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## SCHEDULES

SCHEDULE 1 Sections 40(1), 41(3) and (5), and 55(4).

### APPLICATION OF CERTAIN PROVISIONS TO PATIENTS SUBJECT TO HOSPITAL AND GUARDIANSHIP ORDERS

#### PART I

##### PATIENTS NOT SUBJECT TO SPECIAL RESTRICTIONS

- 1 Sections 9, 10, 17, [<sup>F1</sup> 21 to 21B], 24(3) and (4), [<sup>F2</sup>25C] to 28, 31, 32, 67 and 76 shall apply in relation to the patient without modification.

#### Textual Amendments

- F1** Words in Sch. 1 Pt. I para. 1 substituted (1.4.1996) by 1995 c. 52, ss. 2(8), 7(2)  
**F2** Words in Sch. 1 Pt. I para. 1 substituted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), Sch. 1 para. 6(a)

- 2 Sections 16, 18, 19, 20, 22, 23 [<sup>F3</sup>, 25A, 25B] and 66 shall apply in relation to the patient with the modifications specified in paragraphs 3 to 9 below.

#### Textual Amendments

- F3** Words in Sch. 1, para. 2 inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), Sch. 1, para. 6(b)

VALID FROM 03/11/2008

- [<sup>F4</sup>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.

#### Textual Amendments

- F4** Sch. 1 Pt. 1 paras. 2A, 2B inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, Sch. 3 para. 36(4) (with Sch. 10); S.I. 2008/1900, art. 2(i) (with art. 3, Sch.)

VALID FROM 03/11/2008

- 2B In section 17G—

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- (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.]

#### Textual Amendments

- F4** Sch. 1 Pt. 1 paras. 2A, 2B inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 32, 56, [Sch. 3 para. 36\(4\)](#) (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(i\)](#) (with [art. 3](#), [Sch.](#))

3 In section 16(1) 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.

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”.

VALID FROM 03/11/2008

[<sup>F5</sup>5A In section 19A(2), paragraph (b) shall be omitted.]

#### Textual Amendments

- F5** Sch. 1 Pt. 1 para. 5A inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 32, 56, [Sch. 3 para. 36\(5\)](#) (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(i\)](#) (with [art. 3](#), [Sch.](#))

6 In subsection 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”; and
- (b) in subsection (9) for the words “the application for admission for treatment or, as the case may be, in the guardianship application, that application” there shall be substituted the words “the relevant order or direction under Part III of this Act, that order or direction”.

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[<sup>F6</sup>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.]

#### Textual Amendments

**F6** Sch. 1 Pt. 1 para. 6A inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, Sch. 3 para. 36(6) (with Sch. 10); S.I. 2008/1900, art. 2(i) (with art. 3, Sch.)

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) and (b) the references to the nearest relative shall be omitted.

[<sup>F7</sup>8A In sections 25A(1)(a) and 25B(5)(a) for the words “in pursuance of an application for admission for treatment” there shall be substituted the words “by virtue of an order or direction for his admission or removal to hospital under Part III of this Act”.]

#### Textual Amendments

**F7** S. 8A inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), Sch. 1, para. 6(c)

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) [<sup>F8</sup>, and in paragraph (d) “, (g)”, shall be omitted.].

#### Textual Amendments

**F8** Words in Sch. 1, para. 9(b) substituted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), Sch. 1, para. 14

VALID FROM 03/11/2008

[<sup>F9</sup>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.]

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### Textual Amendments

- F9** Sch. 1 Pt. 1 para. 10 inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 37(6)(b), 56 (with Sch. 10); S.I. 2008/1900, art. 2(1) (with art. 3, Sch.)

## PART II

### PATIENTS SUBJECT TO SPECIAL RESTRICTIONS

- 1 Sections 24(3) and (4), 32 and 76 shall apply in relation to the patient without modification.
- 2 Sections 17 to 19, 22, 23 and 34 shall apply in relation to the patient with the modifications specified in paragraphs 3 to 8 below.

### Extent Information

- E1** For extent of Sch. 1 Pt. II para. 2 see ss. 146, 147

- 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”;
  - (b) in subsection (4) after the words “the responsible medical officer” and after the words “that officer” 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 medical officer”, 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 [<sup>F10</sup>twelve] months beginning with the first day of his absence on leave”.

### Textual Amendments

- F10** Words in Sch. 1, Pt. II, para. 3(c) substituted (1.4.1996 with application as mentioned in s. 3(3) of substituting Act) by 1995 c. 52, ss. 3(2)(3), 7(2)

- 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;<sup>F11</sup> . . .
  - (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

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- before being transferred were an order or direction for his admission or removal to the hospital to which he is transferred”; <sup>F12</sup>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,”.]

#### Textual Amendments

- F11** Words in Sch. 1 Pt. II immediately following para. 5(a) repealed (1.10.1997) by 1997 c. 43, ss. 49(4)(a), 56(2), Sch. 6; S.I. 1997/2200, art. 2
- F12** Sch. 1 Pt. II para. 5(c) and the word “and” immediately preceding it inserted (1.10.1997) by 1997 c. 43, s. 49(4)(b); S.I. 1997/2200, art. 2

- 6 In section 22 subsection (1) and paragraph (a) of subsection (2) 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) 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.

## SCHEDULE 2

Section 65(2).

### MENTAL HEALTH REVIEW TRIBUNALS

- 1 Each of the Mental Health Review Tribunals 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 <sup>F13</sup>. . . ; and
- (c) a number of persons appointed by the Lord Chancellor <sup>F13</sup>. . . and having such experience in administration, such knowledge of social services or such other qualifications or experience as the Lord Chancellor considers suitable.

#### Textual Amendments

- F13** Words in Sch. 2 para. 1(b)(c) repealed (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 146, 148, Sch. 4 para. 158(2), Sch. 18 Pt. 2; S.I. 2006/1014, art. 2(a), Sch. 1 paras. 10, 11(q), 29, 30(b)

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

- C1** Sch. 2 para. 1(b)(c): Functions of the Lord Chancellor, so far as they are exercisable by him in relation to Wales, to be exercised only with the agreement of or after the consultation with the Assembly of Wales (1.7.1999) by S.I. 1999/672, art. 5, Sch. 2

- [<sup>F14</sup>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.]

**Textual Amendments**

- F14** Sch. 2 para. 1A inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, Sch. 4 para. 158(3); S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(q)

- 2 [F15Subject to paragraph 2A below,]the members of Mental Health Review Tribunals 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.

**Textual Amendments**

- F15** Words in Sch. 2 para. 2 inserted (31.3.1995) by 1993 c. 8, s. 26, Sch. 6 para. 40 (with Sch. 7 paras. 2(2), 3(2), 4); S.I. 1995/631, art. 2

- [F162A A member of a Mental Health Review Tribunal 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).]

**Textual Amendments**

- F16** Sch. 2 para. 2A inserted (31.3.1995) by 1993 c. 8, s. 26, Sch. 6 para. 40 (with Sch. 7 paras. 2(2), 3(2), 4); S.I. 1995/631, art. 2

- 3 One of the legal members of each Mental Health Review Tribunal shall be appointed by the Lord Chancellor as chairman of the Tribunal.

- 4 Subject to rules made by the Lord Chancellor under section 78(2)(c) above, the members who are to constitute a Mental Health Review Tribunal for the purposes of any proceedings or class or group of proceedings under this Act shall be appointed by the chairman of the tribunal or, if for any reason he is unable to act, by another member of the tribunal appointed for the purpose by the chairman; 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

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- (c) one or more shall be appointed from the members who are neither legal nor medical members.

- 5 A member of a Mental Health Review Tribunal for any area may be appointed under paragraph 4 above as one of the persons to constitute a Mental Health Review Tribunal for any other area for the purposes of any proceedings or class or group of proceedings; and for the purposes of this Act, a person so appointed shall, in relation to the proceedings for which he was appointed, be deemed to be a member of that other tribunal.
- 6 Subject to any rules made by the Lord Chancellor under section 78(4)(a) above, where the chairman of the tribunal is included among the persons appointed under paragraph 4 above, he shall be president of the tribunal; and in any other case the president of the tribunal shall be such one of the members so appointed (being one of the legal members) as the chairman may nominate.

### <sup>F17</sup>SCHEDULE 3

#### Textual Amendments

- F17** Sch. 3 repealed (1.10.2007) by Mental Capacity Act 2005 (c. 9), ss. 67(2), 68(1)-(3), Sch. 7 (with ss. 27, 28, 29, 62); S.I. 2007/1897, art. 2(d)

### SCHEDULE 4

Section 148.

#### CONSEQUENTIAL AMENDMENTS

- 1 <sup>F18</sup> .....

#### Textual Amendments

- F18** Sch. 4 para. 1 repealed (1.10.2007) by Mental Capacity Act 2005 (c. 9), ss. 67(2), 68(1)-(3), Sch. 7 (with ss. 27, 28, 29, 62); S.I. 2007/1897, art. 2(d)

- 2 <sup>F19</sup> .....

#### Textual Amendments

- F19** Sch. 4 para. 2 repealed (1.10.2007) by Mental Capacity Act 2005 (c. 9), ss. 67(2), 68(1)-(3), Sch. 7 (with ss. 27, 28, 29, 62); S.I. 2007/1897, art. 2

- 3 In section 10(3) of the <sup>M1</sup>Colonial Prisoners Removal Act 1884 for the words “section seventy-one of the Mental Health Act 1959”, “section seventy-two” and “section seventy-four” there shall be substituted respectively the words “ section 46 of the Mental Health Act 1983 ”, “ section 47 ”and “ section 49 ”.

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**Marginal Citations**

**M1** 1884 c. 31.

4 **F20** .....

**Textual Amendments**

**F20** Sch. 4 para. 4 repealed (1.10.2007) by Mental Capacity Act 2005 (c. 9), ss. 67(2), 68(1)-(3), **Sch. 7** (with ss. 27, 28, 29, 62); S.I. 2007/1897, **art. 2**

5 **F21** .....

**Textual Amendments**

**F21** Sch. 4 para. 5 repealed (1.10.2007) by Mental Capacity Act 2005 (c. 9), ss. 67(2), 68(1)-(3), **Sch. 7** (with ss. 27, 28, 29, 62); S.I. 2007/1897, **art. 2**

6 **F22** .....

**Textual Amendments**

**F22** Sch. 4 para. 6 repealed (13.10.2003) by 2002 c. 9, ss. 135, 136(2), **Sch. 13** (with s. 129, **Sch. 12** para. 1), S.I. 2003/1725, **art. 2(1)**

7 **F23** .....

**Textual Amendments**

**F23** Sch. 4 para. 7 repealed (1.10.2007) by Mental Capacity Act 2005 (c. 9), ss. 67(2), 68(1)-(3), **Sch. 7** (with ss. 27, 28, 29, 62); S.I. 2007/1897, **art. 2**

8 In sections 4(1) and 11(3)(b) of the <sup>M2</sup>Polish Resettlement Act 1947 for the words “the Mental Health Act 1959” there shall be substituted the words “ the Mental Health Act 1983 ”.

**Marginal Citations**

**M2** 1947 c. 19.

9 **F24** .....

**Textual Amendments**

**F24** Sch. 4 para. 9 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), **Sch. 1 Pt. 11**

10 In section 116(7) of the <sup>M3</sup>Army Act 1955 for the words “section 71 of the Mental Health Act 1959” and “within the meaning of the Mental Health Act 1959” there



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shall be substituted respectively the words “ section 46 of the Mental Health Act 1983 ” and “ within the meaning of the Mental Health Act 1983 ”.

**Marginal Citations**

**M3** 1955 c. 18.

11 In section 116(7) of the <sup>M4</sup>Air Force Act 1955 for the words “section 71 of the Mental Health Act 1959” and “within the meaning of the Mental Health Act 1959” there shall be substituted respectively the words “ section 46 of the Mental Health Act 1983 ” and “ within the meaning of the Mental Health Act 1983 ”.

**Marginal Citations**

**M4** 1955 c. 19.

<sup>F25</sup>12 .....

**Textual Amendments**

**F25** Sch. 4 para. 12 repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(7), **Sch.15** (with Sch. 14 paras. 1(1), 27(4)); S.I. 1991/828, **art. 3(2)**

13 In section 71(6) of the <sup>M5</sup>Naval Discipline Act 1957 for the words “section 71 of the Mental Health Act 1959” and “within the meaning of the Mental Health Act 1959” there shall be substituted respectively the words “ section 46 of the Mental Health Act 1983 ” and “ within the meaning of the Mental Health Act 1983 ”.

**Marginal Citations**

**M5** 1957 c. 53.

14 <sup>F26</sup> .....

**Textual Amendments**

**F26** Sch. 4 para. 14 repealed (1.10.2007) by Mental Capacity Act 2005 (c. 9), ss. 67(2), 68(1)-(3), **Sch. 7** (with ss. 27, 28, 29, 62); S.I. 2007/1897, **art. 2**

15 <sup>F27</sup> .....

**Textual Amendments**

**F27** Sch. 4 para. 15 repealed (1.5.2004) by Sexual Offences Act 2003 (c. 42), ss. 140, 141, **Sch. 7**; S.I. 2004/874, **art. 2**

16 <sup>F28</sup> .....

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**Textual Amendments**

**F28** Sch. 4 para. 16 repealed by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), s. 127(2), [Sch. 5](#)

17 In section 5 of the <sup>M6</sup>Administration of Justice Act 1960—

- (a) in subsection (4) for the words “Part V of the Mental Health Act 1959” and the words “the said Part V” there shall be substituted respectively the words “Part III of the Mental Health Act 1983 (other than under section 35, 36 or 38)” and “the said Part III”; and
- (b) in subsection (4A) for the words “section 31 of the Mental Health (Amendment) Act 1982”, “Part V of the said Act of 1959” and “the said section 31” there shall be substituted respectively “section 38 of the Mental Health Act 1983”, “Part III of the said Act of 1983” and “the said section 38”.

**Marginal Citations**

**M6** 1960 c. 65.

18 In the <sup>M7</sup>Criminal Procedure (Insanity) Act 1964—

- (a) in section 8(2) for the words “the Mental Health Act 1959”, “Part V” and “sections 139 to 141” there shall be substituted respectively the words “the Mental Health Act 1983”, “Part III” and “sections 137 to 139”;
- <sup>F29</sup>(b) .....

**Textual Amendments**

**F29** Sch. 4 para. 18(b) repealed (1.1.1992) by [Criminal Procedure \(Insanity and Unfitness to Plead\) Act 1991 \(c. 25, SIF 39:1\)](#), s. 8(3), [Sch.4](#) (with saving in s. 8); S.I. 1991/2488, [art. 2](#)

**Marginal Citations**

**M7** 1964 c. 84.

19 <sup>F30</sup> .....

**Textual Amendments**

**F30** Sch. 4 para. 19 repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), [s. 1\(1\)](#), {Sch. 1 Pt. 17 Group 8}

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

**Textual Amendments**

**F31** Sch. 4 para. 20 repealed (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\)](#), ss. 67(2), 68(1)-(3), [Sch. 7](#) (with ss. 27, 28, 29, 62); S.I. 2007/1897, [art. 2](#)

21 In the <sup>M8</sup>Criminal Justice Act 1967—

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- (a) in section 72(1)(b) for the words “section 40 or 140 of the Mental Health Act 1959 or section 31(8) of the Mental Health (Amendment) Act 1982” there shall be substituted the words “ section 18, 38(7) or 138 of the Mental Health Act 1983 ”;
- (b) in section 72(3) for the words “Section 139 of the Mental Health Act 1959” and “the said Act of 1959” there shall be substituted respectively the words “ Section 137 of the Mental Health Act 1983 ” and “ the said Act of 1983 ”;
- (c) in section 72(4) for the words “Part V of the Mental Health Act 1959”, “section 31 of the Mental Health (Amendment) Act 1982” and “Part V of the said Act of 1959” there shall be substituted respectively the words “ Part III of the Mental Health Act 1983 ”, “ section 38 of the said Act of 1983 ” and “ Part III of the said Act of 1983 ”.

**Marginal Citations**

**M8** 1967 c. 80.

22 <sup>F32</sup> .....

**Textual Amendments**

**F32** Sch. 4 para. 22 repealed (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\)](#), ss. 67(2), 68(1)-(3), [Sch. 7](#) (with ss. 27, 28, 29, 62); S.I. 2007/1897, [art. 2](#)

23 In the <sup>M9</sup>Criminal Appeal Act 1968—

- <sup>F33</sup>(a) .....
- (b) in section 8(3) after the words “Part V of the Mental Health Act 1959” there shall be inserted the words “ or under Part III of the Mental Health Act 1983 (other than under section 35, 36 or 38 of that Act) ”;
- (c) in section 8(3A)—
  - (i) for the words “section 30 of the Mental Health (Amendment) Act 1982” there shall be substituted the words “ section 36 of the Mental Health Act 1983 ”;
  - (ii) for the words “section 31 of that Act” there shall be substituted the words “ section 38 of that Act ”; and
  - (iii) for the words “Part V of the Mental Health Act 1959” there shall be substituted the words “ Part III of that Act ”;
- (d) in section 11—
  - (i) in subsection (5) for the words “the Mental Health (Amendment) Act 1982” there shall be substituted the words “ the Mental Health Act 1983 ”; and
  - (ii) in subsection (6)(b) for the words “section 31(8) of the said Act of 1982” there shall be substituted the words “ section 38(7) of the said Act of 1983 ”.

<sup>F33</sup>(e) .....

<sup>F33</sup>(f) .....

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- (g) in section 37(4) for the words “Part V of the Mental Health Act 1959” and “the Mental Health Act 1959” there shall be substituted respectively the words “ Part III of the Mental Health Act 1983 (otherwise than under section 35, 36 or 38 of that Act) ” and “ the Mental Health Act 1983 ”;
- (h) in section 37(4A) for the words “section 30 of the Mental Health (Amendment) Act 1982”, “section 31” and “Part V of the said Act of 1959” wherever they occur there shall be substituted respectively the words “ section 36 of the Mental Health Act 1983 ”, “ section 38 ” and “ Part III of the said Act of 1983 ”;
- (i) in section 50(1), for the words from “Part V” to “1982” there shall be substituted the words “ Part III of the Mental Health Act 1983, with or without a restriction order, and an interim hospital order under that Part ”;
- (j) in section 51(2) for the words “section 147(1) of the Mental Health Act 1959” there shall be substituted the words “ section 145(1) of the Mental Health Act 1983 ”;
- <sup>F33</sup>(k) .....
- <sup>F33</sup>(l) .....
- <sup>F33</sup>(m) .....
- (n) in Schedule 3—
  - (i) in the heading to the Schedule for the words “PART V OF MENTAL HEALTH ACT 1959” there shall be substituted the words “ PART III OF MENTAL HEALTH ACT 1983 ”; and
  - (ii) for paragraph 2 there shall be substituted—

**Order for continued detention under Act of 1983**

“2 Where an order is made by the Court of Appeal under section 16(3) of this Act for a person’s continued detention under the Mental Health Act 1983, Part III of that Act (patients concerned in criminal proceedings or under sentence) shall apply to him as if he had been ordered under the said section 16(3) to be kept in custody pending trial and were detained in pursuance of a transfer direction together with a restriction direction.”

**Textual Amendments**  
**F33** Sch. 4 para. 23 (a)(e)(f)(k)-(m) repealed (1.1.1992) by [Criminal Procedure \(Insanity and Unfitness to Plead\) Act 1991 \(c. 25, SIF 39:1\)](#), s. 8(3), [Sch.4](#) (with saving in s. 8); [S.I. 1991/2488](#), [art. 2](#)

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**Marginal Citations**  
**M9** 1968 c. 19.

- 24 In the <sup>M10</sup>Courts-Martial (Appeals) Act 1968—
- (a) in sections 20(4) and 43(4) for the words “Part V of the Mental Health Act 1959” there shall be substituted the words “ Part III of the Mental Health Act 1983 ”;
  - (b) in section 23, in subsection (1) for the words “section 71 of the Mental Health Act 1959” there shall be substituted the words “ section 46 of the Mental Health Act 1983 ” and in subsection (2) for the words “the Mental

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Health Act 1959” there shall be substituted the words “ the Mental Health Act 1983 ”;

- (c) in section 25(4) for the words “the Mental Health Act 1959” there shall be substituted the words “ the Mental Health Act 1983 ”.

**Marginal Citations**

**M10** 1968 c. 20.

25 <sup>F34</sup> .....

**Textual Amendments**

**F34** Sch. 4 para. 25 repealed (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\)](#), ss. 67(2), 68(1)-(3), [Sch. 7](#) (with ss. 27, 28, 29, 62); S.I. 2007/1897, [art. 2](#)

- 26 In the <sup>M11</sup>Children and Young Persons Act 1969— <sup>F35</sup>
- (a) .....
  - <sup>F35</sup>(b) .....
  - <sup>F35</sup>(c) .....
  - (d) in section 12(4) for the words “section 28 of the Mental Health Act 1959”, “Part V” and “the said Act of 1959” there shall be substituted respectively the words “ section 12 of the Mental Health Act 1983 ”, “ Part III ” and “ the said Act of 1983 ”;
  - (e) in paragraph 7(7) of Schedule 4 for the words from the beginning to “1959” there shall be substituted the words “ A restriction direction which was given under section 49 of the Mental Health Act 1983 ”.

**Textual Amendments**

**F35** Sch. 4 para. 26(a)–(c) repealed (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(7), [Sch.15](#) (with Sch. 14 paras. 1(1), [27\(4\)](#)); S.I. 1991/828, [art. 3\(2\)](#)

**Marginal Citations**

**M11** 1969 c. 54.

- 27 In Schedule 1 to the <sup>M12</sup>Local Authorities Social Services Act 1970—
- (a) in the entry relating to the Mental Health Act 1959, in the first column for the words “Parts II to VI and IX” there shall be substituted the words “ sections 8 and 9 ” and for the entry in the second column there shall be substituted the words “ Welfare and accommodation of mentally disordered persons. ”;
  - (b) there shall be inserted at the end—

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**“Mental Health Act 1983 (c. 20)**

Parts II, III and VI

Welfare of the mentally disordered;  
guardianship of persons suffering  
from mental disorder including  
such persons removed to England

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	and Wales from Scotland or Northern Ireland; exercise of functions of nearest relative of person so suffering.
Sections 66, 67, 69(1)	Exercise of functions of nearest relative in relation to applications and references to Mental Health Review Tribunals.
Section 114	Appointment of approved social workers.
Section 115	Entry and inspection.
Section 116	Welfare of certain hospital patients.
Section 117	After-care of detained patients.
Section 130	Prosecutions.”;
<hr/>	
(c)	the entry relating to the <sup>M13</sup> Mental Health (Amendment) Act 1982 shall cease to have effect.

**Marginal Citations**  
**M12** 1970 c. 42.  
**M13** 1982 c. 51.

28 In section 57(1) of the <sup>M14</sup>Courts Act 1971 for the words “Part V of the Mental Health Act 1959” there shall be substituted the words “ Part III of the Mental Health Act 1983 ”.

**Marginal Citations**  
**M14** 1971 c. 23.

<sup>F36</sup>29 .....

**Textual Amendments**  
**F36** Sch. 4 para. 29 repealed (1.10.1992) by Tribunals and Inquiries Act 1992 (c. 53), ss. 18(2), 19(2), Sch. 4 Pt.I.

30 <sup>F37</sup> .....

**Textual Amendments**  
**F37** Sch. 4 para. 30 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 8}

31 .....

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**Textual Amendments**

**F38** Sch. 4 para. 31 repealed by Parliamentary and other Pensions Act 1987 (c. 45, SIF 89), s. 6, **Sch. 4**

32 **F39** .....

**Textual Amendments**

**F39** Sch. 4 para. 32 repealed (1.10.2007) by Mental Capacity Act 2005 (c. 9), ss. 67(2), 68(1)-(3), **Sch. 7** (with ss. 27, 28, 29, 62); S.I. 2007/1897, **art. 2**

33 **F40** .....

**Textual Amendments**

**F40** Sch. 4 para. 33 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), **s. 1(1)**, {Sch. 1 Pt. 17 Group 8}

34 In section 12(d) of the <sup>M15</sup>Matrimonial Causes Act 1973 for the words “the Mental Health Act 1959” there shall be substituted the words “the Mental Health Act 1983”.

**Marginal Citations**

**M15** 1973 c. 18.

**F41**35 .....

**Textual Amendments**

**F41** Sch. 4 para. 35 repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(7), **Sch.15** (with Sch. 14 paras. 1(1), 27(4)); S.I. 1991/828, **art. 3(2)**

36 **F42** .....

**Textual Amendments**

**F42** Sch. 4 para. 36 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), **s. 1(1)**, {Sch. 1 Pt. 17 Group 8}

37 **F43** .....

**Textual Amendments**

**F43** Sch. 4 para. 37 repealed (5.4.2004) by Criminal Justice Act 2003 (c. 44), **ss. 332, 336; Sch. 37 Pt. 10;** S.I. 2004/829, **art. 2(2)(i)(iv)** (subject to art. 2(3)-(6))

38 **F44** .....

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**Textual Amendments**

**F44** Sch. 4 para. 38 repealed (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\)](#), ss. 67(2), 68(1)-(3), [Sch. 7](#) (with ss. 27, 28, 29, 62); S.I. 2007/1897, [art. 2](#)

39 In section 5(7) of the <sup>M16</sup>Rehabilitation of Offenders Act 1974 for the words “Part V of the Mental Health Act 1959” there shall be substituted the words “ Part III of the Mental Health Act 1983 ”.

**Marginal Citations**

**M16** 1974 c. 53.

40 ..... **F45**

**Textual Amendments**

**F45** Sch. 4 para. 40 repealed by [Capital Transfer Tax Act 1984 \(c. 51, SIF 65\)](#), ss. 274, 277, [Schs. 7, 9](#)

41 In the <sup>M17</sup>Criminal Procedure (Scotland) Act 1975—  
(a) in sections 13(1)(b) and 322(1)(b) for the words “section 40 or 140 of the Mental Health Act 1959, section 31(8) of the Mental Health (Amendment) Act 1982” there shall be substituted the words “ section 18, 38(7) or 138 of the Mental Health Act 1983 ”;  
(b) in sections 13(3) and 322(3) for the words “Section 139 of the Mental Health Act 1959” and “the said Act of 1959” there shall be substituted respectively “ Section 137 of the Mental Health Act 1983 ” and “ the said Act of 1983 ”;  
(c) in sections 13(4) and 322(4) for the words “Part V of the Mental Health Act 1959”, “section 31 of the Mental Health (Amendment) Act 1982” and “Part V of the said Act of 1959” there shall be substituted respectively the words “ Part III of the Mental Health Act 1983 ”, “ section 38 of the said Act of 1983 ” and “ Part III of the said Act of 1983 ”.

**Marginal Citations**

**M17** 1975 c. 21.

42 In Part II of Schedule 1 to the <sup>M18</sup>House of Commons Disqualification Act 1975 in the entry relating to Mental Health Review Tribunals for the words “constituted under the Mental Health Act 1959” there shall be substituted the words “ constituted or having effect as if constituted under the Mental Health Act 1983 ”.

**Marginal Citations**

**M18** 1975 c. 24.

43 ..... **F46**



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**Textual Amendments**

**F46** Sch. 4 para. 43 repealed by Registered Homes Act 1984 (c. 23, SIF 113:3), s. 57, **Sch. 3**

<sup>F47</sup>44 . . . . .

**Textual Amendments**

**F47** Sch. 4 para. 44 repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(7), **Sch. 15** (with Sch. 14 paras. 1(1), 27(4)); S.I. 1991/828, **art. 3(2)**

45 <sup>F48</sup> . . . . .

**Textual Amendments**

**F48** Sch. 4 para. 45 repealed ( 30.12.2005) by 2002 c. 38, ss. 139, 148, Sch. 5 (with Sch. 4 paras. 6-8); S.I. 2005/2897, **art. 2**

46 In section 3(6B) of the <sup>M19</sup>Bail Act 1976 for the words “section 28 of the Mental Health Act 1959” there shall be substituted the words “ section 12 of the Mental Health Act 1983 ”.

**Marginal Citations**

**M19** 1976 c. 63.

47 <sup>F49</sup> . . . . .

**Textual Amendments**

**F49** Sch 4 para. 47 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

48 In section 16A(1)(b)(ii) of the <sup>M20</sup>National Health Service (Scotland) Act 1978 for the words “section 10 of the Mental Health Act 1959” there shall be substituted the words “ section 116 of the Mental Health Act 1983 ”.

**Marginal Citations**

**M20** 1978 c. 29.

<sup>F50</sup>49 . . . . .

**Textual Amendments**

**F50** Sch. 4 para. 49 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch.12** (with s. 201(3), Sch. 11 paras. 20, 22, 26(2), 27)

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F51 50 .....

**Textual Amendments**  
F51 Sch. 4 para. 50 repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(7), Sch.15 (with Sch. 14 paras. 1(1), 27(4)); S.I. 1991/828, art. 3(2)

F52 51 .....

**Textual Amendments**  
F52 Sch. 4 para. 51 repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(7), Sch.15 (with Sch. 14 paras. 1(1), 27(4)); S.I. 1991/828, art. 3(2)

52 F53 .....

**Textual Amendments**  
F53 Sch. 4 para. 52 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 8}

53 F54 .....

**Textual Amendments**  
F54 Sch. 4 para. 53 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 8}

54 F55 .....

**Textual Amendments**  
F55 Sch. 4 para. 54 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 8}

55 F56 .....

**Textual Amendments**  
F56 Sch. 4 para. 55 repealed (1.10.2007) by Mental Capacity Act 2005 (c. 9), ss. 67(2), 68(1)-(3), Sch. 7 (with ss. 27, 28, 29, 62); S.I. 2007/1897, art. 2

56 F57 .....

**Textual Amendments**  
F57 Sch. 4 para. 56 repealed (1.10.2007) by Mental Capacity Act 2005 (c. 9), ss. 67(2), 68(1)-(3), Sch. 7 (with ss. 27, 28, 29, 62); S.I. 2007.1897, {art. 2}

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- 57 In the <sup>M21</sup>Contempt of Court Act 1981—
- (a) in section 14(4) for the words “section 60 of the Mental Health Act 1959” and “section 31 of the Mental Health (Amendment) Act 1982” there shall be substituted respectively the words “section 37 of the Mental Health Act 1983” and “section 38 of that Act”; and
  - (b) in section 14(4A) for the words “section 29 of the said Act of 1982” there shall be substituted the words “section 35 of the said Act of 1983”.
  - (c) in paragraph 10(b) of Schedule 1 for the words “paragraph (b) of subsection (2) of section 76 of the Mental Health Act 1959” there shall be substituted the words “section 51(5) of the Mental Health Act 1983”.

**Marginal Citations**

**M21** 1981 c. 49.

- 58 In the <sup>M22</sup>Supreme Court Act 1981—
- (a) in section 48(6)(a) for the words “Part V of the Mental Health Act 1959” and “the Mental Health (Amendment) Act 1982” there shall be substituted respectively the words “Part III of the Mental Health Act 1983”; and “that Act”;
  - (b) in section 48(7) for the words “the said Act of 1982” there shall be substituted the words “the said Act of 1983”; and
  - (c) in section 48(8)(b) for the words “section 31(8) of the said Act of 1982” there shall be substituted the words “section 38(7) of the said Act of 1983”.

**Marginal Citations**

**M22** 1981 c. 54.

- 59 In section 13(9) of the <sup>M23</sup>Armed Forces Act 1981 or the words “the Mental Health Act 1959” there shall be substituted the words “the Mental Health Act 1983”.

**Marginal Citations**

**M23** 1981 c. 55.

- 60 In paragraph 9 of Schedule 1 to the <sup>M24</sup>British Nationality Act 1981—
- (a) in sub-paragraph (1)(b) for the words “Part V of the Mental Health Act 1959” there shall be substituted the words “Part III of the Mental Health Act 1983”; and
  - (b) in sub-paragraph (2)(b) for the words “Part V of the Mental Health Act 1959” there shall be substituted the words “Part III of the Mental Health Act 1983”.

**Marginal Citations**

**M24** 1981 c. 61.

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- 61 In the <sup>M25</sup>Mental Health (Amendment) Act 1982—
  - (a) ..... <sup>F58</sup>
  - (b) in section 70(3) for the words “Section 154(2) of the principal Act” there shall be substituted the words “ Section 149(4) of the Mental Health Act 1983” ”.

**Textual Amendments**  
**F58** Sch. para. 61(a) repealed by Statute Law (Repeals) Act 1986 (c. 12), s. 1(1), Sch. 1 Pt. XIII

**Marginal Citations**  
**M25** 1982 c. 51.

SCHEDULE 5

Section 148.

TRANSITIONAL AND SAVING PROVISIONS

- 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 <sup>M26</sup>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.

**Marginal Citations**  
**M26** 1959 c. 72.

- 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 <sup>F59</sup> .....

**Textual Amendments**  
**F59** Sch. 5 para. 4 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 8}

- 5 <sup>F60</sup> .....

**Textual Amendments**  
**F60** Sch. 5 para. 5 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 8}

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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 section 1 or 2 of the <sup>M27</sup>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.

**Marginal Citations**

M27 1982 c. 51.

7 F61 .....

**Textual Amendments**

F61 Sch. 5 para. 7 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 8}

8 F62 .....

**Textual Amendments**

F62 Sch. 5 para. 8 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 8}

9 (1) F63 .....

(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”.

(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) F64 .....

**Textual Amendments**

F63 Sch. 5 para. 9(1) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 8}

F64 Sch. 5 para. 9(3) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 8}

10 F65 .....

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**Textual Amendments**

**F65** Sch. 5 para. 10 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 8}

11 F66 .....

**Textual Amendments**

**F66** Sch. 5 para. 11 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 8}

12 F67 .....

**Textual Amendments**

**F67** Sch. 5 para. 12 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 8}

13 F68 .....

**Textual Amendments**

**F68** Sch. 5 para. 13 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 8}

14 F69 .....

**Textual Amendments**

**F69** Sch. 5 para. 14 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 8}

15 The provisions of this Act which derive from sections 24 to 27 of the <sup>M28</sup>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.

**Marginal Citations**

**M28** 1982 c. 51.

16 The words in section 42(1) of this Act which derive from the amendment of section 66(1) of the <sup>M29</sup>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

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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.

#### Marginal Citations

M29 1959 c. 72.

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 F70 .....

#### Textual Amendments

F70 Sch. 5 para. 18 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 8}

19 F71 .....

#### Textual Amendments

F71 Sch. 5 para. 19 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 8}

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.

[<sup>F72</sup>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.]

#### Textual Amendments

F72 Sch. 5 para. 21 substituted (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(1), 60, Sch. 10 para. 23(2); S.I. 2005/579, art. 3(g)

22 F73 .....

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**Textual Amendments**

**F73** Sch. 5 para. 22 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 8}

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 <sup>F74</sup> .....

**Textual Amendments**

**F74** Sch. 5 para. 26 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 8}

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 <sup>M30</sup>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.

**Marginal Citations**

**M30** 1930 c. 23.

30 The repeal by the Mental Health Act 1959 of the provisions of the <sup>M31</sup>Lunacy Act 1890 and of the <sup>M32</sup>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.

**Marginal Citations**

**M31** 1890 c. 5.

**M32** 1913 c. 28.



*Status: Point in time view as at 01/04/2008.*

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- 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 <sup>M33</sup>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 subparagraph (1) above apply to a Mental Health Review Tribunal.

#### Marginal Citations

**M33** 1959 c. 72.

- 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 <sup>M34</sup>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.

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- (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 <sup>M35</sup>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 a Mental Health Review Tribunal in any period of 12 months.

#### Marginal Citations

**M34** 1959 c. 72.

**M35** 1913 c. 28.

- 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.

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- 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 <sup>M36</sup>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 [<sup>F75</sup>hospital order together with a restriction order, made without limitation of time] of this Act.
- (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, and he shall be so treated notwithstanding that he is not suffering from a form of mental disorder mentioned in the said section 48.

#### Textual Amendments

**F75** Words in [Sch. 5 para. 37\(2\)](#) substituted (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), ss. 58(1), 60, [Sch. 10 para. 23\(3\)](#); S.I. 2005/579, [art. 3\(g\)](#)

#### Marginal Citations

**M36** [1959 c. 72](#).

- 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 Upon a restriction direction in respect of a patient who immediately before the commencement of this Act was a transferred patient within the meaning of paragraph 15 of Schedule 6 to the Mental Health Act 1959 ceasing to have effect, the responsible medical officer shall record his opinion whether the patient is suffering from mental illness, severe mental impairment, psychopathic disorder or mental impairment, and references in this Act to the form or forms of mental disorder specified in the relevant application, order or direction shall be construed as including references to the form

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or forms of mental disorder recorded under this paragraph or under paragraph 17 of the said Schedule 6.

- 40 A person who immediately before the commencement of this Act was detained by virtue of paragraph 19 of Schedule 6 to the <sup>M37</sup>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.

#### Marginal Citations

**M37** 1959 c. 72.

- 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 <sup>M38</sup>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 <sup>M39</sup>Mental Health Act 1959.

#### Marginal Citations

**M38** 1913 c. 28.

**M39** 1959 c. 72.

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43 F76 .....

**Textual Amendments**

**F76** Sch 5 para. 43 repealed (1.10.2007) by Mental Capacity Act 2005 (c. 9), ss. 67(2), 68(1)-(3), Sch. 7 (with ss. 27, 28, 29, 62); S.I. 2007/1897, art. 2

44 F77 .....

**Textual Amendments**

**F77** Sch 5 para. 43 repealed (1.10.2007) by Mental Capacity Act 2005 (c. 9), ss. 67(2), 68(1)-(3), Sch. 7 (with ss. 27, 28, 29, 62); S.I. 2007/1897, art. 2

45 F78 .....

**Textual Amendments**

**F78** Sch 5 para. 45 repealed (1.10.2007) by Mental Capacity Act 2005 (c. 9), ss. 67(2), 68(1)-(3), Sch. 7 (with ss. 27, 28, 29, 62); S.I. 2007/1897, art. 2

46 For the purposes of section 15 of the <sup>M40</sup>National Health Service Reorganisation Act 1973 (preservation of certain boards of governors) any provision of this Act which corresponds to a provision amended by that Act shall be treated as if it were such a provision and any reference in any order for the time being in force under that section to such a provision shall have effect as if it were a reference to the corresponding provision of this Act.

SCHEDULE 6

Section 134.

REPEALS

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.

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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.

Section 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 hundred and forty one” and from “section one hundred and forty six” to “Schedules”.

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”.

Section 153.

Schedule 1.

Schedule 3.

Schedule 5.

Schedule 6, except paragraph 15(4).

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.

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Chapter	Short title	Extent of repeal
1960 c. 61.	The Mental Health (Scotland) Act 1960.	Section 74.  In Schedule 4, all the entries relating to the Mental Health Act 1959 except those relating to section 9 and Schedule 7.
1961 (N.I.) 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 1968.	In Schedule 8, paragraphs 48 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”,

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		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.
Chapter	Short title	Extent of repeal
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 Supreme Court 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”.



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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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