time being liable to be detained . . . under this Act (otherwise than by virtue of section 35, 36 or 38 above), that it is in the interests of the patient to remove him to Scotland, and that arrangements have been made for admitting

him to a hospital . . . there, [or, where he is not to be admitted to a hospital, for his detention in hospital to be authorised by virtue of the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995] the Secretary of State may authorise his removal to Scotland and may give any necessary directions for his conveyance to his destination.

(2) . . .

(3) . . .

(4) . . .

(5) . . .

(6) *Where a person removed under this section was immediately before his removal subject to a restriction order or restriction direction of limited duration, [the restriction order or restriction direction . . . shall expire on the date on which the first-mentioned order or direction would have expired if he had not been so removed].*

(7) In this section “hospital” has the same meaning as in the [Mental Health (Care and Treatment) (Scotland) Act 2003].

[(8) Reference in this section to a patient’s detention in hospital being authorised by virtue of the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995 shall be read as including references to a patient in respect of whom a certificate under one of the provisions listed in section 290(7)(a) of the Act of 2003 is in operation.]

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 81.

### Initial Commencement

#### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): words omitted repealed by the Mental Health Act 2007, ss 39(2), 55, Sch 5, Pt 1, paras 1, 2, Sch 11, Pt 7.

Date in force: 1 April 2008: see SI 2008/745, art 3(f).

Sub-s (1): words from “or, where he” to “Criminal Procedure (Scotland) Act 1995” in square brackets inserted, in relation to England and Wales, by SI 2005/2078, art 15, Sch 1, para 2(1), (4)(a).

Date in force: 5 October 2005: see SI 2005/2078, art 1(1).

Sub-ss (2)–(6): repealed in relation to England and Wales by SI 2005/2078, art 16(1), Sch 3; a corresponding amendment (repealing sub-ss (2)–(5) and sub-s (6) in part) has been made in relation to Scotland by SSI 2005/465, art 3, Sch 2.

Date in force (in relation to Scotland): 27 September 2005: see SSI 2005/465, art 1.

Date in force (in relation to England and Wales): 5 October 2005: see SI 2005/2078, art 1(1), (2).

Sub-s (6): words from “the restriction order” to “been so removed” in square brackets substituted by the Mental Health (Amendment) (Scotland) Act 1983, s 39(2), Sch 2, para 1.

Sub-s (7): words “Mental Health (Care and Treatment) (Scotland) Act 2003” in square brackets substituted in relation to England and Wales by SI 2005/2078, art 15, Sch 1, para 2(1), (4)(b) and in relation to Scotland by SSI 2005/465, art 2, Sch 1, para 13(1), (2).

Date in force (in relation to Scotland): 27 September 2005: see SSI 2005/465, art 1.

Date in force (in relation to England and Wales): 5 October 2005: see SI 2005/2078, art 1(1).

Sub-s (8): inserted, in relation to England and Wales, by SI 2005/2078, art 15, Sch 1, para 2(1), (4)(c).

Date in force: 5 October 2005: see SI 2005/2078, art 1(1).

### **Transfer of Functions**

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3) provides that, subject to art 2(b)–(f) of the 1999 Order, functions of a Minister of the Crown under this section are, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales. Sch 1 to the 1999 Order further provides that this transfer of functions does not apply to a patient who is subject to a restriction order, a hospital direction, a limitation direction or a restriction direction made ss 41, 45A or 49 of this Act.

### **[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.

(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.]

### **NOTES**

#### **Amendment**

Inserted, in relation to England and Wales, by the Mental Health Act 2007, s 39(2), Sch 5, Pt 1, paras 1, 3.

Date in force: 3 November 2008: see SI 2008/1900, art 2(n).

### **[80A Transfer of responsibility for patients to Scotland] [80A Transfer of responsibility for conditionally discharged patients to Scotland]**

[(1) If it appears to the Secretary of State, in the case of a patient who—

- (a) is subject to a restriction order under section 41 above; and
- (b) has been conditionally discharged under section 42 or 73 above,

that a transfer under this section would be in the interests of the patient, the Secretary of State may, with the consent of the Minister exercising corresponding functions in Scotland, transfer responsibility for the patient to that Minister.

- (2) . . .  
(3) . . .]

## NOTES

### Amendment

Section heading: substituted, in relation to England and Wales, by the Mental Health Act 2007, s 39(2), Sch 5, Pt 1, paras 1, 4.

Date in force: 3 November 2008: see SI 2008/1900, art 2(n).

Inserted by the Crime (Sentences) Act 1997, s 48, Sch 3, para 1.

Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(j).

Sub-ss (2), (3): repealed in relation to England and Wales by SI 2005/2078, art 16(1), Sch 3 and in relation to Scotland by SSI 2005/465, art 3, Sch 2.

Date in force (in relation to Scotland): 27 September 2005: see SSI 2005/465, art 1.

Date in force (in relation to England and Wales): 5 October 2005: see SI 2005/2078, art 1(1), (2).

### Transfer of Functions

Transfer of functions to and from the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 provided that all functions of a Minister of the Crown under this section were, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales. As a consequence of the amendment of Sch 1 to the 1999 Order by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(b), the functions transferred to the Assembly by the 1999 Order ceased to be exercisable by the Assembly and instead (by virtue of art 5 of the 2000 Order) became exercisable by the Minister of the Crown by whom they were exercisable, in relation to Wales, immediately before 1 July 1999.

### [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.

(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.]

## NOTES

### Amendment

Inserted, in relation to England and Wales, by the Mental Health Act 2007, s 39(2), Sch 5, Pt 1, paras 1, 4.

Date in force: 3 November 2008: see SI 2008/1900, art 2(n).

### [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.]

## NOTES

### Amendment

Inserted, in relation to England and Wales, by the Mental Health Act 2007, s 39(2), Sch 5, Pt 1, paras 1, 4.

Date in force: 3 November 2008: see SI 2008/1900, art 2(n).

### [80D Transfer of conditionally discharged patients from Scotland]

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

- (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.]

## NOTES

### Amendment

Inserted, in relation to England and Wales, by the Mental Health Act 2007, s 39(2), Sch 5, Pt 1, paras 1, 4.

Date in force: 1 October 2007: see SI 2007/2798, art 2(c)(i).

### *Removal to and from Northern Ireland*

### 81 Removal of patients to Northern Ireland

(1) If it appears to the Secretary of State, in the case of a patient who is for the time being liable to be detained or subject to guardianship under this Act (otherwise than by virtue of section 35, 36 or 38 above), that it is in the interests of the patient to remove him to Northern Ireland, and that arrangements have been made for admitting him to a hospital or, as the case may be, for receiving him into guardianship there, the Secretary of State may authorise his removal to Northern Ireland and may give any necessary directions for his conveyance to his destination.

(2) Subject to the provisions of subsections (4) and (5) below, where a patient liable to be detained

under this Act by virtue of an application, order or direction under any enactment in force in England and Wales is removed under this section and admitted to a hospital in Northern Ireland, he shall be treated as if on the date of his admission he had been so admitted in pursuance of an application made, or an order or direction made or given, on that date under the corresponding enactment in force in Northern Ireland, and, [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] in force in Northern Ireland.

(3) Where a patient subject to guardianship under this Act by virtue of an application, order or direction under any enactment in force in England and Wales is removed under this section and received into guardianship in Northern Ireland, he shall be treated as if on the date on which he arrives at the place where he is to reside he had been so received in pursuance of an application, order or direction under the corresponding enactment in force in Northern Ireland, and as if the application had been accepted or, as the case may be, the order or direction had been made or given on that date.

(4) Where a person removed under this section was immediately before his removal liable to be detained by virtue of an application for admission for assessment under this Act, he shall, on his admission to a hospital in Northern Ireland, be treated as if he had been admitted to the hospital in pursuance of an application [for assessment under Article 4 of the Mental Health (Northern Ireland) Order 1986] made on the date of his admission.

(5) Where a person removed under this section was immediately before his removal liable to be detained by virtue of an application for admission for treatment under this Act, he shall, on his admission to a hospital in Northern Ireland, be treated as if [he were detained for treatment under Part II of the Mental Health (Northern Ireland) Order 1986 by virtue of a report under Article 12(1) of that Order made on the date of his admission].

(6) Where a patient removed under this section was immediately before his removal liable to be detained under this Act by virtue of a transfer direction given while he was serving a sentence of imprisonment (within the meaning of section 47(5) above) imposed by a court in England and Wales, he shall be treated as if the sentence had been imposed by a court in Northern Ireland.

(7) Where a person removed under this section was immediately before his removal subject to a . . . restriction direction of limited duration, [the . . . restriction direction] to which he is subject by virtue of subsection (2) above shall expire on the date on which [the first-mentioned . . .] restriction direction would have expired if he had not been so removed.

(8) In this section "hospital" has the same meaning as in the [(Northern Ireland) Order 1986].

## **NOTES**

### **Derivation**

This section derived from the Mental Health Act 1959, s 85.

### **Initial Commencement**

#### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### **Amendment**

Sub-s (2): words from "where he is" to "the corresponding enactment" in square brackets substituted by the Mental Health Act 2007, s 39(2), Sch 5, Pt 1, paras 1, 5.

Date in force: 1 April 2008: see SI 2008/745, art 3(f).

Sub-s (4): words "for assessment under Article 4 of the Mental Health (Northern Ireland) Order 1986" in square brackets substituted by SI 1986/596, art 2(1), (3).

Sub-s (5): words from "he were detained" to "of his admission" in square brackets substituted by SI 1986/596, art 2(1), (4).

Sub-s (7): words omitted repealed by the Mental Health Act 2007, ss 40(4), 55, Sch 11, Pt 8.

Date in force: 1 October 2007: see SI 2007/2798, art 2(d); for effect see the Mental Health Act 2007, s 40(7).

Sub-s (7): words in square brackets ending with the words “restriction direction” substituted by SI 1986/596, art 2(1), (5).

Sub-s (7): words in square brackets beginning with the words “the first-mentioned” substituted by SI 1986/596, art 2(1), (5).

Sub-s (8): words “(Northern Ireland Order 1986)” in square brackets substituted by SI 1986/596, art 2(1), (6).

### **Transfer of Functions**

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3) provides that, subject to art 2(b)–(f) of the 1999 Order, functions of a Minister of the Crown under this section are, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales. Sch 1 to the 1999 Order further provides that this transfer of functions does not apply to a patient who is subject to a restriction order, a hospital direction, a limitation direction or a restriction direction made ss 41, 45A or 49 of this Act.

### **[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.]

### **NOTES**

#### **Amendment**

Inserted by the Mental Health Act 2007, s 39(2), Sch 5, Pt 1, paras 1, 6.

Date in force: 3 November 2008: see SI 2008/1900, art 2(n).

### **[81A Transfer of responsibility for patients to Northern Ireland]**

[(1) If it appears to the Secretary of State, in the case of a patient who—

[(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;] and

(b) has been conditionally discharged under section 42 or 73 above,

that a transfer under this section would be in the interests of the patient, the Secretary of State may, with the consent of the Minister exercising corresponding functions in Northern Ireland, transfer responsibility for the patient to that Minister.

(2) Where responsibility for such a patient is transferred under this section, the patient shall be treated—

(a) as if on the date of the transfer he had been conditionally discharged under the corresponding enactment in force in Northern Ireland; and

(b) as if he were subject to [a hospital order and a restriction order, or to a transfer direction and a restriction direction,] under the corresponding enactment in force in Northern Ireland.

(3) Where a patient responsibility for whom is transferred under this section was immediately before the transfer subject to a . . . restriction direction of limited duration, the . . . restriction direction to which he is subject by virtue of subsection (2) above shall expire on the date on which the first-mentioned . . . direction would have expired if the transfer had not been made.]

## NOTES

### Amendment

Inserted by the Crime (Sentences) Act 1997, s 48, Sch 3, para 2.

Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(j).

Sub-s (1): para (a) substituted by the Mental Health Act 2007, s 39(2), Sch 5, Pt 1, paras 1, 7(1), (2).

Date in force: 1 October 2007: see SI 2007/2798, art 2(c)(ii).

Sub-s (2): in para (b) words from “a hospital order” to “a restriction direction,” in square brackets substituted by the Mental Health Act 2007, s 39(2), Sch 5, Pt 1, paras 1, 7(1), (3).

Date in force: 1 October 2007: see SI 2007/2798, art 2(c)(ii).

Sub-s (3): first and second words omitted repealed by the Mental Health Act 2007, ss 40(5)(a), 55, Sch 11, Pt 8.

Date in force: 1 October 2007: see SI 2007/2798, art 2(d); for effect see the Mental Health Act 2007, s 40(7).

Sub-s (3): final words omitted repealed by the Mental Health Act 2007, ss 40(5)(b), 55, Sch 11, Pt 8.

Date in force: 1 October 2007: see SI 2007/2798, art 2(d); for effect see the Mental Health Act 2007, s 40(7).

### Transfer of Functions

Transfer of functions to and from the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 provided that all functions of a Minister of the Crown under this section were, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales. As a consequence of the amendment of Sch 1 to the 1999 Order by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(b), the functions transferred to the Assembly by the 1999 Order ceased to be exercisable by the Assembly and instead (by virtue of art 5 of the 2000 Order) became exercisable by the Minister of the Crown by whom they were exercisable, in relation to Wales, immediately before 1 July 1999.

## 82 Removal to England and Wales of patients from Northern Ireland

(1) If it appears to the responsible authority, in the case of a patient who is for the time being liable to be detained or subject to guardianship under the [(Northern Ireland) Order 1986 (otherwise than by virtue of Article 42, 43 or 45 of that Order)], that it is in the interests of the patient to remove him to England and Wales, and that arrangements have been made for admitting him to a hospital or, as the case may be, for receiving him into guardianship there, the responsible authority may authorise his removal to England and Wales and may give any necessary directions for his conveyance to his destination.

(2) Subject to the provisions of [subsections (4) and (4A)] below, where a patient who is liable to be detained under the [Mental Health (Northern Ireland) Order 1986] by virtue of an application, order or direction under any enactment in force in Northern Ireland is removed under this section and admitted to a hospital in England and Wales, he shall be treated as if on the date of his admission he had been so admitted in pursuance of an application made, or an order or direction made or given, on that date under the corresponding enactment in force in England and Wales and, [[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] in force in England and Wales].

(3) Where a patient subject to guardianship under the [Mental Health (Northern Ireland) Order 1986] by virtue of an application, order or direction under any enactment in force in Northern Ireland is removed

under this section and received into guardianship in England and Wales, he shall be treated as if on the date on which he arrives at the place where he is to reside he had been so received in pursuance of an application, order or direction under the corresponding enactment in force in England and Wales and as if the application had been accepted or, as the case may be, the order or direction had been made or given on that date.

[(4) Where a person removed under this section was immediately before his removal liable to be detained for treatment by virtue of a report under Article 12(1) or 13 of the Mental Health (Northern Ireland) Order 1986, he shall be treated, on his admission to a hospital in England and Wales, as if he had been admitted to the hospital in pursuance of an application for admission for treatment made on the date of his admission.

(4A) Where a person removed under this section was immediately before his removal liable to be detained by virtue of an application for assessment under Article 4 of the Mental Health (Northern Ireland) Order 1986, he shall be treated, on his admission to a hospital in England and Wales, as if he had been admitted to the hospital in pursuance of an application for admission for assessment made on the date of his admission.]

(5) Where a patient removed under this section was immediately before his removal liable to be detained under the [Mental Health (Northern Ireland) Order 1986] by virtue of a transfer direction given while he was serving a sentence of imprisonment (within the meaning of [Article 53(5) of that Order]) imposed by a court in Northern Ireland, he shall be treated as if the sentence had been imposed by a court in England and Wales.

(6) Where a person removed under this section was immediately before his removal subject to [a restriction order or restriction direction] of limited duration, the restriction order or restriction direction to which he is subject by virtue of subsection (2) above shall expire on the date on which the [first-mentioned restriction order or restriction direction] would have expired if he had not been so removed.

(7) In this section “the responsible authority” means the Department of Health and Social Services for Northern Ireland or, in relation to a patient who is subject to [a restriction order or restriction direction], the [Department of Justice in Northern Ireland].

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 87.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): words “(Northern Ireland) Order 1986 (otherwise than by virtue of Article 42, 43 or 45 of that Order)” in square brackets substituted by SI 1986/596, art 2(1), (7).

Sub-s (2): words “subsections (4) and (4A)” and “Mental Health (Northern Ireland) Order 1986” in square brackets substituted by SI 1986/596, art 2(1), (8).

Sub-s (2): words from “where he is” to “the corresponding enactment” in square brackets substituted by the Mental Health Act 2007, s 39(2), Sch 5, Pt 1, paras 1, 8.

Date in force: 1 October 2007: see SI 2007/2798, art 2(c)(iii).

Sub-s (2): words in square brackets ending with the words “England and Wales” substituted by SI 1986/596, art 2(1), (8).

Sub-s (3): words “Mental Health (Northern Ireland) Order 1986” in square brackets substituted by SI 1986/596, art 2(1), (9).

Sub-ss (4), (4A): substituted, for sub-s (4) as originally enacted, by SI 1986/596, art 2(1), (10).

Sub-s (5): words “Mental Health (Northern Ireland) Order 1986” and “Article 53(5) of that Order” in square brackets substituted by SI 1986/596, art 2(1), (11).

Sub-s (6): words “a restriction order or restriction direction” and “first-mentioned restriction order or restriction direction” in square brackets substituted by SI 1986/596, art 2(1), (12).

Sub-s (7): words “a restriction order or restriction direction” in square brackets substituted by SI 1986/596, art 2(1), (13).

Sub-s (7): words “Department of Justice in Northern Ireland” in square brackets substituted by SI 2010/976, art 12, Sch 14, para 28(1), (2).

Date in force: 12 April 2010 (being the date on which the Northern Ireland Act 1998 (Amendment of Schedule 3) Order 2010, SI 2010/977 came into force): see SI 2010/976, art 1(2); for transitional provisions see arts 28–31 thereof.

### **Transfer of Functions**

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

### **[82A Transfer of responsibility for conditionally discharged patients to England and Wales from Northern Ireland]**

[(1) If it appears to [the Department of Justice in Northern Ireland], in the case of a patient who—

- (a) is subject to a restriction order or restriction direction under Article 47(1) or 55(1) of the Mental Health (Northern Ireland) Order 1986; and
- (b) has been conditionally discharged under Article 48(2) or 78(2) of that Order,

that a transfer under this section would be in the interests of the patient, [the Department of Justice in Northern Ireland] may, with the consent of the Secretary of State, transfer responsibility for the patient to the Secretary of State.

(2) Where responsibility for such a patient is transferred under this section, the patient shall be treated—

- (a) as if on the date of the transfer he had been conditionally discharged under section 42 or 73 above; and
- [(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].

(3) Where a patient responsibility for whom is transferred under this section was immediately before the transfer subject to a restriction order or restriction direction of limited duration, the restriction order or restriction direction to which he is subject by virtue of subsection (2) above shall expire on the date on which the first-mentioned order or direction would have expired if the transfer had not been made.

(4) . . .]

### **NOTES**

#### **Amendment**

Section heading: substituted by the Mental Health Act 2007, s 39(2), Sch 5, Pt 1, paras 1, 9.

Date in force: 1 October 2007: see SI 2007/2798, art 2(c)(iv).

Inserted by the Crime (Sentences) Act 1997, s 48, Sch 3, para 3.

Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(j).

Sub-s (1): words “the Department of Justice in Northern Ireland” in square brackets in both places they occur substituted by SI 2010/976, art 12, Sch 14, para 28(1), (3)(a).

Date in force: 12 April 2010 (being the date on which the Northern Ireland Act 1998 (Amendment of Schedule 3) Order 2010, SI 2010/977 came into force): see SI 2010/976, art 1(2); for transitional provisions see arts 28–31 thereof.

Sub-s (2): para (b) substituted by the Mental Health Act 2007, s 39(2), Sch 5, Pt 1, paras 1, 9.  
Date in force: 1 October 2007: see SI 2007/2798, art 2(c)(iv).

Sub-s (4): repealed by SI 2010/976, art 12, Sch 14, para 28(1), (3)(b).

Date in force: 12 April 2010 (being the date on which the Northern Ireland Act 1998 (Amendment of Schedule 3) Order 2010, SI 2010/977 came into force): see SI 2010/976, art 1(2); for transitional provisions see arts 28–31 thereof.

### **Transfer of Functions**

Transfer of functions to and from the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 provided that all functions of a Minister of the Crown under this section were, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales. As a consequence of the amendment of Sch 1 to the 1999 Order by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(b), the functions transferred to the Assembly by the 1999 Order ceased to be exercisable by the Assembly and instead (by virtue of art 5 of the 2000 Order) became exercisable by the Minister of the Crown by whom they were exercisable, in relation to Wales, immediately before 1 July 1999.

### *Removal to and from Channel Islands and Isle of Man*

### **83 Removal of patients to Channel Islands or Isle of Man**

If it appears to the Secretary of State, in the case of a patient who is for the time being liable to be detained or subject to guardianship under this Act (otherwise than by virtue of section 35, 36 or 38 above), that it is in the interests of the patient to remove him to any of the Channel Islands or to the Isle of Man, and that arrangements have been made for admitting him to a hospital or, as the case may be, for receiving him into guardianship there, the Secretary of State may authorise his removal to the island in question and may give any necessary directions for his conveyance to his destination.

### **NOTES**

#### **Derivation**

This section derived from the Mental Health (Amendment) Act 1982, s 36.

#### **Initial Commencement**

##### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

#### **Transfer of Functions**

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3) provides that, subject to art 2(b)–(f) of the 1999 Order, functions of a Minister of the Crown under this section are, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales. Sch 1 to the 1999 Order further provides that this transfer of functions does not apply to a patient who is subject to a restriction order, a hospital direction, a limitation direction or a restriction direction made ss 41, 45A or 49 of this Act.

### **[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;
- (b) in relation to a community patient in respect of whom the responsible hospital is in Wales, the Welsh Ministers.]

## NOTES

### Amendment

Inserted by the Mental Health Act 2007, s 39(2), Sch 5, Pt 1, paras 1, 10.

Date in force: 3 November 2008: see SI 2008/1900, art 2(n).

## [83A Transfer of responsibility for conditionally discharged patients to Channel Islands or Isle of Man]

[If it appears to the Secretary of State, in the case of a patient who—

- (a) is subject to a restriction order or restriction direction under section 41 or 49 above; and
- (b) has been conditionally discharged under section 42 or 73 above,

that a transfer under this section would be in the interests of the patient, the Secretary of State may, with the consent of the authority exercising corresponding functions in any of the Channel Islands or in the Isle of Man, transfer responsibility for the patient to that authority.]

## NOTES

### Amendment

Section heading: substituted by the Mental Health Act 2007, s 39(2), Sch 5, Pt 1, paras 1, 10.

Date in force: 3 November 2008: see SI 2008/1900, art 2(n).

Inserted by the Crime (Sentences) Act 1997, s 48, Sch 3, para 4.

Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(j).

### Transfer of Functions

Transfer of functions to and from the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 provided that all functions of a Minister of the Crown under this section were, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales. As a consequence of the amendment of Sch 1 to the 1999 Order by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(b), the functions transferred to the Assembly by the 1999 Order ceased to be exercisable by the Assembly and instead (by virtue of art 5 of the 2000 Order) became exercisable by the Minister of the Crown by whom they were exercisable, in relation to Wales,

immediately before 1 July 1999.

## **84 Removal to England and Wales of offenders found insane in Channel Islands and Isle of Man**

(1) The Secretary of State may by warrant direct that any offender found by a court in any of the Channel Islands or in the Isle of Man to be insane or to have been insane at the time of the alleged offence, and ordered to be detained during Her Majesty's pleasure, be removed to a hospital in England and Wales.

(2) A patient removed under subsection (1) above shall, on his reception into the hospital in England and Wales, be treated as if he [were subject to a hospital order together with a restriction order. . .].

(3) The Secretary of State may by warrant direct that any patient removed under this section from any of the Channel Islands or from the Isle of Man be returned to the island from which he was so removed, there to be dealt with according to law in all respects as if he had not been removed under this section.

### **NOTES**

#### **Derivation**

This section derived from the Mental Health Act 1959, s 89.

#### **Initial Commencement**

##### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

#### **Amendment**

Sub-s (2): words in square brackets beginning with the words "were subject to" substituted by the Domestic Violence, Crime and Victims Act 2004, s 58(1), Sch 10, para 22.

Date in force: 31 March 2005: see SI 2005/579, art 3(f), (g).

Sub-s (2): words omitted repealed by the Mental Health Act 2007, ss 40(3)(b), 55, Sch 11, Pt 8.

Date in force: 1 October 2007: see SI 2007/2798, art 2(d); for effect see the Mental Health Act 2007, s 40(7).

#### **Transfer of Functions**

Transfer of functions to and from the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 provided that all functions of a Minister of the Crown under this section were, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales. As a consequence of the amendment of Sch 1 to the 1999 Order by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(b), the functions transferred to the Assembly by the 1999 Order ceased to be exercisable by the Assembly and instead (by virtue of art 5 of the 2000 Order) became exercisable by the Minister of the Crown by whom they were exercisable, in relation to Wales, immediately before 1 July 1999.

## **85 Patients removed from Channel Islands or Isle of Man**

(1) This section applies to any patient who is removed to England and Wales from any of the Channel Islands or the Isle of Man under a provision corresponding to section 83 above and who immediately before his removal was liable to be detained or subject to guardianship in the island in question under a provision corresponding to an enactment contained in this Act (other than section 35, 36 or 38 above).

(2) Where the patient is admitted to a hospital in England and Wales he shall be treated as if on the date of his admission he had been so admitted in pursuance of an application made, or an order or direction made or given, on that date under the corresponding enactment contained in this Act and, where he is subject to an order or direction restricting his discharge, as if he 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].

(3) Where the patient is received into guardianship in England and Wales, he shall be treated as if on the date on which he arrives at the place where he is to reside he had been so received in pursuance of an application, order or direction under the corresponding enactment contained in this Act and as if the application had been accepted or, as the case may be, the order or direction had been made or given on that date.

(4) Where the patient was immediately before his removal liable to be detained by virtue of a transfer direction given while he was serving a sentence of imprisonment imposed by a court in the island in question, he shall be treated as if the sentence had been imposed by a court in England and Wales.

(5) Where the patient was immediately before his removal subject to an order or direction restricting his discharge, being an order or direction of limited duration, the restriction order or restriction direction to which he is subject by virtue of subsection (2) above shall expire on the date on which the first-mentioned order or direction would have expired if he had not been removed.

(6) While being conveyed to the hospital referred to in subsection (2) or, as the case may be, the place referred to in subsection (3) above, the patient shall be deemed to be in legal custody, and section 138 below shall apply to him as if he were in legal custody by virtue of section 137 below.

(7) In the case of a patient removed from the Isle of Man the reference in subsection (4) above to a person serving a sentence of imprisonment includes a reference to a person detained as mentioned in section 60(6)(a) of the Mental Health Act 1974 (an Act of Tynwald).

## NOTES

### Derivation

This section derived from the Mental Health (Amendment) Act 1982, s 37.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (2): words from “to a hospital” to “a restriction direction” in square brackets substituted by the Mental Health Act 2007, s 39(2), Sch 5, Pt 1, paras 1, 11.

Date in force: 1 October 2007: see SI 2007/2798, art 2(c)(v).

## **[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.]

## NOTES

### Amendment

Inserted by the Mental Health Act 2007, s 39(2), Sch 5, Pt 1, paras 1, 12.

Date in force: 3 November 2008: see SI 2008/1900, art 2(n).

### [85A Responsibility for conditionally discharged patients transferred from Channel Islands or Isle of Man]

[(1) This section applies to any patient responsibility for whom is transferred to the Secretary of State by the authority exercising corresponding functions in any of the Channel Islands or the Isle of Man under a provision corresponding to section 83A above.

(2) The patient shall be treated—

(a) as if on the date of the transfer he had been conditionally discharged under section 42 or 73 above; and

[(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) Where the patient was immediately before the transfer subject to an order or direction restricting his discharge, being an order or direction of limited duration, the restriction order[, limitation direction] or restriction direction to which he is subject by virtue of subsection (2) above shall expire on the date on which the first-mentioned order or direction would have expired if the transfer had not been made.]

## NOTES

### Amendment

Section heading: substituted by the Mental Health Act 2007, s 39(2), Sch 5, Pt 1, paras 1, 12.

Date in force: 3 November 2008: see SI 2008/1900, art 2(n).

Inserted by the Crime (Sentences) Act 1997, s 48, Sch 3, para 5.

Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(j).

Sub-s (2): para (b) substituted by the Mental Health Act 2007, s 39(2), Sch 5, Pt 1, paras 1, 13(1), (2).

Date in force: 1 October 2007: see SI 2007/2798, art 2(c)(vi).

Sub-s (3): words “, limitation direction” in square brackets inserted by the Mental Health Act 2007, s 39(1), Sch 5, Pt 1, paras 1, 13(1), (3).

Date in force: 1 October 2007: see SI 2007/2798, art 2(c)(vi).

### Transfer of Functions

Transfer of functions to and from the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 provided that all functions of a Minister of the Crown under this section were, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales. As a consequence of the amendment of Sch 1 to the 1999 Order by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(b), the functions transferred to the Assembly by the 1999 Order ceased to be exercisable by the Assembly and instead (by virtue of art 5 of the 2000 Order) became

exercisable by the Minister of the Crown by whom they were exercisable, in relation to Wales, immediately before 1 July 1999.

### *Removal of aliens*

#### **86 Removal of alien patients**

(1) This section applies to any patient who is neither a British citizen nor a Commonwealth citizen having the right of abode in the United Kingdom by virtue of section 2(1)(b) of the Immigration Act 1971, being a patient who is receiving treatment for [mental disorder] as an in-patient in a hospital in England and Wales or a hospital within the meaning of the Mental Health [(Northern Ireland) Order 1986] and is detained pursuant to—

- (a) an application for admission for treatment or [a report under Article 12(1) or 13 of that Order];
- (b) a hospital order under section 37 above or [Article 44 of that Order]; or
- (c) an order or direction under this Act (other than under section 35, 36 or 38 above) or [under that Order (other than under Article 42, 43 or 45 of that Order)] having the same effect as such a hospital order.

(2) If it appears to the Secretary of State that proper arrangements have been made for the removal of a patient to whom this section applies to a country or territory outside the United Kingdom, the Isle of Man and the Channel Islands and for his care or treatment there and that it is in the interests of the patient to remove him, the Secretary of State may, subject to subsection (3) below—

- (a) by warrant authorise the removal of the patient from the place where he is receiving treatment as mentioned in subsection (1) above, and
- (b) give such directions as the Secretary of State thinks fit for the conveyance of the patient to his destination in that country or territory and for his detention in any place or on board any ship or aircraft until his arrival at any specified port or place in any such country or territory.

(3) The Secretary of State shall not exercise his powers under subsection (2) above in the case of any patient except with the approval of [the appropriate tribunal] or, as the case may be, of the Mental Health Review Tribunal for Northern Ireland.

[(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 [and any reference in subsection (2) or (3) to the Secretary of State shall be construed as a reference to the Department of Justice in Northern Ireland].]

#### **NOTES**

##### **Derivation**

This section derived from the Mental Health Act 1959, s 90, and the Mental Health (Amendment) Act 1982, s 35 (1), (2).

##### **Initial Commencement**

###### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

##### **Amendment**

Sub-s (1): words “mental disorder” in square brackets substituted by the Mental Health Act 2007, s 1(4), Sch 1, Pt 1, paras 1, 15(1), (2).

Date in force: 3 November 2008: see SI 2008/1900, art 2(a); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch

10, paras 1, 2.

Sub-s (1): words “(Northern Ireland) Order 1986” in square brackets substituted by SI 1986/596, art 2(14).

Sub-s (1): in para (a) words “a report under Article 12(1) or 13 of that Order” in square brackets substituted by SI 1986/596, art 2(14).

Sub-s (1): in para (b) words “Article 44 of that Order” in square brackets substituted by SI 1986/596, art 2(14).

Sub-s (1): in para (c) words “under that Order (other than under Article 42, 43 or 45 of that Order)” in square brackets substituted by SI 1986/596, art 2(14).

Sub-s (3): words “the appropriate tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 62.

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (4): inserted by the Mental Health Act 2007, s 1(4), Sch 1, Pt 1, paras 1, 15(1), (3).

Date in force: 3 November 2008: see SI 2008/1900, art 2(a); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (4): words from “and any reference” to “in Northern Ireland” in square brackets inserted by SI 2010/976, art 12, Sch 14, para 28(1), (4).

Date in force: 12 April 2010 (being the date on which the Northern Ireland Act 1998 (Amendment of Schedule 3) Order 2010, SI 2010/977 came into force): see SI 2010/976, art 1(2); for transitional provisions see arts 28–31 thereof.

### **Transfer of Functions**

Transfer of functions to and from the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 provided that all functions of a Minister of the Crown under this section were, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales. As a consequence of the amendment of Sch 1 to the 1999 Order by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(b), the functions transferred to the Assembly by the 1999 Order ceased to be exercisable by the Assembly and instead (by virtue of art 5 of the 2000 Order) became exercisable by the Minister of the Crown by whom they were exercisable, in relation to Wales, immediately before 1 July 1999.

Transfer of certain functions under this section, so far as exercisable in relation to Wales, to the Welsh Ministers: the Welsh Ministers (Transfer of Functions) Order 2008, SI 2008/1786, art 2(a).

### *Return of patients absent without leave*

## **87 Patients absent from hospitals in Northern Ireland**

(1) Any person who—

- (a) under [Article 29 or 132 of the Mental Health (Northern Ireland) Order 1986] (which provide, respectively, for the retaking of patients absent without leave and for the retaking of patients escaping from custody); or
- (b) under the said [Article 29 as applied by Article 31 of the said Order] (which makes special provision as to persons sentenced to imprisonment);

may be taken into custody in Northern Ireland, may be taken into custody in, and returned to Northern Ireland from, England and Wales by an [approved mental health professional], by any constable or by any person authorised by or by virtue of the said [said Order] to take him into custody.

(2) This section does not apply to any person who is subject to guardianship.

### **NOTES**

#### **Derivation**

This section derived from the Mental Health Act 1959, s 92.

## **Initial Commencement**

### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

## **Amendment**

Sub-s (1): in para (a) words “Article 29 or 132 of the Mental Health (Northern Ireland) Order 1986” in square brackets substituted by SI 1986/596, art 2(15).

Sub-s (1): in para (b) words “Article 29 as applied by Article 31 of the said Order” in square brackets substituted by SI 1986/596, art 2(15).

Sub-s (1): words “approved mental health professional” in square brackets substituted by the Mental Health Act 2007, s 21, Sch 2, paras 1, 7(f).

Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.

Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.

Sub-s (1): words “said Order” in square brackets substituted by SI 1986/596, art 2(15).

**88 . . .**

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## **NOTES**

### **Amendment**

Repealed by the Adult Support and Protection (Scotland) Act 2007, s 74.

Date in force: 3 November 2008: see SSI 2008/49, art 2(2) (as amended by SSI 2008/49, art 3).

## **89 Patients absent from hospitals in the Channel Islands or Isle of Man**

(1) Any person who under any provision corresponding to section 18 above or 138 below may be taken into custody in any of the Channel Islands or the Isle of Man may be taken into custody in, and returned to the island in question from, England and Wales by an [approved mental health professional] or a constable.

(2) This section does not apply to any person who is subject to guardianship.

## **NOTES**

### **Derivation**

This section derived from the Mental Health (Amendment) Act 1982, ss 38, 69(4).

## **Initial Commencement**

### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

## **Amendment**

Sub-s (1): words “approved mental health professional” in square brackets substituted by the Mental Health Act 2007, s 21, Sch 2, paras 1, 7(h).

Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.

Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.

*General*

## **90 Regulations for purposes of Part VI**

Section 32 above shall have effect as if references in that section to Part II of this Act included references to this Part of this Act[, 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].

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 94.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Words from “, so far as” to “England and Wales” in square brackets substituted by the Mental Health Act 2007, s 39(2), Sch 5, Pt 1, paras 1, 15.

Date in force: 3 November 2008: see SI 2008/1900, art 2(n).

## 91 General provisions as to patients removed from England and Wales

(1) Subject to subsection (2) below, where a patient liable to be detained or subject to guardianship by virtue of an application, order or direction under Part II or III of this Act (other than section 35, 36 or 38 above) is removed from England and Wales in pursuance of arrangements under this Part of this Act, the application, order or direction shall cease to have effect when he is duly received into a hospital or other institution, or placed under guardianship [or, where he is not received into a hospital but his detention in hospital is authorised by virtue of the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995], in pursuance of those arrangements.

(2) Where the Secretary of State exercises his powers under section 86(2) above in respect of a patient who is detained pursuant to a hospital order under section 37 above and in respect of whom a restriction order is in force, those orders shall continue in force so as to apply to the patient if he returns to England and Wales . . .

[(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.]

[(3) Reference in this section to a patient's detention in hospital being authorised by virtue of the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995 shall be read as including references to a patient in respect of whom a certificate under one of the provisions listed in section 290(7)(a) of the Act of 2003 is in operation.]

## NOTES

### Derivation

This section derived from the Mental Health act 1959, s 95, and the Mental Health (Amendment) Act 1982, s 35(3).

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): words from “or, where he” to “Criminal Procedure (Scotland) Act 1995” in square brackets inserted, in relation to England and Wales, by SI 2005/2078, art 15, Sch 1, para 2(1), (7)(a).

- Date in force: 5 October 2005: see SI 2005/2078, art 1(1).
- Sub-s (2): words omitted repealed by the Mental Health Act 2007, ss 40(6), 55, Sch 11, Pt 8.  
Date in force: 1 October 2007: see SI 2007/2798, art 2(d); for effect see the Mental Health Act 2007, s 40(7).
- Sub-s (2A): inserted by the Mental Health Act 2007, s 39(2), Sch 5, Pt 1, paras 1, 16.  
Date in force: 3 November 2008: see SI 2008/1900, art 2(n).
- Sub-s (3): inserted, in relation to England and Wales, by SI 2005/2078, art 15, Sch 1, para 2(1), (7)(b).  
Date in force: 5 October 2005: see SI 2005/2078, art 1(1).

### **Transfer of Functions**

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

### **92 Interpretation of Part VI**

(1) References in this Part of this Act to a hospital, being a hospital in England and Wales, shall be construed as references to a hospital within the meaning of Part II of this Act.

[(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.]

(2) Where a patient is treated by virtue of this Part of this Act as if he had been removed to a hospital in England and Wales in pursuance of a direction under Part III of this Act, that direction shall be deemed to have been given on the date of his reception into the hospital.

(3) . . .

[(4) Sections 80 to 85A above shall have effect as if—

(a) any hospital direction under section 45A above were a transfer direction under section 47 above; and

(b) any limitation direction under section 45A above were a restriction direction under section 49 above.

(5) Sections 80(5), 81(6) and 85(4) above shall have effect as if any reference to a transfer direction given while a patient was serving a sentence of imprisonment imposed by a court included a reference to a hospital direction given by a court after imposing a sentence of imprisonment on a patient.]

### **NOTES**

#### **Derivation**

This section derived from the Mental Health Act 1959, s 96.

#### **Initial Commencement**

##### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

#### **Amendment**

Sub-s (1A): inserted by the Mental Health Act 2007, s 39(2), Sch 5, Pt 1, paras 1, 17.

Date in force: 3 November 2008: see SI 2008/1900, art 2(n).

Sub-s (3): repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 1.

Date in force: 3 November 2008: see SI 2008/1900, art 2(p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-ss (4), (5): inserted by the Crime (Sentences) Act 1997, s 55, Sch 4, para 12(16).

Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(l), (2)(f).

## Part VII

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### NOTES

#### Amendment

Repealed by the Mental Capacity Act 2005, ss 66(1)(a), (2), 67(2), Sch 7.

Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(c), (d); for transitional provisions and savings see the Mental Capacity Act 2005, s 66(4), Sch 5, Pt I.

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### NOTES

#### Amendment

Repealed by the Mental Capacity Act 2005, ss 66(1)(a), (2), 67(2), Sch 7.

Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(c), (d); for transitional provisions and savings see the Mental Capacity Act 2005, s 66(4), Sch 5, Pt I.

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### NOTES

#### Amendment

Repealed by the Mental Capacity Act 2005, ss 66(1)(a), (2), 67(2), Sch 7.

Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(c), (d); for transitional provisions and savings see the Mental Capacity Act 2005, s 66(4), Sch 5, Pt I.

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### NOTES

#### Amendment

Repealed by the Mental Capacity Act 2005, ss 66(1)(a), (2), 67(2), Sch 7.

Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(c), (d); for transitional provisions and savings see the Mental Capacity Act 2005, s 66(4), Sch 5, Pt I.

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### NOTES

#### Amendment

Repealed by the Mental Capacity Act 2005, ss 66(1)(a), (2), 67(2), Sch 7.

Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(c), (d); for transitional provisions and savings see the Mental Capacity Act 2005, s 66(4), Sch 5, Pt I.

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### NOTES

#### Amendment

Repealed by the Mental Capacity Act 2005, ss 66(1)(a), (2), 67(2), Sch 7.  
Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(c), (d); for transitional provisions  
and savings see the Mental Capacity Act 2005, s 66(4), Sch 5, Pt I.

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## **NOTES**

### **Amendment**

Repealed by the Mental Capacity Act 2005, ss 66(1)(a), (2), 67(2), Sch 7.  
Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(c), (d); for transitional provisions  
and savings see the Mental Capacity Act 2005, s 66(4), Sch 5, Pt I.

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## **NOTES**

### **Amendment**

Repealed by the Mental Capacity Act 2005, ss 66(1)(a), (2), 67(2), Sch 7.  
Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(c), (d); for transitional provisions  
and savings see the Mental Capacity Act 2005, s 66(4), Sch 5, Pt I.

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## **NOTES**

### **Amendment**

Repealed by the Mental Capacity Act 2005, ss 66(1)(a), (2), 67(2), Sch 7.  
Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(c), (d); for transitional provisions  
and savings see the Mental Capacity Act 2005, s 66(4), Sch 5, Pt I.

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## **NOTES**

### **Amendment**

Repealed by the Mental Capacity Act 2005, ss 66(1)(a), (2), 67(2), Sch 7.  
Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(c), (d); for transitional provisions  
and savings see the Mental Capacity Act 2005, s 66(4), Sch 5, Pt I.

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## **NOTES**

### **Amendment**

Repealed by the Mental Capacity Act 2005, ss 66(1)(a), (2), 67(2), Sch 7.  
Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(c), (d); for transitional provisions  
and savings see the Mental Capacity Act 2005, s 66(4), Sch 5, Pt I.

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## NOTES

### Amendment

Repealed by the Mental Capacity Act 2005, ss 66(1)(a), (2), 67(2), Sch 7.

Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(c), (d); for transitional provisions and savings see the Mental Capacity Act 2005, s 66(4), Sch 5, Pt I.

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## NOTES

### Amendment

Repealed by the Mental Capacity Act 2005, ss 66(1)(a), (2), 67(2), Sch 7.

Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(c), (d); for transitional provisions and savings see the Mental Capacity Act 2005, s 66(4), Sch 5, Pt I.

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## NOTES

### Amendment

Repealed by the Mental Capacity Act 2005, ss 66(1)(a), (2), 67(2), Sch 7.

Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(c), (d); for transitional provisions and savings see the Mental Capacity Act 2005, s 66(4), Sch 5, Pt I.

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## NOTES

### Amendment

Repealed by the Mental Capacity Act 2005, ss 66(1)(a), (2), 67(2), Sch 7.

Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(c), (d); for transitional provisions and savings see the Mental Capacity Act 2005, s 66(4), Sch 5, Pt I.

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## NOTES

### Amendment

Repealed by the Mental Capacity Act 2005, ss 66(1)(a), (2), 67(2), Sch 7.

Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(c), (d); for transitional provisions and savings see the Mental Capacity Act 2005, s 66(4), Sch 5, Pt I.

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## NOTES

### Amendment

Repealed by the Mental Capacity Act 2005, ss 66(1)(a), (2), 67(2), Sch 7.

Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(c), (d); for transitional provisions and savings see the Mental Capacity Act 2005, s 66(4), Sch 5, Pt I.

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## NOTES

### Amendment

Repealed by the Mental Capacity Act 2005, ss 66(1)(a), (2), 67(2), Sch 7.

Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(c), (d); for transitional provisions and savings see the Mental Capacity Act 2005, s 66(4), Sch 5, Pt I.

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## NOTES

### Amendment

Repealed by the Mental Capacity Act 2005, ss 66(1)(a), (2), 67(2), Sch 7.

Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(c), (d); for transitional provisions and savings see the Mental Capacity Act 2005, s 66(4), Sch 5, Pt I.

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## NOTES

### Amendment

Repealed by the Mental Capacity Act 2005, ss 66(1)(a), (2), 67(2), Sch 7.

Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(c), (d); for transitional provisions and savings see the Mental Capacity Act 2005, s 66(4), Sch 5, Pt I.

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## NOTES

### Amendment

Repealed by the Mental Capacity Act 2005, ss 66(1)(a), (2), 67(2), Sch 7.

Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(c), (d); for transitional provisions and savings see the Mental Capacity Act 2005, s 66(4), Sch 5, Pt I.

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## NOTES

### Amendment

Repealed by the Mental Capacity Act 2005, ss 66(1)(a), (2), 67(2), Sch 7.

Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(c), (d); for transitional provisions and savings see the Mental Capacity Act 2005, s 66(4), Sch 5, Pt I.

## Part VIII

### Miscellaneous Functions of Local Authorities and the Secretary of State

*[Approved mental health professionals]*

**NOTES**

**Amendment**

Substituted by the Mental Health Act 2007, s 18.

Date in force (for certain purposes): 1 April 2008: see SI 2008/745, arts 2(a), 3(b).

Date in force (in relation to England for remaining purposes): 3 November 2008: see SI 2008/1900, art 2(c); for transitional provisions and savings see art 3, Schedule, paras 1, 4–11 thereto.

Date in force (in relation to Wales for remaining purposes): 3 November 2008: see SI 2008/2561, art 2(a); for transitional provisions and savings see art 3, Schedule thereto.

**[114 Approval by local social services authority]**

(1) A local social services authority may approve a person to act as an approved mental health professional for the purposes of this Act.

(2) But a local social services authority may not approve a registered medical practitioner to act as an approved mental health professional.

(3) Before approving a person under subsection (1) above, a local social services authority shall be satisfied that he has appropriate competence in dealing with persons who are suffering from mental disorder.

(4) The appropriate national authority may by regulations make provision in connection with the giving of approvals under subsection (1) above.

(5) The provision which may be made by regulations under subsection (4) above includes, in particular, provision as to—

- (a) the period for which approvals under subsection (1) above have effect;
- (b) the courses to be undertaken by persons before such approvals are to be given and during the period for which such approvals have effect;
- (c) the conditions subject to which such approvals are to be given; and
- (d) the factors to be taken into account in determining whether persons have appropriate competence as mentioned in subsection (3) above.

(6) Provision made by virtue of subsection (5)(b) above may relate to courses approved or provided by such person as may be specified in the regulations (as well as to courses approved under section [114ZA or] 114A below).

(7) An approval by virtue of subsection (6) above may be in respect of a course in general or in respect of a course in relation to a particular person.

(8) The power to make regulations under subsection (4) above includes power to make different provision for different cases or areas.

(9) In this section “the appropriate national authority” means—

- (a) in relation to persons who are or wish to become approved to act as approved mental health professionals by a local social services authority whose area is in England, the Secretary of State;

- (b) in relation to persons who are or wish to become approved to act as approved mental health professionals by a local social services authority whose area is in Wales, the Welsh Ministers.

(10) In this Act “approved mental health professional” means—

- (a) in relation to acting on behalf of a local social services authority whose area is in England, a person approved under subsection (1) above by any local social services authority whose area is in England, and
- (b) in relation to acting on behalf of a local social services authority whose area is in Wales, a person approved under that subsection by any local social services authority whose area is in Wales.]

## NOTES

### Derivation

This section as originally enacted derived from the Mental Health (Amendment) Act 1982, s 61(2), (3).

### Amendment

Substituted by the Mental Health Act 2007, s 18.

Date in force (for certain purposes): 1 April 2008: see SI 2008/745, arts 2(a), 3(b).

Date in force (in relation to England for remaining purposes): 3 November 2008: see SI 2008/1900, art 2(c); for transitional provisions and savings see art 3, Schedule, paras 1, 4–11 thereto.

Date in force (in relation to Wales for remaining purposes): 3 November 2008: see SI 2008/2561, art 2(a); for transitional provisions and savings see art 3, Schedule thereto.

Sub-s (6): words “114ZA or” in square brackets inserted by the Health and Social Care Act 2012, s 217(1), (3).

Date in force: 1 August 2012: see SI 2012/1319, art 2(1), (4).

### Subordinate Legislation

Mental Health (Approved Mental Health Professionals) (Approval) (England) Regulations 2008, SI 2008/1206.

Mental Health (Approval of Persons to be Approved Mental Health Professionals) (Wales) Regulations 2008, SI 2008/2436.

### [114ZA Approval of courses: England]

[(1) The Health and Care Professions Council may approve courses for persons who are, or wish to become, approved to act as approved mental health professionals by a local social services authority whose area is in England.

(2) The Council must publish a list of—

- (a) the courses which are approved under this section, and
- (b) the courses which have been, but are no longer, approved under this section and the periods for which they were so approved.

(3) The functions of an approved mental health professional are not to be considered to be relevant social work for the purposes of Part 4 of the Care Standards Act 2000.

(4) Where the function under subsection (1) is, in accordance with the Health and Social Work Professions Order 2001, exercisable by a committee of the Council, the committee may arrange for another person to exercise the function on the Council's behalf.]

## NOTES

## **Amendment**

Inserted by the Health and Social Care Act 2012, s 217(1), (2).

Date in force: 1 August 2012: see SI 2012/1319, art 2(1), (4).

### **[114A Approval of courses: Wales]**

[[ (1) The Care Council for Wales may, in accordance with rules made by it, approve courses for persons who are, or wish to become, approved to act as approved mental health professionals by a local social services authority whose area is in Wales.]

(2) For that purpose—

(a) subsections (2) to (4)(a) and (7) of section 63 of the Care Standards Act 2000 apply as they apply to approvals given, rules made and courses approved under that section; and

(b) sections 66 and 71 of that Act apply accordingly.

(3) . . .

(4) The functions of an approved mental health professional shall not be considered to be relevant social work for the purposes of Part 4 of the Care Standards Act 2000.

(5) The . . . Care Council for Wales may also carry out, or assist other persons in carrying out, research into matters relevant to training for approved mental health professionals.]

## **NOTES**

### **Amendment**

Inserted by the Mental Health Act 2007, s 19.

Date in force: 1 October 2007: see SI 2007/2798, art 2(a).

Section heading: substituted by the Health and Social Care Act 2012, s 217(4), (8).

Date in force: 1 August 2012: see SI 2012/1319, art 2(1), (4).

Sub-s (1): substituted by the Health and Social Care Act 2012, s 217(4), (5).

Date in force: 1 August 2012: see SI 2012/1319, art 2(1), (4).

Sub-s (3): repealed by the Health and Social Care Act 2012, s 217(4), (6).

Date in force: 1 August 2012: see SI 2012/1319, art 2(1), (4).

Sub-s (5): words omitted repealed by the Health and Social Care Act 2012, s 217(4), (7).

Date in force: 1 August 2012: see SI 2012/1319, art 2(1), (4).

### **[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.]

## **NOTES**

### **Derivation**

This section as originally enacted derived from the Mental Health Act 1959, s 22.

### **Amendment**

Substituted by the Mental Health Act 2007, s 21, Sch 2, paras 1, 8.

Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.

Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.

### *Visiting patients*

#### **116 Welfare of certain hospital patients**

(1) Where a patient to whom this section applies is admitted to a hospital[, independent hospital or care home] in England and Wales (whether for treatment for mental disorder or for any other reason) then, without prejudice to their duties in relation to the patient apart from the provisions of this section, the authority shall arrange for visits to be made to him on behalf of the authority, and shall take such other steps in relation to the patient while in the hospital[, independent hospital or care home] as would be expected to be taken by his parents.

(2) This section applies to—

[(a) a child or young person—

(i) who is in the care of a local authority by virtue of a care order within the meaning of the Children Act 1989, or

(ii) in respect of whom the rights and powers of a parent are vested in a local authority by virtue of section 16 of the Social Work (Scotland) Act 1968;]

(b) a person who is subject to the guardianship of a local social services authority under the provisions of this Act . . . ; or

(c) a person the functions of whose nearest relative under this Act . . . are for the time being transferred to a local social services authority.

#### **NOTES**

##### **Derivation**

This section derived from the Mental Health Act 1959, s 10(1).

##### **Initial Commencement**

###### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

##### **Amendment**

Sub-s (1): words “, independent hospital or care home” in square brackets in both places they occur substituted, in relation to England and Wales, by the Care Standards Act 2000, s 116, Sch 4, para 9(1), (5).

Date in force (in relation to England): 1 April 2002: see SI 2001/4150, art 3(3)(a); for transitional provisions see SI 2001/4150, arts 3(2), 4(1), (3), (4) and SI 2002/1493, art 4 (as amended by SI 2002/1493, art 6).

Date in force (in relation to Wales): 1 April 2002: see SI 2002/920, art 3(3)(d); for transitional provisions see arts 2, 3(2), (4), (6)–(10), Sch 1 thereto.

Sub-s (2): para (a) substituted by the Courts and Legal Services Act 1990, s 116, Sch 16, para 42.

Sub-s (2): in para (b) words omitted repealed in relation to England and Wales by SI 2005/2078, art 16(1), Sch 3 and in relation to Scotland by virtue of SSI 2005/465, art 3, Sch 2.

Date in force (in relation to Scotland): 27 September 2005: see SSI 2005/465, art 1.

Date in force (in relation to England and Wales): 5 October 2005: see SI 2005/2078, art 1(1), (2).

Sub-s (2): in para (c) words omitted repealed in relation to England and Wales by SI 2005/2078, art 16(1), Sch 3 and in relation to Scotland by SSI 2005/465, art 3, Sch 2.

Date in force (in relation to Scotland): 27 September 2005: see SSI 2005/465, art 1.

Date in force (in relation to England and Wales): 5 October 2005: see SI 2005/2078, art

1(1).

*After-care*

**117 After-care**

(1) This section applies to persons who are detained under section 3 above, or admitted to a hospital in pursuance of a hospital order made under section 37 above, or transferred to a hospital in pursuance of [a hospital direction made under section 45A above or] a transfer direction made under section 47 or 48 above, and then cease to be detained and [(whether or not immediately after so ceasing)] leave hospital.

(2) It shall be the duty of the [clinical commissioning group or] [. . .] [Local Health Board] and of the local social services authority to provide [or arrange for the provision of], in co-operation with relevant voluntary agencies, after-care services for any person to whom this section applies until such time as the [clinical commissioning group or] [. . .] [Local Health Board] and the local social services authority are satisfied that the person concerned is no longer in need of such services[; but they shall not be so satisfied in the case of a [community patient while he remains such a patient]].

[(2A) . . .

(2B) Section 32 above shall apply for the purposes of this section as it applies for the purposes of Part II of this Act.]

[(2C) References in this Act to after-care services provided for a patient under this section include references to services provided for the patient—

(a) in respect of which direct payments are made under *regulations under section 57 of the Health and Social Care Act 2001* or [—

(i) sections 31 to 33 of the Care Act 2014 (as applied by Schedule 4 to that Act),

(ii) sections 50, 51 and 53 of the Social Services and Well-being (Wales) Act 2014 (as applied by Schedule A1 to that Act), or

(iii) regulations under] section 12A(4) of the National Health Service Act 2006, and

(b) which would be provided under this section apart from [those sections (as so applied) or] the regulations.]

[(2D) Subsection (2), in its application to the clinical commissioning group, has effect [as if the words “provide or” were omitted].

(2E) The Secretary of State may by regulations provide that the duty imposed on the clinical commissioning group by subsection (2) is, in the circumstances or to the extent prescribed by the regulations, to be imposed instead on another clinical commissioning group or the National Health Service Commissioning Board.

(2F) Where regulations under subsection (2E) provide that the duty imposed by subsection (2) is to be imposed on the National Health Service Commissioning Board, subsection (2D) has effect as if the reference to the clinical commissioning group were a reference to the National Health Service Commissioning Board.

(2G) Section 272(7) and (8) of the National Health Service Act 2006 applies to the power to make

regulations under subsection (2E) as it applies to a power to make regulations under that Act.]

(3) In this [section “the [clinical commissioning group or] [. . .] [Local Health Board]” means the [clinical commissioning group or] [. . .] [Local Health Board], and “the local social services authority” means the local social services authority[—

- (a) if, immediately before being detained, the person concerned was ordinarily resident in England, for the area in England in which he was ordinarily resident;
- (b) if, immediately before being detained, the person concerned was ordinarily resident in Wales, for the area in Wales in which he was ordinarily resident; or
- (c) in any other case], for the area] in which the person concerned is resident or to which he is sent on discharge by the hospital in which he was detained.

[(4) Where there is a dispute about where a person was ordinarily resident for the purposes of subsection (3) above—

- (a) if the dispute is between local social services authorities in England, section 40 of the Care Act 2014 applies to the dispute as it applies to a dispute about where a person was ordinarily resident for the purposes of Part 1 of that Act;
- (b) if the dispute is between local social services authorities in Wales, section 195 of the Social Services and Well-being (Wales) Act 2014 applies to the dispute as it applies to a dispute about where a person was ordinarily resident for the purposes of that Act;
- (c) if the dispute is between a local social services authority in England and a local social services authority in Wales, it is to be determined by the Secretary of State or the Welsh Ministers.

(5) The Secretary of State and the Welsh Ministers shall make and publish arrangements for determining which of them is to determine a dispute under subsection (4)(c); and the arrangements may, in particular, provide for the dispute to be determined by whichever of them they agree is to do so.]

[(6) In this section, “after-care services”, in relation to a person, means services which have both of the following purposes—

- (a) meeting a need arising from or related to the person’s mental disorder; and
- (b) reducing the risk of a deterioration of the person’s mental condition (and, accordingly, reducing the risk of the person requiring admission to a hospital again for treatment for mental disorder).]

## NOTES

### Derivation

This section derived from the Mental Health (Amendment) Act 1982, s 51.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Extent

This section does not extend to Scotland.

### Amendment

Sub-s (1): words from “a hospital” to “above or” in square brackets inserted by the Crime (Sentences) Act 1997, s 55, Sch 4, para 12(17).

Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(l), (2)(f).

Sub-s (1): words “(whether or not immediately after so ceasing)” in square brackets inserted by the Mental Health (Patients in the Community) Act 1995, s 1(2), Sch 1, para 15(1), (2).

Sub-s (2): words “clinical commissioning group or” in square brackets inserted by the Health and Social Care Act 2012, s 40(1), (2)(a).

Date in force (in so far as is necessary for enabling the exercise of any power to make an order or regulations or to give directions): 27 March 2012: see the Health and Social Care Act 2012, s 306(1)(d).

Date in force (in so far as it relates to the provision of after-care services for the purposes of the health service in England on or after 1 April 2013): 1 February 2013: see SI 2012/2657, art 2(1), (4).

Date in force (for remaining purposes): 1 April 2013: see SI 2013/160, art 2.

Sub-s (2): words omitted in square brackets in both places they occur inserted by the National Health Service Reform and Health Care Professions Act 2002, s 2(5), Sch 2, Pt 2, paras 42, 47.

Date in force: 1 October 2002: see SI 2002/2478, art 3(1)(d).

Sub-s (2): words omitted repealed by the Health and Social Care Act 2012, s 40(1), (2)(b).

Date in force (in so far as it relates to the provision of after-care services for the purposes of the health service in England on or after 1 April 2013): 1 February 2013: see SI 2012/2657, art 2(1), (4).

Date in force (for remaining purposes): 1 April 2013: see SI 2013/160, art 2; for savings and transitional provisions see arts 5–7 thereof.

Sub-s (2): words “Local Health Board” in square brackets in both places they occur substituted by SI 2007/961, art 3, Schedule, para 13(1), (9).

Date in force: 1 April 2007: see SI 2007/961, art 1(1).

Sub-s (2): words “or arrange for the provision of” in square brackets inserted by the Care Act 2014, s 75(1).

Date in force: 1 April 2015: see SI 2015/993, art 7(1)(a).

Sub-s (2): words “clinical commissioning group or” in square brackets inserted by the Health and Social Care Act 2012, s 40(1), (2)(c).

Date in force (in so far as is necessary for enabling the exercise of any power to make an order or regulations or to give directions): 27 March 2012: see the Health and Social Care Act 2012, s 306(1)(d).

Date in force (in so far as it relates to the provision of after-care services for the purposes of the health service in England on or after 1 April 2013): 1 February 2013: see SI 2012/2657, art 2(1), (4).

Date in force (for remaining purposes): 1 April 2013: see SI 2013/160, art 2.

Sub-s (2): words in square brackets beginning with the words “; but they shall” inserted by the Mental Health (Patients in the Community) Act 1995, s 1(2), Sch 1, para 15(1), (3).

Sub-s (2): words “community patient while he remains such a patient” in square brackets substituted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 24.

Date in force: 3 November 2008: see SI 2008/1210, art 2(b); for savings and transitional provisions see arts 1(2), (4), 3, 4, 6, 8, 9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-ss (2A), (2B): inserted by the Mental Health (Patients in the Community) Act 1995, s 1(2), Sch 1, para 15(4).

Sub-s (2A): repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 5.

Date in force: 3 November 2008: see SI 2008/1210, art 2(d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (2C): inserted by the Health Act 2009, s 13, Sch 1, para 3.

Date in force: 19 January 2010: see SI 2010/30, art 2(b).

Sub-s (2C): in para (a) words from “regulations under section” to “Health and Social Care Act 2001 or” in italics repealed and subsequent words in square brackets substituted by the Care Act 2014, s 75(11)(a).

Date in force (for certain purposes): 1 April 2015: see SI 2015/993, art 7(3); for transitory modifications see art 7(4).

Date in force (for remaining purposes): to be appointed: see the Care Act 2014, s 127(1).

Sub-s (2C): in para (b) words “those sections (as so applied) or” in square brackets inserted by the Care Act 2014, s 75(11)(b).

Date in force: 1 April 2015: see SI 2015/993, art 7(3).

Sub-ss (2D)–(2G): inserted by the Health and Social Care Act 2012, s 40(1), (3).

Date in force (in so far as is necessary for enabling the exercise of any power to make an order or regulations or to give directions): 27 March 2012: see the Health and Social Care Act 2012, s 306(1)(d).

Date in force (in so far as it relates to the provision of after-care services for the purposes of the health service in England on or after 1 April 2013): 1 February 2013: see SI 2012/2657, art 2(1), (4).

Date in force (for remaining purposes): 1 April 2013: see SI 2013/160, art 2.

Sub-s (2D): words “as if the words “provide or” were omitted” in square brackets substituted by the Care Act 2014, s 75(2).

Date in force: 1 April 2015: see SI 2015/993, art 7(1)(a).

Sub-s (3): words in square brackets beginning with the words “section “the” substituted by the Health Authorities Act 1995, s 2(1), Sch 1, para 107(1), (8)(b)

Sub-s (3): words “clinical commissioning group or” in square brackets inserted by the Health and Social Care Act 2012, s 40(1), (4)(a).

Date in force (in so far as is necessary for enabling the exercise of any power to make an order or regulations or to give directions): 27 March 2012: see the Health and Social Care Act 2012, s 306(1)(d).

Date in force (in so far as it relates to the provision of after-care services for the purposes of the health service in England on or after 1 April 2013): 1 February 2013: see SI 2012/2657, art 2(1), (4).

Date in force (for remaining purposes): 1 April 2013: see SI 2013/160, art 2.

Sub-s (3): words omitted in square brackets in both places they occur inserted by the National Health Service Reform and Health Care Professions Act 2002, s 2(5), Sch 2, Pt 2, paras 42, 47.

Date in force: 1 October 2002: see SI 2002/2478, art 3(1)(d).

Sub-s (3): words omitted repealed by the Health and Social Care Act 2012, s 40(1), (4)(b).

Date in force (in so far as it relates to the provision of after-care services for the purposes of the health service in England on or after 1 April 2013): 1 February 2013: see SI 2012/2657, art 2(1), (4).

Date in force (for remaining purposes): 1 April 2013: see SI 2013/160, art 2; for savings and transitional provisions see arts 5–7 thereof.

Sub-s (3): words “Local Health Board” in square brackets in both places they occur substituted by SI 2007/961, art 3, Schedule, para 13(1), (9).

Date in force: 1 April 2007: see SI 2007/961, art 1(1).

Sub-s (3): words “clinical commissioning group or” in square brackets inserted by the Health and Social Care Act 2012, s 40(1), (4)(c).

Date in force (in so far as is necessary for enabling the exercise of any power to make an order or regulations or to give directions): 27 March 2012: see the Health and Social Care Act 2012, s 306(1)(d).

Date in force (in so far as it relates to the provision of after-care services for the purposes of the health service in England on or after 1 April 2013): 1 February 2013: see SI 2012/2657, art 2(1), (4).

Date in force (for remaining purposes): 1 April 2013: see SI 2013/160, art 2.

Sub-s (3): words from “— (a) if, immediately” to “any other case” in square brackets inserted by the Care Act 2014, s 75(3); for transitional provision see s 75(12).

Date in force: 1 April 2015: see SI 2015/993, art 7(1)(a).

Sub-ss (4), (5): inserted by the Care Act 2014, s 75(4); for transitional provision see s 75(12).

Date in force: 1 April 2015: see SI 2015/993, art 7(1)(a); for transitory modifications see art 7(2).

Sub-s (6): inserted by the Care Act 2014, s 75(5).

Date in force (for certain purposes): 1 October 2014: see SI 2014/2473, art 2(1)(u).

Date in force (for remaining purposes): 1 April 2015: see SI 2015/993, art 7(1)(a).

## **Modification**

Certain functions of a Minister of the Crown under this Act are, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3). Sch 1 to the 1999 Order (as amended) further provides that sub-s (2A)(a) above shall have effect, in relation to such transfer, as if references to a registered medical practitioner approved for the purposes of s 12 by the Secretary of State (including references to be construed as such) included a reference to such a practitioner approved by the Assembly.

## **Subordinate Legislation**

National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012, SI 2012/2996 (made under sub-ss (2E), (2G)).

### **[117A After-care: preference for particular accommodation]**

[(1) The Secretary of State may by regulations provide that where—

- (a) the local social services authority under section 117 is, in discharging its duty under subsection (2) of that section, providing or arranging for the provision of accommodation for the person concerned;
- (b) the person concerned expresses a preference for particular accommodation; and
- (c) any prescribed conditions are met,

the local social services authority must provide or arrange for the provision of the person's preferred accommodation.

(2) Regulations under this section may provide for the person concerned, or a person of a prescribed description, to pay for some or all of the additional cost in prescribed cases.

(3) In subsection (2), "additional cost" means the cost of providing or arranging for the provision of the person's preferred accommodation less the amount that the local social services authority would expect to be the usual cost of providing or arranging for the provision of accommodation of that kind.

(4) The power to make regulations under this section—

- (a) is exercisable only in relation to local social services authorities in England;
- (b) includes power to make different provision for different cases or areas.]

## **NOTES**

### **Amendment**

Inserted by the Care Act 2014, s 75(6).

Date in force: 1 October 2014: see SI 2014/2473, art 2(1)(u).

### **Subordinate Legislation**

Care and Support and After-care (Choice of Accommodation) Regulations 2014, SI 2014/2670 (made under sub-ss (1), (2), (4)).

### **[117B After-care: exception for provision of nursing care]**

[(1) Section 117 does not authorise or require a local social services authority in England, in or in connection with the provision of services under that section, to provide or arrange for the provision of nursing care by a registered nurse.

(2) In this section “nursing care by a registered nurse” means a service provided by a registered nurse involving—

- (a) the provision of care, or
- (b) the planning, supervision or delegation of the provision of care,

other than a service which, having regard to its nature and the circumstances in which it is provided, does not need to be provided by a registered nurse.]

## NOTES

### Amendment

Inserted by SI 2015/914, art 2, Schedule, paras 27, 28.

Date in force: 1 April 2015: see SI 2015/914, art 1(2) and the Care Act 2014, s 1; for savings and transitional provision see art 3.

### *Functions of the Secretary of State*

## 118 Code of practice

- (1) The Secretary of State shall prepare, and from time to time revise, a code of practice—
- (a) for the guidance of registered medical practitioners[, approved clinicians], managers and staff of hospitals[, independent hospitals and care homes] and [approved mental health professionals] in relation to the admission of patients to hospitals [and registered establishments] under this Act [and to guardianship and [community patients] under this Act]; and
  - (b) for the guidance of registered medical practitioners and members of other professions in relation to the medical treatment of patients suffering from mental disorder.

[(1A) The Code which must be prepared, and from time to time revised, in relation to Wales shall also be for the guidance of independent mental health advocates appointed under arrangements made under section 130E below.]

(2) The code shall, in particular, specify forms of medical treatment in addition to any specified by regulations made for the purposes of section 57 above which in the opinion of the Secretary of State give rise to special concern and which should accordingly not be given by a registered medical practitioner unless the patient has consented to the treatment (or to a plan of treatment including that treatment) and a certificate in writing as to the matters mentioned in subsection (2)(a) and (b) of that section has been given by another registered medical practitioner, being a practitioner [appointed for the purposes of this section by the regulatory authority].

[(2A) The code shall include a statement of the principles which the Secretary of State thinks should inform decisions under this Act.

(2B) In preparing the statement of principles the Secretary of State shall, in particular, ensure that each of the following matters is addressed—

- (a) respect for patients’ past and present wishes and feelings,
- (b) respect for diversity generally including, in particular, diversity of religion, culture and sexual orientation (within the meaning of section 35 of the Equality Act 2006),
- (c) minimising restrictions on liberty,
- (d) involvement of patients in planning, developing and delivering care and treatment appropriate

- to them,
- (e) avoidance of unlawful discrimination,
  - (f) effectiveness of treatment,
  - (g) views of carers and other interested parties,
  - (h) patient wellbeing and safety, and
  - (i) public safety.

(2C) The Secretary of State shall also have regard to the desirability of ensuring—

- (a) the efficient use of resources, and
- (b) the equitable distribution of services.

(2D) In performing functions under this Act persons mentioned in subsection (1)(a) or (b) [and subsection (1A)] shall have regard to the code.]

(3) Before preparing the code or making any alteration in it the Secretary of State shall consult such bodies as appear to him to be concerned.

(4) The Secretary of State shall lay copies of the code and of any alteration in the code before Parliament; and if either House of Parliament passes a resolution requiring the code or any alteration in it to be withdrawn the Secretary of State shall withdraw the code or alteration and, where he withdraws the code, shall prepare a code in substitution for the one which is withdrawn.

(5) No resolution shall be passed by either House of Parliament under subsection (4) above in respect of a code or alteration after the expiration of the period of 40 days beginning with the day on which a copy of the code or alteration was laid before that House; but for the purposes of this subsection no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(6) The Secretary of State shall publish the code as for the time being in force.

[(7) The Care Quality Commission may at any time make proposals to the Secretary of State as to the content of the code of practice which the Secretary of State must prepare, and from time to time revise, under this section in relation to England.]

## NOTES

### Derivation

This section derived from the Mental Health (Amendment) Act 1982, ss 53, 69(4).

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Extent

This section does not extend to Scotland.

### Amendment

Sub-s (1): in para (a) words “, approved clinicians” in square brackets inserted by the Mental Health Act 2007, s 14(1), (2).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (1): in para (a) words “, independent hospitals and care homes” and “and registered establishments” in square brackets substituted by the Care Standards Act 2000, s 116, Sch 4, para 9(1), (6).

Date in force (in relation to England): 1 April 2002: see SI 2001/4150, art 3(3)(a); for transitional provisions see SI 2001/4150, arts 3(2), 4(1), (3), (4) and SI 2002/1493, art 4 (as amended by SI 2002/1493, art 6).

Date in force (in relation to Wales): 1 April 2002: see SI 2002/920, art 3(3)(d); for transitional provisions see arts 2, 3(2), (4), (6)–(10), Sch 1 thereto.

Sub-s (1): in para (a) words “approved mental health professionals” in square brackets substituted by the Mental Health Act 2007, s 21, Sch 2, paras 1, 9.

Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.

Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.

Sub-s (1): in para (a) words from “and to guardianship” to “under this Act” in square brackets inserted by the Mental Health (Patients in the Community) Act 1995, s 1(2), Sch 1, para 16.

Sub-s (1): in para (a) words “community patients” in square brackets substituted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 25.

Date in force: 3 November 2008: see SI 2008/1210, art 2(b); for savings and transitional provisions see arts 1(2), (4), 3, 4, 6, 8, 9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (1A): inserted, in relation to Wales, by the Mental Health (Wales) Measure 2010, s 39(1), (2).

Date in force (for the purpose of conferring power to make regulations): 15 February 2011: see the Mental Health (Wales) Measure 2010, s 55(1), (2)(b).

Date in force (except in relation to Welsh qualifying informal patients): 3 January 2012: see SI 2011/3046, art 2(f).

Date in force (for remaining purposes): 2 April 2012: see SI 2011/3046, art 3(f).

Sub-s (2): words “appointed for the purposes of this section by the regulatory authority” in square brackets substituted by the Health and Social Care Act 2008, s 52(5), Sch 3, paras 1, 6(1), (2).

Date in force: 1 April 2009: see SI 2009/462, art 2(1), Sch 1, para 33.

Sub-ss (2A)–(2D): inserted by the Mental Health Act 2007, s 8.

Date in force: 3 November 2008: see SI 2008/1900, art 2(b).

Sub-s (2D): words “and subsection (1A)” in square brackets inserted, in relation to Wales, by the Mental Health (Wales) Measure 2010, s 39(1), (3).

Date in force (for the purpose of conferring power to make regulations): 15 February 2011: see the Mental Health (Wales) Measure 2010, s 55(1), (2)(b).

Date in force (except in relation to Welsh qualifying informal patients): 3 January 2012: see SI 2011/3046, art 2(f).

Date in force (for remaining purposes): 2 April 2012: see SI 2011/3046, art 3(f).

Sub-s (7): inserted by the Health and Social Care Act 2008, s 52(5), Sch 3, paras 1, 6(1), (3).

Date in force: 1 April 2009: see SI 2009/462, art 2(1), Sch 1, para 33.

### **Transfer of Functions**

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

### **119 Practitioners approved for Part IV and s 118**

(1) [The regulatory authority] may make such provision as [it] may with the approval of the Treasury determine for the payment of remuneration, allowances, pensions or gratuities to or in respect of registered medical practitioners appointed [by the authority] for the purposes of Part IV of this Act and section 118 above and to or in respect of other persons appointed for the purposes of section 57(2)(a) above.

(2) A registered medical practitioner or other person appointed . . . for the purposes of the provisions mentioned in subsection (1) above may, for the purpose of exercising his functions under those

provisions [or under Part 4A of this Act], at any reasonable time—

- (a) visit and interview and, in the case of a registered medical practitioner, examine in private any patient detained [in a hospital or registered establishment or any community patient in a hospital or [regulated establishment (other than a hospital)] or (if access is granted) other place]; and
- (b) require the production of and inspect any records relating to the treatment of the patient [there].

[(3) In this section “regulated establishment” means—

- (a) an establishment in respect of which a person is registered under Part 2 of the Care Standards Act 2000; or
- (b) premises used for the carrying on of a regulated activity, within the meaning of Part 1 of the Health and Social Care Act 2008, in respect of which a person is registered under Chapter 2 of that Part.]

## NOTES

### Derivation

This section derived from the Mental Health (Amendment) Act 1982, s 54.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): words “The regulatory authority” in square brackets substituted by the Health and Social Care Act 2008, s 52(5), Sch 3, paras 1, 7(1), (2)(a).

Date in force: 1 April 2009: see SI 2009/462, art 2(1), Sch 1, para 33.

Sub-s (1): word “it” in square brackets substituted by the Health and Social Care Act 2008, s 52(5), Sch 3, paras 1, 7(1), (2)(b).

Date in force: 1 April 2009: see SI 2009/462, art 2(1), Sch 1, para 33.

Sub-s (1): words “by the authority” in square brackets substituted by the Health and Social Care Act 2008, s 52(5), Sch 3, paras 1, 7(1), (2)(c).

Date in force: 1 April 2009: see SI 2009/462, art 2(1), Sch 1, para 33.

Sub-s (2): words omitted repealed by the Health and Social Care Act 2008, ss 52(5), 166, Sch 3, paras 1, 7(1), (3), Sch 15, Pt 1.

Date in force: 1 April 2009: see SI 2009/462, art 2(1), Sch 1, para 33.

Sub-s (2): words “or under Part 4A of this Act” in square brackets inserted by the Mental Health Act 2007, s 35(2)(a)(i).

Date in force: 3 November 2008: see SI 2008/1900, art 2(k); for transitional provisions and savings see art 3, Schedule, paras 1, 4–11 thereto.

Sub-s (2): in para (a) words from “in a hospital” to “granted) other place” in square brackets substituted by the Mental Health Act 2007, s 35(2)(a)(ii).

Date in force: 3 November 2008: see SI 2008/1900, art 2(k); for transitional provisions and savings see art 3, Schedule, paras 1, 4–11 thereto.

Sub-s (2): in para (a) words “regulated establishment (other than a hospital)” in square brackets substituted by SI 2010/813, art 5(1), (4)(a).

Date in force: 1 October 2010: see SI 2010/813, art 1.

Sub-s (2): in para (b) word “there” in square brackets substituted by the Mental Health Act 2007, s 35(2)(a)(iii).

Date in force: 3 November 2008: see SI 2008/1900, art 2(k); for transitional provisions and savings see art 3, Schedule, paras 1, 4–11 thereto.

Sub-s (3): substituted by SI 2010/813, art 5(1), (4)(b).

Date in force: 1 October 2010: see SI 2010/813, art 1.

### **Transfer of Functions**

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 provides that, except in so far as provided for by art 2(b)–(f) of that Order, all functions of a Minister of the Crown under this section are, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales. Sch 1 to the 1999 Order further provides that the Treasury approval requirements under sub-s (1) above shall continue in effect so far as they relate to pensions.

### **[120 General protection of relevant patients]**

(1) The regulatory authority must keep under review and, where appropriate, investigate the exercise of the powers and the discharge of the duties conferred or imposed by this Act so far as relating to the detention of patients or their reception into guardianship or to relevant patients.

(2) Relevant patients are—

- (a) patients liable to be detained under this Act,
- (b) community patients, and
- (c) patients subject to guardianship.

(3) The regulatory authority must make arrangements for persons authorised by it to visit and interview relevant patients in private—

- (a) in the case of relevant patients detained under this Act, in the place where they are detained, and
- (b) in the case of other relevant patients, in hospitals and regulated establishments and, if access is granted, other places.

(4) The regulatory authority must also make arrangements for persons authorised by it to investigate any complaint as to the exercise of the powers or the discharge of the duties conferred or imposed by this Act in respect of a patient who is or has been detained under this Act or who is or has been a relevant patient.

(5) The arrangements made under subsection (4)—

- (a) may exclude matters from investigation in specified circumstances, and
- (b) do not require any person exercising functions under the arrangements to undertake or continue with any investigation where the person does not consider it appropriate to do so.

(6) Where any such complaint as is mentioned in subsection (4) is made by a Member of Parliament or a member of the National Assembly for Wales, the results of the investigation must be reported to the Member of Parliament or member of the Assembly.

(7) For the purposes of a review or investigation under subsection (1) or the exercise of functions under arrangements made under this section, a person authorised by the regulatory authority may at any reasonable time—

- (a) visit and interview in private any patient in a hospital or regulated establishment,
- (b) if the authorised person is a registered medical practitioner or approved clinician, examine the patient in private there, and

- (c) require the production of and inspect any records relating to the detention or treatment of any person who is or has been detained under this Act or who is or has been a community patient or a patient subject to guardianship.

(8) The regulatory authority may make provision for the payment of remuneration, allowances, pensions or gratuities to or in respect of persons exercising functions in relation to any review or investigation for which it is responsible under subsection (1) or functions under arrangements made by it under this section.

(9) In this section “regulated establishment” means—

- (a) an establishment in respect of which a person is registered under Part 2 of the Care Standards Act 2000, or
- (b) premises used for the carrying on of a regulated activity (within the meaning of Part 1 of the Health and Social Care Act 2008) in respect of which a person is registered under Chapter 2 of that Part.]

## NOTES

### Derivation

This section derived from the Mental Health (Amendment) Act 1982, s 55.

### Amendment

Substituted by the Health and Social Care Act 2008, s 52(5), Sch 3, paras 1, 8.

Date in force: 1 April 2009: see SI 2009/462, art 2(1), Sch 1, para 33.

Sub-s (5): repealed by the Registered Homes Act 1984, s 57, Sch 3.

### Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 provides that, except in so far as provided for by art 2(b)–(f) of that Order, all functions of a Minister of the Crown under this section are, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales. Sch 1 to the 1999 Order further provides that the Treasury approval requirements under sub-s (6) above shall continue in effect so far as they relate to pensions.

## [120A Investigation reports]

[(1) The regulatory authority may publish a report of a review or investigation carried out by it under section 120(1).

(2) The Secretary of State may by regulations make provision as to the procedure to be followed in respect of the making of representations to the Care Quality Commission before the publication of a report by the Commission under subsection (1).

(3) The Secretary of State must consult the Care Quality Commission before making any such regulations.

(4) The Welsh Ministers may by regulations make provision as to the procedure to be followed in respect of the making of representations to them before the publication of a report by them under subsection (1).]

## NOTES

### Amendment

Inserted by the Health and Social Care Act 2008, s 52(5), Sch 3, paras 1, 9.

Date in force (in so far as it confers power to make subordinate legislation): 21 July 2008: see the Health and Social Care Act 2008, s 170(1)(b).

Date in force (for remaining purposes): 1 April 2009: see SI 2009/462, art 2(1), Sch 1, para

**[120B Action statements]**

[(1) The regulatory authority may direct a person mentioned in subsection (2) to publish a statement as to the action the person proposes to take as a result of a review or investigation under section 120(1).

(2) The persons are—

- (a) the managers of a hospital within the meaning of Part 2 of this Act;
- (b) a local social services authority;
- (c) persons of any other description prescribed in regulations.

(3) Regulations may make further provision about the content and publication of statements under this section.

(4) “Regulations” means regulations made—

- (a) by the Secretary of State, in relation to England;
- (b) by the Welsh Ministers, in relation to Wales.]

**NOTES**

**Amendment**

Inserted by the Health and Social Care Act 2008, s 52(5), Sch 3, paras 1, 9.

Date in force (in so far as it confers power to make subordinate legislation): 21 July 2008: see the Health and Social Care Act 2008, s 170(1)(b).

Date in force (for remaining purposes): 1 April 2009: see SI 2009/462, art 2(1), Sch 1, para 33.

**[120C Provision of information]**

[(1) This section applies to the following persons—

- (a) the managers of a hospital within the meaning of Part 2 of this Act;
- (b) a local social services authority;
- (c) persons of any other description prescribed in regulations.

(2) A person to whom this section applies must provide the regulatory authority with such information as the authority may reasonably request for or in connection with the exercise of its functions under section 120.

(3) A person to whom this section applies must provide a person authorised under section 120 with such information as the person so authorised may reasonably request for or in connection with the exercise of functions under arrangements made under that section.

(4) This section is in addition to the requirements of section 120(7)(c).

(5) “Information” includes documents and records.

(6) “Regulations” means regulations made—

- (a) by the Secretary of State, in relation to England;

- (b) by the Welsh Ministers, in relation to Wales.]

## NOTES

### Amendment

Inserted by the Health and Social Care Act 2008, s 52(5), Sch 3, paras 1, 9.

Date in force (in so far as it confers power to make subordinate legislation): 21 July 2008: see the Health and Social Care Act 2008, s 170(1)(b).

Date in force (for remaining purposes): 1 April 2009: see SI 2009/462, art 2(1), Sch 1, para 33.

### [120D Annual reports]

[(1) The regulatory authority must publish an annual report on its activities in the exercise of its functions under this Act.

(2) The report must be published as soon as possible after the end of each financial year.

(3) The Care Quality Commission must send a copy of its annual report to the Secretary of State who must lay the copy before Parliament.

(4) The Welsh Ministers must lay a copy of their annual report before the National Assembly for Wales.

(5) In this section “financial year” means—

(a) the period beginning with the date on which section 52 of the Health and Social Care Act 2008 comes into force and ending with the next 31 March following that date, and

(b) each successive period of 12 months ending with 31 March.]

## NOTES

### Amendment

Inserted by the Health and Social Care Act 2008, s 52(5), Sch 3, paras 1, 9.

Date in force (in so far as it confers power to make subordinate legislation): 21 July 2008: see the Health and Social Care Act 2008, s 170(1)(b).

Date in force (for remaining purposes): 1 April 2009: see SI 2009/462, art 2(1), Sch 1, para 33.

121 . . .

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## NOTES

### Derivation

This section derived from the Mental Health (Amendment) Act 1982, s 56.

### Amendment

Repealed by the Health and Social Care Act 2008, s 166, Sch 15, Pt 1.

Date in force: 1 April 2009: see SI 2009/462, art 2(1), Sch 1, para 36.

### 122 Provision of pocket money for in-patients in hospital

(1) The [Welsh Ministers may (in relation to Wales)] pay to persons who are receiving treatment as in-patients (whether liable to be detained or not) in *special hospitals or other hospitals being* hospitals wholly or mainly used for the treatment of persons suffering from mental disorder, such amounts as [the Welsh Ministers think fit] in respect of [those persons] occasional personal expenses where it appears to

[the Welsh Ministers] that [those persons] would otherwise be without resources to meet those expenses.

(2) For the purposes of the [. . . the National Health Service (Wales) Act 2006], the making of payments under this section to persons for whom hospital services are provided under [that Act] shall be treated as included among those services.

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 133.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): words “Welsh Ministers may (in relation to Wales)” in square brackets substituted by the Health and Social Care Act 2012, s 41(1), (2)(a).

Date in force: 1 April 2013: see SI 2013/160, art 2.

Sub-s (1): words “special hospitals or other hospitals being” in italics repealed by the Health Act 1999, s 65, Sch 4, paras 65, 66, Sch 5.

Date in force (in relation to England and Wales): 1 April 2000: see SI 1999/2793, art 2(3)(a), Sch 3.

Date in force (in relation to Scotland): to be appointed: see the Health Act 1999, s 67(1), (2).

Sub-s (1): words “the Welsh Ministers think fit” in square brackets substituted by the Health and Social Care Act 2012, s 41(1), (2)(b).

Date in force: 1 April 2013: see SI 2013/160, art 2.

Sub-s (1): word “those persons” in square brackets substituted by the Health and Social Care Act 2012, s 41(1), (2)(c).

Date in force: 1 April 2013: see SI 2013/160, art 2.

Sub-s (1): word “the Welsh Ministers” in square brackets substituted by the Health and Social Care Act 2012, s 41(1), (2)(d).

Date in force: 1 April 2013: see SI 2013/160, art 2.

Sub-s (1): word “those persons” in square brackets substituted by the Health and Social Care Act 2012, s 41(1), (2)(e).

Date in force: 1 April 2013: see SI 2013/160, art 2.

Sub-s (2): words in square brackets ending in the words “National Health Service (Wales) Act 2006” substituted by the National Health Service (Consequential Provisions) Act 2006, s 2, Sch 1, paras 62, 67(a).

Date in force: 1 March 2007: see the National Health Service (Consequential Provisions) Act 2006, s 8(2).

Sub-s (2): words omitted repealed by the Health and Social Care Act 2012, s 41(1), (3)(a).

Date in force: 1 April 2013: see SI 2013/160, art 2.

Sub-s (2): words “that Act” in square brackets substituted by the Health and Social Care Act 2012, s 41(1), (3)(b).

Date in force: 1 April 2013: see SI 2013/160, art 2.

### Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

123 . . .

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## NOTES

### **Amendment**

Repealed by the Health and Social Care Act 2012, s 42(1).

Date in force: 1 July 2012: see SI 2012/1319, art 2(1), (3); for savings see the Health and Social Care Act 2012, s 42(5).

124 . . .

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### **NOTES**

#### **Amendment**

Repealed by the National Health Service and Community Care Act 1990, s 66(2), Sch 2.

125 . . .

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### **NOTES**

#### **Amendment**

Repealed by the Inquiries Act 2005, ss 48(1), 49(2), Sch 2, Pt 1, para 9, Sch 3.

Date in force: 7 June 2005: see SI 2005/1432, art 2; for transitional provisions and savings see the Inquiries Act 2005, s 44(5).

## **Part IX Offences**

### **126 Forgery, false statements, etc**

(1) Any person who without lawful authority or excuse has in his custody or under his control any document to which this subsection applies, which is, and which he knows or believes to be, false within the meaning of Part I of the Forgery and Counterfeiting Act 1981, shall be guilty of an offence.

(2) Any person who without lawful authority or excuse makes, or has in his custody or under his control, any document so closely resembling a document to which subsection (1) above applies as to be calculated to deceive shall be guilty of an offence.

(3) The documents to which subsection (1) above applies are any documents purporting to be—

- (a) an application under Part II of this Act;
- (b) a medical [or other] recommendation or report under this Act; and
- (c) any other document required or authorised to be made for any of the purposes of this Act.

(4) Any person who—

(a) wilfully makes a false entry or statement in any application, recommendation, report, record or other document required or authorised to be made for any of the purposes of this Act; or

(b) with intent to deceive, makes use of any such entry or statement which he knows to be false,

shall be guilty of an offence.

(5) Any person guilty of an offence under this section shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not

exceeding the statutory maximum, or to both;

- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine of any amount, or to both.

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 125.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (3): in para (b) words in square brackets inserted by the Mental Health (Patients in the Community) Act 1995, s 1(2), Sch 1, para 17.

## 127 Ill-treatment of patients

(1) It shall be an offence for any person who is an officer on the staff of or otherwise employed in, or who is one of the managers of, a hospital[, independent hospital or care home]—

- (a) to ill-treat or wilfully to neglect a patient for the time being receiving treatment for mental disorder as an in-patient in that hospital or home; or
- (b) to ill-treat or wilfully to neglect, on the premises of which the hospital or home forms part, a patient for the time being receiving such treatment there as an out-patient.

(2) It shall be an offence for any individual to ill-treat or wilfully to neglect a mentally disordered patient who is for the time being subject to his guardianship under this Act or otherwise in his custody or care (whether by virtue of any legal or moral obligation or otherwise).

[(2A) . . .]

(3) Any person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding [five years] or to a fine of any amount, or to both.

(4) No proceedings shall be instituted for an offence under this section except by or with the consent of the Director of Public Prosecutions.

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 126.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): words “, independent hospital or care home” in square brackets substituted by the Care Standards Act 2000, s 116, Sch 4, para 9(1), (8).

Date in force (in relation to England): 1 April 2002: see SI 2001/4150, art 3(3)(a); for transitional provisions see SI 2001/4150, arts 3(2), 4(1), (3), (4) and SI 2002/1493, art 4 (as amended by SI 2002/1493, art 6).

Date in force (in relation to Wales): 1 April 2002: see SI 2002/920, art 3(3)(d); for transitional provisions see arts 2, 3(2), (4), (6)–(10), Sch 1 thereto.

Sub-s (2A): inserted by the Mental Health (Patients in the Community) Act 1995, s 1(2), Sch 1, para 18.

Sub-s (2A): repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 5.

Date in force: 3 November 2008: see SI 2008/1210, art 2(d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof.

Sub-s (3): in para (b) words “five years” in square brackets substituted by the Mental Health Act 2007, s 42.

Date in force: 1 October 2007: see SI 2007/2798, art 2(f).

### **128 Assisting patients to absent themselves without leave, etc**

(1) *Where any person induces or knowingly assists another person who is liable to be detained in a hospital within the meaning of Part II of this Act or is subject to guardianship under this Act [or is a community patient] to absent himself without leave he shall be guilty of an offence.*

(2) *Where any person induces or knowingly assists another person who is in legal custody by virtue of section 137 below to escape from such custody he shall be guilty of an offence.*

(3) *Where any person knowingly harbours a patient who is absent without leave or is otherwise at large and liable to be retaken under this Act or gives him any assistance with intent to prevent, hinder or interfere with his being taken into custody or returned to the hospital or other place where he ought to be he shall be guilty of an offence.*

(4) *Any person guilty of an offence under this section shall be liable—*

(a) *on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;*

(b) *on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine of any amount, or to both.*

### **NOTES**

#### **Derivation**

This section derived from the Mental Health Act 1959, s 129.

#### **Initial Commencement**

##### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

#### **Amendment**

Repealed by the Adult Support and Protection (Scotland) Act 2007, s 74.

Date in force: 3 November 2008: see SSI 2008/49, art 2(2) (as amended by SSI 2008/314, art 3).

Sub-s (1): words “or is a community patient” in square brackets inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 28.

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

### **129 Obstruction**

- (1) Any person who without reasonable cause—
- (a) refuses to allow the inspection of any premises; or
  - (b) refuses to allow the visiting, interviewing or examination of any person by a person authorised in that behalf by or under this Act [or to give access to any person to a person so authorised]; or
  - (c) refuses to produce for the inspection of any person so authorised any document or record the production of which is duly required by him; or
  - [(ca) fails to comply with a request made under section 120C; or]
  - (d) otherwise obstructs any such person in the exercise of his functions,

shall be guilty of an offence.

(2) Without prejudice to the generality of subsection (1) above, any person who insists on being present when required to withdraw by a person authorised by or under this Act to interview or examine a person in private shall be guilty of an offence.

(3) Any person guilty of an offence under this section shall be liable on summary conviction *to imprisonment for a term not exceeding three months or to a fine not exceeding level 4 on the standard scale or to both.*

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 130.

### Initial Commencement

#### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): in para (b) words in square brackets inserted by the Mental Health (Patients in the Community) Act 1995, s 1(2), Sch 1, para 19.

Sub-s (1): para (ca) inserted by the Health and Social Care Act 2008, s 52(5), Sch 3, paras 1, 10.

Date in force: 1 April 2009: see SI 2009/462, art 2(1), Sch 1, para 33.

Sub-s (3): words “to imprisonment for a term not exceeding three months or” in italics repealed by the Criminal Justice Act 2003, s 332, Sch 37, Pt 9.

Date in force: to be appointed: see the Criminal Justice Act 2003, s 336(3).

Sub-s (3): words “or to both” in italics repealed by the Criminal Justice Act 2003, s 332, Sch 37, Pt 9.

Date in force: to be appointed: see the Criminal Justice Act 2003, s 336(3).

### See Further

See further, in relation to summary offences no longer punishable with imprisonment: the Criminal Justice Act 2003, s 280(1), Sch 25, para 80.

## 130 Prosecutions by local authorities

A local social services authority may institute proceedings for any offence under this Part of this Act, but without prejudice to any provision of this Part of this Act requiring the consent of the Director of Public Prosecutions for the institution of such proceedings.

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 131.

### **Initial Commencement**

#### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

## Part X Miscellaneous and Supplementary

### *Miscellaneous provisions*

#### **[130A Independent mental health advocates][: England]**

(1) [A local social services authority whose area is in England] shall make such arrangements as it considers reasonable to enable persons (“independent mental health advocates”) to be available to help qualifying patients [for whom the authority is responsible for the purposes of this section].

(2) The *appropriate national authority* [Secretary of State] may by regulations make provision as to the appointment of persons as independent mental health advocates.

(3) The regulations may, in particular, provide—

- (a) that a person may act as an independent mental health advocate only in such circumstances, or only subject to such conditions, as may be specified in the regulations;
- (b) for the appointment of a person as an independent mental health advocate to be subject to approval in accordance with the regulations.

(4) In making arrangements under this section, [a local social services authority] shall have regard to the principle that any help available to a patient under the arrangements should, so far as practicable, be provided by a person who is independent of any person who is professionally concerned with the patient’s medical treatment.

(5) For the purposes of subsection (4) above, a person is not to be regarded as professionally concerned with a patient’s medical treatment merely because he is representing him in accordance with arrangements—

- (a) under section 35 of the Mental Capacity Act 2005; or
- (b) of a description specified in regulations under this section.

(6) Arrangements under this section may include provision for payments to be made to, or in relation to, persons carrying out functions in accordance with the arrangements.

(7) Regulations under this section—

- (a) may make different provision for different cases;
- (b) may make provision which applies subject to specified exceptions;
- (c) may include transitional, consequential, incidental or supplemental provision.]

### **NOTES**

#### **Amendment**

Inserted by the Mental Health Act 2007, s 30(1), (2); for transitional provisions and savings see s

53, Sch 10, paras 1, 8 thereto.

Date in force (for the purposes of making regulations): 1 April 2008: see SI 2008/745, art 2(b)(i).

Date in force (in relation to Wales for remaining purposes): 3 November 2008: see SI 2008/2561, art 2(c); for transitional provisions and savings see art 3, Schedule thereto.

Date in force (in relation to England for remaining purposes): 1 April 2009: see SI 2009/139, art 2(a); for transitional provisions see art 3, Schedule thereto.

Section heading: word “: England” in square brackets inserted, in relation to Wales, by the Mental Health (Wales) Measure 2010, s 53(1), Sch 1, paras 1, 2.

Date in force (for the purpose of conferring power to make regulations): 15 February 2011: see the Mental Health (Wales) Measure 2010, s 55(1), (2)(b).

Date in force (except in relation to Welsh qualifying informal patients): 3 January 2012: see SI 2011/3046, art 2(i), (k).

Date in force (for remaining purposes): 2 April 2012: see SI 2011/3046, art 3(j).

Sub-s (1): words “A local social services authority whose area is in England” in square brackets substituted by virtue of the Health and Social Care Act 2012, s 43(1)(a).

Date in force (in so far as is necessary for enabling the exercise of any power to make an order or regulations or to give directions): 27 March 2012: see the Health and Social Care Act 2012, s 306(1)(d).

Date in force (for remaining purposes): 1 April 2013: see SI 2013/160, art 2.

Sub-s (1): words “for whom the authority is responsible for the purposes of this section” in square brackets inserted by the Health and Social Care Act 2012, s 43(1)(b).

Date in force (in so far as is necessary for enabling the exercise of any power to make an order or regulations or to give directions): 27 March 2012: see the Health and Social Care Act 2012, s 306(1)(d).

Date in force (for remaining purposes): 1 April 2013: see SI 2013/160, art 2.

Sub-ss (1), (2): words “appropriate national authority” in italics repealed and subsequent words in square brackets substituted, in relation to Wales, by the Mental Health (Wales) Measure 2010, s 53(1), Sch 1, paras 1, 3.

Date in force (for the purpose of conferring power to make regulations): 15 February 2011: see the Mental Health (Wales) Measure 2010, s 55(1), (2)(b).

Date in force (except in relation to Welsh qualifying informal patients): 3 January 2012: see SI 2011/3046, art 2(i), (k).

Date in force (for remaining purposes): 2 April 2012: see SI 2011/3046, art 3(j).

Sub-s (4): words “a local social services authority” in square brackets substituted by virtue of the Health and Social Care Act 2012, s 43(2).

Date in force (in so far as is necessary for enabling the exercise of any power to make an order or regulations or to give directions): 27 March 2012: see the Health and Social Care Act 2012, s 306(1)(d).

Date in force (for remaining purposes): 1 April 2013: see SI 2013/160, art 2.

### **Subordinate Legislation**

Mental Health Act 1983 (Independent Mental Health Advocates) (England) Regulations 2008, SI 2008/3166.

Mental Health and Mental Capacity (Advocacy) Amendment (England) Regulations 2009, SI 2009/2376 (made under sub-ss (2), (3)).

National Health Service and Public Health (Functions and Miscellaneous Provisions) Regulations 2013, SI 2013/261.

### **[130B Arrangements under section 130A]**

[(1) The help available to a qualifying patient under arrangements under section 130A above shall include help in obtaining information about and understanding—

- (a) the provisions of this Act by virtue of which he is a qualifying patient;
- (b) any conditions or restrictions to which he is subject by virtue of this Act;

- (c) what (if any) medical treatment is given to him or is proposed or discussed in his case;
  - (d) why it is given, proposed or discussed;
  - (e) the authority under which it is, or would be, given; and
  - (f) the requirements of this Act which apply, or would apply, in connection with the giving of the treatment to him.
- (2) The help available under the arrangements to a qualifying patient shall also include—
- (a) help in obtaining information about and understanding any rights which may be exercised under this Act by or in relation to him; and
  - (b) help (by way of representation or otherwise) in exercising those rights.
- (3) For the purpose of providing help to a patient in accordance with the arrangements, an independent mental health advocate may—
- (a) visit and interview the patient in private;
  - (b) visit and interview any person who is professionally concerned with his medical treatment;
  - (c) require the production of and inspect any records relating to his detention or treatment in any hospital or registered establishment or to any after-care services provided for him under section 117 above;
  - (d) require the production of and inspect any records of, or held by, a local social services authority which relate to him.
- (4) But an independent mental health advocate is not entitled to the production of, or to inspect, records in reliance on subsection (3)(c) or (d) above unless—
- (a) in a case where the patient has capacity or is competent to consent, he does consent; or
  - (b) in any other case, the production or inspection would not conflict with a decision made by a donee or deputy or the Court of Protection and the person holding the records, having regard to such matters as may be prescribed in regulations under section 130A above, considers that—
    - (i) the records may be relevant to the help to be provided by the advocate;and
    - (ii) the production or inspection is appropriate.
- (5) For the purpose of providing help to a patient in accordance with the arrangements, an independent mental health advocate shall comply with any reasonable request made to him by any of the following for him to visit and interview the patient—
- (a) the person (if any) appearing to the advocate to be the patient's nearest relative;
  - (b) the responsible clinician for the purposes of this Act;
  - (c) an approved mental health professional.
- (6) But nothing in this Act prevents the patient from declining to be provided with help under the arrangements.

- (7) In subsection (4) above—
- (a) the reference to a patient who has capacity is to be read in accordance with the Mental Capacity Act 2005;
  - (b) the reference to a donee is to a donee of a lasting power of attorney (within the meaning of section 9 of that Act) created by the patient, where the donee is acting within the scope of his authority and in accordance with that Act;
  - (c) the reference to a deputy is to a deputy appointed for the patient by the Court of Protection under section 16 of that Act, where the deputy is acting within the scope of his authority and in accordance with that Act.]

## NOTES

### Amendment

Inserted by the Mental Health Act 2007, s 30(1), (2); for transitional provisions and savings see s 53, Sch 10, paras 1, 8 thereto.

Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(c); for transitional provisions and savings see art 3, Schedule thereto.

Date in force (in relation to England): 1 April 2009: see SI 2009/139, art 2(a); for transitional provisions see art 3, Schedule thereto.

### [130C Section 130A: supplemental]

- [(1) This section applies for the purposes of section 130A above.
- (2) *A patient is a qualifying patient if he is—*
- (a) *liable to be detained under this Act (otherwise than by virtue of section 4 or 5(2) or (4) above or section 135 or 136 below);*
  - (b) *subject to guardianship under this Act; or*
  - (c) *a community patient.*
- [(2) A patient is a qualifying patient if he is—
- (a) liable to be detained under this Act (otherwise than by virtue of section 4 or 5(2) or (4) above or section 135 or 136 below) and the hospital or registered establishment in which he is liable to be detained is situated in England;
  - (b) subject to guardianship under this Act and the area of the responsible local social services authority within the meaning of section 34(3) above is situated in England;
  - (c) a community patient and the responsible hospital is situated in England.]
- (3) A patient is also a qualifying patient if [the patient is to be regarded as being in England for the purposes of this subsection and]—
- (a) not being a qualifying patient falling within subsection (2) above, he discusses with a registered medical practitioner or approved clinician the possibility of being given a form of treatment to which section 57 above applies; or
  - (b) not having attained the age of 18 years and not being a qualifying patient falling within subsection (2) above, he discusses with a registered medical practitioner or approved clinician the possibility of being given a form of treatment to which section 58A above applies.

[(3A) For the purposes of subsection (3), a patient is to be regarded as being in England if that has been determined in accordance with arrangements made for the purposes of that subsection and section 130(4), and published, by the Secretary of State and the Welsh Ministers.]

(4) Where a patient who is a qualifying patient falling within subsection (3) above is informed that the treatment concerned is proposed in his case, he remains a qualifying patient falling within that subsection until—

- (a) the proposal is withdrawn; or
- (b) the treatment is completed or discontinued.

[(4A) A local social services authority is responsible for a qualifying patient if—

- (a) in the case of a qualifying patient falling within subsection (2)(a) above, the hospital or registered establishment in which he is liable to be detained is situated in that authority's area;
- (b) in the case of a qualifying patient falling within subsection (2)(b) above, that authority is the responsible local social services authority within the meaning of section 34(3) above;
- (c) in the case of a qualifying patient falling within subsection (2)(c), the responsible hospital is situated in that authority's area;
- (d) in the case of a qualifying patient falling within subsection (3)—
  - (i) in a case where the patient has capacity or is competent to do so, he nominates that authority as responsible for him for the purposes of section 130A above, or
  - (ii) in any other case, a donee or deputy or the Court of Protection, or a person engaged in caring for the patient or interested in his welfare, nominates that authority on his behalf as responsible for him for the purposes of that section.

(4B) In subsection (4A)(d) above—

- (a) the reference to a patient who has capacity is to be read in accordance with the Mental Capacity Act 2005;
- (b) the reference to a donee is to a donee of a lasting power of attorney (within the meaning of section 9 of that Act) created by the patient, where the donee is acting within the scope of his authority and in accordance with that Act;
- (c) the reference to a deputy is to a deputy appointed for the patient by the Court of Protection under section 16 of that Act, where the deputy is acting within the scope of his authority and in accordance with that Act.]

(5) *References to the appropriate national authority are—*

- (a) *in relation to a qualifying patient in England, to the Secretary of State;*
- (b) *in relation to a qualifying patient in Wales, to the Welsh Ministers.*

(6) *For the purposes of subsection (5) above—*

- (a) *a qualifying patient falling within subsection (2)(a) above is to be regarded as being in the territory in which the hospital or registered establishment in which he is liable to be detained*

*is situated;*

- (b) *a qualifying patient falling within subsection (2)(b) above is to be regarded as being in the territory in which the area of the responsible local social services authority within the meaning of section 34(3) above is situated;*
- (c) *a qualifying patient falling within subsection (2)(c) above is to be regarded as being in the territory in which the responsible hospital is situated;*
- (d) *a qualifying patient falling within subsection (3) above is to be regarded as being in the territory determined in accordance with arrangements made for the purposes of this paragraph, and published, by the Secretary of State and the Welsh Ministers.]*

## **NOTES**

### **Amendment**

Inserted by the Mental Health Act 2007, s 30(1), (2); for transitional provisions and savings see s 53, Sch 10, paras 1, 8 thereto.

Date in force (for the purposes of sub-s (5)): 1 April 2008: see SI 2008/745, art 3(d).

Date in force (in relation to Wales for remaining purposes): 3 November 2008: see SI 2008/2561, art 2(c); for transitional provisions and savings see art 3, Schedule thereto.

Date in force (in relation to England for remaining purposes): 1 April 2009: see SI 2009/139, art 2(a); for transitional provisions see art 3, Schedule thereto.

Sub-s (2): substituted, in relation to Wales, by the Mental Health (Wales) Measure 2010, s 53(1), Sch 1, paras 1, 4.

Date in force (for the purpose of conferring power to make regulations): 15 February 2011: see the Mental Health (Wales) Measure 2010, s 55(1), (2)(b).

Date in force (except in relation to Welsh qualifying informal patients): 3 January 2012: see SI 2011/3046, art 2(i), (k).

Date in force (for remaining purposes): 2 April 2012: see SI 2011/3046, art 3(j).

Sub-s (3): words from “the patient is” to “this subsection and” in square brackets inserted, in relation to Wales, by the Mental Health (Wales) Measure 2010, s 53(1), Sch 1, paras 1, 5.

Date in force (for the purpose of conferring power to make regulations): 15 February 2011: see the Mental Health (Wales) Measure 2010, s 55(1), (2)(b).

Date in force (except in relation to Welsh qualifying informal patients): 3 January 2012: see SI 2011/3046, art 2(i), (k).

Date in force (for remaining purposes): 2 April 2012: see SI 2011/3046, art 3(j).

Sub-s (3A): inserted, in relation to Wales, by the Mental Health (Wales) Measure 2010, s 53(1), Sch 1, paras 1, 6.

Date in force (for the purpose of conferring power to make regulations): 15 February 2011: see the Mental Health (Wales) Measure 2010, s 55(1), (2)(b).

Date in force (except in relation to Welsh qualifying informal patients): 3 January 2012: see SI 2011/3046, art 2(i), (k).

Date in force (for remaining purposes): 2 April 2012: see SI 2011/3046, art 3(j).

Sub-ss (4A), (4B): inserted by the Health and Social Care Act 2012, s 43(3).

Date in force (in so far as is necessary for enabling the exercise of any power to make an order or regulations or to give directions): 27 March 2012: see the Health and Social Care Act 2012, s 306(1)(d).

Date in force (for remaining purposes): 1 April 2013: see SI 2013/160, art 2.

Sub-ss (5), (6): repealed, in relation to Wales, by the Mental Health (Wales) Measure 2010, ss 53(1), 54, Sch 1, paras 1, 7, Sch 2.

Date in force (for the purpose of conferring power to make regulations): 15 February 2011: see the Mental Health (Wales) Measure 2010, s 55(1), (2)(b).

Date in force (except in relation to Welsh qualifying informal patients): 3 January 2012: see SI 2011/3046, art 2(i)–(l).

Date in force (for remaining purposes): 2 April 2012: see SI 2011/3046, art 3(j).

### **Subordinate Legislation**

Mental Health and Mental Capacity (Advocacy) Amendment (England) Regulations 2009, SI 2009/2376 (made under sub-s (5)).

**[130D Duty to give information about independent mental health advocates]**

[(1) The responsible person in relation to a qualifying patient (within the meaning given by section 130C above) shall take such steps as are practicable to ensure that the patient understands—

- (a) that help is available to him from an independent mental health advocate; and
- (b) how he can obtain that help.

(2) In subsection (1) above, “the responsible person” means—

- (a) in relation to a qualifying patient falling within section 130C(2)(a) above (other than one also falling within paragraph (b) below), the managers of the hospital or registered establishment in which he is liable to be detained;
- (b) in relation to a qualifying patient falling within section 130C(2)(a) above and conditionally discharged by virtue of section 42(2), 73 or 74 above, the responsible clinician;
- (c) in relation to a qualifying patient falling within section 130C(2)(b) above, the responsible local social services authority within the meaning of section 34(3) above;
- (d) in relation to a qualifying patient falling within section 130C(2)(c) above, the managers of the responsible hospital;
- (e) in relation to a qualifying patient falling within section 130C(3) above, the registered medical practitioner or approved clinician with whom the patient first discusses the possibility of being given the treatment concerned.

(3) The steps to be taken under subsection (1) above shall be taken—

- (a) where the responsible person falls within subsection (2)(a) above, as soon as practicable after the patient becomes liable to be detained;
- (b) where the responsible person falls within subsection (2)(b) above, as soon as practicable after the conditional discharge;
- (c) where the responsible person falls within subsection (2)(c) above, as soon as practicable after the patient becomes subject to guardianship;
- (d) where the responsible person falls within subsection (2)(d) above, as soon as practicable after the patient becomes a community patient;
- (e) where the responsible person falls within subsection (2)(e) above, while the discussion with the patient is taking place or as soon as practicable thereafter.

(4) The steps to be taken under subsection (1) above shall include giving the requisite information both orally and in writing.

(5) The responsible person in relation to a qualifying patient falling within section 130C(2) above (other than a patient liable to be detained by virtue of Part 3 of this Act) shall, except where the patient otherwise requests, take such steps as are practicable to furnish the person (if any) appearing to the responsible person to be the patient’s nearest relative with a copy of any information given to the patient in writing under subsection (1) above.

(6) The steps to be taken under subsection (5) above shall be taken when the information concerned is given to the patient or within a reasonable time thereafter.]

## NOTES

### Amendment

Inserted by the Mental Health Act 2007, s 30(1), (2); for transitional provisions and savings see s 53, Sch 10, paras 1, 8 thereto.

Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(c); for transitional provisions and savings see art 3, Schedule thereto.

Date in force (in relation to England): 1 April 2009: see SI 2009/139, art 2(a); for transitional provisions see art 3, Schedule thereto.

### [130E Independent mental health advocates: Wales]

[(1) The Welsh Ministers shall make such arrangements as they consider reasonable to enable persons (“independent mental health advocates”) to be available to help—

- (a) Welsh qualifying compulsory patients; and
- (b) Welsh qualifying informal patients.

(2) The Welsh Ministers may by regulations make provision as to the appointment of persons as independent mental health advocates.

(3) The regulations may, in particular, provide—

- (a) that a person may act as an independent mental health advocate only in such circumstances, or only subject to such conditions, as may be specified in the regulations;
- (b) for the appointment of a person as an independent mental health advocate to be subject to approval in accordance with the regulations.

(4) In making arrangements under this section, the Welsh Ministers shall have regard to the principle that any help available to a patient under the arrangements should, so far as practicable, be provided by a person who is independent of any person who—

- (a) is professionally concerned with the patient’s medical treatment; or
- (b) falls within a description specified in regulations made by the Welsh Ministers.

(5) For the purposes of subsection (4) above, a person is not to be regarded as professionally concerned with a patient’s medical treatment merely because he is representing him in accordance with arrangements—

- (a) under section 35 of the Mental Capacity Act 2005; or
- (b) of a description specified in regulations under this section.

(6) Arrangements under this section may include provision for payments to be made to, or in relation to, persons carrying out functions in accordance with the arrangements.

(7) Regulations under this section and sections 130F to 130H—

- (a) may make different provision for different cases;
- (b) may make provision which applies subject to specified exceptions;

- (c) may include transitional, consequential, incidental or supplemental provision.]

## NOTES

### Amendment

Inserted by the Mental Health (Wales) Measure 2010, s 31.

Date in force (for the purpose of conferring power to make regulations): 15 February 2011: see the Mental Health (Wales) Measure 2010, s 55(1), (2)(b).

Date in force (except in relation to Welsh qualifying informal patients): 3 January 2012: see SI 2011/3046, art 2(a); for transitional provision see art 5(2) thereof.

Date in force (for remaining purposes): 2 April 2012: see SI 2011/3046, art 3(a).

### Subordinate Legislation

Mental Health (Independent Mental Health Advocates) (Wales) Regulations 2011, SI 2011/2501 (made under sub-ss (2), (3), (4)(b), (5)(b), (7)).

### [130F Arrangements under section 130E for Welsh qualifying compulsory patients]

[(1) The help available to a Welsh qualifying compulsory patient under arrangements under section 130E shall include help in obtaining information about and understanding—

- (a) the provisions of this Act by virtue of which he is a qualifying compulsory patient;
- (b) any conditions or restrictions to which he is subject by virtue of this Act;
- (c) what (if any) medical treatment is given to him or is proposed or discussed in his case;
- (d) why it is given, proposed or discussed;
- (e) the authority under which it is, or would be, given; and
- (f) the requirements of this Act which apply, or would apply, in connection with the giving of the treatment to him.

(2) The help available under the arrangements to a Welsh qualifying compulsory patient shall also include—

- (a) help in obtaining information about and understanding any rights which may be exercised under this Act by or in relation to him;
- (b) help (by way of representation or otherwise)—
  - (i) in exercising the rights referred to in paragraph (a);
  - (ii) for patients who wish to become involved, or more involved, in decisions made about their care or treatment, or care or treatment generally;
  - (iii) for patients who wish to complain about their care or treatment;
- (c) the provision of information about other services which are or may be available to the patient;
- (d) other help specified in regulations made by the Welsh Ministers.]

## NOTES

### Amendment

Inserted by the Mental Health (Wales) Measure 2010, s 32.

Date in force (for the purpose of conferring power to make regulations): 15 February 2011: see the Mental Health (Wales) Measure 2010, s 55(1), (2)(b).

Date in force (for remaining purposes): 3 January 2012: see SI 2011/3046, art 2(b).

### **[130G Arrangements under section 130E for Welsh qualifying informal patients]**

[(1) The help available to a Welsh qualifying informal patient under arrangements under section 130E shall include help in obtaining information about and understanding—

- (a) what (if any) medical treatment is given to him or is proposed or discussed in his case;
- (b) why it is given, proposed or discussed;
- (c) the authority under which it is, or would be, given.

(2) The help available under the arrangements to a Welsh qualifying informal patient shall also include—

- (a) help (by way of representation or otherwise)—
  - (i) for patients who wish to become involved, or more involved, in decisions made about their care or treatment, or care or treatment generally;
  - (ii) for patients who wish to complain about their care or treatment;
- (b) the provision of information about other services which are or may be available to the patient;
- (c) other help specified in regulations made by the Welsh Ministers.]

### **NOTES**

#### **Amendment**

Inserted by the Mental Health (Wales) Measure 2010, s 33.

Date in force (for the purpose of conferring power to make regulations): 15 February 2011: see the Mental Health (Wales) Measure 2010, s 55(1), (2)(b).

Date in force (for remaining purposes): 2 April 2012: see SI 2011/3046, art 3(b).

### **[130H Independent mental health advocates for Wales: supplementary powers and duties]**

[(1) For the purpose of providing help to a patient in accordance with arrangements made under section 130E, an independent mental health advocate may—

- (a) visit and interview the patient in private;
- (b) visit and interview—
  - (i) any person who is professionally concerned with his medical treatment;
  - (ii) any other person who falls within a description specified in regulations made by the Welsh Ministers;
- (c) require the production of and inspect any records relating to his detention, treatment or assessment in any hospital or registered establishment or to any after-care services provided for him under section 117 above;
- (d) require the production of and inspect any records of, or held by, a local social services authority which relate to him.

(2) But an independent mental health advocate is not entitled to the production of, or to inspect, records in reliance on subsection (1)(c) or (d) above unless—

- (a) in a case where the patient has capacity or is competent to consent, he does consent; or

- (b) in any other case, the production or inspection would not conflict with a decision made by a donee or deputy or the Court of Protection and the person holding the records, having regard to such matters as may be prescribed in regulations under section 130E above, considers that—
  - (i) the records may be relevant to the help to be provided by the advocate;
  - (ii) the production or inspection is appropriate.

(3) For the purpose of providing help to a Welsh qualifying compulsory patient in accordance with the arrangements, an independent mental health advocate shall comply with any reasonable request made to him by any of the following for him to visit and interview the patient—

- (a) the patient;
- (b) the person (if any) appearing to the advocate to be the patient's nearest relative;
- (c) the responsible clinician for the purposes of this Act;
- (d) an approved mental health professional;
- (e) a registered social worker who is professionally concerned with the patient's care, treatment or assessment;
- (f) where the patient is liable to be detained in a hospital or registered establishment, the managers of the hospital or establishment or a person duly authorised on their behalf;
- (g) the patient's donee or deputy.

(4) For the purpose of providing help to a Welsh qualifying informal patient in accordance with the arrangements, an independent mental health advocate shall comply with any reasonable request made to him by any of the following for him to visit and interview the patient—

- (a) the patient;
- (b) the managers of the hospital or establishment in which the patient is an in-patient or a person duly authorised on their behalf;
- (c) any person appearing to the advocate to whom the request is made to be the patient's carer;
- (d) the patient's donee or deputy;
- (e) a registered social worker who is professionally concerned with the patient's care, treatment or assessment.

(5) But nothing in this Act prevents the patient from declining to be provided with help under the arrangements.

(6) In subsection (2) above the reference to a patient who has capacity is to be read in accordance with the Mental Capacity Act 2005.

(7) In subsection (4) above—

- (a) "carer", in relation to a Welsh qualifying informal patient, means an individual who provides or intends to provide a substantial amount of care on a regular basis for the patient, but does not include any individual who provides, or intends to provide care by virtue of a contract of employment or other contract with any person or as a volunteer for a body (whether or not incorporated);

- (b) “registered social worker” means a person included in the principal part or the visiting European part of a register maintained under section 56(1) of the Care Standards Act 2000.

(8) In subsections (2) to (4) above—

- (a) the reference to a donee is to a donee of a lasting power of attorney (within the meaning of section 9 of the Mental Capacity Act 2005) created by the patient, where the donee, in making the decision referred to in subsection (2) or the request referred to in subsection (3) or (4), is acting within the scope of his authority and in accordance with that Act;
- (b) the reference to a deputy is to a deputy appointed for the patient by the Court of Protection under section 16 of that Act, where the deputy, in making the decision referred to in subsection (2) or the request referred to in subsection (3) or (4), is acting within the scope of his authority and in accordance with that Act.]

## NOTES

### Amendment

Inserted by the Mental Health (Wales) Measure 2010, s 34.

Date in force (for the purpose of conferring power to make regulations): 15 February 2011: see the Mental Health (Wales) Measure 2010, s 55(1), (2)(b).

Date in force (except in relation to Welsh qualifying informal patients): 3 January 2012: see SI 2011/3046, art 2(c).

Date in force (for remaining purposes): 2 April 2012: see SI 2011/3046, art 3(c).

### Subordinate Legislation

Mental Health (Independent Mental Health Advocates) (Wales) Regulations 2011, SI 2011/2501 (made under sub-s (1)(b)).

### [130I Welsh qualifying compulsory patients]

[(1) This section applies for the purposes of section 130E above.

(2) A patient is a Welsh qualifying compulsory patient if he is—

- (a) liable to be detained under this Act (other than under section 135 or 136 below) and the hospital or registered establishment in which he is liable to be detained is situated in Wales;
- (b) subject to guardianship under this Act and the area of the responsible local social services authority within the meaning of section 34(3) above is situated in Wales; or
- (c) a community patient and the responsible hospital is situated in Wales.

(3) A patient is also a Welsh qualifying compulsory patient if the patient is to be regarded as being in Wales for the purposes of this subsection and—

- (a) not being a qualifying patient falling within subsection (2) above, he discusses with a registered medical practitioner or approved clinician the possibility of being given a form of treatment to which section 57 above applies; or
- (b) not having attained the age of 18 years and not being a qualifying patient falling within subsection (2) above, he discusses with a registered medical practitioner or approved clinician the possibility of being given a form of treatment to which section 58A above applies.

(4) For the purposes of subsection (3), a patient is to be regarded as being in Wales if that has been determined in accordance with arrangements made for the purposes of that subsection and section 130C(3), and published, by the Secretary of State and the Welsh Ministers.

(5) Where a patient who is a Welsh qualifying compulsory patient falling within subsection (3) above is informed that the treatment concerned is proposed in his case, he remains a qualifying patient falling within that subsection until—

- (a) the proposal is withdrawn; or
- (b) the treatment is completed or discontinued.]

## NOTES

### Amendment

Inserted by the Mental Health (Wales) Measure 2010, s 35.

Date in force (for the purpose of conferring power to make regulations): 15 February 2011: see the Mental Health (Wales) Measure 2010, s 55(1), (2)(b).

Date in force (for remaining purposes): 3 January 2012: see SI 2011/3046, art 2(d).

### [130J Welsh qualifying informal patients]

[(1) This section applies for the purposes of section 130E above.

(2) A patient is a Welsh qualifying informal patient if—

- (a) the patient is an in-patient at a hospital or registered establishment situated in Wales;
- (b) the patient is receiving treatment for, or assessment in relation to, mental disorder at the hospital or registered establishment; and
- (c) no application, order, direction or report renders the patient liable to be detained under this Act.]

## NOTES

### Amendment

Inserted by the Mental Health (Wales) Measure 2010, s 36.

Date in force (for the purpose of conferring power to make regulations): 15 February 2011: see the Mental Health (Wales) Measure 2010, s 55(1), (2)(b).

Date in force (for remaining purposes): 2 April 2012: see SI 2011/3046, art 3(d).

### [130K Duty to give information about independent mental health advocates to Welsh qualifying compulsory patients]

[(1) The responsible person in relation to a Welsh qualifying compulsory patient (within the meaning given by section 130I above) shall take such steps as are practicable to ensure that the patient understands—

- (a) that help is available to him from an independent mental health advocate; and
- (b) how he can obtain that help.

(2) In subsection (1) above, the “responsible person” means—

- (a) in relation to a Welsh qualifying compulsory patient falling within section 130I(2)(a) above (other than one also falling within paragraph (b) below), the managers of the hospital or registered establishment in which he is liable to be detained; or
- (b) in relation to a Welsh qualifying compulsory patient falling within section 130I(2)(a) above and conditionally discharged by virtue of section 42(2), 73 or 74 above, the responsible clinician;
- (c) in relation to a Welsh qualifying compulsory patient falling within section 130I(2)(b) above, the

- responsible local social services authority within the meaning of section 34(3) above;
- (d) in relation to a Welsh qualifying compulsory patient falling within section 130I(2)(c) above, the managers of the responsible hospital;
  - (e) in relation to a Welsh qualifying compulsory patient falling within section 130I(3) above, the registered medical practitioner or approved clinician with whom the patient first discusses the possibility of being given the treatment concerned.
- (3) The steps to be taken under subsection (1) above shall be taken—
- (a) where the responsible person falls within subsection (2)(a) above, as soon as practicable after the patient becomes liable to be detained;
  - (b) where the responsible person falls within subsection (2)(b) above, as soon as practicable after the conditional discharge;
  - (c) where the responsible person falls within subsection (2)(c) above, as soon as practicable after the patient becomes subject to guardianship;
  - (d) where the responsible person falls within subsection (2)(d) above, as soon as practicable after the patient becomes a community patient;
  - (e) where the responsible person falls within subsection (2)(e) above, while the discussion with the patient is taking place or as soon as practicable thereafter.
- (4) The steps to be taken under subsection (1) above shall include giving the requisite information both orally and in writing.
- (5) The responsible person in relation to a Welsh qualifying compulsory patient falling within section 130I(2) above (other than a patient liable to be detained by virtue of Part 3 of this Act) shall, except where the patient otherwise requests, take such steps as are practicable to furnish any person falling within subsection (6) with a copy of any information given to the patient in writing under subsection (1) above.
- (6) A person falls within this subsection if—
- (a) the person appears to the responsible person to be the patient's nearest relative;
  - (b) the person is a donee of a lasting power of attorney (within the meaning of section 9 of the Mental Capacity Act 2005) created by the patient and the scope of the donee's authority includes matters related to the care and treatment of the patient;
  - (c) the person is a deputy appointed for the patient by the Court of Protection under section 16 of that Act and the scope of the deputy's authority includes matters related to the care and treatment of the patient.
- (7) The steps to be taken under subsection (5) above shall be taken when the information concerned is given to the patient or within a reasonable time thereafter.]

## **NOTES**

### **Amendment**

Inserted by the Mental Health (Wales) Measure 2010, s 37.

Date in force (for the purpose of conferring power to make regulations): 15 February 2011: see the Mental Health (Wales) Measure 2010, s 55(1), (2)(b).

Date in force (for remaining purposes): 3 January 2012: see SI 2011/3046, art 2(e).

### **[130L Duty to give information about independent mental health advocates to Welsh qualifying**

## **informal patients]**

[(1) The responsible person in relation to a Welsh qualifying informal patient (within the meaning given by section 130J above) shall take such steps as are practicable to ensure that the patient understands—

- (a) that help is available to him from an independent mental health advocate; and
- (b) how he can obtain that help.

(2) In subsection (1) above, the “responsible person” means the managers of the hospital or registered establishment to which the patient is admitted as an in-patient.

(3) The steps to be taken under subsection (1) above shall be taken as soon as practicable after the patient becomes an in-patient.

(4) The steps to be taken under subsection (1) above shall include giving the requisite information both orally and in writing.

(5) The responsible person in relation to a Welsh qualifying informal patient shall, except where the patient otherwise requests, take such steps as are practicable to furnish any person falling within subsection (6) with a copy of any information given to the patient in writing under subsection (1) above.

(6) A person falls within this subsection if—

- (a) the person appears to the responsible person to be a carer of the patient;
- (b) the person is a donee of a lasting power of attorney (within the meaning of section 9 of the Mental Capacity Act 2005) created by the patient and the scope of the donee’s authority includes matters related to the care and treatment of the patient;
- (c) the person is a deputy appointed for the patient by the Court of Protection under section 16 of that Act and the scope of the deputy’s authority includes matters related to the care and treatment of the patient.

(7) In subsection (6), “carer”, in relation to a Welsh qualifying informal patient, means an individual who provides or intends to provide a substantial amount of care on a regular basis for the patient, but does not include any individual who provides, or intends to provide care by virtue of a contract of employment or other contract with any person or as a volunteer for a body (whether or not incorporated);

(8) The steps to be taken under subsection (5) above shall be taken when the information concerned is given to the patient or within a reasonable time thereafter.]

## **NOTES**

### **Amendment**

Inserted by the Mental Health (Wales) Measure 2010, s 38.

Date in force (for the purpose of conferring power to make regulations): 15 February 2011: see the Mental Health (Wales) Measure 2010, s 55(1), (2)(b).

Date in force (for remaining purposes): 2 April 2012: see SI 2011/3046, art 3(e).

## **131 Informal admission of patients**

(1) Nothing in this Act shall be construed as preventing a patient who requires treatment for mental disorder from being admitted to any hospital or [registered establishment] in pursuance of arrangements made in that behalf and without any application, order or direction rendering him liable to be detained under this Act, or from remaining in any hospital or [registered establishment] in pursuance of such

arrangements after he has ceased to be so liable to be detained.

[(2) Subsections (3) and (4) below apply in the case of a patient aged 16 or 17 years who has capacity to consent to the making of such arrangements as are mentioned in subsection (1) above.

(3) If the patient consents to the making of the arrangements, they may be made, carried out and determined on the basis of that consent even though there are one or more persons who have parental responsibility for him.

(4) If the patient does not consent to the making of the arrangements, they may not be made, carried out or determined on the basis of the consent of a person who has parental responsibility for him.

(5) In this section—

- (a) the reference to a patient who has capacity is to be read in accordance with the Mental Capacity Act 2005; and
- (b) “parental responsibility” has the same meaning as in the Children Act 1989.]

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 5.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (2): words from “even though there” to “Children Act 1989” in square brackets substituted by the Children Act 1989, s 108(5), (6), Sch 13, para 48(5), Sch 14, para 1.

Sub-s (1): words “registered establishment” in square brackets in both places they occur substituted by the Care Standards Act 2000, s 116, Sch 4, para 9(1), (2).

Date in force (in relation to England): 1 April 2002: see SI 2001/4150, art 3(3)(a); for transitional provisions see SI 2001/4150, arts 3(2), 4(1), (3), (4) and SI 2002/1493, art 4 (as amended by SI 2002/1493, art 6).

Date in force (in relation to Wales): 1 April 2002: see SI 2002/920, art 3(3)(d); for transitional provisions see arts 2, 3(2), (4), (6)–(10), Sch 1 thereto.

Sub-ss (2)–(5): substituted, for sub-s (2) as originally enacted, by the Mental Health Act 2007, s 43. Date in force: 1 January 2008: see SI 2007/2798, art 4.

## [131A Accommodation, etc for children]

[(1) This section applies in respect of any patient who has not attained the age of 18 years and who—

- (a) is liable to be detained in a hospital under this Act; or
- (b) is admitted to, or remains in, a hospital in pursuance of such arrangements as are mentioned in section 131(1) above.

(2) The managers of the hospital shall ensure that the patient’s environment in the hospital is suitable having regard to his age (subject to his needs).

(3) For the purpose of deciding how to fulfil the duty under subsection (2) above, the managers shall consult a person who appears to them to have knowledge or experience of cases involving patients who have not attained the age of 18 years which makes him suitable to be consulted.

(4) In this section, “hospital” includes a registered establishment.]

## NOTES

### Amendment

Inserted by the Mental Health Act 2007, s 31(1), (3).

Date in force: 1 April 2010: see SI 2010/143, art 2.

### 132 Duty of managers of hospitals to give information to detained patients

(1) The managers of a hospital or [registered establishment] in which a patient is detained under this Act shall take such steps as are practicable to ensure that the patient understands—

- (a) under which of the provisions of this Act he is for the time being detained and the effect of that provision; and
- (b) what rights of applying to a [tribunal] are available to him in respect of his detention under that provision;

and those steps shall be taken as soon as practicable after the commencement of the patient’s detention under the provision in question.

(2) The managers of a hospital or [registered establishment] in which a patient is detained as aforesaid shall also take such steps as are practicable to ensure that the patient understands the effect, so far as relevant in his case, of sections 23, 25, 56 to 64, 66(1)(g), 118 and 120 above and section 134 below; and those steps shall be taken as soon as practicable after the commencement of the patient’s detention in the hospital or [establishment].

(3) The steps to be taken under subsections (1) and (2) above shall include giving the requisite information both orally and in writing.

(4) The managers of a hospital or [registered establishment] in which a patient is detained as aforesaid shall, except where the patient otherwise requests, take such steps as are practicable to furnish the person (if any) appearing to them to be his nearest relative with a copy of any information given to him in writing under subsections (1) and (2) above; and those steps shall be taken when the information is given to the patient or within a reasonable time thereafter.

## NOTES

### Derivation

This section derived from the Mental Health (Amendment) Act 1982, s 57(1)–(4).

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): words “registered establishment” in square brackets substituted by the Care Standards Act 2000, s 116, Sch 4, para 9(1), (2).

Date in force (in relation to England): 1 April 2002: see SI 2001/4150, art 3(3)(a); for transitional provisions see SI 2001/4150, arts 3(2), 4(1), (3), (4) and SI 2002/1493, art 4 (as amended by SI 2002/1493, art 6).

Date in force (in relation to Wales): 1 April 2002: see SI 2002/920, art 3(3)(d); for transitional provisions see arts 2, 3(2), (4), (6)–(10), Sch 1 thereto.

Sub-s (1): in para (b) word “tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 63.

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (2): words “registered establishment” in square brackets substituted by the Care Standards

Act 2000, s 116, Sch 4, para 9(1), (2).

Date in force (in relation to England): 1 April 2002: see SI 2001/4150, art 3(3)(a); for transitional provisions see SI 2001/4150, arts 3(2), 4(1), (3), (4) and SI 2002/1493, art 4 (as amended by SI 2002/1493, art 6).

Date in force (in relation to Wales): 1 April 2002: see SI 2002/920, art 3(3)(d); for transitional provisions see arts 2, 3(2), (4), (6)–(10), Sch 1 thereto.

Sub-s (2): word “establishment” in square brackets substituted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 29.

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1–12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (4): words “registered establishment” in square brackets substituted by the Care Standards Act 2000, s 116, Sch 4, para 9(1), (2).

Date in force (in relation to England): 1 April 2002: see SI 2001/4150, art 3(3)(a); for transitional provisions see SI 2001/4150, arts 3(2), 4(1), (3), (4) and SI 2002/1493, art 4 (as amended by SI 2002/1493, art 6).

Date in force (in relation to Wales): 1 April 2002: see SI 2002/920, art 3(3)(d); for transitional provisions see arts 2, 3(2), (4), (6)–(10), Sch 1 thereto.

### **[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 [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.]

### **NOTES**

#### **Amendment**

Inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 30.

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (1): in para (b) word “tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 64.

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

### **133 Duty of managers of hospitals to inform nearest relatives of discharge**

(1) Where a patient liable to be detained under this Act in a hospital or [registered establishment] is to be discharged otherwise than by virtue of an order for discharge made by his nearest relative, the managers of the hospital or [registered establishment] shall, subject to subsection (2) below, take such steps as are practicable to inform the person (if any) appearing to them to be the nearest relative of the patient; and that information shall, if practicable, be given at least seven days before the date of

discharge.

[(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.]

(2) Subsection (1) above shall not apply if the patient or his nearest relative has requested that information about the patient's discharge should not be given under this section.

## NOTES

### Derivation

This section derived from the Mental Health (Amendment) Act 1982, s 58(1), (2).

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): words "registered establishment" in square brackets in both places they occur substituted by the Care Standards Act 2000, s 116, Sch 4, para 9(1), (2).

Date in force (in relation to England): 1 April 2002: see SI 2001/4150, art 3(3)(a); for transitional provisions see SI 2001/4150, arts 3(2), 4(1), (3), (4) and SI 2002/1493, art 4 (as amended by SI 2002/1493, art 6).

Date in force (in relation to Wales): 1 April 2002: see SI 2002/920, art 3(3)(d); for transitional provisions see arts 2, 3(2), (4), (6)–(10), Sch 1 thereto.

Sub-ss (1A), (1B): inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 31.

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

## 134 Correspondence of patients

(1) A postal packet addressed to any person by a patient detained in a hospital under this Act and delivered by the patient for dispatch may be withheld from [the postal operator concerned]—

- (a) if that person has requested that communications addressed to him by the patient should be withheld; or
- (b) subject to subsection (3) below, if the hospital is [one at which high security psychiatric services are provided] and the managers of the hospital consider that the postal packet is likely—
  - (i) to cause distress to the person to whom it is addressed or to any other person (not being a person on the staff of the hospital); or
  - (ii) to cause danger to any person;

and any request for the purposes of paragraph (a) above shall be made by a notice in writing given to the managers of the hospital, [or] the [approved clinician with overall responsibility for the patient's case] . . .

(2) Subject to subsection (3) below, a postal packet addressed to a patient detained [under this Act in a hospital at which high security psychiatric services are provided] may be withheld from the patient if, in

the opinion of the managers of the hospital, it is necessary to do so in the interests of the safety of the patient or for the protection of other persons.

(3) Subsections (1)(b) and (2) above do not apply to any postal packet addressed by a patient to, or sent to a patient by or on behalf of—

- (a) any Minister of the Crown [or the Scottish Ministers] or Member of either House of Parliament [or member of the Scottish Parliament] [or of the Northern Ireland Assembly];
- [(aa) any of the Welsh Ministers, the Counsel General to the Welsh Assembly Government or a member of the National Assembly for Wales;]
- [(b) any judge or officer of the Court of Protection, any of the Court of Protection Visitors or any person asked by that Court for a report under section 49 of the Mental Capacity Act 2005 concerning the patient;]
- (c) the Parliamentary Commissioner for Administration, [the Scottish Public Services Ombudsman,] [the Public Services Ombudsman for Wales,] the Health Service Commissioner for England. . . or a Local Commissioner within the meaning of Part III of the Local Government Act 1974;
- [(ca) the Care Quality Commission;]
- (d) [the First-tier Tribunal or the Mental Health Review Tribunal for Wales];
- (e) [the National Health Service Commissioning Board, a clinical commissioning group,] a [. . .] [Local Health Board] [[or Special Health Authority] . . .], a local social services authority, a Community Health Council[. . .], a [local probation board established under section 4 of the Criminal Justice and Court Services Act 2000] [or a provider of probation services];
- [(ea) a provider of a patient advocacy and liaison service for the assistance of patients at the hospital and their families and carers;
- (eb) a provider of independent advocacy services for the patient;]
- (f) the managers of the hospital in which the patient is detained;
- (g) any legally qualified person instructed by the patient to act as his legal adviser; or
- (h) the European Commission of Human Rights or the European Court of Human Rights

[and for the purposes of paragraph (d) above the reference to the First-tier Tribunal is a reference to that tribunal so far as it is acting for the purposes of any proceedings under this Act or paragraph 5(2) of the Schedule to the Repatriation of Prisoners Act 1984].

[(3A) In subsection (3) above—

- (a) “patient advocacy and liaison service” means a service of a description prescribed by regulations made by the Secretary of State, and
- [(b) “independent advocacy services” means services provided under—
  - (i) arrangements under section 130A [or section 130E] above;
  - (ii) arrangements under [section 223A of the Local Government and Public Involvement in Health Act 2007] or section 187 of the National Health Service (Wales) Act 2006; or

(iii) arrangements of a description prescribed as mentioned in paragraph (a) above].]

(4) The managers of a hospital may inspect and open any postal packet for the purposes of determining—

- (a) whether it is one to which subsection (1) or (2) applies, and
- (b) in the case of a postal packet to which subsection (1) or (2) above applies, whether or not it should be withheld under that subsection;

and the power to withhold a postal packet under either of those subsections includes power to withhold anything contained in it.

(5) Where a postal packet or anything contained in it is withheld under subsection (1) or (2) above the managers of the hospital shall record that fact in writing.

(6) Where a postal packet or anything contained in it is withheld under subsection (1)(b) or (2) above the managers of the hospital shall within seven days give notice of that fact to the patient and, in the case of a packet withheld under subsection (2) above, to the person (if known) by whom the postal packet was sent; and any such notice shall be given in writing and shall contain a statement of the effect of [section 134A(1) to (4)].

(7) The functions of the managers of a hospital under this section shall be discharged on their behalf by a person on the staff of the hospital appointed by them for that purpose and different persons may be appointed to discharge different functions.

(8) The Secretary of State may make regulations with respect to the exercise of the powers conferred by this section.

(9) In this section [and section 134A] “hospital” has the same meaning as in Part II of this Act [and “postal operator” and] “postal packet” [have] the same meaning as in [Part 3 of the Postal Services Act 2011 (see section 27)]. . .

## NOTES

### Derivation

This section derived from the Mental Health (Amendment) Act 1982, s 52.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): words “the postal operator concerned” in square brackets substituted by the Postal Services Act 2000, s 127(4), Sch 8, Pt II, para 19(1), (2).

Date in force: 26 March 2001: see SI 2001/1148, art 2(2), Schedule.

Sub-s (1): in para (b) words “one at which high security psychiatric services are provided” in square brackets substituted by the Health Act 1999, s 65, Sch 4, paras 65, 68(a).

Date in force: 1 April 2000: see SI 1999/2793, art 2(3)(a), Sch 3.

Sub-s (1): word “or” in square brackets inserted by the Health and Social Care Act 2012, s 44(1)(a).

Date in force (in so far as is necessary for enabling the exercise of any power to make an order or regulations or to give directions): 27 March 2012: see the Health and Social Care Act 2012, s 306(1)(d).

Date in force (for remaining purposes): 1 July 2012: see SI 2012/1319, art 2(1), (3); for transitional provisions see the Health and Social Care Act 2012, s 44(2).

Sub-s (1): words “approved clinician with overall responsibility for the patient’s case” in square brackets substituted by the Mental Health Act 2007, s 14(1), (4).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (1): words omitted repealed by the Health and Social Care Act 2012, s 44(1)(b).  
Date in force: 1 July 2012: see SI 2012/1319, art 2(1), (3); for savings see the Health and Social Care Act 2012, s 44(2).

Sub-s (2): words “under this Act in a hospital at which high security psychiatric services are provided” in square brackets substituted by the Health Act 1999, s 65, Sch 4, paras 65, 68(b).  
Date in force: 1 April 2000: see SI 1999/2793, art 2(3)(a), Sch 3.

Sub-s (3): in para (a) words “or the Scottish Ministers” in square brackets inserted by SI 1999/1820, art 4, Sch 2, Pt I, para 71(1), (2).  
Date in force: 1 July 1999: see SI 1999/1820, art 1(2).

Sub-s (3): in para (a) words “or member of the Scottish Parliament” in square brackets inserted by SI 1999/1820, art 4, Sch 2, Pt I, para 71(1), (2).  
Date in force: 1 July 1999: see SI 1999/1820, art 1(2).

Sub-s (3): in para (a) words “or of the Northern Ireland Assembly” in square brackets inserted by the Northern Ireland Act 1998, s 99, Sch 13, para 5(1), (2).  
Date in force: 2 December 1999: see SI 1999/3209, art 2, Schedule.

Sub-s (3): para (aa) inserted by SI 2007/1388, art 3, Sch 1, para 18.  
Date in force: this amendment came into force on 25 May 2007 being the date on which the initial period ended (following the appointment of the First Minister): see SI 2007/1388, art 1(2) and the Government of Wales Act 2006, ss 46, 161(5).

Sub-s (3): para (b) substituted by the Mental Capacity Act 2005, s 67(1), Sch 6, para 29(1), (2).  
Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(d).

Sub-s (3): in para (c) words “the Scottish Public Services Ombudsman,” in square brackets inserted by SI 2004/1823, art 9.  
Date in force: 14 July 2004: see SI 2004/1823, art 1.

Sub-s (3): in para (c) words “the Public Services Ombudsman for Wales,” in square brackets substituted (for words as inserted by the Government of Wales Act 1998, s 125, Sch 12, para 22) by the Public Services Ombudsman (Wales) Act 2005, s 39(1), Sch 6, para 21(a).  
Date in force: 1 April 2006: see SI 2005/2800, art 5(1); for further effect in relation to complaints made or referred to the Ombudsman about a matter relating to events that occurred before or after 1 April 2006, and in relation to estimates for income and expenses in relation to the financial year ending 31 March 2007, see arts 6, 7 thereof.

Sub-s (3): in para (c) words omitted repealed by the Public Services Ombudsman (Wales) Act 2005, s 39(1), Sch 6, para 21(b), Sch 7.  
Date in force: 1 April 2006: see SI 2005/2800, art 5(1); for further effect in relation to complaints made or referred to the Ombudsman about a matter relating to events that occurred before or after 1 April 2006, and in relation to estimates for income and expenses in relation to the financial year ending 31 March 2007, see arts 6, 7 thereof.

Sub-s (3): para (ca) inserted by the Health and Social Care Act 2008, s 52(5), Sch 3, paras 1, 11(1), (2).  
Date in force: 1 April 2009: see SI 2009/462, art 2(1), Sch 1, para 33.

Sub-s (3): in para (d) words “the First-tier Tribunal or the Mental Health Review Tribunal for Wales” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 65(a).  
Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (3): in para (e) words “the National Health Service Commissioning Board, a clinical commissioning group,” in square brackets inserted by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 24, 29(a).  
Date in force (in so far as is necessary for enabling the exercise of any power to make an order or regulations or to give directions): 27 March 2012: see the Health and Social Care Act 2012, s 306(1)(d).  
Date in force (for remaining purposes): 1 April 2013: see SI 2013/160, art 2.

Sub-s (3): in para (e) words omitted inserted by SI 2002/2469, reg 4, Sch 1, Pt 1, para 10(1), (2).  
Date in force: 1 October 2002: see SI 2002/2469, reg 1.

Sub-s (3): in para (e) first words omitted repealed by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 24, 29(b).

Date in force: 1 April 2013: see SI 2013/160, art 2.

Sub-s (3): in para (e) words "Local Health Board" in square brackets substituted by SI 2007/961, art 3, Schedule, para 13(1), (10).

Date in force: 1 April 2007: see SI 2007/961, art 1(1).

Sub-s (3): in para (e) words "Special Health Authority or Primary Care Trust" in square brackets substituted by SI 2000/90, art 3(1), Sch 1, para 16(1), (7).

Date in force: 8 February 2000: see SI 2000/90, art 1.

Sub-s (3): in para (e) words "or Special Health Authority" in square brackets substituted by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 24, 29(c).

Date in force (in so far as is necessary for enabling the exercise of any power to make an order or regulations or to give directions): 27 March 2012: see the Health and Social Care Act 2012, s 306(1)(d).

Date in force (for remaining purposes): 1 April 2013: see SI 2013/160, art 2.

Sub-s (3): in para (e) second words omitted repealed by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 24, 29(d).

Date in force: 1 April 2013: see SI 2013/160, art 2.

Sub-s (3): in para (e) third words in square brackets omitted inserted by the National Health Service Reform and Health Care Professions Act 2002, s 19(6).

Date in force: 1 September 2003: see SI 2003/2246, art 2(a).

Sub-s (3): in para (e) third words omitted repealed by the Local Government and Public Involvement in Health Act 2007, s 241, Sch 18, Pt 18.

Date in force: 1 April 2008: see SI 2008/461, art 2(3), Schedule.

Sub-s (3): in para (e) word "a" in square brackets substituted by SI 2008/912, art 3, Sch 1, Pt 1, para 7.

Date in force: 1 April 2008: see SI 2008/912, art 1.

Sub-s (3): in para (e) words "local probation board established under section 4 of the Criminal Justice and Court Services Act 2000" in square brackets substituted by the Criminal Justice and Court Services Act 2000, s 74, Sch 7, Pt II, paras 72, 74.

Date in force: 1 April 2001: see SI 2001/919, art 2(f)(ii).

Sub-s (3): in para (e) words "or a provider of probation services" in square brackets inserted by SI 2008/912, art 3, Sch 1, Pt 1, para 7.

Date in force: 1 April 2008: see SI 2008/912, art 1.

Sub-s (3): paras (ea), (eb) inserted by the Health and Social Care Act 2001, s 67(1), Sch 5, Pt 1, para 6(1), (2).

Date in force (in relation to Wales): 1 July 2002: see SI 2002/1475, art 2(1), Schedule, Pt 1.

Date in force (in relation to England): 1 September 2003: see SI 2003/2245, art 2(b).

Sub-s (3): words from "and for the" to "the Repatriation of Prisoners Act 1984" in square brackets inserted by SI 2008/2833, art 9(1), Sch 3, paras 39, 65(b).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (3A): inserted by the Health and Social Care Act 2001, s 67(1), Sch 5, Pt 1, para 6(1), (3).

Date in force (in relation to Wales): 1 July 2002: see SI 2002/1475, art 2(1), Schedule, Pt 1.

Date in force (in relation to England): 1 September 2003: see SI 2003/2245, art 2(b).

Sub-s (3A): para (b) substituted by the Mental Health Act 2007, s 30(1), (3); for transitional provisions and savings see s 53, Sch 10, paras 1, 8 thereto.

Date in force (for the purposes of making regulations): 1 April 2008: see SI 2008/745, art 2(b)(ii).

Date in force (in relation to Wales for remaining purposes): 3 November 2008: see SI 2008/2561, art 2(c); for transitional provisions and savings see art 3, Schedule thereto.

Date in force (in relation to England for remaining purposes): 1 April 2009: see SI 2009/139, art 2(a); for transitional provisions see art 3, Schedule thereto.

Sub-s (3A): in para (b)(i) words "or section 130E" in square brackets inserted, in relation to Wales, by the Mental Health (Wales) Measure 2010, s 53(1), Sch 1, paras 1, 8.

Date in force (for the purpose of conferring power to make regulations): 15 February 2011: see the Mental Health (Wales) Measure 2010, s 55(1), (2)(b).

Date in force (except in relation to Welsh qualifying informal patients): 3 January 2012: see SI 2011/3046, art 2(i), (k).

Date in force (for remaining purposes): 2 April 2012: see SI 2011/3046, art 3(j).

Sub-s (3A): in para (b)(ii) words from “section 223A of” to “Health Act 2007” in square brackets substituted by the Health and Social Care Act 2012, s 185(3).

Date in force: 1 April 2013: see SI 2013/160, art 2.

Sub-s (6): words “section 134A(1) to (4)” in square brackets substituted by the Health and Social Care Act 2008, s 52(5), Sch 3, paras 1, 11(1), (3).

Date in force: 1 April 2009: see SI 2009/462, art 2(1), Sch 1, para 33.

Sub-s (9): words “and section 134A” in square brackets inserted by the Health and Social Care Act 2008, s 52(5), Sch 3, paras 1, 11(1), (4).

Date in force: 1 April 2009: see SI 2009/462, art 2(1), Sch 1, para 33.

Sub-s (9): words “and “postal operator” and” in square brackets inserted by the Postal Services Act 2000, s 127(4), Sch 8, Pt II, para 19(1), (3)(a).

Date in force: 26 March 2001: see SI 2001/1148, art 2(2), Schedule.

Sub-s (9): word “have” in square brackets substituted by the Postal Services Act 2000, s 127(4), Sch 8, Pt II, para 19(1), (3)(b).

Date in force: 26 March 2001: see SI 2001/1148, art 2(2), Schedule.

Sub-s (9): words “Part 3 of the Postal Services Act 2011 (see section 27)” in square brackets substituted by the Postal Services Act 2011, s 91(1), (2), Sch 12, Pt 3, para 115.

Date in force: 1 October 2011: see SI 2011/2329, art 3(1).

Sub-s (9): words omitted repealed by the Postal Services Act 2000, s 127(6), Sch 9.

Date in force: 26 March 2001: see SI 2001/1148, art 2(2), Schedule.

#### **Modification**

Modified, by the Wales Act 2014, s 4(4)(a).

#### **Subordinate Legislation**

Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008, SI 2008/1184 (made under sub-ss (3A)(a), (8)).

Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) Regulations 2008, SI 2008/2439 (made under sub-ss (3A)(a), (8)).

#### **[134A Review of decisions to withhold correspondence]**

[(1) The regulatory authority must review any decision to withhold a postal packet (or anything contained in it) under subsection (1)(b) or (2) of section 134 if an application for a review of the decision is made—

- (a) in a case under subsection (1)(b) of that section, by the patient; or
- (b) in a case under subsection (2) of that section, either by the patient or by the person by whom the postal packet was sent.

(2) An application under subsection (1) must be made within 6 months of receipt by the applicant of the notice referred to in section 134(6).

(3) On an application under subsection (1), the regulatory authority may direct that the postal packet (or anything contained in it) is not to be withheld.

(4) The managers of the hospital concerned must comply with any such direction.

(5) The Secretary of State may by regulations make provision in connection with the making to and determination by the Care Quality Commission of applications under subsection (1), including provision for the production to the Commission of any postal packet which is the subject of such an application.

(6) The Welsh Ministers may by regulations make provision in connection with the making to them of

applications under subsection (1), including provision for the production to them of any postal packet which is the subject of such an application.]

## NOTES

### Amendment

Inserted by the Health and Social Care Act 2008, s 52(5), Sch 3, paras 1, 12.

Date in force (in so far as it confers power to make subordinate legislation): 21 July 2008: see the Health and Social Care Act 2008, s 170(1)(b).

Date in force (for remaining purposes): 1 April 2009: see SI 2009/462, art 2(1), Sch 1, para 33.

### 135 Warrant to search for and remove patients

(1) If it appears to a justice of the peace, on information on oath laid by an [approved mental health professional], that there is reasonable cause to suspect that a person believed to be suffering from mental disorder—

- (a) has been, or is being, ill-treated, neglected or kept otherwise than under proper control, in any place within the jurisdiction of the justice, or
- (b) being unable to care for himself, is living alone in any such place,

the justice may issue a warrant authorising any constable . . . to enter, if need be by force, any premises specified in the warrant in which that person is believed to be, and, if thought fit, to remove him to a place of safety with a view to the making of an application in respect of him under Part II of this Act, or of other arrangements for his treatment or care.

(2) If it appears to a justice of the peace, on information on oath laid by any constable or other person who is authorised by or under this Act or under *section 83 of the [Mental Health (Scotland) Act 1984]* [article 8 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005] to take a patient to any place, or to take into custody or retake a patient who is liable under this Act or under the said *section 83* [article 8] to be so taken or retaken—

- (a) that there is reasonable cause to believe that the patient is to be found on premises within the jurisdiction of the justice; and
- (b) that admission to the premises has been refused or that a refusal of such admission is apprehended,

the justice may issue a warrant authorising any constable < . . . > to enter the premises, if need be by force, and remove the patient.

(3) A patient who is removed to a place of safety in the execution of a warrant issued under this section may be detained there for a period not exceeding 72 hours.

[(3A) A constable, an approved mental health professional or a person authorised by either of them for the purposes of this subsection may, before the end of the period of 72 hours mentioned in subsection (3) above, take a person detained in a place of safety under that subsection to one or more other places of safety.

(3B) A person taken to a place of safety under subsection (3A) above may be detained there for a period ending no later than the end of the period of 72 hours mentioned in subsection (3) above.]

(4) In the execution of a warrant issued under subsection (1) above, [a constable] shall be accompanied by an [approved mental health professional] and by a registered medical practitioner, and in the execution of a warrant issued under subsection (2) above [a constable] may be accompanied—

- (a) by a registered medical practitioner;
- (b) by any person authorised by or under this Act or under *section 83 of the [Mental Health (Scotland) Act 1984]* [article 8 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005] to take or retake the patient.

(5) It shall not be necessary in any information or warrant under subsection (1) above to name the patient concerned.

(6) In this section “place of safety” means residential accommodation provided by a local social services authority under [Part 1 of the Care Act 2014 or] Part III of the National Assistance Act 1948 < . . . > , a hospital as defined by this Act, a police station, [an independent hospital or care home] for mentally disordered persons or any other suitable place the occupier of which is willing temporarily to receive the patient.

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 135.

### Initial Commencement

#### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): words “approved mental health professional” in square brackets substituted by the Mental Health Act 2007, s 21, Sch 2, paras 1, 10(a).

Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.

Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.

Sub-s (1): words omitted repealed by the Police and Criminal Evidence Act 1984, s 119, Sch 7, Part I.

Sub-s (2): words “section 83 of the Mental Health (Scotland) Act 1984” in italics repealed and subsequent words in square brackets substituted, in relation to England and Wales, by SI 2005/2078, art 15, Sch 1, para 2(1), (9)(a)(i).

Date in force: 5 October 2005: see SI 2005/2078, art 1(1).

Sub-s (2): words “Mental Health (Scotland) Act 1984” in square brackets substituted by the Mental Health (Scotland) Act 1984, s 127(1), Sch 3, para 56.

Sub-s (2): words “section 83” in italics repealed and subsequent words in square brackets substituted, in relation to England and Wales, by SI 2005/2078, art 15, Sch 1, para 2(1), (9)(a)(ii).

Date in force: 5 October 2005: see SI 2005/2078, art 1(1).

Sub-s (2): words omitted repealed by the Police and Criminal Evidence Act 1984, s 119, Sch 7, Part I.

Sub-ss (3A), (3B): inserted by the Mental Health Act 2007, s 44(1), (2).

Date in force: 30 April 2008: see SI 2008/800, art 2.

Sub-s (4): words “a constable” in square brackets in both places they occur substituted by the Police and Criminal Evidence Act 1984, s 119, Sch 6, Part I.

Sub-s (4): words “approved mental health professional” in square brackets substituted by the Mental Health Act 2007, s 21, Sch 2, paras 1, 10(a).

Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.

Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.

Sub-s (4): in para (b) words “section 83 of the Mental Health (Scotland) Act 1984” in italics repealed and subsequent words in square brackets substituted, in relation to England and Wales, by SI 2005/2078, art 15, Sch 1, para 2(1), (9)(b).

Date in force: 5 October 2005: see SI 2005/2078, art 1(1).

Sub-s (4): in para (b) words “Mental Health (Scotland) Act 1984” in square brackets substituted by the Mental Health (Scotland) Act 1984, s 127(1), Sch 3, para 56.

Sub-s (6): words “Part 1 of the Care Act 2014 or” in square brackets inserted by SI 2015/914, art 2, Schedule, paras 27, 29.

Date in force: 1 April 2015: see SI 2015/914, art 1(2) and the Care Act 2014, s 1; for savings and transitional provision see art 3.

Sub-s (6): words omitted repealed by the National Health Service and Community Care Act 1990, s 66(2), Sch 10.

Sub-s (6): words “an independent hospital or care home” in square brackets substituted by the Care Standards Act 2000, s 116, Sch 4, para 9(1), (9).

Date in force (in relation to England): 1 April 2002: see SI 2001/4150, art 3(3)(a); for transitional provisions see SI 2001/4150, arts 3(2), 4(1), (3), (4) and SI 2002/1493, art 4 (as amended by SI 2002/1493, art 6).

Date in force (in relation to Wales): 1 April 2002: see SI 2002/920, art 3(3)(d); for transitional provisions see arts 2, 3(2), (4), (6)–(10), Sch 1 thereto.

### **136 Mentally disordered persons found in public places**

(1) If a constable finds in a place to which the public have access a person who appears to him to be suffering from mental disorder and to be in immediate need of care or control, the constable may, if he thinks it necessary to do so in the interests of that person or for the protection of other persons, remove that person to a place of safety within the meaning of section 135 above.

(2) A person removed to a place of safety under this section may be detained there for a period not exceeding 72 hours for the purpose of enabling him to be examined by a registered medical practitioner and to be interviewed by an [approved mental health professional] and of making any necessary arrangements for his treatment or care.

[(3) A constable, an approved mental health professional or a person authorised by either of them for the purposes of this subsection may, before the end of the period of 72 hours mentioned in subsection (2) above, take a person detained in a place of safety under that subsection to one or more other places of safety.

(4) A person taken to a place of a safety under subsection (3) above may be detained there for a purpose mentioned in subsection (2) above for a period ending no later than the end of the period of 72 hours mentioned in that subsection.]

### **NOTES**

#### **Derivation**

This section derived from the Mental Health Act 1959, s 136.

#### **Initial Commencement**

##### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

#### **Amendment**

Sub-s (2): words “approved mental health professional” in square brackets substituted by the Mental Health Act 2007, s 21, Sch 2, paras 1, 10(b).

Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.

Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.

Sub-ss (3), (4): inserted by the Mental Health Act 2007, s 44(1), (3).

Date in force: 30 April 2008: see SI 2008/800, art 2.

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

(1) Any person required or authorised by or by virtue of this Act to be conveyed to any place or to be kept in custody or detained in a place of safety or at any place to which he is taken under section 42(6) above 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.

#### **NOTES**

##### **Derivation**

This section derived from the Mental Health Act 1959, s 139.

##### **Initial Commencement**

###### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

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

(1) If any person who is in legal custody by virtue of section 137 above 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 [approved mental health professional];
- (b) if at the time of the escape he was liable to be detained in a hospital within the meaning of Part II of this Act, or subject to guardianship under this Act, [or a community patient who was recalled to hospital under section 17E above,] by any other person who could take him into custody under section 18 above if he had absented himself without leave.

(2) A person to whom paragraph (b) of subsection (1) above applies shall not be retaken under this section after the expiration of the period within which he could be retaken under section 18 above if he had absented himself without leave on the day of the escape unless he is subject to a restriction order under Part III of this Act or an order or direction having the same effect as such an order; and subsection (4) of the said section 18 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 135 or 136 above shall not be retaken under this section after the expiration of the period of 72 hours beginning with the time when he escapes or the period during which he is liable to be so detained, whichever expires first.

(4) This section, so far as it relates to the escape of a person liable to be detained in a hospital within the meaning of Part II 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 19 above, or of any order, direction or authorisation under Part III or VI of this Act (other than under section 35, 36, 38, 53, 83 or 85) . . . ; or
- (b) while being taken to or detained in a place of safety in pursuance of an order under Part III of this Act (other than under section 35, 36 or 38 above) 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 in that hospital, as if he had been so received.

(5) In computing for the purposes of the power to give directions under section 37(4) above and for the purposes of sections 37(5) and 40(1) above the period of 28 days mentioned in those sections, 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 21 above 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 and references in that section to section 18 above shall be construed accordingly.

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 140.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): in para (a) words “approved mental health professional” in square brackets substituted by the Mental Health Act 2007, s 21, Sch 2, paras 1, 10(c).

Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.

Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.

Sub-s (1): in para (b) words “or a community patient who was recalled to hospital under section 17E above,” in square brackets inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 32.

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (4): in para (a) words omitted repealed by the Health and Social Care Act 2012, s 42(3).

Date in force: 1 July 2012: see SI 2012/1319, art 2(1), (3); for savings see the Health and Social Care Act 2012, s 42(5).

## 139 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 made under this Act, . . . unless the act was done in bad faith or without reasonable care.

(2) No civil proceedings shall be brought against any person in any court in respect of any such act without the leave of the High Court; and no criminal proceedings shall be brought against any person in any court in respect of any such act except by or with the consent of the Director of Public Prosecutions.

(3) This section does not apply to proceedings for an offence under this Act, being proceedings which, under any other provision of this Act, can be instituted only by or with the consent of the Director of Public Prosecutions.

(4) This section does not apply to proceedings against the Secretary of State or against [the National Health Service Commissioning Board, a clinical commissioning group,] a [ . . . ] [Local Health Board] [[or

Special Health Authority] . . .] [or against a National Health Service trust established under [*the National Health Service Act 2006* or the National Health Service (Wales) Act 2006]] [or NHS foundation trust] [or against the Department of Justice in Northern Ireland] [or against a person who has functions under this Act by virtue of section 12ZA in so far as the proceedings relate to the exercise of those functions].

(5) In relation to Northern Ireland the reference in this section to the Director of Public Prosecutions shall be construed as a reference to the Director of Public Prosecutions for Northern Ireland.

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 141.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): words omitted repealed by the Mental Capacity Act 2005, s 67(1), (2), Sch 6, para 29(1), (3), Sch 7.

Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(d).

Sub-s (4): words “the National Health Service Commissioning Board, a clinical commissioning group,” in square brackets inserted by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 24, 30(a).

Date in force (in so far as is necessary for enabling the exercise of any power to make an order or regulations or to give directions): 27 March 2012: see the Health and Social Care Act 2012, s 306(1)(d).

Date in force (for remaining purposes): 1 April 2013: see SI 2013/160, art 2; for savings see art 10, Schedule, paras 1, 3 thereto.

Sub-s (4): first words in square brackets omitted inserted by SI 2002/2469, reg 4, Sch 1, Pt 1, para 10(1), (3).

Date in force: 1 October 2002: see SI 2002/2469, reg 1.

Sub-s (4): first words omitted repealed by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 24, 30(b).

Date in force: 1 April 2013: see SI 2013/160, art 2; for savings see art 10, Schedule, paras 1, 3 thereto.

Sub-s (4): words “Local Health Board” in square brackets substituted by SI 2007/961, art 3, Schedule, para 13(1), (11).

Date in force: 1 April 2007: see SI 2007/961, art 1(1).

Sub-s (4): words in square brackets containing the words “Special Health Authority” substituted by SI 2000/90, art 3(1), Sch 1, para 16(1), (8).

Date in force: 8 February 2000: see SI 2000/90, art 1.

Sub-s (4): words “or Special Health Authority” in square brackets substituted by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 24, 30(c).

Date in force (in so far as is necessary for enabling the exercise of any power to make an order or regulations or to give directions): 27 March 2012: see the Health and Social Care Act 2012, s 306(1)(d).

Date in force (for remaining purposes): 1 April 2013: see SI 2013/160, art 2; for savings see art 10, Schedule, paras 1, 3 thereto.

Sub-s (4): second words omitted repealed by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 24, 30(d).

Date in force: 1 April 2013: see SI 2013/160, art 2; for savings see art 10, Schedule, paras 1, 3 thereto.

Sub-s (4): words in square brackets beginning with the words “or against a National Health Service” inserted by the National Health Service and Community Care Act 1990, s 66(1), Sch 9, para 24(7).

Sub-s (4): words “the National Health Service Act 2006 or the National Health Service (Wales) Act

2006” in square brackets substituted by the National Health Service (Consequential Provisions) Act 2006, s 2, Sch 1, paras 62, 69.

Date in force: 1 March 2007: see the National Health Service (Consequential Provisions) Act 2006, s 8(2).

Sub-s (4): words “the National Health Service Act 2006 or” in italics repealed by the Health and Social Care Act 2012, s 179(6), Sch 14, Pt 2, para 50.

Date in force: to be appointed: see the Health and Social Care Act 2012, s 306(4).

Sub-s (4): words “or NHS foundation trust” in square brackets inserted by the Health and Social Care (Community Health and Standards) Act 2003, s 34, Sch 4, paras 50, 56.

Date in force: 1 April 2004: see SI 2004/759, art 2.

Sub-s (4): words “or against the Department of Justice in Northern Ireland” in square brackets inserted by SI 2010/976, art 12, Sch 14, para 28(1), (5).

Date in force: 12 April 2010 (being the date on which the Northern Ireland Act 1998 (Amendment of Schedule 3) Order 2010, SI 2010/977 came into force): see SI 2010/976, art 1(2); for transitional provisions see arts 28–31 thereof.

Sub-s (4): words from “or against a” to “of those functions” in square brackets inserted by the Health and Social Care Act 2012, s 38(3).

Date in force: 1 April 2013: see SI 2013/160, art 2.

### **Modification**

Certain functions of a Minister of the Crown under this Act are, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3). Sch 1 to the 1999 Order (as amended) further provides that, in relation to this transfer of functions, sub-s (4) above shall have effect as if after the words “the Secretary of State” there were inserted “the National Assembly for Wales”.

### **[140 Notification of hospitals having arrangements for special cases]**

It shall be the duty of [every clinical commissioning group and of] [. . .] every [Local Health Board] to give notice to every local social services authority for an area wholly or partly comprised within the [area of the [clinical commissioning group or] . . .] [Local Health Board] specifying the hospital or hospitals administered by [or otherwise available [to the [clinical commissioning group or] [. . .] [Local Health Board]]] in which arrangements are from time to time in force[—

- (a) for the reception of patients in cases of special urgency;
- (b) for the provision of accommodation or facilities designed so as to be specially suitable for patients who have not attained the age of 18 years].

### **NOTES**

#### **Derivation**

This section derived from the Mental Health Act 1959, s 132.

#### **Initial Commencement**

##### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

#### **Amendment**

Section heading: substituted by the Mental Health Act 2007, s 31(1), (4).

Date in force: 3 November 2008: see SI 2008/1900, art 2(h); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Words “every clinical commissioning group and of” in square brackets inserted by the Health and Social Care Act 2012, s 45(1)(a).

Date in force: 1 April 2013: see SI 2013/160, art 2.

First words omitted inserted by the National Health Service Reform and Health Care Professions

Act 2002, s 2(5), Sch 2, Pt 2, paras 42, 48(a).

Date in force: 1 October 2002: see SI 2002/2478, art 3(1)(d).

First words omitted repealed by the Health and Social Care Act 2012, s 45(1)(b).

Date in force: 1 April 2013: see SI 2013/160, art 2; for savings and transitional provisions see arts 5–7 thereof.

Words “Local Health Board” in square brackets in each place they occur substituted by SI 2007/961, art 3, Schedule, para 13(1), (12).

Date in force: 1 April 2007: see SI 2007/961, art 1(1).

Words in square brackets beginning with the words “area of the” substituted by the National Health Service Reform and Health Care Professions Act 2002, s 2(5), Sch 2, Pt 2, paras 42, 48(b).

Date in force: 1 October 2002: see SI 2002/2478, art 3(1)(d).

Words “clinical commissioning group or” in square brackets inserted by the Health and Social Care Act 2012, s 45(1)(c).

Date in force: 1 April 2013: see SI 2013/160, art 2.

Second words omitted repealed by the Health and Social Care Act 2012, s 45(1)(d).

Date in force: 1 April 2013: see SI 2013/160, art 2; for savings and transitional provisions see arts 5–7 thereof.

Words in square brackets beginning with the words “or otherwise available” inserted by the National Health Service and Community Care Act 1990, s 66(1), Sch 9, para 24(8).

Words in square brackets beginning with the words “to the” substituted by the Health Authorities Act 1995, s 2(1), Sch 1, para 107(1), (12(c))

Words “clinical commissioning group or” in square brackets inserted by the Health and Social Care Act 2012, s 45(1)(e).

Date in force: 1 April 2013: see SI 2013/160, art 2.

Final words omitted inserted by the National Health Service Reform and Health Care Professions Act 2002, s 2(5), Sch 2, Pt 2, paras 42, 48(c).

Date in force: 1 October 2002: see SI 2002/2478, art 3(1)(d).

Final words omitted repealed by the Health and Social Care Act 2012, s 45(1)(f).

Date in force: 1 April 2013: see SI 2013/160, art 2; for savings and transitional provisions see arts 5–7 thereof.

Paras (a), (b) substituted by the Mental Health Act 2007, s 31(1), (4).

Date in force: 3 November 2008: see SI 2008/1900, art 2(h); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

141 . . .

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## NOTES

### Amendment

Repealed by the Mental Health (Discrimination) Act 2013, s 1(1).

Date in force: 28 April 2013: see the Mental Health (Discrimination) Act 2013, s 4(1).

142 . . .

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## NOTES

### Amendment

Repealed by the Mental Capacity Act 2005, s 67(1), Sch 6, para 29(1), (4)–(6) and by the Adult Support and Protection (Scotland) Act 2007, s 77(2), Sch 2.

Date in force (in relation to England and Wales): 1 October 2007: see SI 2007/1897, art 2(1)(c), (d); for effect see the Mental Capacity Act 2005, s 67(1), Sch 6, para 29(5), (6).

Date in force (in relation to Scotland): 5 October 2007: see SSI 2007/334, art 2(b), Sch 2; for savings see art 6 thereof.

### **[142A Regulations as to approvals in relation to England and Wales]**

[The Secretary of State jointly with the Welsh Ministers may by regulations make provision as to the circumstances in which—

- (a) a practitioner approved for the purposes of section 12 above, or
- (b) a person approved to act as an approved clinician for the purposes of this Act,

approved in relation to England is to be treated, by virtue of his approval, as approved in relation to Wales too, and vice versa.]

### **NOTES**

#### **Amendment**

Inserted by the Mental Health Act 2007, s 17.

Date in force: 1 April 2008: see SI 2008/745, art 3(a).

#### **Subordinate Legislation**

Mental Health (Mutual Recognition) Regulations 2008, SI 2008/1204.

### **[142B Delegation of powers of managers of NHS foundation trusts]**

(1) The constitution of an NHS foundation trust may not provide for a function under this Act to be delegated otherwise than in accordance with provision made by or under this Act.

(2) Paragraph 15(3) of Schedule 7 to the National Health Service Act 2006 (which provides that the powers of a public benefit corporation may be delegated to a committee of directors or to an executive director) shall have effect subject to this section.]

### **NOTES**

#### **Amendment**

Inserted by the Mental Health Act 2007, s 45(3).

Date in force: 24 July 2007: see SI 2007/2156, art 2.

#### *Supplemental*

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

(1) Any power of the Secretary of State 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 [or any order made [by the Secretary of State] under section 54A [. . .] [or 68A(7)] above] and any statutory instrument containing regulations [made by the Secretary of State, or rules made,] under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) No order shall be made [by the Secretary of State] under section [45A(10),] [68A(1)] or 71(3) above unless a draft of it has been approved by a resolution of each House of Parliament.

[(3A) Subsections (3B) to (3D) [(3DB)] apply where power to make regulations or an order under this Act is conferred on the Welsh Ministers (other than by or by virtue of the Government of Wales Act 2006).

(3B) Any power of the Welsh Ministers to make regulations or an order shall be exercisable by statutory instrument.

(3C) Any statutory instrument containing regulations, or an order under section 68A(7) above, made by

the Welsh Ministers shall be subject to annulment in pursuance of a resolution of the National Assembly for Wales.

(3D) No order shall be made under section 68A(1) above by the Welsh Ministers unless a draft of it has been approved by a resolution of the National Assembly for Wales.

[(3DA) Subsection (3C) does not apply to regulations to which subsection (3DB) applies.

(3DB) A statutory instrument which contains (alone or with other provisions) the first regulations to be made under any of the following provisions—

- (a) section 130E(2),
- (b) section 130E(4)(b),
- (c) section 130E(5)(b),
- (d) section 130F(2)(d),
- (e) section 130G(2)(c), or
- (f) section 130H(1)(b)(ii),

must not be made unless a draft of the instrument containing the regulations has been laid before, and approved by resolution of, the National Assembly for Wales.]

(3E) In this section—

- (a) references to the Secretary of State include the Secretary of State and the Welsh Ministers acting jointly; and
- (b) references to the Welsh Ministers include the Welsh Ministers and the Secretary of State acting jointly.]

[(4) This section does not apply to rules which are, by virtue of section 108 of this Act, to be made in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005.]

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 145, and the Mental Health (Amendment) Act 1982, s 66.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (2): words “or any order made under section 54A above” in square brackets inserted by the Criminal Justice Act 1991, s 27(3).

Sub-s (2): words “by the Secretary of State” in square brackets inserted by the Mental Health Act 2007, s 37(1), (5)(a)(i).

Date in force: 3 November 2008: see SI 2008/1900, art 2(l); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 9(1).

Sub-s (2): words in square brackets omitted inserted by the Health Authorities Act 1995, s 2(1), Sch 1, para 107(13).

Sub-s (2): words omitted repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 6.

- Date in force: 3 November 2008: see SI 2008/1900, art 2(p).
- Sub-s (2): words “or 68A(7)” in square brackets inserted by the Mental Health Act 2007, s 37(1), (5)(a)(ii).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(l); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 9(1).
- Sub-s (2): words “made by the Secretary of State, or rules made,” in square brackets substituted by the Mental Health Act 2007, s 47(1), (2).  
Date in force: 1 April 2008: see SI 2008/745, art 3(g).
- Sub-s (3): words “by the Secretary of State” in square brackets inserted by the Mental Health Act 2007, s 37(1), (5)(b)(i).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(l); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 9(1).
- Sub-s (3): reference to “45A(10),” in square brackets inserted by the Crime (Sentences) Act 1997, s 55, Sch 4, para 12(18).  
Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(l), (2)(f).
- Sub-s (3): reference to “68A(1)” in square brackets substituted by the Mental Health Act 2007, s 37(1), (5)(b)(ii).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(l); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 9(1).
- Sub-ss (3A)–(3E): inserted by the Mental Health Act 2007, s 47(1), (3).  
Date in force: 1 April 2008: see SI 2008/745, art 3(g).
- Sub-s (3A): reference to “(3D)” in italics repealed and subsequent reference in square brackets substituted, in relation to Wales, by the Mental Health (Wales) Measure 2010, s 40(1), (2).  
Date in force (for the purpose of conferring power to make regulations): 15 February 2011: see the Mental Health (Wales) Measure 2010, s 55(1), (2)(b).  
Date in force (except in relation to Welsh qualifying informal patients): 3 January 2012: see SI 2011/3046, art 2(g).  
Date in force (for remaining purposes): 2 April 2012: see SI 2011/3046, art 3(g).
- Sub-ss (3DA), (3DB): inserted, in relation to Wales, by the Mental Health (Wales) Measure 2010, s 40(1), (3).  
Date in force (for the purpose of conferring power to make regulations): 15 February 2011: see the Mental Health (Wales) Measure 2010, s 55(1), (2)(b).  
Date in force (except in relation to Welsh qualifying informal patients): 3 January 2012: see SI 2011/3046, art 2(g).  
Date in force (for remaining purposes): 2 April 2012: see SI 2011/3046, art 3(g).
- Sub-s (4): inserted by the Constitutional Reform Act 2005, s 12(2), Sch 1, Pt 2, paras 14, 16.  
Date in force: 3 April 2006: see SI 2006/1014, art 2(a), Sch 1, para 7.

### **Subordinate Legislation**

Mental Health (Nurses) (Wales) Order 2008, SI 2008/2441.

### **144 Power to amend local Acts**

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 this Act.

### **NOTES**

#### **Derivation**

This section derived from the Mental Health Act 1959, s 149(3).

#### **Initial Commencement**

##### ***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

## 145 Interpretation

(1) In this Act, unless the context otherwise requires—

“absent without leave” has the meaning given to it by section 18 above and related expressions [(including expressions relating to a patient’s liability to be returned to a hospital or other place)] shall be construed accordingly;

“application for admission for assessment” has the meaning given in section 2 above;

“application for admission for treatment” has the meaning given in section 3 above;

[“the appropriate tribunal” has the meaning given by section 66(4) above;]

[“approved clinician” means a person approved by the Secretary of State [or another person by virtue of section 12ZA or 12ZB above] (in relation to England) or by the Welsh Ministers (in relation to Wales) to act as an approved clinician for the purposes of this Act;]

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

[“care home” has the same meaning as in the Care Standards Act 2000;]

[“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;]

[. . .]

[“high security psychiatric services” has the same meaning as in [section 4 of the National Health Service Act 2006 or section 4 of the National Health Service (Wales) Act 2006].]

“hospital” means—

(a) any health service hospital within the meaning of the [National Health Service Act 2006 or the National Health Service (Wales) Act 2006]; and

(b) any accommodation provided by a local authority and used as a hospital by or on behalf of the Secretary of State under that Act; [and

(c) any hospital as defined by section 206 of the National Health Service (Wales) Act 2006 which is vested in a Local Health Board;]

and “hospital within the meaning of Part II of this Act” has the meaning given in section 34 above;

[“hospital direction” has the meaning given in section 45A(3)(a) above;]

“hospital order” and “guardianship order” have the meanings respectively given in section 37 above;

[“independent hospital”—

(a) in relation to England, means a hospital as defined by section 275 of the National Health Service Act 2006 that is not a health service hospital as defined by that section, and

(b) in relation to Wales, has the same meaning as in the Care Standards Act

2000;]

“interim hospital order” has the meaning given in section 38 above;

[“limitation direction” has the meaning given in section 45A(3)(b) above;]

[“Local Health Board” means a Local Health Board established under section 11 of the National Health Services (Wales) Act 2006;]

[“local social services authority” means—

(a) an authority in England which is a local authority for the purposes of Part 1 of the Care Act 2014, or

(b) an authority in Wales which is a local authority for the purposes of the Social Services and Well-being (Wales) Act 2014;]

“the managers” means—

(a) in relation to a hospital vested in the Secretary of State for the purposes of his functions under [the National Health Service Act 2006, or in the Welsh Ministers for the purposes of their functions under the National Health Service (Wales) Act 2006,] and in relation to any accommodation provided by a local authority and used as a hospital by or on behalf of the Secretary of State under [the National Health Service Act 2006, or of the Welsh Ministers under the National Health Service (Wales) Act 2006,] [the Secretary of State where the Secretary is responsible for the administration of the hospital or] the [ . . . ] [ . . . ] [[Local Health Board] or Special Health Authority] responsible for the administration of the hospital;

(b) *in relation to a special hospital, the Secretary of State;*

[(bb) in relation to a hospital vested in [a Primary Care Trust or] a National Health Service trust, . . . the trust];

[(bc) in relation to a hospital vested in an NHS foundation trust, the trust;]

[(bd) in relation to a hospital vested in a Local Health Board, the Board;]

[(c) in relation to a registered establishment—

(i) if the establishment is in England, the person or persons registered as a service provider under Chapter 2 of Part 1 of the Health and Social Care Act 2008 in respect of the regulated activity (within the meaning of that Part) relating to the assessment or medical treatment of mental disorder that is carried out in the establishment, and

(ii) if the establishment is in Wales, the person or persons registered in respect of the establishment under Part 2 of the Care Standards Act 2000;]

and in this definition “ hospital” means a hospital within the meaning of Part II of this Act;

“medical treatment” includes nursing, [psychological intervention and specialist mental health habilitation, rehabilitation and care (but see also subsection (4) below)];

[“mental disorder” has the meaning given in section 1 above (subject to [section 86(4)]);]

. . .;

“nearest relative”, in relation to a patient, has the meaning given in Part II of this Act;;

“patient” . . . means a person suffering or appearing to be suffering from mental disorder;

[. . .]

[“registered establishment” has the meaning given in section 34 above;]

[“the regulatory authority” means—

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

[. . .]

[“the responsible hospital” has the meaning given in section 17A above;]

“restriction direction” has the meaning given to it by section 49 above;

“restriction order” has the meaning given to it by section 41 above;

[“Special Health Authority” means a Special Health Authority established under [section 28 of the National Health Service Act 2006, or section 22 of the National Health Service (Wales) Act 2006];]

*“special hospital” has the same meaning as in the National Health Service Act 1977;*

[. . .]

. . .

[. . .]

“transfer direction” has the meaning given to it by section 47 above.

[(1AA) Where high security psychiatric services and other services are provided at a hospital, the part of the hospital at which high security psychiatric services are provided and the other part shall be treated as separate hospitals for the purposes of this Act.]

[(1AB) References in this Act to appropriate medical treatment shall be construed in accordance with section 3(4) above.]

[(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.]

[(1A) . . .]

(2) . . .

(3) In relation to a person who is liable to be detained or subject to guardianship [or a community patient] by virtue of an order or direction under Part III of this Act (other than under section 35, 36 or 38), any reference in this Act to any enactment contained in Part II of this Act or in section 66 or 67 above shall be construed as a reference to that enactment as it applies to that person by virtue of Part III of this Act.

[(4) Any reference in this Act to medical treatment, in relation to mental disorder, shall be construed as a reference to medical treatment the purpose of which is to alleviate, or prevent a worsening of, the disorder or one or more of its symptoms or manifestations.]

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, ss 40(4), 59(1), 147.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (1): in definition “absent without leave” words “(including expressions relating to a patient’s liability to be returned to a hospital or other place)” in square brackets inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 34(1), (2).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (1): definition “the appropriate tribunal” inserted by SI 2008/2833, art 9(1), Sch 3, paras 39, 66.

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Sub-s (1): definition “approved clinician” inserted by the Mental Health Act 2007, s 14(1), (5).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Sub-s (1): in definition “approved clinician” words “or another person by virtue of section 12ZA or 12ZB above” in square brackets inserted by the Health and Social Care Act 2012, s 38(4).

Date in force: 1 April 2013: see SI 2013/160, art 2.

Sub-s (1): definition “approved mental health professional” substituted, for definition “approved social worker” as originally enacted, by the Mental Health Act 2007, s 21, Sch 2, paras 1, 11(1), (2).

Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.

Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.

Sub-s (1): definition “care home” inserted by the Care Standards Act 2000, Sch 4, para 9(1), (10)(a).

Date in force (in relation to England): 1 April 2002: see SI 2001/4150, art 3(3)(a); for transitional provisions see SI 2001/4150, arts 3(2), 4(1), (3), (4) and SI 2002/1493, art 4 (as amended by SI 2002/1493, art 6).

Date in force (in relation to Wales): 1 April 2002: see SI 2002/920, art 3(3)(d); for transitional provisions see arts 2, 3(2), (4), (6)–(10), Sch 1 thereto.

Sub-s (1): definition “community patient” inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 34(1), (3).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (1): definition ““community treatment order” and “the community treatment order”” inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 34(1), (3).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (1): definition “the community treatment period” inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 34(1), (3).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch

10, paras 1, 5.

Sub-s (1): definition “Health Authority” (omitted) inserted by the Health Authorities Act 1995, s 2(1), Sch 1, para 107(14).

Sub-s (1): definition “Health Authority” (omitted) repealed by the National Health Service (Consequential Provisions) Act 2006, s 2, Sch 1, paras 62, 70(a).

Date in force: 1 March 2007: see the National Health Service (Consequential Provisions) Act 2006, s 8(2).

Sub-s (1): definition “high security psychiatric services” inserted by the Health Act 1999, s 65, Sch 4, paras 65, 69(1), (2)(a).

Date in force: 1 April 2000: see SI 1999/2793, art 2(3)(a), Sch 3.

Sub-s (1): in definition “high security psychiatric services” words from “section 4 of” to “National Health Service (Wales) Act 2006” in square brackets substituted by the National Health Service (Consequential Provisions) Act 2006, s 2, Sch 1, paras 62, 70(b).

Date in force: 1 March 2007: see the National Health Service (Consequential Provisions) Act 2006, s 8(2).

Sub-s (1): in definition “hospital” in para (a) words “National Health Service Act 2006 or the National Health Service (Wales) Act 2006” in square brackets substituted by the National Health Service (Consequential Provisions) Act 2006, s 2, Sch 1, paras 62, 70(c).

Date in force: 1 March 2007: see the National Health Service (Consequential Provisions) Act 2006, s 8(2).

Sub-s (1): in definition “hospital” para (c) and word “and” immediately preceding it inserted by the Mental Health Act 2007, s 46(1), (3)(a).

Date in force: 1 October 2007: see SI 2007/2798, art 2(g).

Sub-s (1): definition “hospital direction” inserted by the Crime (Sentences) Act 1997, s 55, Sch 4, para 12(19)(a).

Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(l), (2)(f).

Sub-s (1): definition “independent hospital” substituted by SI 2010/813, art 5(1), (5)(a).

Date in force: 1 October 2010: see SI 2010/813, art 1.

Sub-s (1): definition “limitation direction” inserted by the Crime (Sentences) Act 1997, s 55, Sch 4, para 12(19)(b).

Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(l), (2)(f).

Sub-s (1): definition “Local Health Board” inserted by SI 2007/961, art 3, Schedule, para 13(1), (13)(i).

Date in force: 1 April 2007: see SI 2007/961, art 1(1).

Sub-s (1): definition “local social services authority” substituted by the Care Act 2014, s 75(13).

Date in force: 1 April 2015: see SI 2015/993, art 7(1)(a); for transitory modifications see art 7(5).

Sub-s (1): in definition “the managers” in para (a) words from “the National Health Service Act 2006,” to “National Health Service (Wales) Act 2006,” in square brackets substituted by the National Health Service (Consequential Provisions) Act 2006, s 2, Sch 1, paras 62, 70(d)(i).

Date in force: 1 March 2007: see the National Health Service (Consequential Provisions) Act 2006, s 8(2).

Sub-s (1): in definition “the managers” in para (a) words from “the National Health Service Act 2006,” to “National Health Service (Wales) Act 2006,” in square brackets substituted by the National Health Service (Consequential Provisions) Act 2006, s 2, Sch 1, paras 62, 70(d)(ii).

Date in force: 1 March 2007: see the National Health Service (Consequential Provisions) Act 2006, s 8(2).

Sub-s (1): in definition “the managers” in para (a) words from “the Secretary of” to “the hospital or” in square brackets inserted by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 24, 31(1)(a)(i).

Date in force (in so far as is necessary for enabling the exercise of any power to make an order or regulations or to give directions): 27 March 2012: see the Health and Social Care Act 2012, s 306(1)(d).

Date in force (for remaining purposes): 1 April 2013: see SI 2013/160, art 2.

Sub-s (1): in definition “the managers” in para (a) first words omitted in square brackets inserted by the National Health Service Reform and Health Care Professions Act 2002, s 2(5), Sch 2, Pt 2,

paras 42, 49.

Date in force: 1 October 2002: see SI 2002/2478, art 3(1)(d).

Sub-s (1): in definition “the managers” in para (a) first words omitted repealed by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 24, 31(a)(ii).

Date in force: 1 April 2013: see SI 2013/160, art 2; for transitional provisions and savings see arts 5–7 thereof.

Sub-s (1): in definition “the managers” in para (a) second words omitted in square brackets inserted by SI 2002/2469, reg 4, Sch 1, Pt 1, para 10(1), (4)(a).

Date in force: 1 October 2002: see SI 2002/2469, reg 1.

Sub-s (1): in definition “the managers” in para (a) second words omitted repealed by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 24, 31(1)(a)(iii).

Date in force: 1 April 2013: see SI 2013/160, art 2; for transitional provisions and savings see arts 5–7 thereof.

Sub-s (1): in definition “the managers” in para (a) words in square brackets ending with the words “Special Health Authority” substituted by the Health Authorities Act 1995, s 2(1), Sch 1, para 107(14).

Sub-s (1): in definition “the managers” in para (a) words “Local Health Board” in square brackets substituted by SI 2007/961, art 3, Schedule, para 13(1), (13)(ii).

Date in force: 1 April 2007: see SI 2007/961, art 1(1).

Sub-s (1): in definition “the managers” para (b) repealed by the Health Act 1999, ss 41(2), 65, Sch 5.

Date in force (in relation to England and Wales): 1 April 2000: see SI 1999/2793, art 2(3)(a), Sch 3.

Date in force (in relation to Scotland): to be appointed: see the Health Act 1999, s 67(1), (2).

Sub-s (1): in definition “the managers” para (bb) inserted by the National Health Service and Community Care Act 1990, s 66(1), Sch 9, para 24(9).

Sub-s (1): in definition “the managers” in para (bb) words “a Primary Care Trust or” in square brackets inserted by SI 2000/90, art 3(1), Sch 1, para 16(1), (9)(a).

Date in force: 8 February 2000: see SI 2000/90, art 1.

Sub-s (1): in definition “the managers” in para (bb) words omitted repealed by the Mental Health (Amendment) Act 1994, s 1.

Sub-s (1): in definition “the managers” para (bc) inserted by the Health and Social Care (Community Health and Standards) Act 2003, s 34, Sch 4, paras 50, 57.

Date in force: 1 April 2004: see SI 2004/759, art 2.

Sub-s (1): in definition “the managers” para (bd) inserted by the Mental Health Act 2007, s 46(1), (3)(b).

Date in force: 1 October 2007: see SI 2007/2798, art 2(g).

Sub-s (1): in definition “the managers” para (c) substituted by SI 2010/813, art 5(1), (5)(b).

Date in force: 1 October 2010: see SI 2010/813, art 1.

Sub-s (1): in definition “medical treatment” words from “psychological intervention” to “subsection (4) below” in square brackets substituted by the Mental Health Act 2007, s 7(1), (2).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (1): definition “mental disorder” substituted, for definition ““mental disorder”, “severe mental impairment”, “mental impairment” and “psychopathic disorder”” as originally enacted, by the Mental Health Act 2007, s 1(4), Sch 1, Pt 1, paras 1, 17.

Date in force: 3 November 2008: see SI 2008/1900, art 2(a); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (1): in definition “mental disorder” words “section 86(4)” in square brackets substituted by the Mental Health (Discrimination) Act 2013, s 1(3), Schedule, para 1(1).

Date in force: 28 April 2013: see the Mental Health (Discrimination) Act 2013, s 4(1).

Sub-s (1): definition “mental nursing home” (omitted) repealed by the Care Standards Act 2000, s 117(2), Sch 6.

Date in force (in relation to England): 1 April 2002: see SI 2001/4150, art 3(3)(c)(v); for transitional provisions see SI 2001/4150, arts 3(2), 4(1)–(3), (5) and SI 2002/1493, art 4 (as

amended by SI 2002/1493, art 6).  
Date in force (in relation to Wales): 1 April 2002: see SI 2002/920, art 3(3)(g)(iv); for transitional provisions see arts 2, 3(2), (5)–(10), Sch 1 thereto.

Sub-s (1): in definition “patient” words omitted repealed by the Mental Capacity Act 2005, s 67(1), (2), Sch 6, para 29(1), (7), Sch 7.  
Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(d).

Sub-s (1): definition “Primary Care Trust” (omitted) inserted by SI 2000/90, art 3(1), Sch 1, para 16(1), (9)(b).  
Date in force: 8 February 2000: see SI 2000/90, art 1.

Sub-s (1): definition “Primary Care Trust” (omitted) repealed by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 24, 31(1)(c).  
Date in force: 1 April 2013: see SI 2013/160, art 2; for transitional provisions and savings see arts 5–7 thereof.

Sub-s (1): definition “registered establishment” inserted by the Care Standards Act 2000, s 116, Sch 4, para 9(1), (10)(d).  
Date in force (in relation to England): 1 April 2002: see SI 2001/4150, art 3(3)(a); for transitional provisions see SI 2001/4150, arts 3(2), 4(1), (3), (4) and SI 2002/1493, art 4 (as amended by SI 2002/1493, art 6).  
Date in force (in relation to Wales): 1 April 2002: see SI 2002/920, art 3(3)(d); for transitional provisions see arts 2, 3(2), (4), (6)–(10), Sch 1 thereto.

Sub-s (1): definition “the regulatory authority” inserted by the Health and Social Care Act 2008, s 52(5), Sch 3, paras 1, 13.  
Date in force: 1 April 2009: see SI 2009/462, art 2(1), Sch 1, para 33.

Sub-s (1): definition “the responsible after-care bodies” (omitted) inserted by the Mental Health (Patients in the Community) Act 1995, s 1(2), Sch 1, para 20(2).

Sub-s (1): definition “the responsible after-care bodies” (omitted) repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 5.  
Date in force: 3 November 2008: see SI 2008/1210, art 2(d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (1): definition “the responsible hospital” inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 34(1), (3).  
Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (1): definition “Special Health Authority” inserted by the Health Authorities Act 1995, s 2(1), Sch 1, para 107(14).

Sub-s (1): in definition “Special Health Authority” words from “section 28 of” to “National Health Service (Wales) Act 2006” in square brackets substituted by the National Health Service (Consequential Provisions) Act 2006, s 2, Sch 1, paras 62, 70(f).  
Date in force: 1 March 2007: see the National Health Service (Consequential Provisions) Act 2006, s 8(2).

Sub-s (1): definition “special hospital” repealed by the Health Act 1999, s 65, Sch 4, paras 65, 69(1), (2)(b), Sch 5.  
Date in force (in relation to England and Wales): 1 April 2000: see SI 1999/2793, art 2(3)(a), Sch 3.  
Date in force (in relation to Scotland): to be appointed: see the Health Act 1999, s 67(1), (2).

Sub-s (1): definition “Strategic Health Authority” omitted inserted by SI 2002/2469, reg 4, Sch 1, Pt 1, para 10(1), (4)(b).  
Date in force: 1 October 2002: see SI 2002/2469, reg 1.

Sub-s (1): definition “Strategic Health Authority” (omitted) repealed by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 24, 31(1)(d).  
Date in force: 1 April 2013: see SI 2013/160, art 2; for transitional provisions and savings see arts 5–7 thereof.

Sub-s (1): definition “standard scale” (omitted) repealed by the Statute Law (Repeals) Act 1993.

Sub-s (1): definition “supervision application” (omitted) inserted by the Mental Health (Patients in

the Community) Act 1995, s 1(2), Sch 1, para 20(2).

Sub-s (1): definition “supervision application” (omitted) repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 5.

Date in force: 3 November 2008: see SI 2008/1210, art 2(d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (1AA): inserted by the Health Act 1999, s 65, Sch 4, paras 65, 69(1), (3).

Date in force: 1 April 2000: see SI 1999/2793, art 2(3)(a), Sch 3.

Sub-s (1AB): inserted by the Mental Health Act 2007, s 4(1), (10).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Sub-s (1AC): inserted by the Mental Health Act 2007, s 21, Sch 2, paras 1, 11(1), (3).

Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(d); for transitional provisions and savings see art 3, Schedule, paras 1, 4–12 thereto.

Date in force (in relation to Wales): 3 November 2008: see SI 2008/2561, art 2(b); for transitional provisions and savings see art 3, Schedule thereto.

Sub-s (1A): inserted by the Mental Health (Patients in the Community) Act 1995, s 1(2), Sch 1, para 20(3).

Sub-s (1A): repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 5.

Date in force: 3 November 2008: see SI 2008/1210, art 2(d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (2): repealed by the Statute Law (Repeals) Act 1993.

Sub-s (3): words “or a community patient” in square brackets inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 34(1), (4).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Sub-s (4): inserted by the Mental Health Act 2007, s 7(1), (3).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

## **Modification**

Certain functions of a Minister of the Crown under this Act are, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3). Sch 1 to the 1999 Order (as amended) further provides that, in relation to this transfer of functions, the reference in the definition “the Managers” in sub-s (1) above to a hospital vested in the Secretary of State for the purposes of his functions under the National Health Service Act 1977 shall have effect as if it included a reference to a hospital vested in the Assembly for the purposes of its functions under the 1977 Act.

## **146 Application to Scotland**

Sections 42(6), 80, . . . , . . . 116, . . . . . , 137, 139(1), . . . 142, 143 (so far as applicable to any Order in Council extending to Scotland) and 144 above shall extend to Scotland together with any amendment or repeal by this Act of or any provision of Schedule 5 to this Act relating to any enactment which so extends; 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.

## **NOTES**

### **Derivation**

This section derived from the Mental Health Act 1959, s 150.

### **Initial Commencement**

**Specified date**

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

**Amendment**

First words omitted repealed in relation to Scotland by the Adult Support and Protection (Scotland) Act 2007, s 77(2), Sch 2 and in relation to England and Wales by the Mental Health Act 2007, ss 39(2), 55, Sch 5, Pt 2, para 20, Sch 11, Pt 7.

Date in force (in relation to England and Wales): 28 October 2008: see SI 2008/2788, art 2(b).

Date in force (in relation to Scotland): 3 November 2008: see SSI 2008/49, art 2(2) (as amended by SSI 2008/314, art 3).

Second words omitted repealed by the Mental Capacity Act 2005, s 67(1), (2), Sch 6, para 29(1), (7), Sch 7.

Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(d).

Third word omitted repealed by the Health and Social Care Act 2012, s 41(1), (4).

Date in force: 1 April 2013: see SI 2013/160, art 2.

Fourth words omitted repealed in relation to Scotland by the Adult Support and Protection (Scotland) Act 2007, s 77(2), Sch 2 and in relation to England and Wales by the Mental Health Act 2007, ss 32(4), 55, Sch 3, paras 1, 35, Sch 11, Pt 5.

Date in force (in relation to England and Wales): 3 November 2008: see SI 2008/1210, art 2(d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Date in force (in relation to Scotland): 3 November 2008: see SSI 2008/49, art 2(2) (as amended by SSI 2008/49, art 3).

Final word omitted repealed by the Mental Health (Discrimination) Act 2013, s 1(3), Schedule, para 1(2).

Date in force: 28 April 2013: see the Mental Health (Discrimination) Act 2013, s 4(1).

**147 Application to Northern Ireland**

Sections 81, 82, 86, 87, 88 (and so far as applied by that section sections 18, 22 and 138), . . . section 128 (except so far as it relates to patients subject to guardianship), 137, 139, . . . 142, 143 (so far as applicable to any Order in Council extending to Northern Ireland) and 144 above shall extend to Northern Ireland together with any amendment or repeal by this Act of or any provision of Schedule 5 to this Act relating to any enactment which so extends; 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.

**NOTES****Derivation**

This section derived from the Mental Health Act 1959, s 152.

**Initial Commencement****Specified date**

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

**Amendment**

First words omitted repealed by the Mental Capacity Act 2005, s 67(1), (2), Sch 6, para 29(1), (9), Sch 7.

Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(d).

Second word omitted repealed by the Mental Health (Discrimination) Act 2013, s 1(3), Schedule, para 1(3).

Date in force: 28 April 2013: see the Mental Health (Discrimination) Act 2013, s 4(1).

**148 Consequential and transitional provisions and repeals**

(1) Schedule 4 (consequential amendments) and Schedule 5 (transitional and saving provisions) to

this Act shall have effect but without prejudice to the operation of sections 15 to 17 of the Interpretation Act 1978 (which relate to the effect of repeals).

(2) Where any amendment in Schedule 4 to this Act affects an enactment amended by the Mental Health (Amendment) Act 1982 the amendment in Schedule 4 shall come into force immediately after the provision of the Act of 1982 amending that enactment.

(3) The enactments specified in Schedule 6 to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

## NOTES

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### 149 Short title, commencement and application to Scilly Isles

(1) This Act may be cited as the Mental Health Act 1983.

(2) Subject to subsection (3) below and Schedule 5 to this Act, this Act shall come into force on 30th September 1983.

(3) . . .

(4) Section 130(4) of the National Health Service Act 1977 (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.

## NOTES

### Derivation

This section derived from the Mental Health Act 1959, s 154(2), and the Mental Health (Amendment) Act 1982, s 69.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see sub-s (2) above; for transitional provisions and savings see Sch 5 hereof.

### Amendment

Sub-s (3): repealed by the Statute Law (Repeals) Act 2004.

Date in force: 22 July 2004: (no specific commencement provision).

### Miscellaneous

Sub-s (3) stated that ss 35, 36, 38 and 40(3) would come into force on such day (not being earlier than 30 September 1983) as may be appointed by the Secretary of State and that a different day could be appointed for each of those sections or for different purposes of any of those sections.

### Subordinate Legislation

Mental Health Act 1983 Commencement Order 1984, SI 1984/1357.

[SCHD

## SCHEDULE 1 APPLICATION OF CERTAIN PROVISIONS TO PATIENTS SUBJECT TO HOSPITAL AND GUARDIANSHIP ORDERS

Sections 40(4), 41(3), (5), 55(4)

Part I  
Patients not subject to special restrictions

**1**

Sections 9, 10, 17 [to 17C, 17E, 17F, 20A], [21 to 21B,] . . . [26] to 28, 31, 32, 34, 67 and 76 shall apply in relation to the patient without modification.

**2**

Sections . . . [17D, 17G, 18 to 20, 20B], 22, 23[. . .], 66 and 68] shall apply in relation to the patient with the modifications specified in [paragraphs 2A] [to 10] below.

**[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”.]

**3**

. . .

**4**

In section 18 subsection (5) shall be omitted.

**5**

In section 19(2) for the words from “as follows” to the end of the subsection there shall be substituted the words “as if the order or direction under Part III of this Act by virtue of which he was liable to be detained or subject to guardianship before being transferred were an order or direction for his admission or removal to the hospital to which he is transferred, or placing him under the guardianship of the authority or person into whose guardianship he is transferred, as the case may be”.

**[5A**

In section 19A(2), paragraph (b) shall be omitted.]

**6**

In section 20—

- (a) in subsection (1) for the words from “day on which he was” to “as the case may be” there shall be substituted the words “date of the relevant order or direction under Part III of this Act”; . . .
- (b) . . .

**[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 section 22 for references to an application for admission or a guardianship application there shall be substituted references to the order or direction under Part III of this Act by virtue of which the patient is liable to be detained or subject to guardianship.

**8**

In section 23(2)—

- (a) in paragraph (a) the words “for assessment or” shall be omitted; and
- (b) in paragraphs (a) [to (c)] the references to the nearest relative shall be omitted.

**[8A**

. . .]

**9**

In section 66—

- (a) in subsection (1), paragraphs (a), (b), (c), (g) and (h), the words in parenthesis in paragraph (i) and paragraph (ii) shall be omitted; and
- (b) in subsection (2), paragraphs (a), (b), (c) and (g)[, and in paragraph (d) “, (g)”, shall be omitted.]

**[10**

In section 68—

- (a) in subsection (1) paragraph (a) shall be omitted; and
- (b) subsections (2) to (5) shall apply if the patient falls within paragraph (e) of subsection (1), but not otherwise.]

**NOTES**

**Derivation**

This Part derived from the Mental Health Act 1959, Sch 3, columns 1, 2.

**Initial Commencement**

***Specified date***

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

## Amendment

Para 1: words “to 17C, 17E, 17F, 20A” in square brackets inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 36(1), (2).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Para 1: words “21 to 21B,” in square brackets substituted by the Mental Health (Patients in the Community) Act 1995, ss 1(2), 2(8), Sch 1, para 6(a).

Para 1: words omitted repealed by the Health and Social Care Act 2012, s 39(3)(a).

Date in force: 1 July 2012: see SI 2012/1319, art 2(1), (3).

Para 1: reference to “26” in square brackets substituted by the Mental Health Act 2007, s 36(1), (4).

Date in force: 3 November 2008: see SI 2008/1210, art 2(c); for savings and transitional provisions see arts 1(2), (4), 3, 4, 6–9 thereof.

Para 2: first reference omitted repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 1.

Date in force: 3 November 2008: see SI 2008/1900, art 2(p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Para 2: words “17D, 17G, 18 to 20, 20B” in square brackets substituted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 36(1), (3)(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Para 2: second reference omitted in square brackets inserted by the Mental Health (Patients in the Community) Act 1995, s 1(2), Sch 1, para 6(b).

Para 2: second reference omitted repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 5.

Date in force: 3 November 2008: see SI 2008/1210, art 2(d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Para 2: words “, 66 and 68” in square brackets substituted by the Mental Health Act 2007, s 37(1), (6)(a)(i).

Date in force: 3 November 2008: see SI 2008/1900, art 2(l); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 9(1).

Para 2: words “paragraphs 2A” in square brackets substituted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 36(1), (3)(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Para 2: words “to 10” in square brackets substituted by the Mental Health Act 2007, s 37(1), (6)(a)(ii).

Date in force: 3 November 2008: see SI 2008/1900, art 2(l); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 9(1).

Paras 2A, 2B: inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 36(1), (4).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Para 3: repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 1.

Date in force: 3 November 2008: see SI 2008/1900, art 2(p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Para 5A: inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 36(1), (5).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Para 6: sub-para (b) and word omitted immediately preceding it repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 1.

Date in force: 3 November 2008: see SI 2008/1900, art 2(p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 2.

Para 6A: inserted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 36(1), (6).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Para 8: in sub-para (b) words “to (c)” in square brackets substituted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 36(1), (7).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Para 8A: inserted by the Mental Health (Patients in the Community) Act 1995, s 1(2), Sch 1, para 6(c).

Para 8A: repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 5.

Date in force: 3 November 2008: see SI 2008/1210, art 2(d); for savings and transitional provisions see arts 1(2), (4), 3–9 thereof and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Para 9: in sub-para (b) words “, and in paragraph (d) “, (g)”, shall be omitted.” in square brackets substituted by the Mental Health (Patients in the Community) Act 1995, s 1(2), Sch 1, para 14.

Para 10: inserted by the Mental Health Act 2007, s 37(1), (6)(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(l); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 9(1).

## Part II

### Patients subject to special restrictions

#### 1

Sections . . . 32 and 76 shall apply in relation to the patient without modification.

#### 2

Sections [17, 18, 19], 22, 23 and 34 shall apply in relation to the patient with the modifications specified in paragraphs 3 to 8 below.

#### 3

In section 17—

(a) in subsection (1) after the word “may” there shall be inserted the words “with the consent of the Secretary of State”;

[(aa) subsections (2A) and (2B) shall be omitted;]

(b) in subsection (4) after the words [“the responsible clinician” and after the words “that clinician”] there shall be inserted the words “or the Secretary of State”; and

(c) in subsection (5) after the word “recalled” there shall be inserted the words [“by the responsible clinician”], and for the words from “he has ceased” to the end of the subsection there shall be substituted the words “the expiration of the period of [twelve] months beginning with the first day of his absence on leave”.

#### 4

In section 18 there shall be omitted—

- (a) in subsection (1) the words “subject to the provisions of this section”; and
- (b) subsections (3), (4) and (5).

## 5

In section 19—

- (a) in subsection (1) after the word “may” in paragraph (a) there shall be inserted the words “with the consent of the Secretary of State”, and the words from “or into” to the end of the subsection shall be omitted; . . .
- (b) in subsection (2) for the words from “as follows” to the end of the subsection there shall be substituted the words “as if the order or direction under Part III of this Act by virtue of which he was liable to be detained before being transferred were an order or direction for his admission or removal to the hospital to which he is transferred”; [and
- (c) in subsection (3) after the words “may at any time” there shall be inserted the words “, with the consent of the Secretary of State,”].

## [6

In section 22, subsections (1) and (5) shall not apply.]

## 7

In section 23—

- (a) in subsection (1) references to guardianship shall be omitted and after the word “made” there shall be inserted the words “with the consent of the Secretary of State and”; and
- (b) in subsection (2)—
  - (i) in paragraph (a) to the words “for assessment or” and “or by the nearest relative of the patient” shall be omitted; and
  - (ii) paragraph (b) shall be omitted.

## 8

In section 34, in subsection (1) the definition of “the nominated medical attendant” and subsection (3) shall be omitted.

## NOTES

### Derivation

This Part derived from the Mental Health Act 1959, Sch 3, columns 1, 3.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Para 1: words omitted repealed by the Health and Social Care Act 2012, s 39(3)(b).

Date in force: 1 July 2012: see SI 2012/1319, art 2(1), (3).

Para 2: references to “17, 18, 19” in square brackets substituted by the Mental Health Act 2007, s

32(4), Sch 3, paras 1, 37(1), (2).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

Para 3: sub-para (aa) inserted by the Mental Health Act 2007, s 33(1), (3).

Date in force: 3 November 2008: see SI 2008/1900, art 2(j); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Para 3: in sub-para (b) words ““the responsible clinician” and after the words “that clinician”” in square brackets substituted by the Mental Health Act 2007, s 11(1), (8)(a).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Para 3: in sub-para (c) words ““by the responsible clinician”” in square brackets substituted by the Mental Health Act 2007, s 11(1), (8)(b).

Date in force: 3 November 2008: see SI 2008/1900, art 2(b); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Para 3: in sub-para (c) word “twelve” in square brackets substituted by the Mental Health (Patients in the Community) Act 1995, s 3(2) (this amendment has effect where the leave of absence was granted before 1 April 1996 as well as where the leave of absence was granted after that date).

Para 5: in sub-para (a) word omitted repealed by the Crime (Sentences) Act 1997, ss 49(4), 56(2), Sch 6.

Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(k).

Para 5: sub-para (c) and preceding word “and” in square brackets inserted by the Crime (Sentences) Act 1997, s 49(4).

Date in force: 1 October 1997: see SI 1997/2200, art 2(1)(k).

Para 6: substituted by the Mental Health Act 2007, s 32(4), Sch 3, paras 1, 37(1), (3).

Date in force: 3 November 2008: see SI 2008/1900, art 2(i); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto and the Mental Health Act 2007, s 53, Sch 10, paras 1, 5.

## **SCHEDULE 2**

### **MENTAL HEALTH REVIEW [TRIBUNAL FOR WALES]**

#### **NOTES**

##### **Amendment**

Schedule heading: words “Tribunal for Wales” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 67(a).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Section 65(2)

#### **1**

[The Mental Health Review Tribunal for Wales] shall consist of—

- (a) a number of persons (referred to in this Schedule as “the legal members”) appointed by the Lord Chancellor and having such legal experience as the Lord Chancellor considers suitable;
- (b) a number of persons (referred to in this Schedule as “the medical members”) being registered medical practitioners appointed by the Lord Chancellor . . . ; and
- (c) a number of persons appointed by the Lord Chancellor . . . and having such experience in administration, such knowledge of social services or such other qualifications or experience as the Lord Chancellor considers suitable.

#### **[1A**

As part of the selection process for an appointment under paragraph 1(b) or (c) the Judicial Appointments Commission shall consult the Secretary of State.]

## 2

[Subject to paragraph 2A below] the members of [the Mental Health Review Tribunal for Wales] shall hold and vacate office under the terms of the instrument under which they are appointed, but may resign office by notice in writing to the Lord Chancellor; and any such member who ceases to hold office shall be eligible for re-appointment.

### [2A

A member of [the Mental Health Review Tribunal for Wales] shall vacate office on the day on which he attains the age of 70 years; but this paragraph is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (power to authorise continuance in office up to the age of 75 years).]

## 3

*One of the legal members of [the Mental Health Review Tribunal for Wales] shall be appointed by the Lord Chancellor as chairman of the Tribunal.*

### [3

(1) \_\_\_\_\_ . . .

(2) \_\_\_\_\_ The Lord Chancellor shall appoint one of the legal members of the Mental Health Review Tribunal for Wales to be the President of that tribunal.]

## 4

Subject to rules made by the Lord Chancellor under section 78(2)(c) above, the members who are to constitute [the Mental Health Review Tribunal for Wales] for the purposes of any proceedings or class or group of proceedings under this Act shall be appointed by the *chairman* [President] of the tribunal or . . . by another member of the tribunal appointed for the purpose by the *chairman* [President]; and of the members so appointed—

- (a) one or more shall be appointed from the legal members;
- (b) one or more shall be appointed from the medical members; and
- (c) one or more shall be appointed from the members who are neither legal nor medical members.

### [5

(1) A member of the First-tier Tribunal who is eligible to decide any matter in a case under this Act may, at the request of the President of the Mental Health Review Tribunal for Wales and with the approval of the Senior President of Tribunals, act as a member of the Mental Health Review Tribunal for Wales.

(2) Every person while acting under this paragraph may perform any of the functions of a member of the Mental Health Review Tribunal for Wales.

(3) Until section 38(7) of the Mental Health Act 2007 comes into force, the reference in subparagraph (1) to the President of the Mental Health Review Tribunal for Wales is to be read as a reference to the chairman of the tribunal.]

5

...

6

Subject to any rules made by the Lord Chancellor under section 78(4)(a) above, where the *chairman* [President] of the tribunal is included among the persons appointed under paragraph 4 above, he shall be *president* [chairman] of the tribunal; and in any other case the *president* [chairman] of the tribunal shall be such one of the members so appointed (being one of the legal members) as the *chairman* [President] may nominate.

## NOTES

### Derivation

This Schedule derived from the Mental Health Act 1959, Sch 1.

### Initial Commencement

#### **Specified date**

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Para 1: words “The Mental Health Review Tribunal for Wales” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 67(b).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Para 1: in sub-paras (b), (c) words omitted repealed by the Constitutional Reform Act 2005, ss 15(1), 146, Sch 4, Pt 1, paras 150, 158(1), (2), Sch 18, Pt 2.

Date in force: 3 April 2006: see SI 2006/1014, art 2(a), Sch 1, paras 10, 11(q), 29, 30(b).

Para 1A: inserted by the Constitutional Reform Act 2005, s 15(1), Sch 4, Pt 1, paras 150, 158(1), (3).

Date in force: 3 April 2006: see SI 2006/1014, art 2(a), Sch 1, paras 10, 11(q).

Para 2: words in square brackets inserted by the Judicial Pensions and Retirement Act 1993, s 26, Sch 6, para 40.

Para 2: words “the Mental Health Review Tribunal for Wales” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 67(c).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Para 2A: inserted by the Judicial Pensions and Retirement Act 1993, s 26, Sch 6, para 40.

Para 2A: words “the Mental Health Review Tribunal for Wales” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 67(d).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Para 3: substituted by the Mental Health Act 2007, s 38(1), (5), (6).

Date in force: to be appointed: see the Mental Health Act 2007, s 56(1).

Para 3: words “the Mental Health Review Tribunal for Wales” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 67(e).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Para 3 (as substituted by the Mental Health Act 2007, s 38(1), (5), (6)): sub-para (1) repealed by SI 2008/2833, art 9(1), Sch 3, paras 39, 67(f).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Para 4: words “the Mental Health Review Tribunal for Wales” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 67(g).

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Para 4: word “chairman” in italics in both places it occurs repealed and subsequent words in square brackets substituted by the Mental Health Act 2007, s 38(1), (5), (7)(a).

Date in force: to be appointed: see the Mental Health Act 2007, s 56(1).

Para 4: words omitted repealed by the Mental Health Act 2007, ss 38(1), (5), (7)(b), 55, Sch 11, Pt 6.

Date in force (in relation to Wales): 3 November 2008: see SI 2008/1900, art 2(m).

Date in force (in relation to England): 3 November 2008: see SI 2008/1900, art 2(p).  
Para 5: inserted by SI 2009/1307, art 5(1), (2), Sch 1, paras 160, 162.  
Date in force: 1 June 2009: see SI 2009/1307, art 1; for transitional and savings provisions see art 5(6), Sch 5 thereto.  
Para 5 (as originally enacted): repealed by SI 2008/2833, art 9(1), Sch 3, paras 39, 67(h).  
Date in force: 3 November 2008: see SI 2008/2833, art 1(1).  
Para 6: word “chairman” in italics in both places it occurs repealed and subsequent words in square brackets substituted by the Mental Health Act 2007, s 38(1), (5), (9)(a).  
Date in force: to be appointed: see the Mental Health Act 2007, s 56(1).  
Para 6: word “president” in italics in both places it occurs repealed and subsequent words in square brackets substituted by the Mental Health Act 2007, s 38(1), (5), (9)(b).  
Date in force: to be appointed: see the Mental Health Act 2007, s 56(1).

**See Further**

See further, for provisions relating to the transfer of functions under s 65 of this Act to the First-tier Tribunal: the Transfer of Tribunal Functions Order 2008, SI 2008/2833, arts 3–5, 9(2), Sch 1, Table 1, Sch 2, Tables 1–3, Sch 4.

**Transfer of Functions**

Functions of the Lord Chancellor referred to in para 1(b), (c) above, so far as exercisable in relation to Wales, shall be exercisable only after consultation with the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 5, Sch 2.

**SCHEDULE 3**

...

**NOTES**

**Amendment**

Repealed by the Mental Capacity Act 2005, s 67(2), Sch 7.  
Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(d).

...

**NOTES**

**Amendment**

Repealed by the Mental Capacity Act 2005, s 67(2), Sch 7.  
Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(d).

< . . . >

**NOTES**

**Amendment**

Repealed by the Mental Capacity Act 2005, s 67(2), Sch 7.  
Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(d).

**SCHEDULE 4**  
**CONSEQUENTIAL AMENDMENTS**

1–10

< . . . >

11–20

< . . . >

**21–30**

< . . . >

**31–40**

[< . . . >]

**41–50**

< . . . >

**51–61**

< . . . >

## NOTES

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

This Schedule contains amendments only.

Paras 1, 2, 4, 5, 7, 14, 20: repealed by the Mental Capacity Act 2005, s 67(2), Sch 7.

Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(d).

Para 6: repealed by the Land Registration Act 2002, s 135, Sch 13.

Date in force: 13 October 2003: see SI 2003/1725, art 2(1).

Para 9: repealed by the Statute Law (Repeals) Act 2004.

Date in force: 22 July 2004: (no specific commencement provision).

Paras 12, 35, 44, 50, 51: repealed by the Children Act 1989, s 108(6), (7), Sch 14, paras 1, 27, Sch 15.

Para 15: repealed by the Sexual Offences Act 2003, s 140, Sch 7.

Date in force: 1 May 2004: see SI 2004/874, art 2.

Para 16: repealed by the Mental Health (Scotland) Act 1984, s 127(2), Sch 5.

Para 18: sub-para (b) repealed by the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991, s 8(3), Sch 4.

Para 19: repealed by the Statute Law (Repeals) Act 2004.

Date in force: 22 July 2004: (no specific commencement provision).

Paras 22, 25, 32, 38: repealed by the Mental Capacity Act 2005, s 67(2), Sch 7.

Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(d).

Para 23: repealed in part by the Criminal Justice and Immigration Act 2008, s 149, Sch 28, Pt 3.

Date in force: 14 July 2008: see SI 2008/1586, art 2(1), Sch 1, para 50(1), (3)(d).

Para 23: sub-paras (a), (e), (f), (k)–(m) repealed by the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991, s 8(3), Sch 4.

Para 26: sub-paras (a)–(c) repealed by the Children Act 1989, s 108(6), (7), Sch 14, paras 1, 27, Sch 15.

Para 29: repealed by the Tribunals and Inquiries Act 1992, s 18(2), Sch 4, Pt 1.

Para 30: repealed by the Statute Law (Repeals) Act 2004.

Date in force: 22 July 2004: (no specific commencement provision).

Para 31: repealed by the Parliamentary and Other Pensions Act 1987, ss 2, 6, Schs 2, 4.

Para 33: repealed by the Statute Law (Repeals) Act 2004.

Date in force: 22 July 2004: (no specific commencement provision).

Para 36: repealed by the Statute Law (Repeals) Act 2004.

Date in force: 22 July 2004: (no specific commencement provision).

Para 37: repealed by the Criminal Justice Act 2003, s 332, Sch 37, Pt 10.  
Date in force: 5 April 2004: see SI 2004/829, art 2(1), (2)(l)(iv).

Para 38: repealed in part by the Legal Services Act 2007, s 210, Sch 23.  
Date in force: 1 January 2010: see SI 2009/3250, art 2(i)(iii).

Para 39: repealed in part, in relation to England and Wales, by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, s 141(10), Sch 25, Pt 2.  
Date in force: 10 March 2014: see SI 2014/423, art 2(c); for savings see art 3 thereof.

Para 40: repealed by the Inheritance Tax Act 1984, ss 274, 277, Sch 9.

Para 43: repealed by the Registered Homes Act 1984, s 57, Sch 3.

Para 45: repealed by the Adoption and Children Act 2002, s 139(3), Sch 5.  
Date in force: 30 December 2005: see SI 2005/2897, art 2(b).

Para 47: repealed by the National Health Service (Consequential Provisions) Act 2006, s 6, Sch 4.  
Date in force: 1 March 2007: see the National Health Service (Consequential Provisions) Act 2006, s 8(2).

Para 49: repealed by the Taxation of Chargeable Gains Act 1992, s 290(3), Sch 12; for effect see s 289 thereof.

Paras 52–54: repealed by the Statute Law (Repeals) Act 2004.  
Date in force: 22 July 2004: (no specific commencement provision).

Paras 55, 56: repealed by the Mental Capacity Act 2005, s 67(2), Sch 7.  
Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(d).

Para 61: sub-para (a) repealed by the Statute Law (Repeals) Act 1986.

#### **Miscellaneous**

Inheritance Tax: except in relation to a liability to tax arising before 25 July 1986 capital transfer tax is to be known as inheritance tax and the Capital Transfer Tax Act 1984 may be cited as the Inheritance Tax Act 1984, by virtue of the Finance Act 1986, s 100. Accordingly references to capital transfer tax have been changed to references to inheritance tax.

## **SCHEDULE 5 TRANSITIONAL AND SAVING PROVISIONS**

Section 148

**1**

Where any period of time specified in an enactment repealed by this Act is current at the commencement of this Act, this Act shall have effect as if the corresponding provision of this Act had been in force when that period began to run.

**2**

Nothing in this Act shall affect the interpretation of any provision of the Mental Health Act 1959 which is not repealed by this Act and accordingly sections 1 and 145(1) of this Act shall apply to any such provision as if it were contained in this Act.

**3**

Where, apart from this paragraph, anything done under or for the purposes of any enactment which is repealed by this Act would cease to have effect by virtue of that repeal it shall have effect as if it had been done under or for the purposes of the corresponding provision of this Act.

**4**

...

**5**

...

**6**

This Act shall apply in relation to any authority for the detention or guardianship of a person who was liable to be detained or subject to guardianship under the Mental Health Act 1959 immediately before 30th September 1983 as if the provisions of this Act which derive from provisions amended by sections 1 or 2 of the Mental Health (Amendment) Act 1982 and the amendments in Schedule 3 to that Act which are consequential on those sections were included in this Act in the form the provisions from which they derive would take if those amendments were disregarded but this provision shall not apply to any renewal of that authority on or after that date.

**7**

...

**8**

...

**9**

(1) ...

(2) Section 20(2) of this Act shall have effect in relation to any authority renewed before 1st October 1983 with the substitution for the words "six months" of the words "one year" and for the words "one year" in both places they occur of the words "two years".

(3) ...

**10**

...

**11**

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**13**

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**14**

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**15**

The provisions of this Act which derive from sections 24 to 27 of the Mental Health (Amendment) Act 1982 shall have effect in relation to a transfer direction given before 30th September 1983 as well as in relation to one given later, but where, apart from this paragraph, a transfer direction given before 30th September 1983 would by virtue of the words in section 50(3) of this Act which are derived from section 24(3) of the Mental Health (Amendment) Act 1982 have ceased to have effect before that date it shall

cease to have effect on that date.

## **16**

The words in section 42(1) of this Act which derive from the amendment of section 66(1) of the Mental Health Act 1959 by section 28(1) of the Mental Health (Amendment) Act 1982 and the provisions of this Act which derive from section 28(3) of and Schedule 1 to that Act have effect in relation to a restriction order or, as the case may be, a restriction direction made or given before 30th September 1983 as well as in relation to one made or given later, but—

- (a) any reference to a tribunal under section 66(6) of the said Act of 1959 in respect of a patient shall be treated for the purposes of subsections (1) and (2) of section 77 of this Act in their application to sections 70 and 75(2) of this Act as an application made by him; and
- (b) sections 71(5) and 75(1)(a) of this Act do not apply where the period in question has expired before 30th September 1983.

## **17**

Section 91(2) of this Act shall not apply in relation to a patient removed from England and Wales before 30th September 1983.

## **18**

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## **19**

...

## **20**

The repeal by the Mental Health (Amendment) Act 1982 of section 77 of the Mental Health Act 1959 does not affect subsection (4) of that section in its application to a transfer direction given before 30th September 1983, but after the coming into force of this Act that subsection shall have effect for that purpose as if for the references to subsection (6) of section 60, Part IV of that Act and the provisions of that Act there were substituted respectively references to section 37(8), Part II and the provisions of this Act.

## **[21**

Any direction to which section 71(4) of the Mental Health Act 1959 applied immediately before the commencement of this Act shall have the same effect as a hospital order together with a restriction order, made without limitation of time.]

## **22**

...

## **23**

For any reference in any enactment, instrument, deed or other document to a receiver under Part VIII of the Mental Health Act 1959 there shall be substituted a reference to a receiver under Part VII of this Act.

## **24**

Nothing in this Act shall affect the operation of the proviso to section 107(5) of the Mental Health Act 1959

in relation to a charge created before the commencement of this Act under that section.

## **25**

Nothing in this Act shall affect the operation of subsection (6) of section 112 of the Mental Health Act 1959 in relation to a charge created before the commencement of this Act by virtue of subsection (5) of that section.

## **26**

...

## **27**

Nothing in this Act shall affect the operation of section 116 of the Mental Health Act 1959 in relation to orders made, directions or authorities given or other instruments issued before the commencement of this Act.

## **28**

References to applications, recommendations, reports and other documents in section 126 of this Act shall include those to which section 125 of the Mental Health Act 1959 applied immediately before the commencement of this Act and references in section 139 of this Act to the Acts to which that section applies shall include those to which section 141 of the said Act of 1959 applied at that time.

## **29**

The repeal by the Mental Health Act 1959 of the Mental Treatment Act 1930 shall not affect any amendment effected by section 20 of that Act in any enactment not repealed by the said Act of 1959.

## **30**

The repeal by the Mental Health Act 1959 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 on 1st November 1960.

## **31**

(1) Any patient who immediately before the commencement of this Act was liable to be detained in a hospital or subject to guardianship by virtue of paragraph 9 of Schedule 6 to the Mental Health Act 1959 shall unless previously discharged continue to be so liable for the remainder of the period of his treatment current on 1st November 1960.

(2) The patient may before the expiration of the period of treatment referred to in sub-paragraph (1) above apply to a Mental Health Review Tribunal.

## **32**

Any patient who immediately before the commencement of this Act was liable to be detained or subject to guardianship by virtue of an authority which had been renewed under paragraph 11 of Schedule 6 to the Mental Health Act 1959 shall unless previously discharged continue to be so liable during the period for which that authority was so renewed.

## **33**

(1) This paragraph applies to patients who at the commencement of this Act are liable to be detained

or subject to guardianship by virtue of paragraph 31 or 32 above.

(2) Authority for the detention or guardianship of the patient may on the expiration of the relevant period, unless the patient has previously been discharged, be renewed for a further period of two years.

(3) Sections 20(3) to (10) and 66(1)(f) of this Act shall apply in relation to the renewal of authority for the detention or guardianship of a patient under this paragraph as they apply in relation to the renewal of authority for the detention or guardianship of the patient under section 20(2).

(4) In this paragraph “the relevant period” means—

- (a) in relation to a patient liable to be detained or subject to guardianship by virtue of the said paragraph 31, the period of his treatment referred to in that paragraph;
- (b) in relation to a patient detained by virtue of the said paragraph 32, the period for which authority for the detention or guardianship of the patient has been renewed under paragraph 11 of Schedule 6 to the 1959 Act;
- (c) in relation to a patient the authority for whose detention or guardianship has previously been renewed under this paragraph, the latest period for which it has been so renewed.

### **34**

(1) Any patient who is liable to be detained in a hospital or subject to guardianship by virtue of paragraph 31 above shall (subject to the exceptions and modifications specified in the following provisions of this paragraph) be treated as if he had been admitted to the hospital in pursuance of an application for admission for treatment under Part II of this Act or had been received into guardianship in pursuance of a guardianship application under the said Part II and had been so admitted or received as a patient suffering from the form or forms of mental disorder recorded under paragraph 7 of Schedule 6 to the Mental Health Act 1959 or, if a different form or forms have been specified in a report under section 38 of that Act as applied by that paragraph, the form or forms so specified.

(2) Section 20 of this Act shall not apply in relation to the patient, but the provisions of paragraph 33 above shall apply instead.

(3) Any patient to whom paragraph 9(3) of Schedule 6 to the Mental Health Act 1959 applied at the commencement of this Act who fell within paragraph (b) of that paragraph shall cease to be liable to be detained on attaining the age of 25 years unless, during the period of two months ending on the date when he attains that age, the responsible medical officer records his opinion under the following provisions of this Schedule that the patient is unfit for discharge.

(4) If the patient was immediately before 1st November 1960 liable to be detained by virtue of section 6, 8(1) or 9 of the Mental Deficiency Act 1913, the power of discharging him under section 23 of this Act shall not be exercisable by his nearest relative, but his nearest relative may make one application in respect of him to [the appropriate tribunal] in any period of 12 months.

### **35**

(1) The responsible medical officer may record for the purposes of paragraph 34(3) above his opinion that a patient detained in a hospital is unfit for discharge if it appears to the responsible medical officer—

- (a) that if that patient were released from the hospital he would be likely to act in a manner dangerous to other persons or to himself, or would be likely to resort to criminal activities; or
- (b) that that patient is incapable of caring for himself and that there is no suitable hospital or

other establishment into which he can be admitted and where he would be likely to remain voluntarily;

and where the responsible medical officer records his opinion as aforesaid he shall also record the grounds for his opinion.

(2) Where the responsible medical officer records his opinion under this paragraph in respect of a patient, the managers of the hospital or other persons in charge of the establishment where he is for the time being detained or liable to be detained shall cause the patient to be informed, and the patient may, at any time before the expiration of the period of 28 days beginning with the date on which he is so informed, apply to a Mental Health Review Tribunal.

(3) On any application under sub-paragraph (2) above the tribunal shall, if satisfied that none of the conditions set out in paragraphs (a) and (b) of sub-paragraph (1) above are fulfilled, direct that the patient be discharged, and subsection (1) of section 72 of this Act shall have effect in relation to the application as if paragraph (b) of that subsection were omitted.

### **36**

Any person who immediately before the commencement of this Act was deemed to have been named as the guardian of any patient under paragraph 14 of Schedule 6 to the Mental Health Act 1959 shall be deemed for the purposes of this Act to have been named as the guardian of the patient in an application for his reception into guardianship under Part II of this Act accepted on that person's behalf by the relevant local authority.

### **37**

(1) This paragraph applies to patients who immediately before the commencement of this Act were transferred patients within the meaning of paragraph 15 of Schedule 6 to the Mental Health Act 1959.

(2) A transferred patient who immediately before the commencement of this Act was by virtue of sub-paragraph (2) of that paragraph treated for the purposes of that Act as if he were liable to be detained in a hospital in pursuance of a direction under section 71 of that Act shall be treated as if he were so liable in pursuance of a *direction under section 46 of this Act* [hospital order together with a restriction order, made without limitation of time].

(3) A transferred patient who immediately before the commencement of this Act was by virtue of sub-paragraph (3) of that paragraph treated for the purposes of that Act as if he were liable to be detained in a hospital by virtue of a transfer direction under section 72 of that Act and as if a direction restricting his discharge had been given under section 74 of that Act shall be treated as if he were so liable by virtue of a transfer direction under section 47 of this Act and as if a restriction direction had been given under section 49 of this Act.

(4) Section 84 of this Act shall apply to a transferred patient who was treated by virtue of sub-paragraph (5) of that paragraph immediately before the commencement of this Act as if he had been removed to a hospital under section 89 of that Act as if he had been so removed under the said section 84.

(5) Any person to whom sub-paragraph (6) of that paragraph applied immediately before the commencement of this Act shall be treated for the purposes of this Act as if he were liable to be detained in a hospital in pursuance of a transfer direction given under section 48 of this Act and as if a restriction direction had been given under section 49 of this Act. . .

### **38**

Any patient who immediately before the commencement of this Act was treated by virtue of sub-

paragraph (1) of paragraph 16 of Schedule 6 to the Mental Health Act 1959 as if he had been conditionally discharged under section 66 of that Act shall be treated as if he had been conditionally discharged under section 42 of this Act and any such direction as is mentioned in paragraph (b) of that sub-paragraph shall be treated as if it had been given under the said section 42.

### **39**

...

### **40**

A person who immediately before the commencement of this Act was detained by virtue of paragraph 19 of Schedule 6 to the Mental Health Act 1959 may continue to be detained until the expiration of the period of his treatment current on 1st November 1960 or until he becomes liable to be detained or subject to guardianship under this Act, whichever occurs first, and may be so detained in any place in which he might have been detained under that paragraph.

### **41**

Any opinion recorded by the responsible medical officer under the foregoing provisions of this Schedule shall be recorded in such form as may be prescribed by regulations made by the Secretary of State.

### **42**

(1) In the foregoing provisions of this Schedule—

- (a) references to the period of treatment of a patient that was current on 1st November 1960 are to the period for which he would have been liable to be detained or subject to guardianship by virtue of any enactment repealed or excluded by the Mental Health Act 1959, or any enactment repealed or replaced by any such enactment as aforesaid, being a period which began but did not expire before that date; and
- (b) “the responsible medical officer” means—
  - (i) in relation to a patient subject to guardianship, the medical officer authorised by the local social services authority to act (either generally or in any particular case or for any particular purpose) as the responsible medical officer;
  - (ii) in relation to any other class of patient, the registered medical practitioner in charge of the treatment of the patient.

(2) Subsection (2) of section 34 of this Act shall apply for the purposes of the foregoing provisions of this Schedule as it applies for the purposes of Part II of this Act.

(3) The sentence or other period of detention of a person who was liable to be detained or subject to guardianship immediately before 1st November 1960 by virtue of an order under section 9 of the Mental Deficiency Act 1913 shall be treated for the purposes of the foregoing provisions of this Schedule as expiring at the end of the period for which that person would have been liable to be detained in a prison or other institution if the order had not been made.

(4) For the purposes of the foregoing provisions of this Schedule, an order sending a person to an institution or placing a person under guardianship made before 9th March 1956 on a petition presented under the Mental Deficiency Act 1913 shall be deemed to be valid if it was so deemed immediately before the commencement of this Act by virtue of section 148(2) of the Mental Health Act 1959.

### **43**

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## NOTES

### Derivation

Paras 4–20 derived from the Mental Health (Amendment) Act 1982, ss 56(1), 61(1), (4), 64(5), 69(3), (4), Sch 5; paras 29–31, 33–45 derived from the Mental Health Act 1959, ss 148(2), 149(4), (5), Sch 6, paras 9–17, 19, 22, 23, 25–27.

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

Paras 4, 5, 7, 8, 10–14, 18, 19, 22, 26: repealed by the Statute Law (Repeals) Act 2004.

Date in force: 22 July 2004: (no specific commencement provision).

Para 9: sub-paras (1), (3) repealed by the Statute Law (Repeals) Act 2004.

Date in force: 22 July 2004: (no specific commencement provision).

Para 21: substituted by the Domestic Violence, Crime and Victims Act 2004, s 58(1), Sch 10, para 23(1), (2).

Date in force: 31 March 2005: see SI 2005/579, art 3(f), (g).

Para 34: in sub-para (4) words “the appropriate tribunal” in square brackets substituted by SI 2008/2833, art 9(1), Sch 3, paras 39, 68.

Date in force: 3 November 2008: see SI 2008/2833, art 1(1).

Para 37: in sub-para (2) words “direction under section 46 of this Act” in italics repealed and subsequent words in square brackets substituted by the Domestic Violence, Crime and Victims Act 2004, s 58(1), Sch 10, para 23(1), (3).

Date in force: to be appointed: see the Domestic Violence, Crime and Victims Act 2004, s 60.

Para 37: in sub-para (5) words omitted repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 1.

Date in force: 3 November 2008: see SI 2008/1900, art 2(p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Para 39: repealed by the Mental Health Act 2007, s 55, Sch 11, Pt 1.

Date in force: 3 November 2008: see SI 2008/1900, art 2(p); for transitional provisions and savings see art 3, Schedule, paras 1, 12 thereto.

Paras 43–45: repealed by the Mental Capacity Act 2005, s 67(2), Sch 7.

Date in force: 1 October 2007: see SI 2007/1897, art 2(1)(d).

Para 46: repealed by the Health Authorities Act 1995, s 5(1), Sch 3.

### Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

## SCHEDULE 6

## REPEALS

Section 148(3)

Chapter	Short title	Extent of repeal
7 & 8 Eliz 2 c 72	The Mental Health Act 1959.	Sections 1 to 5.  Section 10.  Section 22.  Sections 25 to 35.  Sections 37 to 43.  Sections 45 to 60.  Sections 62 to 68.  Sections 70 to 76.  Sections 80 and 81.  Section 85.  Section 87.  Sections 89 and 90.  Sections 92 to 96.  Sections 99 to 119.  Sections 121 to 126.  Sections 129 and 130.  Sections 132 and 133.  Sections 135 to 141.  In section 144, in subsection (1), paragraph (b).  Section 145(2).  Sections 147 and 148.  Section 149(3) to (5).  In section 150, the words from "section ten" to "section one

		<p>hundred and forty one” and from “section one hundred and forty six” to “Schedules”.</p> <p>In section 152, the words from “sections eighty-five” to “Northern Ireland by that section”, from “section one hundred and twenty-nine” to “Schedules” and the words “Part II of the Seventh Schedule; Part II of the Eighth Schedule”.</p> <p>Section 153.</p> <p>Schedule 1.</p> <p>Schedule 3.</p> <p>Schedule 5.</p> <p>Schedule 6, except paragraph 15(4).</p> <p>In Schedule 7, in Part I the entry relating to sections 48 and 49 of the Fines and Recoveries Act 1833 and in Part II the entries relating to the Polish Resettlement Act 1947 and the USA Veterans’ Pensions (Administration) Act 1949.</p>
1960 c 61	The Mental Health (Scotland) Act 1960.	<p>Section 74.</p> <p>In Schedule 4, all the entries relating to the Mental Health Act 1959 except those relating to section 9 and Schedule 7.</p>
1961 (NI) c 15	The Mental Health Act (Northern Ireland) 1961.	In Schedule 5, paragraphs 1 to 4.
1964 c 84	The Criminal Procedure (Insanity) Act 1964.	Section 4(7).
1965 c 2	The Administration of Justice Act 1965.	In Schedule 1, the entry relating to the Mental Health Act 1959.
1968 c 20	The Courts-Martial (Appeals) Act 1968.	In Schedule 4, the entry relating to the Mental Health Act 1959.
1968 c 49	The Social Work (Scotland) Act	In Schedule 8, paragraphs 48

	1968.	and 49.
1969 c 46	The Family Law Reform Act 1969.	In Schedule 1 the entries relating to the Mental Health Act 1959.
1969 c 54	The Children and Young Persons Act 1969.	In Schedule 5, paragraphs 38 to 40.
1969 c 58	The Administration of Justice Act 1969.	Sections 17 to 19.
1970 c 42	The Local Authority Social Services Act 1970.	In Schedule 1, the entry relating to the Mental Health (Amendment) Act 1982.
1971 c 23	The Courts Act 1971.	In Schedule 8, paragraph 38.  In Part i of Schedule 9, the entry relating to the Mental Health Act 1959.
1971 c 77	The Immigration Act 1971.	In section 30(2), the words from "and accordingly" onwards.
1972 c 70	The Local Government Act 1972.	In Schedule 23, in paragraph 9, in sub-paragraph (1) the words "35, 56(2)(c) and 56(3)", in sub-paragraph (2) the words "10(1), 22, 27(2), 33, 34, 38(3), 40 to 43, 47(2), 52, 53, 59, 60" and "132", sub-paragraphs (4), (5) and (6).
1973 c 29	The Guardianship Act 1973.	In section 1(8), the words from "and" to the end of the subsection.
1975 c 37	The Nursing Homes Act 1975.	In Schedule 1, paragraphs 1 to 4.
1977 c 45	The Criminal Law Act 1977.	In Schedule 6, the entry relating to section 130(3) of the Mental Health Act 1959.
1977 c 49	The National Health Service Act 1977.	In section 105(3), the words "or the Mental Health Act 1959".  In Schedule 15, paragraphs 23, 26 to 28, 30, 31 and 33.
1978 c 29	The National Health Service (Scotland) Act 1978.	In paragraph 10(b) of Schedule 15, the figure "102".
1980 c 5	The Child Care Act 1980.	In Schedule 5, paragraphs 13

		and 14.
1980 c 43	The Magistrates' Courts Act 1980.	In Schedule 7, paragraphs 31 and 32.
1980 c 53	The Health Services Act 1980.	In Schedule 1, paragraph 13.
1981 c 45	The Forgery and Counterfeiting Act 1981.	Section 11(1).
1981 c 54	The [Senior Courts Act 1981].	Section 144.  In Schedule 5, paragraphs 2 and 3 of the entry relating to the Mental Health Act 1959.  In Schedule 6, paragraph 4.
1981 c 61	The British Nationality Act 1981.	In section 39(7) the words "section 90 of the Mental Health Act 1959 and".
1982 c 51	The Mental Health (Amendment) Act 1982.	Sections 1 to 33.  Sections 35 to 61.  In section 63, subsection (1) and in subsection (2) the words from the beginning to "Act and".  Section 64(1), (2), (3), (5) and (6).  Section 66.  Section 68(2) and (3).  Section 69(2), (3) and (4).  In section 70(2), the words "sections 35(1) and (2) and 64(6) above extend to Northern Ireland".  Schedule 1.  In Schedule 3, in Part I paragraphs 1 to 26, in paragraph 35 sub-paragraph (a), paragraphs 40, 42, 45 and 46, in paragraph 50 sub-paragraph (a), in paragraph 51 sub-paragraph (a), paragraphs 52 to 55, 57 and 58 and Part II.

		In Schedule 5, paragraphs 2 to 15.
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## NOTES

### Initial Commencement

#### *Specified date*

Specified date: 30 September 1983: see s 149(2); for transitional provisions and savings see Sch 5 hereof.

### Amendment

In column 2 words "Senior Courts Act 1981" in square brackets substituted by the Constitutional Reform Act 2005, s 59(5), Sch 11, Pt 1, para 1(2).

Date in force: 1 October 2009: see SI 2009/1604, art 2(d).