



# Mental Health Act 1983

## 1983 CHAPTER 20

### PART IV

#### CONSENT TO TREATMENT

#### **56 Patients to whom Part IV applies.**

- (1) This Part of this Act applies to any patient liable to be detained under this Act except—
  - (a) a patient who is liable to be detained by virtue of an emergency application and in respect of whom the second medical recommendation referred to in section 4(4)(a) above has not been given and received;
  - (b) a patient who is liable to be detained by virtue of section 5(2) or (4) or 35 above or section 135 or 136 below or by virtue of a direction under section 37(4) above; and
  - (c) a patient who has been conditionally discharged under section 42(2) above or section 73 or 74 below and has not been recalled to hospital.
- (2) Section 57 and, so far as relevant to that section, sections 59, 60 and 62 below, apply also to any patient who is not liable to be detained under this Act.

#### **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 Secretary of State (not being the responsible medical officer) and two other persons appointed for the purposes of this paragraph by the Secretary of State (not being registered medical practitioners) have certified

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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, having regard to the likelihood of the treatment alleviating or preventing a deterioration of the patient's condition, the treatment should 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, and of those persons one shall be a nurse and the other shall be neither a nurse nor a registered medical practitioner.
- (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.

## **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) 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 responsible medical officer or a registered medical practitioner appointed for the purposes of this Part of this Act by the Secretary of State 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 medical officer) has certified in writing that the patient is not capable of understanding the nature, purpose and likely effects of that treatment or has not consented to it but that, having regard to the likelihood of its alleviating or preventing a deterioration of his condition, the treatment should 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, and of those persons one shall be a nurse and the other shall be neither a nurse nor a registered medical practitioner.
- (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.

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**[<sup>F1</sup>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

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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.]

#### Textual Amendments

- F1** S. 58A inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 27, 56** (with [Sch. 10](#)); [S.I. 2008/1900](#), **art. 2(g)** (with [art. 3](#), [Sch.](#))

#### Modifications etc. (not altering text)

- C1** S. 58A excluded (W.) (3.11.2008) by [The Mental Health \(Hospital, Guardianship, Community Treatment and Consent to Treatment\) \(Wales\) Regulations 2008 \(S.I. 2008/2439\)](#), **regs. 1, 38(3)**

## 59 Plans of treatment.

Any consent or certificate under section 57 or 58 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.

## 60 Withdrawal of consent.

- (1) Where the consent of a patient to any treatment has been given for the purposes of section 57 or 58 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.
- (2) Without prejudice to the application of subsection (1) 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.

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## 61 Review of treatment.

- (1) Where a patient is given treatment in accordance with section 57(2) or 58(3)(b) above a report on the treatment and the patient's condition shall be given by the responsible medical officer to the Secretary of State—
  - (a) on the next occasion on which the responsible medical officer furnishes a report [<sup>F2</sup>under section 20(3) or 21B(2) above renewing the authority for the detention of the patient]; and
  - (b) at any other time if so required by the Secretary of State.
- (2) In relation to a patient who is subject to a restriction order [<sup>F3</sup>, 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 medical officer makes a report in respect of the patient under section 41(6) [<sup>F4</sup>, 45B(3)] or 49(3) above.
- (3) The Secretary of State may at any time give notice to the responsible medical officer directing that, subject to section 62 below, a certificate given in respect of a patient under subsection 57(2) or 58(3)(b) above shall not apply to treatment given to him after a date specified in the notice and sections 57 and 58 above shall then apply to any such treatment as if that certificate has not been given.

### Textual Amendments

**F2** Words in s. 61(1)(a) substituted (1.4.1996) by 1995 c. 52, ss. 2(5), 7(2)

**F3** Words in s. 61(2) inserted (1.10.1997) by 1997 c. 43, s. 55, Sch. 4 para. 12(7)(a); S.I. 1997/2200, art. 2

**F4** Words in s. 61(2) inserted (1.10.1997) by 1997 c. 43, s. 55, Sch. 4 para. 12(7)(b); S.I. 1997/2200, art. 2

## 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;
  - (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.
- (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 or 58 above if the responsible medical officer considers that the discontinuance of the treatment or of treatment under the plan would cause serious suffering to the patient.

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- (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.

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**[<sup>F5</sup>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, 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)(a) above shall not preclude the continuation of any treatment, or of treatment under any plan, pending compliance with section 58 or 58A above 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.
- (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.]

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#### Textual Amendments

- F5** S. 62A inserted (3.11.3008) by Mental Health Act 2007 (c. 12), ss. 34(4), 56 (with Sch. 10); S.I. 2008/1900, art. 2(j) (with art. 3, Sch.)

### 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 treatment falling within section 57 or 58 above, if the treatment is given by or under the direction of the responsible medical officer.

### 64 Supplementary provisions for Part IV.

- (1) In this Part of this Act “the responsible medical officer” means the registered medical practitioner in charge of the treatment of the patient in question and “hospital” includes a [<sup>F6</sup>registered establishment].
- (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.

#### Textual Amendments

- F6** Words in s. 64(1) substituted (1.4.2002) by 2000 c. 14, s. 116, Sch. 4 para. 9(2); S.I. 2001/4150, art. 3(3) (subject to transitional provisions in art. 4 and S.I. 2002/1493, art. 4); S.I. 2002/920, art. 3(3)(d) (with transitional provisions in Schs. 1-3 and art. 3(4)-(10))

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