



Mental Health (Amendment) Act 1982

1982 CHAPTER 51

PART VII

MISCELLANEOUS AND SUPPLEMENTARY

51 After-care

- (1) This section applies to persons who, having been detained under section 26 of the principal Act, or having been admitted to a hospital in pursuance of a hospital order made under section 60 of the principal Act, or having been transferred to a hospital in pursuance of a transfer direction given under section 72 or 73 of the principal Act, cease to be detained and leave hospital.
- (2) It shall be the duty of the District Health Authority and of the local social services authority to provide, in co-operation with relevant voluntary agencies, after-care services for any person to whom this section applies.
- (3) The duty laid down by subsection (2) above shall continue until the District Health Authority and the local social services authority are satisfied that the person concerned is no longer in need of such services.
- (4) In this section " the District Health Authority " means the District Health Authority for the District, and " the local social services authority " means the local social services authority 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.

52 Correspondence of patients

- (1) A postal packet addressed to any person by a patient detained in a hospital under the principal Act or this Act and delivered by the patient for despatch may be withheld from the Post Office—
 - (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 a special hospital and the managers of the hospital consider that the postal packet is likely—

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- (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, the medical practitioner in charge of the treatment of the patient or the Secretary of State.
- (2) Subject to subsection (3) below, a postal packet addressed to a patient detained in a special hospital under the principal Act or this Act 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 Member of either House of Parliament;
 - (b) the Master or Deputy Master or any other officer of the Court of Protection or any of the Lord Chancellor's Visitors;
 - (c) the Parliamentary Commissioner for Administration, the Health Service Commissioner for England, the Health Service Commissioner for Wales or a Local Commissioner within the meaning of Part III of the Local Government Act 1974;
 - (d) a Mental Health Review Tribunal;
 - (e) a health authority within the meaning of the National Health Service Act 1977, a local social services authority, a Community Health Council or a probation and after-care committee appointed under paragraph 2 of Schedule 3 to the Powers of Criminal Courts Act 1973 ;
 - (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.
- (4) The managers of a hospital may inspect and open any postal packet for the purposes of determining whether it is one to which subsection (1) or (2) above applies and, if so, for determining 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 a case under subsection (2) above, to the person (if known) by whom the postal packet was sent; and any such notice shall be in writing and shall contain a statement of the effect of section 56(7) and (8) below.
- (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 Afferent 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 "postal packet" has the same meaning as in the Post Office Act 1953 and the provisions of this section shall have effect notwithstanding anything in section 56 of that Act.
- (10) References in this section to a hospital shall be construed as references to a hospital within the meaning of Part IV of the principal Act.
- (11) Section 36 of the principal Act (which is superseded by this section) and section 134 of that Act (restriction on correspondence of patients not subject to detention) shall cease to have effect.

53 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 medical practitioners, managers and staff of hospitals and mental nursing homes and mental welfare officers in relation to the admission of patients to hospitals and mental nursing homes under the principal Act or this Act; and
 - (b) for the guidance of medical practitioners and members of other professions in relation to the medical treatment of patients suffering from mental disorder.
- (2) The code shall, in particular, specify forms of medical treatment, in addition to any specified by regulations made for the purposes of section 43 above, which in the opinion of the Secretary of State give rise to special concern and should accordingly not be given by a 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 medical practitioner, being a practitioner appointed for the purposes of this section by the Secretary of State.
- (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 forty 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.

54 Practitioners approved for purposes of Part VI and s. 53

- (1) The Secretary of State may make such provision as he may with the approval of the Treasury determine for the payment of remuneration, allowances, pensions or gratuities to or in respect of medical practitioners appointed by him for the purposes of

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Part VI of this Act and section 53 above and to or in respect of other persons appointed for the purposes of section 43(2)(a) above.

- (2) A medical practitioner or other person appointed by the Secretary of State for the purposes of the provisions mentioned in subsection (1) above may, for the purpose of exercising his functions under those provisions, at any reasonable time—
- (a) visit and interview and, in the case of a medical practitioner, examine in private any patient detained in a mental nursing home ; and
 - (b) require the production of and inspect any records relating to the treatment of the patient in that home.

55 General protection of detained patients

- (1) The Secretary of State shall keep under review the exercise of the powers and the discharge of the duties conferred or imposed by the principal Act and this Act so far as relating to the detention of patients or to patients liable to be detained under those Acts and shall make arrangements for persons authorised by him in that behalf—
- (a) to visit and interview in private patients detained under those Acts in hospitals and mental nursing homes ; and
 - (b) to investigate—
 - (i) any complaint made by a person in respect of a matter that occurred while he was detained under those Acts in a hospital or mental nursing home and which he considers has not been satisfactorily dealt with by the managers of that hospital or mental nursing home; and
 - (ii) any other complaint as to the exercise of the powers or the discharge of the duties conferred or imposed by those Acts in respect of a person who is or has been so detained.
- (2) The arrangements made under this section in respect of the investigation of complaints may exclude matters from investigation in specified circumstances and shall not require any person exercising functions under the arrangements to undertake or continue with any investigation where he does not consider it appropriate to do so.
- (3) Where any such complaint as is mentioned in subsection (1)(b)(ii) above is made by a Member of Parliament and investigated under the arrangements made under this section the results of the investigation shall be reported to him.
- (4) For the purpose of any such review as is mentioned in subsection (1) above or of carrying out his functions under arrangements made under this section any person authorised in that behalf by the Secretary of State may at any reasonable time—
- (a) visit and interview and, if he is a medical practitioner, examine in private any patient in a mental nursing home; and
 - (b) require the production of and inspect any records relating to the detention or treatment of any person who is or has been detained in a mental nursing home.
- (5) The matters in respect of which regulations may be made under section 6 of the Nursing Homes Act 1975 shall include the keeping of records relating to the detention and treatment of persons detained under the principal Act or this Act in a mental nursing home.
- (6) The Secretary of State may make such provision as he may with the approval of the Treasury determine for the payment of remuneration, allowances, pensions or gratuities to or in respect of persons exercising functions in relation to any such review

as is mentioned in subsection (1) above or functions under arrangements made under this section.

- (7) The powers and duties referred to in subsection (1) above do not include any power or duty conferred or imposed by Part VIII of the principal Act.

56 Mental Health Act Commission

- (1) The Secretary of State shall under section 11 of the National Health Service Act 1977 establish a special health authority to be known as the Mental Health Act Commission.
- (2) Without prejudice to the generality of his powers under section 13 of that Act, the Secretary of State shall direct the Commission to perform on his behalf—
- (a) the function of appointing medical practitioners for the purposes of Part VI of this Act and section 53 above and of appointing other persons for the purposes of section 43(2)(a) above; and
 - (b) the functions of the Secretary of State under sections 47 and 55(1) and (4) above.
- (3) The medical practitioners and other persons appointed for the purposes mentioned in subsection (2) (a) above may include members of the Commission.
- (4) The Secretary of State may, at the request of or after consultation with the Commission and after consulting such other bodies as appear to him to be concerned, direct the Commission to keep under review the care and treatment, or any aspect of the care and treatment, in hospitals and mental nursing homes of patients who are not liable to be detained under the principal Act or this Act.
- (5) For the purpose of any such review as is mentioned in subsection (4) above any person authorised in that behalf by the Commission may at any reasonable time—
- (a) visit and interview and, if he is a medical practitioner, examine in private any patient in a mental nursing home; and
 - (b) require the production of and inspect any records relating to the treatment of any person who is or has been a patient in a mental nursing home.
- (6) The Secretary of State may make such provision as he may with the approval of the Treasury determine for the payment of remuneration, allowances, pensions or gratuities to or in respect of persons exercising functions in relation to any such review as is mentioned in subsection (4) above.
- (7) The Commission shall review any decision to withhold a postal packet (or anything contained in it) under subsection (1)(b) or (2) of section 52 above if an application in that behalf is made—
- (a) in a case under subsection (1)(b), by the patient; or
 - (b) in a case under subsection (2), either by the patient or by the person by whom the postal packet was sent;
- and any such application shall be made within six months of the receipt by the applicant of the notice referred to in subsection (6) of that section.
- (8) On an application under subsection (7) above the Commission may direct that the postal packet which is the subject of the application (or anything contained in it) shall not be withheld and the managers in question shall comply with any such direction.

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- (9) The Secretary of State may by regulations make provision with respect to the making and determination of applications under subsection (7) above, including provision for the production to the Commission of any postal packet which is the subject of such an application.
- (10) The Commission shall in the second year after its establishment and subsequently in every second year publish a report on its activities ; and copies of every such report shall be sent by the Commission to the Secretary of State who shall lay a copy before each House of Parliament.
- (11) Paragraph 9 of Schedule 5 to the said Act of 1977 (pay and allowances for chairman and members of health authorities) shall have effect in relation to the authority established pursuant to this section as if references in sub-paragraphs (1) and (2) to the chairman included references to any member and as if sub-paragraphs (4) and (5) were omitted.

57 Duty of managers of hospitals to give information to detained patients

- (1) The managers of a hospital or mental nursing home in which a patient is detained under the principal Act or this Act shall take such steps as are practicable to ensure that the patient understands—
 - (a) under which of the provisions of those Acts he is for the time being detained and the effect of that provision; and
 - (b) what rights of applying to a Mental Health Review 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 mental nursing home 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—
 - (a) sections 47 and 48 of the principal Act (discharge by responsible medical officer, managers, nearest relative etc.); and
 - (b) Part VI of this Act and sections 52, 53 and 55 above ;
 and those steps shall be taken as soon as practicable after the commencement of the patient's detention in the hospital or nursing home.
- (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 mental nursing home 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.
- (5) Section 52(5) of the principal Act (effect of order substituting acting nearest relative) shall have effect as if subsection (4) above were contained in Part IV of that Act.

58 Duty of managers of hospitals to inform nearest relative of discharge of detained patient

- (1) Where a patient liable to be detained under the principal Act or this Act in a hospital or mental nursing home is to be discharged otherwise than by virtue of an order for discharge made by his nearest relative, the managers of the hospital or mental nursing home 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.
- (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.
- (3) Section 52(5) of the principal Act (effect of order substituting acting nearest relative) shall have effect as if this section were contained in Part IV of that Act.

59 Management of property and affairs of patients

- (1) In section 100(2) of the principal Act (functions of Court of Protection) for the words "the property of persons under disability " there shall be substituted the words " the property and affairs of persons under disability ".
- (2) In section 103 of the principal Act there shall be omitted—
 - (a) in subsection (1)(d) and (dd) (powers not generally exercisable except by the Lord Chancellor or a nominated judge) the words from " so however " onwards ; and
 - (b) in subsection (3) (settlement of property of an infant) the words from the beginning to " and " where it first occurs.

60 Protection for acts done in pursuance of the principal Act and this Act

- (1) Section 141 of the principal Act (protection for acts done in pursuance of that Act) shall be amended as follows.
- (2) For subsection (2) there shall be substituted—

“(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) In subsection (3) for the words "any provision of this Act" there shall be substituted the words " any other provision of this Act ".
- (4) After subsection (3) there shall be inserted—

“(3A) This section does not apply to proceedings against the Secretary of State or against a health authority within the meaning of the National Health Service Act 1977.”
- (5) For subsection (4) there shall be substituted—

“(4) 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.”

61 Replacement of mental welfare officers by approved social workers

- (1) After the expiration of the period of two years beginning with the day on which this Act is passed the functions conferred by the principal Act and this Act on mental welfare officers shall be discharged by officers of local social services authorities to be known as approved social workers.
- (2) A local social services authority shall appoint a sufficient number of approved social workers for the purpose of discharging the functions referred to in subsection (1) above; and no person shall be appointed as an approved social worker unless he is approved by the authority as having appropriate competence in dealing with persons who are suffering from mental disorder.
- (3) In approving a person for appointment as an approved social worker a local social services authority shall have regard to such matters as the Secretary of State may direct.
- (4) Any appointment of a person as a mental welfare officer for the purposes of the principal Act and this Act shall terminate at the expiration of the period mentioned in subsection (1) above but without prejudice to anything previously done by that person or to the continuation by an approved social worker of anything which is then in process of being done by that person.

62 Electoral registration of patients

- (1) In section 4(3) of the Representation of the People Act 1949 for the words from " who is a patient" to " at any place " there shall be substituted the words " who is detained at any place in legal custody or by virtue of any enactment relating to persons suffering from mental disorder ".
- (2) Schedule 2 to this Act shall have effect with respect to electoral registration and voting in the case of voluntary mental patients.

63 Definition of hospital and medical treatment

- (1) In the definition of "hospital" in section 147(1) of the principal Act for paragraphs (a), (b) and (c) there shall be substituted—
 - “(a) any health service hospital within the meaning of the National Health Service Act 1977 ; 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;”.
- (2) In the definition of " medical treatment " in section 147(1) of the principal Act and in the definition of "mental nursing home " in section 2(1) of the Nursing Homes Act 1975 for the words " care and training under medical supervision " there shall be substituted the words " care, habilitation and rehabilitation under medical supervision ".

64 Minor amendments

- (1) In section 130(1) of the principal Act (obstruction) for the words " who refuses to allow the inspection of any premises, or without reasonable cause refuses " there shall be substituted the words " who without reasonable cause refuses to allow the inspection of any premises, or refuses ".

- (2) The function of appointing medical practitioners under subsection (3) of section 137 of the principal Act (examination of Members of Parliament) shall be exercised by the President of the Royal College of Psychiatrists instead of by the Presidents of the bodies there mentioned and accordingly in that subsection for the words from "appointed as follows" to "Presidents" there shall be substituted the words "appointed by the President of the Royal College of Psychiatrists, being practitioners appearing to the President".
- (3) Section 146 of the principal Act (warrants by Secretary of State to be given under the hand of the Secretary of State or an Under Secretary of State) shall cease to have effect.
- (4) In section 105(1) of the National Health Service Act 1977 (payments by local authorities for medical examinations with a view to admission to hospital under Part IV of the principal Act) for the words "the council which is the local authority for the purposes of the Local Authority Social Services Act 1970 for the area where the person examined resides" there shall be substituted the words "the Secretary of State".
- (5) In paragraph 2(1)(d) of Schedule 8 to the said Act of 1977 (functions of mental welfare officers in relation to persons received into guardianship under Part IV of the principal Act) after the words "Part IV" there shall be inserted the words "or Part V".
- (6) Section 32 of the Magistrates' Courts Act 1980 (maximum fine on summary conviction) shall extend to Northern Ireland so far as it relates to section 129(3)(a) of the principal Act.

65 Consequential amendments and repeals

- (1) The enactments mentioned in Schedule 3 to this Act shall have effect with the amendments there specified, being amendments consequential on the provisions of this Act.
- (2) The enactments mentioned in Schedule 4 to this Act (which include spent provisions) are hereby repealed to the extent specified in the third column of that Schedule.

66 Orders and regulations

- (1) Any power of the Secretary of State to make orders or regulations under this Act shall be exercisable by statutory instrument.
- (2) Any statutory instrument containing regulations 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 under section 40(4) above or paragraph 3(3) of Schedule 1 to this Act unless a draft of it has been approved by a resolution of each House of Parliament.

67 Expenses

There shall be paid out of moneys provided by Parliament—

- (a) any expenses incurred by the Secretary of State under this Act; and
- (b) any increase attributable to this Act in the sums so payable under any other Act.

68 Interpretation and supplementary provisions

- (1) In this Act " the principal Act" means the Mental Health Act 1959.
- (2) Sections 56 and 59 of the principal Act (supplementary provisions for Part IV) shall have effect as if section 17 above were contained in Part IV of that Act, section 80 of that Act (interpretation of Part V) shall have effect as if sections 26 to 33 above were contained in Part V of that Act, and sections 94 to 96 of that Act (supplementary provisions for Part VI) shall have effect as if sections 36 and 37 above were contained in Part VI of that Act.
- (3) The following provisions of the principal Act, that is to say—
 - (a) section 4 (definition and classification of mental disorder) ;
 - (b) section 122 (applications to tribunals);
 - (c) section 125 (forgery etc. of documents);
 - (d) section 129 (assisting patients to absent themselves with out leave etc.);
 - (e) section 130 (penalty for obstruction);
 - (f) section 135(2) and (4) (warrants to search for and remove patients);
 - (g) section 139 (custody of patients etc.);
 - (h) section 141 (protection for acts done in pursuance of the principal Act);
 - (i) section 142 (default powers);
 - (j) section 143 (inquiries);
 - (k) section 147 (general interpretation); and
 - (l) section 149(3) (power to repeal or amend local enactments),shall have effect as if the provisions of this Act other than section 62 and Schedule 2 were contained in the principal Act.

69 Commencement and transitional provisions

- (1) Subject to the provisions of this section, this Act shall come into force on 30th September 1983.
- (2) Sections 29, 30 and 31 above shall come into force on such day (not being earlier than the said 30th September) as may be appointed by an order made by the Secretary of State, and a different day may be appointed for each of those sections or for different purposes of any of those sections.
- (3) Section 56(1) and (11) above shall come into force on the said 30th September or on such earlier day as may be appointed by an order made by the Secretary of State.
- (4) Section 61 above shall come into force as provided in that section and Part II of Schedule 3 and Part II of Schedule 4 to this Act shall come into force at the expiration of the period mentioned in subsection (1) of that section; and at the expiration of that period, the references to a mental welfare officer or mental welfare officers in sections 38 and 53(1)(a) above shall be construed as references to an approved social worker or approved social workers appointed under section 61.
- (5) Section 62 above, Schedule 2 to this Act and in Schedule 4 to this Act the repeal in Schedule 7 to the principal Act and the repeals in the Mental Health (Scotland) Act 1960 and the Mental Health Act (Northern Ireland) 1961 shall come into force on 1st April 1983.

- (6) Schedule 5 to this Act, which contains transitional provisions and savings, shall have effect with respect to the matters there mentioned.

70 Short title and extent

- (1) This Act may be cited as the Mental Health (Amendment) Act 1982.
- (2) Sections 62 and 64(2) above and Schedule 2 to this Act extend to Scotland and Northern Ireland, sections 35(1) and (2) and 64(6) above extend to Northern Ireland and any amendment or repeal by this Act of an enactment which extends to Scotland or Northern Ireland has the same extent as that enactment but, save as aforesaid, this Act extends to England and Wales only.
- (3) Section 154(2) of the principal Act (power to extend Act to Isles of Scilly) shall have effect as if the provisions of this Act were contained in that Act.