



# Mental Health Act 1983

## 1983 CHAPTER 20

### PART II

#### COMPULSORY ADMISSION TO HOSPITAL AND GUARDIANSHIP

#### *[<sup>F1</sup>Duration of authority and discharge]*

#### Textual Amendments

- F1** S. 20: cross-heading substituted (3.11.2008) by virtue of [Mental Health Act 2007 \(c. 12\), ss. 32\(3\), 56](#) (with [Sch. 10](#)); [S.I. 2008/1900, art. 2\(i\)](#) (with [art. 3, Sch.](#))

#### **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 [<sup>F2</sup>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

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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 [<sup>F3</sup>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 [<sup>F4</sup>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 [<sup>F5</sup>mental disorder] of a nature or degree which makes it appropriate for him to receive medical treatment in a hospital; and
- (b) <sup>F6</sup> . . . . .
- (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; [<sup>F7</sup> and
- (d) appropriate medical treatment is available for him.]

<sup>F8</sup> . . .

(5) Before furnishing a report under subsection (3) above the [<sup>F3</sup>responsible clinician] shall consult one or more other persons who have been professionally concerned with the patient’s medical treatment.

[<sup>F9</sup>(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 [<sup>F10</sup>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 [<sup>F4</sup>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 [<sup>F11</sup>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.

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(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) <sup>F12</sup> .....

(10) <sup>F13</sup> .....

#### Textual Amendments

**F2** Words in s. 20(2) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 5(a)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)

**F3** Words in s. 20(3)(5) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), **ss. 9(4)(a)**, 56 (with Sch. 10); S.I. 2008/1900, **art. 2(b)** (with art. 3, Sch.)

**F4** Words in s. 20(3)(6) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 5(b)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)

**F5** Words in s. 20(4)(a) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 1, 56, **Sch. 1 para. 4(a)** (with Sch. 10); S.I. 2008/1900, **art. 2(a)** (with art. 3, Sch.)

**F6** S. 20(4)(b) and word "and" at the end of that paragraph repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 4(4)(a), 55, 56, **Sch. 11 Pt. 2** (with Sch. 10); S.I. 2008/1900, **art. 2(b)(p)** (with art. 3, Sch.)

**F7** S. 20(4)(d) and preceding word inserted (3.11.2008) by Mental Health Act 2007 (c. 12), **ss. 4(4)(b)**, 56 (with Sch. 10); S.I. 2008/1900, **art. 2(b)** (with art. 3, Sch.)

**F8** Words in s. 20(4) repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 4(4)(c), 55, 56, **Sch. 11 Pt. 2** (with Sch. 10); S.I. 2008/1900, **art. 2(b)(p)** (with art. 3, Sch.)

**F9** S. 20(5A) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), **ss. 9(4)(b)**, 56 (with Sch. 10); S.I. 2008/1900, **art. 2(b)** (with art. 3, Sch.)

**F10** Words in s. 20(6) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), **ss. 9(4)(c)**, 56 (with Sch. 10); S.I. 2008/1900, **art. 2(b)** (with art. 3, Sch.)

**F11** Words in s. 20(7)(a) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 1, 56, **Sch. 1 para. 4(b)** (with Sch. 10); S.I. 2008/1900, **art. 2(a)** (with art. 3, Sch.)

**F12** S. 20(9) repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 55, 56, **Sch. 11 Pt. 1** (with Sch. 10); S.I. 2008/1900, **art. 2(p)** (with art. 3, Sch.)

**F13** S. 20(10) repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 9(4)(d), 55, 56, **Sch. 11 Pt. 3** (with Sch. 10); S.I. 2008/1900, **art. 2(b)(p)** (with art. 3, Sch.)

#### [<sup>F14</sup>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.

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- (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.

#### **Textual Amendments**

**F14** Ss. 20A, 20B inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 32(3)**, 56 (with [Sch. 10](#)); [S.I. 2008/1900](#), **art. 2(i)** (with [art. 3](#), [Sch.](#))

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## 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.]

### Textual Amendments

**F14** Ss. 20A, 20B inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\), ss. 32\(3\), 56](#) (with [Sch. 10](#)); [S.I. 2008/1900, art. 2\(i\)](#) (with [art. 3, Sch.](#))

### Modifications etc. (not altering text)

**C1** [S. 20B\(1\)](#) modified (3.11.2008) by [The Mental Health Act 2007 \(Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions\) Order 2008 \(S.I. 2008/1210\)](#), [arts. 1\(1\)\(b\), 11\(e\)](#)

## [<sup>F15</sup>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 [<sup>F16</sup>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 [<sup>F17</sup>, 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.

[ Where a patient is absent without leave on the day on which (apart from this section) <sup>F18</sup>(3) the managers would be required under section 68 below to refer the patient's case to [<sup>F19</sup>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.]

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- [ Where a community patient is absent without leave on the day on which (apart from <sup>F20</sup>(4) 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.]]

#### Textual Amendments

- F15** Ss. 21, 21A, 21B substituted (1.4.1996) for s. 21 by 1995 c. 52, ss. 2(2), 7(2)
- F16** Words in s. 21(1)(a) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, Sch. 3 para. 6(2)(a) (with Sch. 10); S.I. 2008/1900, art. 2(i) (with art. 3, Sch.)
- F17** Words in s. 21(1) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, Sch. 3 para. 6(2)(b) (with Sch. 10); S.I. 2008/1900, art. 2(i) (with art. 3, Sch.)
- F18** S. 21(3) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 37(2), 56 (with Sch. 10); S.I. 2008/1900, art. 2(i) (with art. 3, Sch.)
- F19** Words in s. 21(3) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 6, Sch. 3 para. 40
- F20** S. 21(4)(5) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, Sch. 3 para. 6(3) (with Sch. 10); S.I. 2008/1900, art. 2(i) (with art. 3, Sch.)

#### 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.
- [<sup>F21</sup>(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.]

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### Textual Amendments

**F21** S. 21A(4)(5) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 32, 56, [Sch. 3 para. 7](#) (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(i\)](#) (with [art. 3](#), [Sch.](#))

## 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 [<sup>F22</sup>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 [<sup>F23</sup>(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 [<sup>F24</sup>or is a community patient](as opposed to subject to guardianship), the [<sup>F22</sup>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 [<sup>F25</sup>approved mental health professional] .

[<sup>F26</sup>(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.]

[<sup>F27</sup>(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.

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- (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.

[<sup>F28</sup>(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.

[<sup>F29</sup>(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) <sup>F30</sup> .....

(9) <sup>F30</sup> .....

(10) In this section—

<sup>F31</sup> .....

[<sup>F32</sup>“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]

[<sup>F33</sup>“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;



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- (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.]

#### Textual Amendments

- F22** Words in s. 21B(2)(3) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 9(5)(a), 56 (with Sch. 10); S.I. 2008/1900, art. 2(b) (with art. 3, Sch.)
- F23** Words in s. 21B(2) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, Sch. 3 para. 8(2) (with Sch. 10); S.I. 2008/1900, art. 2(i) (with art. 3, Sch.)
- F24** Words in s. 21B(3) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, Sch. 3 para. 8(3) (with Sch. 10); S.I. 2008/1900, art. 2(i) (with art. 3, Sch.)
- F25** Words in s. 21B(3)(b) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 21, 56, Sch. 2 para. 7(b) (with Sch. 10); S.I. 2008/1900, art. 2(d) (with art. 3, Sch.); S.I. 2008/2561, art. 2(b) (with art. 3, Sch.)
- F26** S. 21B(4) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, Sch. 3 para. 8(4) (with Sch. 10); S.I. 2008/1900, art. 2(i) (with art. 3, Sch.)
- F27** S. 21B(4A) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, Sch. 3 para. 8(5) (with Sch. 10); S.I. 2008/1900, art. 2(i) (with art. 3, Sch.)
- F28** S. 21B(6A)(6B) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, Sch. 3 para. 8(6) (with Sch. 10); S.I. 2008/1900, art. 2(i) (with art. 3, Sch.)
- F29** S. 21B(7A) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, Sch. 3 para. 8(7) (with Sch. 10); S.I. 2008/1900, art. 2(i) (with art. 3, Sch.)
- F30** S. 21B(8)(9) repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 55, 56, Sch. 11 Pt. 1 (with Sch. 10); S.I. 2008/1900, art. 2(p) (with art. 3, Sch.)
- F31** S. 21B(10): definition of "appropriate medical officer" repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 9(5)(b), 56, Sch. 11 Pt. 3 (with Sch. 10); S.I. 2008/1900, art. 2(b)(p) (with art. 3, Sch.)
- F32** S. 21B(10): definition of "the appropriate body" substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, Sch. 3 para. 8(8)(a) (with Sch. 10); S.I. 2008/1900, art. 2(i) (with art. 3, Sch.)
- F33** S. 21B(10): definition of "the relevant conditions" substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, Sch. 3 para. 8(8)(b) (with Sch. 10); S.I. 2008/1900, art. 2(i) (with art. 3, Sch.)

#### [<sup>F34</sup>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—

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- (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.]

#### Extent Information

**E1** For extent of s. 22 see [ss. 146, 147](#)

#### Textual Amendments

**F34** S. 22 substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 32, 56](#), [Sch. 3 para. 9](#) (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(i\)](#) (with [art. 3](#), [Sch.](#))

## 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 [<sup>F35</sup>absolutely from detention or guardianship is made in accordance with this section]

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<sup>F36</sup>(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 <sup>F37</sup>responsible clinician], by the managers or by the nearest relative of the patient;
- (b) where the patient is subject to guardianship, by the <sup>F37</sup>responsible clinician], by the responsible local social services authority or by the nearest relative of the patient.

<sup>F38</sup>(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.]

<sup>F39</sup>(3) .....

<sup>F39</sup>(3A) .....

(4) The powers conferred by this section on any authority [<sup>F40</sup>trust ] [<sup>F41</sup>, board] [<sup>F42</sup>(other than an NHS foundation trust)] or body of persons may be exercised [<sup>F40</sup>subject to subsection (5) below] by any three or more members of that authority [<sup>F40</sup>trust] [<sup>F41</sup>, board] or body authorised by them in that behalf or by three or more members of a committee or sub-committee of that authority [<sup>F40</sup>trust] [<sup>F41</sup>, board] or body which has been authorised by them in that behalf.

<sup>F43</sup>(5) The reference in subsection (4) above to the members of an authority, trust [<sup>F44</sup>, board] or body or the members of a committee or sub-committee of an authority, trust [<sup>F44</sup>, board] or body,—

(a) in the case of [<sup>F45</sup>a [<sup>F46</sup> [<sup>F47</sup>Local Health Board], Special Health Authority or Primary Care Trust]] or a committee or sub-committee of [<sup>F45</sup>a [<sup>F46</sup> [<sup>F47</sup>Local Health Board], Special Health Authority or Primary Care Trust]], is a reference only to the chairman of the authority [<sup>F48</sup>, trust or board] and [<sup>F49</sup>such members (of the authority, trust, board, committee or sub-committee], as the case may be) as are not also officers of the authority [<sup>F48</sup>, trust or board], within the meaning of [<sup>F50</sup>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.]

<sup>F51</sup>(6) The powers conferred by this section on any NHS foundation trust may be exercised by any three or more [<sup>F52</sup>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. ] . ]

#### Textual Amendments

**F35** Words in s. 23(1) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 32, 56, [Sch. 3 para. 10\(2\)](#) (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(i\)](#) (with [art. 3](#), [Sch.](#))

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- F36** S. 23(1A)(1B) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 10(3)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F37** Words in s. 23(2)(a)(b) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), **ss. 9(6)**, 56 (with Sch. 10); S.I. 2008/1900, **art. 2(b)** (with art. 3, Sch.)
- F38** S. 23(2)(c) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 10(4)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F39** S. 23(3)(3A) omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 39(1)**, 306(4); S.I. 2012/1319, **art. 2(3)**
- F40** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 24(3)(b)**
- F41** Words in s. 23(4) inserted (1.4.2007) by The References to Health Authorities Order 2007 (S.I. 2007/961, **art. 3**, **Sch. para. 13(2)(b)**)
- F42** Words in s. 23(4) inserted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 34, 199, **Sch. 4 para. 53(b)**; S.I. 2004/759, **art. 2**
- F43** S.23(5) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 24(3)(c)**
- F44** Words in s. 23(5) inserted (1.4.2007) by The References to Health Authorities Order 2007 (S.I. 2007/961, **art. 3**, **Sch. para. 13(2)(c)**)
- F45** Words in s. 23(5)(a) substituted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8, **Sch. 1 Pt. III**, para. 107(2)(b)
- F46** Words in s. 23(5)(a) substituted (8.2.2000) by S.I. 2000/90, **art. 3(1)**, **Sch. 1 para. 16(4)(b)(i)** (with art. 2(5))
- F47** Words in s. 23(5)(a) substituted (1.4.2007) by The References to Health Authorities Order 2007 (S.I. 2007/961, **art. 3**, **Sch. para. 13(2)(d)(i)**)
- F48** Words in s. 23(5)(a) substituted (1.4.2007) by The References to Health Authorities Order 2007 (S.I. 2007/961, **art. 3**, **Sch. para. 13(2)(d)(ii)**)
- F49** Words in s. 23(5)(a) substituted (1.4.2007) by virtue of The References to Health Authorities Order 2007 (S.I. 2007/961), **art. 3**, **Sch. para. 13(2)(d)(iii)**
- F50** Words in s. 23(5)(a) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 65** (with Sch. 3 Pt. 1)
- F51** S. 23(6) inserted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 34, 199, **Sch. 4 para. 53(c)**; S.I. 2004/759, **art. 2**
- F52** Words in s. 23(6) substituted (24.7.2007) by Mental Health Act 2007 (c. 12), **ss. 45(1)**, 56 (with Sch. 10); S.I. 2007/2156, **art. 2**

**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 [<sup>F53</sup>, or who is a community patient,] of any power to order his discharge, any registered medical practitioner [<sup>F54</sup> 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 [<sup>F54</sup> 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 [<sup>F55</sup> or to any after-care services provided for the patient under section 117 below.].

<sup>F56</sup>(3) .....

<sup>F56</sup>(4) .....

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#### Textual Amendments

- F53** Words in s. 24(1) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 32, 56, [Sch. 3 para. 11\(2\)](#) (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(i\)](#) (with art. 3, Sch.)
- F54** Words in s. 24 inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 9(7), 56, (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(b\)](#) (with art. 3, Sch.)
- F55** Words in s. 24(2)(4) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), Sch. 1, para. 1
- F56** S. 24(3)(4) omitted (1.7.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), ss. 39(2), 306(4); S.I. 2012/1319, art. 2(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 [<sup>F57</sup>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 [<sup>F58</sup>responsible clinician] furnishes to the managers a report certifying that in the opinion of [<sup>F59</sup>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.

[<sup>F60</sup>(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 [<sup>F61</sup>, or in respect of a community patient,] the managers shall cause the nearest relative of the patient to be informed.

#### Textual Amendments

- F57** Words in s. 25(1) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 32, 56, [Sch. 3 para. 12\(2\)](#) (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(i\)](#) (with art. 3, Sch.)
- F58** Words in s. 25(1) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 9(8)(a), 56 (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(b\)](#) (with art. 3, Sch.)
- F59** Words in s. 25(1) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 9(8)(b), 56 (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(b\)](#) (with art. 3, Sch.)
- F60** S. 25(1A) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 32, 56, [Sch. 3 para. 12\(3\)](#) (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(i\)](#) (with art. 3, Sch.)
- F61** Words in s. 25(2) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 32, 56, [Sch. 3 para. 12\(4\)](#) (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(i\)](#) (with art. 3, Sch.)

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