



# Mental Health (Scotland) Act 1984

## 1984 CHAPTER 36

An Act to consolidate the Mental Health (Scotland) Act 1960. [12th July 1984]

<sup>X1</sup>Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Editorial Information

- X1** A Table showing the derivation of the provisions of this consolidation Act will be found at the end of the Act. The Table has no official status.

### Modifications etc. (not altering text)

- C1** Act modified by [Repatriation of Prisoners Act 1984 \(c. 47, SIF 39:1\)](#), s. 3, [Sch. para. 5\(3\)](#)
- C2** By [Criminal Justice Act 1991 \(c.53, SIF 39:1\)](#), s. 101(1), [Sch. 12 para. 23](#); S.I. 1991/2208, art. 2(1), [Sch. 1](#) it is provided (14.10.1991) that in relation to any time before the commencement of s.70 of that 1991 Act (which came into force on 1.10.1992 by [S.I. 1992/333, art. 2\(2\)](#), [Sch. 2](#)) references in any enactment amended by that 1991 Act, to youth courts shall be construed as references to juvenile courts.

### Commencement Information

- I1** Act wholly in force at 30.9.1984 see s. 130

## PART I

### APPLICATION OF ACT

#### 1 Application of Act: “mental disorder”.

- (1) The provisions of this Act shall have effect with respect to the reception, care and treatment of persons suffering, or appearing to be suffering, from mental disorder, to the management of their property and affairs, and to other related matters.

**Status:** Point in time view as at 03/04/2000. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Mental Health (Scotland) Act 1984 is up to date with all changes known to be in force on or before 29 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(2) In this Act—

“mental disorder” means mental illness [<sup>F1</sup>(including personality disorder)] or mental handicap however caused or manifested;

“mental impairment” means a state of arrested or incomplete development of mind not amounting to severe mental impairment which includes significant impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned; and cognate expressions shall be construed accordingly;

“severe mental impairment” means a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned; and cognate expressions shall be construed accordingly;

and other expressions have the meanings assigned to them in section 125 of this Act.

(3) No person shall be treated under this Act as suffering from mental disorder by reason only of promiscuity or other immoral conduct, sexual deviancy or dependence on alcohol or drugs.

**Textual Amendments**

**F1** Words in s. 1(2) inserted (13.9.1999) by 1999 asp 1, s. 3(1)(a)(2)

## PART II

### MENTAL WELFARE COMMISSION

#### 2 Mental Welfare Commission.

- (1) There shall continue to be a body called the Mental Welfare Commission for Scotland (in this Act referred to as “the Mental Welfare Commission”) who shall perform the functions assigned to them by or under this Act.
- (2) The Mental Welfare Commission shall consist of no fewer than 10 commissioners (including at least 3 women) of whom one shall be chairman, at least 3 shall be medical practitioners (in this Act referred to as “medical commissioners”), and one shall be a person who has been for a period of at least 5 years either a member of the Faculty of Advocates or a solicitor.
- (3) Five commissioners of whom at least one shall be a medical commissioner shall constitute a quorum of the Mental Welfare Commission.
- (4) The commissioners shall be appointed by Her Majesty on the recommendation of the Secretary of State and 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 Secretary of State.
- (5) Before making a recommendation under subsection (4) of this section the Secretary of State shall consult such bodies as appear to him to be concerned.

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- (6) No person who for the time being is employed in the civil service of the Crown whether in an established capacity or not, and whether for the whole or part of his time, shall be appointed to the Mental Welfare Commission.
- (7) The Mental Welfare Commission may—
  - (a) pay to the said commissioners such remuneration; and
  - (b) make provision for the payment of such pensions, allowances or gratuities to or in respect of the said commissioners,as the Secretary of State may, with the approval of the Treasury, determine; and such determination may make different provision for different cases or different classes of case.
- (8) The following provisions of the <sup>M1</sup>National Health Service (Scotland) Act 1978 shall apply to the Mental Welfare Commission as they apply to a Health Board, that is to say—
  - (a) sections 85(1), (2A), (4) and (6) (which contain provisions as to expenditure being met by the Secretary of State);
  - (b) sections 85A(1) and (3) (which impose financial duties); and
  - (c) section 86 (which provides for the auditing and examination of accounts).
- (9) The Secretary of State may provide for the Mental Welfare Commission such officers and servants and such accommodation as the Commission may require.
- (10) The Mental Welfare Commission shall be a body corporate and shall have a common seal.
- (11) The proceedings of the Mental Welfare Commission shall not be invalidated by any vacancy in the membership of the Commission or any defect in the appointment of any commissioner.

#### Marginal Citations

M1 1978 c. 29.

### 3 Functions and duties of the Mental Welfare Commission.

- (1) It shall be the duty of the Mental Welfare Commission generally to exercise protective functions in respect of persons who may, by reason of mental disorder, be incapable of adequately protecting their persons or their interests, and, where those persons are liable to be detained in hospital or subject to guardianship [<sup>F2</sup>or a community care order] under the following provisions of this Act, their functions as aforesaid shall include, in appropriate cases, the discharge of such patients in accordance with the said provisions.
- (2) In the exercise of their functions as aforesaid, it shall be the duty of the Mental Welfare Commission—
  - (a) to make enquiry into any case where it appears to them that there may be ill-treatment, deficiency in care or treatment, or improper detention of any person who may be suffering from mental disorder, or where the property of any such person may, by reason of his mental disorder, be exposed to loss or damage;
  - (b) to visit regularly and, subject to paragraph (c) of this subsection, as often as they think appropriate, patients who are liable to be detained in a hospital or

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- who are subject to guardianship [<sup>F3</sup> or a community care order] and on any such visit to afford an opportunity, on request, for private interview to any such patient or, where the patient is in a hospital, to any other patient in that hospital;
- (c) in any case where—
- (i) The authority for the detention of a patient—
- (A) has been renewed for a period of one year under section 30 of this Act; and
- (B) is renewed for a further period of one year under that section; and
- (ii) the patient has not, during the period referred to in sub-paragraph (i) (A) of this paragraph—
- (A) appealed to the sheriff under section 30(6) of this Act; or
- (B) been visited by the Mental Welfare Commission under paragraph (b) of this sub-section,
- to visit the patient before the expiry of the period of one year referred to in sub-paragraph (i)(B) of this paragraph, unless the patient has previously been discharged, and on any such visit to afford an opportunity, on request, for private interview to any such patient;
- (d) to bring to the attention of the managers of any hospital or of any local authority the facts of any case in which in the opinion of the Mental Welfare Commission it is desirable for the managers or the local authority to exercise any of their functions to secure the welfare of any patient suffering from mental disorder by—
- (i) preventing his ill-treatment;
- (ii) remedying any deficiency in his care or treatment;
- (iii) terminating his improper detention; or
- (iv) preventing or redressing loss or damage to his property;
- (e) to advise the Secretary of State, a Health Board [<sup>F4</sup>, a National Health Service trust established under section 12A of the National Health Service (Scotland) Act 1978] or a local authority on any matter arising out of this Act which has been referred to the Commission by the Secretary of State, the Health Board [<sup>F5</sup>, the National Health Service trust], or the local authority, as the case may be;
- (f) to bring to the attention of the Secretary of State, a Health Board, a local authority or any other body any matter concerning the welfare of any persons who are suffering from mental disorder which the Commission consider ought to be brought to his or their attention.
- (3) Where, in the course of carrying out any of their functions, the Mental Welfare Commission form the opinion that any patient who is—
- (a) liable to be detained in a hospital; and
- (b) either a restricted patient within the meaning of section 63 of this Act or a person mentioned in section 67(1) or (2) (persons treated as restricted patients) of this Act,
- should be discharged, they shall recommend accordingly to the Secretary of State.
- (4) On any visit by the Mental Welfare Commission in pursuance of paragraph (b) or (c) of subsection (2) of this section, the visitor shall be, or the visitors shall include, a medical commissioner or a medical officer of the Commission.

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- (5) For the purposes of subsection (2) of this section, the Mental Welfare Commission may interview, and a medical commissioner or a medical officer of the Commission may examine, any patient in private.
- (6) A medical commissioner or a medical officer of the Mental Welfare Commission may require the production of and inspect the medical records of any patient.
- (7) The Mental Welfare Commission shall in 1985 and in every year thereafter publish a report on their activities; and copies of each such report shall be submitted by the Commission to the Secretary of State who shall lay copies before Parliament.
- (8) Subject to the provisions of subsection (4) of this section, the Mental Welfare Commission may appoint—
  - (a) any commissioner or committee of commissioners to carry out any of the functions of the Commission, other than those relating to the discharge of patients, under this Act,
  - (b) a person, not being a commissioner—
    - (i) to make by himself; or
    - (ii) to act as chairman of any committee of commissioners appointed under paragraph (a) of this subsection to make,any enquiry which the Commission are obliged to make under subsection (2) (a) of this sectionand where any committee is so appointed the Commission may fix a quorum for that committee and otherwise regulate its proceedings.
- (9) A person appointed under subsection (9)(b) of this section shall be—
  - (a) an advocate; or
  - (b) a solicitor,of not less than 5 years standing.
- (10) Any commissioner or committee or person appointed in pursuance of subsection (9) of this section shall exercise the functions so conferred in accordance with the directions of the Mental Welfare Commission.

#### Textual Amendments

- F2** Words in s. 3(1) inserted (1.4.1996) by 1995 c. 52, ss. 4(2), 7(2), **Sch. 2**, para. 1
- F3** Words in s. 3(2)(b) inserted (1.4.1996) by 1995 c. 52, ss. 4(2), 7(2), **Sch. 2**, para. 1
- F4** Words inserted by **National Health Service and Community Care Act 1990 (c. 19, SIF 113:2)**, s. 66(1), **Sch. 9 para. 28(1)(a)**
- F5** Words inserted by **National Health Service and Community Care Act 1990 (c. 19, SIF 113:2)**, s. 66(1), **Sch. 9 para. 28(1)(b)**

#### 4 Proceedings and evidence at enquiries under section 3.

- (1) For the purpose of any enquiry under section 3(2)(a) of this Act, the Mental Welfare Commission may, by notice in writing, require any person to attend at the time and place set forth in the notice to give evidence, but no person shall be required in obedience to such a notice to go more than 10 miles from his place of residence unless the necessary expenses of his attendance are paid or tendered to him.

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- (2) A person giving evidence at such an enquiry shall not be required to answer any questions which he would be entitled, on the ground of privilege or confidentiality, to refuse to answer if the enquiry were a proceeding in a court of law.
- (3) The proceedings in any such enquiry shall have the privilege of a court of law.
- (4) The chairman of, or person holding, the enquiry may administer oaths to witnesses and examine witnesses on oath, and may accept, instead of evidence on oath by any person, evidence on affirmation or a statement in writing by that person.
- (5) Any person who refuses or wilfully neglects to attend in obedience to a notice under subsection (1) of this section or to give evidence shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale.

## 5 Duties of the Secretary of State and of local authorities in relation to the Mental Welfare Commission.

- (1) The Secretary of State shall afford the Mental Welfare Commission all facilities necessary to enable them to carry out their functions in respect of any patient in a hospital other than a private hospital.
- (2) The local authority concerned and the guardian of any person subject to guardianship under this Act, shall afford the Mental Welfare Commission all facilities necessary to enable them to carry out their functions in respect of such a patient.
- [<sup>F6</sup>(3) The local authority providing after-care services under section 8 of this Act for a patient subject to a community care order shall afford the Mental Welfare Commission all facilities necessary to carry out their functions in relation to such a patient.]

### Textual Amendments

**F6** S. 5(3) inserted (1.4.1996) by 1995 c. 52, ss. 4(2), 7(2), Sch. 2 para. 2

VALID FROM 01/04/2002

### [<sup>F7</sup>5A Duties in relation to private hospitals

Any person providing a private hospital shall afford to the Mental Welfare Commission all facilities necessary to enable them to carry out their functions in respect of any patient in the hospital.]

### Textual Amendments

**F7** S. 5A inserted (1.4.2002) by 2001 asp 8, s. 79, Sch. 3 para. 11(2); S.S.I. 2002/162, art. 2(f)(h) (subject to arts. 3-13)

## 6 Appointment and payment of staff.

The Mental Welfare Commission may—

- (a) make provision for the payment of—

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- (i) such remuneration to—
  - (A) any person appointed under section 3(9)(b) of this Act; and
  - (B) any medical practitioner or other person appointed for the purposes of the provisions mentioned in section 97(2) of this Act; and
- (ii) such pensions, allowances or gratuities to or in respect of any officers, servants, persons and medical practitioners appointed under paragraph (a) or as mentioned in paragraph (b)(i) of this section, as the Secretary of State may, with the consent of the Treasury, determine; and such determination may make different provision for different cases or different classes of case.

### PART III

#### LOCAL AUTHORITY SERVICES

#### 7 Functions of local authorities.

- (1) In relation to persons who are or have been suffering from mental disorder a local authority may, with the approval of the Secretary of State and shall, to such extent as he may direct, make arrangements for any of the following purposes—
  - (a) the provision, equipment and maintenance of residential accommodation, and the care of persons for the time being resident in accommodation so provided;
  - (b) the exercise by the local authority of their functions under the following provisions of this Act in respect of persons under guardianship (whether under the guardianship of a local authority or of any other person);
  - (c) the provision of any ancillary or supplementary services;
  - (d) the supervision of persons suffering from mental handicap who are neither liable to detention in a hospital nor subject to guardianship.
- (2) The reference in subsection (1)(a) of this section to the care of persons for the time being resident in accommodation provided by a local authority includes, in the case of persons so resident who are under the age of 16 years, the payment to those persons of such amounts as the local authority think fit in respect of their personal expenses where it appears to that authority that no such payment would otherwise be made.
- [<sup>F8</sup>(3) No arrangements under paragraph (a) or (c) of subsection (1) above may be given effect to in relation to a person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies solely—
  - (a) because he is destitute; or
  - (b) because of the physical effects, or anticipated physical effects, of his being destitute.
- (4) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of subsection (3) above as they apply for the purposes of that section, but for the references in subsection (5) and (7) of that section and in that paragraph to the Secretary of State substitute references to a local authority.]

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### Textual Amendments

**F8** S. 7(3)(4) inserted (3.4.2000) by 1999 c. 33, ss. 120(4), 169(2), 170(4), **Sch. 15 para. 10**; S.I. 2000/464, art. 2, **Sch.**

## 7 Functions of local authorities. **S**

- (1) In relation to persons who are or have been suffering from mental disorder a local authority may, with the approval of the Secretary of State and shall, to such extent as he may direct, make arrangements for any of the following purposes—
  - (a) the provision, equipment and maintenance of residential accommodation, and the care of persons for the time being resident in accommodation so provided;
  - (b) the exercise by the local authority of their functions under the following provisions of this Act in respect of persons under guardianship (whether under the guardianship of a local authority or of any other person);
  - (c) the provision of any ancillary or supplementary services;
  - (d) the supervision of persons suffering from mental handicap who are neither liable to detention in a hospital nor subject to guardianship.
- (2) The reference in subsection (1)(a) of this section to the care of persons for the time being resident in accommodation provided by a local authority includes, in the case of persons so resident who are under the age of 16 years, the payment to those persons of such amounts as the local authority think fit in respect of their personal expenses where it appears to that authority that no such payment would otherwise be made.

## 8 Provision of after-care services.

- (1) A local authority shall provide after-care services for any persons who are or have been suffering from mental disorder [<sup>F9</sup> and shall (without prejudice to the foregoing) provide or arrange for the provision of after-care services for any person who is subject to a community care order].
- (2) In providing after-care services under subsection (1) of this section a local authority shall co-operate with such health board or boards and such voluntary organisations as appear to the local authority to be concerned.
- (3) The duty imposed by this section is without prejudice to any other power or duty which a local authority may have in relation to the provision of after-care services.
- [<sup>F10</sup>(4) After care services may not be provided under subsection (1) above in respect of any person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies solely—
  - (a) because he is destitute; or
  - (b) because of the physical effects, or anticipated physical effects, of his being destitute.
- (5) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of subsection (4) above as they apply for the purposes of that section, but for the references in subsection (5) and (7) of that section and in that paragraph to the Secretary of State substitute references to a local authority.]



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### Textual Amendments

- F9** Words in s. 8(1) inserted (1.4.1996) by 1995 c. 52, ss. 4(2), 7(2), **Sch. 2**, para. 3
- F10** S. 8(4)(5) inserted (3.4.2000) by 1999 c. 33, ss. 120(5), 169(2), 170(4), **Sch. 15 para. 10**; S.I. 2000/464, art. 2, **Sch.**

## 9 Appointment of mental health officers.

- (1) A local authority shall appoint a sufficient number of persons for the purpose of discharging in relation to their area the functions of mental health officers under this Act.
- (2) Any officer appointed by a local authority to act as a mental health officer after the date of coming into force of section 64(4) of the <sup>M2</sup>Local Government (Scotland) Act 1973 (that is to say, 16th May 1975) but before 16th August 1983 shall be deemed to have been appointed under subsection (1) of this section as if that subsection and section 64(5)(bb) of the said Act of 1973 had come into force on 16th May 1975.
- (3) On and after a day appointed by the Secretary of State by order, no person shall be appointed to act as a mental health officer under subsection (1) of this section unless he is approved by the local authority as having competence in dealing with persons who are suffering from mental disorder; and before appointing a person to act as a mental health officer, a local authority shall—
  - (a) ensure that the person has such qualifications, experience and competence in dealing with persons suffering from mental disorder; and
  - (b) have regard to such other matters,as the Secretary of State may direct.
- (4) No person appointed to act as a mental health officer before the appointed day shall continue so to act on or after the appointed day unless—
  - (a) he is approved by the local authority as having competence in dealing with persons who are suffering from mental disorder; and
  - (b) the local authority are satisfied that he has such qualifications, experience and competence in dealing with persons who are suffering from mental disorder as the Secretary of State may direct.

### Modifications etc. (not altering text)

- C3** 1.4.1986 appointed by S.I. 1986/374, art. 2

### Marginal Citations

- M2** 1973 c. 65.

## 10 Welfare of certain hospital patients.

- (1) The provisions of this section shall apply to any patient suffering from mental disorder who is—
  - (a) a child or young person in respect of whom the rights and powers of a parent are vested in a local authority by virtue of—
    - [<sup>F11</sup>(i) section 17 of the <sup>M3</sup>Social Work (Scotland) Act 1968; or]

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- (ii) section 3 of the <sup>M4</sup>Child Care Act 1980 (which relates to the assumption by a local authority of parental rights and duties in relation to a child in their care); or
  - (iii) section 10 of the said Act of 1980 (which relates to the powers and duties of local authorities in England and Wales with respect to persons committed to their care);
- [<sup>F12</sup>(aa) a child or young person in relation to whom parental rights and responsibilities have been transferred to a local authority by virtue of section 86(1) of the Children (Scotland) Act 1995;]
- (b) a person who is under the guardianship of a local authority under the following provisions of this Act or under the provisions of the <sup>M5</sup>Mental Health Act 1983; or
  - (c) a person the functions of whose nearest relative under this Act or under the Mental Health Act 1983 are for the time being transferred to a local authority.
- (2) Where a patient to whom this section applies is admitted to any hospital or nursing home in Scotland (whether for treatment for mental disorder or for any other reason) then, without prejudice to their duties in relation to the patient apart from the provisions of this section, the authority having rights or functions in relation to him as aforesaid shall arrange for visits to be made to him on their behalf, and shall take such other steps in relation to the patient while in the hospital or nursing home as would be expected of a parent.

#### Textual Amendments

- F11** S. 10(1)(a)(i) and word “or” immediately following that subpara. repealed (S.) (1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 33(2)(a), **Sch. 5**; S.I. 1996/3201, **art. 3(7)** (as substituted (7.3.1997) by S.I. 1997/744, **art. 2**)
- F12** S. 10(1)(aa) inserted (S.) (1.4.1997) by 1995 c. 36, s. 105(4)(5), **Sch. 4 para. 33(2)(b)**; S.I. 1996/3201, **art. 3(7)** (as substituted (7.3.1997) by S.I. 1997/744, **art. 2**)

#### Marginal Citations

- M3** 1968 c. 49.  
**M4** 1980 c. 5.  
**M5** 1983 c. 20.

## 11 The training and occupation of the mentally handicapped.

- (1) Without prejudice to the operation of [<sup>F13</sup>(a)]section 1 of the <sup>M6</sup>Education (Scotland) Act 1980 (which among other things imposes a duty on education authorities to provide educational facilities for pupils who suffer from disability of mind) [<sup>F14</sup>or
- (b) section 1 of the Further and Higher Education (Scotland) Act 1992 (which imposes a duty on the Secretary of State to secure the provision of adequate and efficient further education in Scotland),]

it shall be the duty of the local authority to provide or secure the provision of suitable training and occupation for persons suffering from mental handicap who are over school age within the meaning of the Education (Scotland) Act 1980:

Provided that this subsection shall not apply in the case of a person in a hospital.

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- (2) A local authority shall make such provision as they may think necessary for securing that transport is available for the conveyance of persons for the purpose of their training and occupation under this section; and accordingly section 45 of the <sup>M7</sup>National Health Service (Scotland) Act 1978 (which relates to the provision by the Secretary of State of ambulances and other means of transport), shall not have effect in relation to the conveyance of persons as aforesaid.
- (3) Where a local authority makes arrangements with any voluntary organisation for the performance by that organisation of any services in connection with the duties of the local authority under this section, the local authority may make contributions to the funds of that voluntary organisation.

#### Textual Amendments

**F13** In s. 11(1), "(a)" inserted (1.4.1993) by Further and Higher Education (Scotland) Act 1992 (c. 37), s. 62(2), Sch. 9, para. 9(a); S.I. 1992/817, art. 3(2), Sch.4

**F14** S. 11(1)(b) and word "or" preceding it inserted (1.4.1993) by Further and Higher Education (Scotland) Act 1992 (c. 37), s. 62(2), Sch. 9, para. 9(b); S.I. 1992/817, art. 3(2), Sch.4

#### Marginal Citations

**M6** 1980 c. 44.

**M7** 1978 c. 29.

## PART IV

### PRIVATE HOSPITALS

#### 12 Registration of private hospitals.

- (1) Every private hospital within the meaning of this Act shall be registered and the following provisions of this Part of this Act shall apply to the registration, conduct and inspection of such hospitals.
- (2) In this Act “private hospital” means any premises used or intended to be used for the reception of, and the provision of medical treatment for, one or more patients subject to detention under this Act (whether or not other persons are received and treated), not being—
  - (a) a hospital vested in the Secretary of State [<sup>F15</sup>or managed by a National Health Service trust established under section 12A of the National Health Service (Scotland) Act 1978];
  - (b) a State hospital; or
  - (c) any other premises managed by a Government department or provided by a local authority.
- (3) Application for registration of premises as a private hospital shall be made in writing to the Secretary of State by or on behalf of the person proposing to carry on the hospital and the application shall be accompanied by a fee of £1.
- (4) Subject to section 13 of this Act, the Secretary of State may register the premises named in the application as a private hospital and issue to the person proposing to

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carry on the hospital a certificate in that behalf (in this Act referred to as “a certificate of registration”).

- (5) A certificate of registration shall specify the maximum number of persons who at any one time may receive care or treatment in the hospital to which the certificate relates, and such conditions as the Secretary of State may consider appropriate for regulating the category of patients who may be received into the hospital.
- (6) A certificate of registration shall lapse on the expiration of a period of 5 years from the date of issue, but shall be renewable on a fresh application.
- (7) A certificate of registration shall be kept fixed conspicuously in the hospital to which it relates and if this requirement is not complied with the person carrying on the hospital shall be guilty of an offence under this Part of this Act.

#### Textual Amendments

**F15** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 28\(2\)](#)

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

**C4** Power to amend s.12(3) conferred by [Local Government \(Scotland\) Act 1966 \(c. 51, SIF 81:2\)](#), s. 42(2), [Sch. 4 Pt. II](#)

### 13 Pre-requisites of registration.

- (1) The Secretary of State shall not issue a certificate of registration unless he is satisfied—
  - (a) that the person proposing to carry on the hospital is a fit person for this purpose, having regard to his age, conduct and any other relevant consideration;
  - (b) that the premises are fit to be used for a private hospital;
  - <sup>F16</sup>(c) that neither the hospital nor any premises to be used in connection therewith consist of or include works executed in contravention of section 12(1) of the <sup>M8</sup>Health Services Act 1976;]
  - (d) that the arrangements proposed for patients are suitable and adequate; and
  - (e) that the medical and nursing staff proposed is adequate for the hospital and is suitably trained and qualified.
- (2) Nothing in the foregoing provisions of this Part of this Act shall be construed as requiring the Secretary of State to issue a certificate of registration under section 12 of this Act.

#### Textual Amendments

**F16** [S. 13\(1\)\(c\)](#) repealed (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(2), [Sch. 10](#)

#### Marginal Citations

**M8** 1976 c. 83.

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## **14 Control of private hospitals.**

- (1) Any person carrying on a private hospital shall—
  - (a) keep the hospital open to inspection for the purposes of this section at all reasonable times;
  - (b) keep such registers and records as the Secretary of State may from time to time by regulations prescribe, and keep such registers and records open to inspection;
  - (c) ensure that any conditions specified in the certificate of registration are complied with;
  - (d) afford to the Mental Welfare Commission all such facilities (including facilities for inspection of the hospital) as are necessary for the Commission to exercise their functions under this Act,and any person who fails to comply with any requirement of this subsection shall be guilty of an offence under this Part of this Act.
- (2) The Secretary of State shall ensure by regular inspection of any private hospital that that hospital is being properly carried on, and any person authorised in that behalf by the Secretary of State may, after producing, if asked to do so, some duly authenticated document showing that he is so authorised, enter any hospital for the purposes of any inspection in pursuance of this section and carry out that inspection.
- (3) Any person authorised under subsection (2) of this section may interview any patient in private.

## **15 Cancellation and continuance in certain circumstances of registration.**

- (1) Subject to the provisions of this section, the Secretary of State may, at any time, cancel a registration of a private hospital on any ground on which he might have refused an application for such a registration of that hospital, or on the ground that the person carrying on the hospital has been convicted of an offence under this Act.
- (2) On the cancellation of a registration, the person who is or was carrying on the hospital shall forthwith deliver up the certificate to the Secretary of State, and if this requirement is not complied with the holder of the certificate shall be guilty of an offence under this Part of this Act.
- (3) Where at the time of any cancellation of a registration under subsection (1) of this section any patient is liable to be detained on the premises concerned, the registration shall, notwithstanding the cancellation, continue in force until the expiration of a period of 28 days from the date of cancellation or until every such patient has ceased to be so liable, whichever first occurs.

## **16 Offences against this Part of this Act and penalties.**

- (1) If any person carries on a private hospital which is not registered under this Part of this Act, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine.
- (2) Any person guilty of an offence under this Part of this Act other than the offence specified in subsection (1) of this section shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale and in the case of a continuing offence to a further fine not exceeding two pounds in respect of each day on which the offence continues after conviction.

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## PART V

### ADMISSION TO AND DETENTION IN HOSPITAL AND GUARDIANSHIP

#### *Grounds for hospital admission*

#### **17 Patients liable to be detained in hospital.**

- (1) A person may, in pursuance of an application for admission under section 18(1) of this Act, be admitted to a hospital and there detained on the grounds that—
  - (a) he is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment in a hospital; and
    - (i) in the case where the mental disorder from which he suffers is a persistent one manifested only by abnormally aggressive or seriously irresponsible conduct, such treatment is likely to alleviate or prevent a deterioration of his condition; or
    - (ii) in the case where the mental disorder from which he suffers is a mental handicap, the handicap comprises mental impairment (where such treatment is likely to alleviate or prevent a deterioration of his condition) or severe mental impairment; and
  - (b) it is necessary for the health or safety of that person or for the protection of other persons that he should receive such treatment and it cannot be provided unless he is detained under this Part of this Act.
- (2) Nothing in this Act shall be construed as preventing a patient who requires treatment for mental disorder from being admitted to any hospital or nursing home for that treatment in pursuance of arrangements made in that behalf without any application, recommendation or order rendering him liable to be detained under this Act, or from remaining in any hospital in pursuance of such arrangements if he has ceased to be so liable to be detained.

#### *Procedure for admission of patients: hospital*

#### **18 Admission and detention of patients: hospital.**

- (1) A patient may be admitted to a hospital and there detained for the period allowed by this Part of this Act in pursuance of an application in the prescribed form (in this Act referred to as “an application for admission”) approved by the sheriff and made in accordance with this Part of this Act.
- (2) An application for admission shall be founded on and accompanied by 2 medical recommendations which shall be in the prescribed form and each such recommendation shall include the following statements, being statements of opinion, and the grounds on which each statement is based—
  - (a) a statement of the form of mental disorder from which the patient is suffering, being mental illness <sup>F17</sup>(including personality disorder) or mental handicap or both; and
  - (b) a statement as to which of the grounds set out in section 17(1) of this Act apply in relation to the patient.

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- (3) An application for admission shall be of no effect unless the patient is described in each of the medical recommendations as suffering from the same form of mental disorder, whether or not he is described in either of those recommendations as suffering also from the other form.

#### Textual Amendments

F17 Words in s. 18(2)(a) inserted (13.9.1999) by 1999 asp 1, s. 3(1)(b)

### 19 General provisions as to applications: hospital.

- (1) Subject to the provisions of this section, an application for admission may be made either by the nearest relative of the patient or by a mental health officer; and every such application shall be addressed to the managers of the hospital to which admission is sought.
- (2) The nearest relative of the patient shall not make an application for admission unless he has personally seen the patient within the period of 14 days ending with the date on which the proposed application is submitted to the sheriff for his approval.
- (3) A local authority shall, if so required by the nearest relative of a patient residing in their area, direct a mental health officer as soon as practicable to take the patient's case into consideration with a view to making an application for admission in respect of the patient; and if in any such case that officer decides not to make an application he shall inform the nearest relative of his reasons in writing.
- (4) A mental health officer shall make an application for admission in respect of a patient within the area of the local authority by whom that officer was appointed in any case where he is satisfied that such an application ought to be made and is of the opinion, having regard to any wishes expressed by relatives of the patient and to any other relevant circumstances, that it is necessary or proper for the application to be made by him.
- (5) A mental health officer who proposes to make an application for admission shall—
  - (a) interview the patient within the period of 14 days ending with the date on which the proposed application is submitted to the sheriff for his approval and satisfy himself that detention in a hospital is, in all the circumstances of the case, the most appropriate way of providing the care and medical treatment which the patient needs; and
  - (b) take such steps as are reasonably practicable to inform the nearest relative of the patient of the proposed application, and of his right to object thereto in accordance with the provisions of section 21 of this Act.
- (6) A mental health officer shall make an application for admission in respect of a patient where—
  - (a) he has received the 2 medical recommendations required for the purposes of such an application; and
  - (b) he has been requested to do so by a medical practitioner who gave one of the medical recommendations,and the application shall include—
  - (i) a statement of the mental health officer's opinion as to whether or not the application should be granted; and



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(ii) a statement of the grounds on which that opinion is based.

(7) An application under this section by a mental health officer may be made outside the area of the local authority by whom he is appointed.

## 20 Medical recommendations: hospital.

(1) The medical recommendations required for the purposes of an application for admission shall satisfy the following requirements—

- (a) such recommendations shall be signed on or before the date of the application and shall be given by medical practitioners (neither being the applicant) who have personally examined the patient separately, in which case not more than 5 days must have elapsed between the days on which the separate examinations took place, or, where no objection has been made by the patient or his nearest relative, together;
- (b) one of the recommendations shall be given by a practitioner approved for the purposes of this section by a Health Board as having special experience in the diagnosis or treatment of mental disorder and the other recommendation shall, if practicable, be given by the patient's general medical practitioner or another medical practitioner who has previous acquaintance with him;
- (c) neither recommendation shall be given by a practitioner on the staff of the hospital named in the application where the patient is to be accommodated under section 57 <sup>F18</sup>of, or paragraph 14 of Schedule 7A to,] the <sup>M9</sup>National Health Service (Scotland) Act 1978 (which <sup>F19</sup>relate] to accommodation for private patients) or in a private hospital and, subject to subsection (2) of this section, where the patient is to be accommodated otherwise one only of the recommendations may be given by such a practitioner;
- (d) such recommendations shall contain a statement as to whether the person signing the recommendation is related to the patient and of any pecuniary interest that that person may have in the admission of the patient to hospital.

(2) Notwithstanding the provisions of paragraph (c) of subsection (1) of this section, both medical recommendations may be given by practitioners on the staff of the hospital named in the application where—

- (a) compliance with the said paragraph (c) would result in a delay involving serious risk to the health or safety of the patient or to the safety of other persons;
- (b) one of the practitioners giving the recommendations works at the hospital for less than half the time which he is bound by contract to devote to work in the health service; and
- (c) if one of the practitioners is a consultant, the other does not work (whether at the hospital or elsewhere) in a grade in which he is under that consultant's directions.

(3) For the purposes of this section a general practitioner who is employed part-time in a hospital shall not be regarded as a practitioner on its staff.

### Textual Amendments

**F18** Words substituted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 28\(3\)\(a\)](#)



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**F19** Word substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 28(3)(b)

**Marginal Citations**

**M9** 1978 c. 29.

**21 Approval of applications by the sheriff: hospital.**

- (1) An application for admission shall be submitted to a sheriff of the sheriffdom—
- (a) within which the patient is resident at the time when the application is submitted; or
  - (b) where the patient is a resident patient in a hospital at the time when the application is submitted, within which the hospital is situated,

.....<sup>F20</sup> within 7 days of the last date on which the patient was examined for the purposes of any medical recommendation accompanying the application.

- (2) Subject to the following provisions of this section and to section 113 of this Act, the sheriff, in considering [<sup>F21</sup>whether to approve] an application submitted to him under this section—
- (a) may make such inquiries and hear such persons (including the patient) as he thinks fit; and
  - (b) where an application is the subject of objection by the nearest relative of the patient, shall afford that relative and any witness that relative may call an opportunity of being heard; and
  - (c) shall, where a mental health officer makes an application for admission in respect of a patient under section 19(6) of this Act and such application includes a statement of the mental health officer’s opinion that the application should not be granted, afford the mental health officer an opportunity of being heard.
- (3) The sheriff shall not withhold approval to an application submitted under this section without affording to the applicant and any witness the applicant may call an opportunity of being heard.

[<sup>F22</sup>(3A) Within five days (excluding Saturdays, Sundays and court holidays) of an application for admission being submitted, the sheriff shall—

- (a) approve the application; or
- (b) where he decides to hold a hearing before determining the application, hold such hearing.

(3B) An application for admission in respect of a patient who is detained in hospital under section 26 or 26A of this Act shall, when submitted to the sheriff, be sufficient authority for the continued detention of the patient under that section until the expiry of a period of five days (excluding Saturdays, Sundays and court holidays) from the date when the application was submitted.

(3C) Where a hearing in relation to an application for admission in respect of a patient who is detained in hospital under section 26 or 26A of this Act is, for whatever reason, adjourned, the authority for the detention of the patient under that section by virtue of subsection (3B) of this section shall continue until the application for admission is finally determined.]

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- (4) Any proceedings under this section shall, where the patient or applicant so desires or the sheriff thinks fit, be conducted in private.
- (5) The sheriff in the exercise of the functions conferred on him by this section shall have the like jurisdiction, and the like powers as regards the summoning and examination of witnesses, the administration of oaths, the awarding of expenses, and otherwise, as if he were acting in the exercise of his civil jurisdiction.
- [<sup>F23</sup>(6) For the purposes of this section, an application is submitted to the sheriff when it is lodged with his sheriff clerk.]

#### Textual Amendments

- F20** Words repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 39:1\)](#), [s. 51\(2\)\(a\)](#)
- F21** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 39:1\)](#), [s. 51\(2\)\(b\)](#)
- F22** [S. 21\(3A\)-\(3C\)](#) inserted (9.3.1992) by [Mental Health \(Detention\) \(Scotland\) Act 1991 \(c. 47, SIF 85\)](#), [s. 2\(2\)](#); [S.I. 1992/357](#), [art.2](#)
- F23** [S. 21\(6\)](#) inserted (9.3.1992) by [Mental Health \(Detention\) \(Scotland\) Act 1991 \(c. 47, SIF 85\)](#), [s. 2\(3\)](#); [S.I. 1992/357](#), [art.2](#)

## 22 Effect of applications: hospital.

- (1) Where an application for admission has been approved by the sheriff, that application shall be sufficient authority for the removal of the patient to the hospital named in the application and, when the application has been forwarded to the managers of the hospital, for the admission of the patient to that hospital at any time within a period of 7 days from the date on which the sheriff approved the application and for his detention there in accordance with the provisions of this Act.
- (2) Where a patient has been admitted to a hospital in pursuance of an application under this Part of this Act, it shall be the duty of the managers of the hospital to notify—
- (a) the Mental Welfare Commission; and
  - (b) the local authority for the area in which the hospital is situated (except where the admission is in pursuance of an application made by a mental health officer appointed by that authority),
- of that admission together with a copy of the application and recommendations relating to the patient's admission within 7 days of its taking place.
- (3) A local authority shall, on being notified under subsection (2) of this section, arrange for a mental health officer as soon as practicable and, in any event, not later than 7 days before the expiry of the period of 28 days beginning with the day on which the patient was admitted to a hospital—
- (a) to interview the patient whose admission has been notified to them; and
  - (b) to provide the responsible medical officer and the Mental Welfare Commission with a report on the patient's social circumstances,
- unless the mental health officer has done so under section 26(5) of this Act within the previous 28 days.
- (4) Where a patient has been admitted as aforesaid the responsible medical officer shall—

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- (a) within the period of 7 days ending on the 28th day after the patient's admission—
  - (i) examine the patient or obtain from another medical practitioner a report on the condition of the patient; and
  - (ii) consult such other person or persons who appear to him to be principally concerned with the patient's medical treatment; and
- (b) if he is satisfied, as a result of the examination or report, that—
  - (i) the patient is not suffering from mental disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment; or
  - (ii) it is not necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment, order the discharge of the patient; or
- (c) if he does not order the discharge of the patient, so inform the Mental Welfare Commission, the nearest relative of the patient, the local authority and the managers concerned.

## **23 Rectification of application and recommendations: hospital.**

- (1) If within the period of 14 days beginning with the day on which a patient has been admitted to a hospital in pursuance of an application for admission, the application, or any medical recommendation given for the purposes of the application, is found to be in any respect incorrect or defective, the application or recommendation may, not later than 7 days after the expiration of the said period, with the approval of the sheriff, be amended by the person by whom it was signed; and upon such amendment being made the application or recommendation shall have effect, and shall be deemed always to have had effect, as if it had been originally made as so amended.
- (2) Without prejudice to the provisions of subsection (1) of this section, if within the period first mentioned therein it appears to the managers of the hospital, that one of the 2 medical recommendations on which the application for admission is founded is insufficient to warrant the detention of the patient in pursuance of the application, they may within that period give notice in writing to that effect to the applicant and to the sheriff; and where any such notice is given in respect of a medical recommendation that recommendation shall be disregarded, but the application shall be, and shall be deemed always to have been, sufficient if—
  - (a) a fresh medical recommendation complying with the relevant provisions of this Part of this Act (other than the provisions relating to the time of signature and the interval between examinations) is furnished to the managers and to the sheriff; and
  - (b) the sheriff is satisfied that that recommendation and the other recommendation on which the application is founded together comply with those provisions.
- (3) Where the medical recommendations upon which an application for admission is founded are, taken together, insufficient to warrant the detention of the patient in pursuance of the application, a notice under subsection (2) of this section may be given in respect of either of those recommendations; but this subsection shall not apply in a case where the application is of no effect by virtue of section 18(3) of this Act.

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## **24 Emergency admission: hospital.**

- (1) In any case of urgent necessity a recommendation (in this Act referred to as “an emergency recommendation”) may be made by a medical practitioner in respect of a patient stating that by reason of mental disorder it is urgently necessary for his health or safety or for the protection of other persons, that he should be admitted to a hospital, but that compliance with the provisions of this Part of this Act relating to an application for admission before the admission of the patient to a hospital would involve undesirable delay.
- (2) An emergency recommendation shall not be made unless, where practicable, the consent of a relative or of a mental health officer has been obtained; and the recommendation shall be accompanied by a statement that such a consent as aforesaid has been obtained or, as the case may be, by a statement of the reasons for the failure to obtain that consent.
- (3) An emergency recommendation shall be sufficient authority for the removal of the patient to a hospital at any time within a period of 3 days from the date on which it was made and for his detention therein for a period not exceeding 72 hours from the time of his admission.
- (4) An emergency recommendation shall be made only by a medical practitioner who has personally examined the patient on the day on which he signed the recommendation.
- (5) Where a patient is admitted to a hospital in pursuance of this section, it shall, where practicable, be the duty of the managers without delay to inform the nearest relative of the patient, the Mental Welfare Commission and, except in the case of a patient referred to in section 25 of this Act, some responsible person residing with the patient.
- (6) A patient who has been detained in a hospital under this section shall not be further detained under this section immediately after the expiry of the period of detention.

## **25 Detention of patients already in hospital.**

- (1) An application for admission or an emergency recommendation may be made under this Part of this Act notwithstanding that the patient is already in a hospital; and where the application or recommendation is made in such a case the patient shall be treated for the purposes of this Part of this Act as if he had been admitted to the hospital on the date on which the application was forwarded to the managers of the hospital, or, as the case may be, the recommendation was made.
- (2) If, in the case of a patient who is already in a hospital receiving treatment for mental disorder and who is not liable to be detained therein under this Part of this Act, it appears to a nurse of the prescribed class—
  - (a) that the patient is suffering from mental disorder to such a degree that it is necessary for his health or safety or for the protection of other persons for him to be immediately restrained from leaving the hospital; and
  - (b) that it is not practicable to secure the immediate attendance of a medical practitioner for the purpose of making an emergency recommendation,
 the patient may be detained in the hospital for a period of 2 hours from the time when he was first so detained or until the earlier arrival at the place where the patient is detained of a medical practitioner having power to make an emergency recommendation.
- (3) Where a patient is detained under subsection (2) of this section the nurse shall as soon as possible record in writing—

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- (a) the facts mentioned in paragraphs (a) and (b) of the said subsection (2);
  - (b) the fact that the patient has been detained; and
  - (c) the time at which the patient was first so detained.
- (4) A record made by a nurse under subsection (3) of this section shall, as soon as possible after it is made, be delivered by the nurse, or by a person authorised by the nurse in that behalf, to the managers of the hospital; and a copy of the record shall, within 14 days of the date on which the managers received it, be sent to the Mental Welfare Commission.
- (5) A patient who has been detained in a hospital under subsection (2) of this section shall not be further detained thereunder immediately after the expiry of that period of detention.
- (6) In subsection (2) of this section “prescribed” means prescribed by an order made by the Secretary of State.

## 26 Short term detention.

- (1) Where a patient is admitted to a hospital in pursuance of section 24 of this Act, he may be detained in that hospital after the expiry of the period of 72 hours referred to in subsection (3) of that section if—
- (a) a report on the condition of the patient has been furnished to the managers of the hospital; and
  - (b) where practicable, consent to the continued detention has been given by the nearest relative of the patient or by a mental health officer.
- (2) The report referred to in subsection (1)(a) of this section shall—
- (a) be given by a medical practitioner approved for the purposes of section 20(1)(b) of this Act who has personally examined the patient and shall include a statement that in the opinion of the medical practitioner—
    - (i) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to be detained in a hospital for at least a limited period; and
    - (ii) the patient ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons;
  - (b) include, where consent to the continued detention has not been obtained, a statement of the reasons for not obtaining such consent; and
  - (c) contain a statement as to whether the person signing the report is related to the patient and of any pecuniary interest that that person may have in the admission of the patient to hospital.
- (3) Subject to subsection (6) of this section, where a report is duly furnished under subsection (1) of this section the authority for the detention of the patient shall be thereby renewed for a further period of 28 days from the expiry of the period of 72 hours referred to in the said subsection (1).
- (4) Where a patient is detained in a hospital in pursuance of this section, the managers of the hospital shall so inform—
- (a) The Mental Welfare Commission;
  - (b) where practicable, the nearest relative of the patient (except where the nearest relative has consented under subsection (1)(b) of this section); and

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- (c) the local authority (except in a case where a mental health officer appointed by that local authority has consented under subsection (1)(b) of this section), not later than 7 days after the patient was detained.
- (5) A local authority, on being informed under subsection (4) of this section of the admission of a patient, shall arrange for a mental health officer as soon as practicable and in any event not later than 7 days before the expiry of the period of 28 days referred to in subsection (3) of this section—
  - (a) to interview the patient; and
  - (b) to provide the responsible medical officer and the Mental Welfare Commission with a report on the patient’s social circumstances.
- (6) Any patient may, within the period for which the authority for his detention is renewed by virtue of a report furnished in respect of him under this section, appeal to the sheriff to order his discharge and the provisions of section 33(2) and (4) of this Act shall apply in relation to such an appeal.
- (7) <sup>F24</sup>Subject to section 21(3B) and (3C) of this Act, a patient who has been detained in a hospital under this section shall not be further detained under this section nor detained under section 24 of this Act immediately after the expiry of the period of detention under this section.

#### Textual Amendments

**F24** Words in s. 26(7) inserted (9.3.1992) by [Mental Health \(Detention\) \(Scotland\) Act 1991 \(c. 47, SIF 85\), s. 3\(1\)](#); S.I. 1992/357, [art.2](#)

#### [26A] <sup>F25</sup>Interim detention.

- (1) This section applies where—
  - (a) a patient is detained in a hospital under section 26 of this Act;
  - (b) a change in the condition of the patient makes it necessary in the interests of his own health or safety or with a view to the protection of other persons that the patient continue to be detained after the expiry of the period of 28 days referred to in subsection (3) of that section; and
  - (c) no application for admission has been submitted to the sheriff in respect of the patient and it is not reasonably practicable to submit such an application before the expiry of that period.
- (2) Where this section applies, a relevant medical practitioner may lodge with the sheriff clerk for a sheriff of the sheriffdom within which the hospital is situated a report on the condition of the patient complying with the following provisions of this section and such report shall, when so lodged, be sufficient authority for the continued detention of the patient in the hospital where he is until the expiry of a period of three days (excluding Saturdays, Sundays and court holidays) from the date when the report was lodged.
- (3) In this section “relevant medical practitioner” means a medical practitioner who—
  - (a) is approved for the purposes of section 20(1)(b) of this Act; and
  - (b) has personally examined the patient.

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- (4) A report referred to in subsection (2) of this section shall not be lodged unless, where practicable, the consent of the nearest relative of the patient or of a mental health officer has been obtained.
- (5) A report referred to in subsection (2) of this section shall include—
- (a) a statement by the relevant medical practitioner that in his opinion—
    - (i) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to be detained in a hospital for at least a limited period; and
    - (ii) the patient ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons;
  - (b) a statement that such a consent as is mentioned in subsection (4) of this section has been obtained or, as the case may be, a statement of the reasons for the failure to obtain that consent; and
  - (c) a statement as to whether the relevant medical practitioner is related to the patient and of any pecuniary interest that the relevant medical practitioner may have in the continued detention of the patient in hospital.
- (6) Where a patient is detained in a hospital under this section, the relevant medical practitioner shall forthwith so inform—
- (a) the Mental Welfare Commission;
  - (b) where practicable, the nearest relative of the patient (except where the nearest relative has consented under subsection (4) of this section); and
  - (c) the local authority (except where a mental health officer appointed by that authority has consented under subsection (4) of this section),
- and shall inform the patient of his right of appeal under subsection (7) of this section and of the period within which it may be exercised.
- (7) A patient who is detained in hospital under this section may, within the period referred to in subsection (2) of this section, appeal to the sheriff to order his discharge and the provisions of section 33(2) and (4) of this Act shall apply in relation to such an appeal.
- (8) Where a patient is detained in hospital under this section the authority for his detention under section 26 of this Act shall cease.
- (9) Subject to section 21(3B) and (3C) of this Act, a patient who has been detained in a hospital under this section shall not be further detained under this section nor detained under section 24 or 26 of this Act immediately after the expiry of the period of detention under this section.]

#### Textual Amendments

**F25** S. 26A inserted (9.3.1992) by [Mental Health \(Detention\) \(Scotland\) Act 1991 \(c. 47, SIF 85\)](#), [s.1](#); [S.I. 1992/357](#), [art.2](#)

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### *Care and treatment of patients: hospital*

#### **27 Leave of absence from hospital.**

- (1) The responsible medical officer may grant to any patient who is for the time being liable to be detained in a hospital under this Part of this Act leave to be absent from the hospital.
- (2) Leave of absence may be granted to a patient under this section either on specified occasions or for any specified period of not more than 6 months; and where leave is so granted for a specified period it may [<sup>F26</sup>, subject to subsection (2A) below,] be extended for further such periods as aforesaid.
- [<sup>F27</sup>(2A) Subject to subsections (2B) and (2C) below, the total period of leave of absence for specified consecutive periods under this section shall not exceed 12 months.
- (2B) If, on the date of expiry of leave of absence granted to a patient under this section, a community care application has been made in respect of him but has not been determined, the leave of absence shall continue until the community care order comes into force or, as the case may be, the application is refused by the sheriff.
- (2C) If, on the date of expiry of leave of absence granted to a patient under this section, a community care order has been made in respect of him but has not come into force, the leave of absence shall continue until the order comes into force.]
- (3) Where it appears to the responsible medical officer that it is necessary so to do in the interests of the patient or for the protection of other persons, he may, upon granting leave of absence under this section, direct that the patient remain in custody during his absence; and where leave of absence is so granted the patient may be kept in the custody of any officer on the staff of the hospital, or of any other person authorised in writing by the managers of the hospital, or, if the patient is required in accordance with conditions imposed on the grant of leave of absence to reside in another hospital, of any officer on the staff of that other hospital.
- (4) Where leave of absence is granted to a patient under this section or where a period of leave is extended by further leave and the leave or the extension is for a period of more than 28 days, it shall be the duty of the responsible medical officer to inform the Mental Welfare Commission within 14 days of the granting of leave or of the extension, as the case may be, of the address at which the patient is residing and, on the return of the patient, to notify the Commission thereof within 14 days.
- (5) In any case where a patient is absent from a hospital in pursuance of leave of absence granted under this section, and it appears to the responsible medical officer that it is necessary so to do in the interests of the health or safety of the patient or for the protection of other persons, that officer may, subject to subsection (6) of this section, by notice in writing given to the patient or to the person for the time being in charge of the patient, revoke the leave of absence and recall the patient to the hospital.
- (6) A patient to whom leave of absence is granted under this section shall not be recalled under subsection (5) of this section after he has ceased to be liable to be detained under this Part of this Act.

#### **Textual Amendments**

**F26** Words in s. 27(2) inserted (1.4.1996) by 1995 c. 52, ss. 6(2), 7(2) (with s. 6(5))



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**F27** S. 27(2A)-(2C) inserted (1.4.1996) by 1995 c. 52, ss. 6(3), 7(2) (with s. 6(5))

## 28 Return and re-admission of patients absent without leave: hospital.

- (1) Where a patient who is for the time being liable to be detained under this Part of this Act in a hospital—
- absents himself from the hospital without leave granted under section 27 of this Act; or
  - fails to return to the hospital on any occasion on which, or at the expiration of any period for which, leave of absence was granted to him under that section, or upon being recalled thereunder; or
  - absents himself without permission from any place where he is required to reside in accordance with conditions imposed on the grant of leave of absence under that section,

he may, subject to the provisions of this section, be taken into custody and returned to the hospital or place by any mental health officer, by any officer on the staff of the hospital, by any constable, or by any person authorised in writing by the managers of the hospital.

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

- [<sup>F28</sup>(3) A patient shall not be taken into custody under this section after the later of—
- the end of the period of six months beginning with the first day of his absence without leave; and
  - the end of the period for which (apart from section 31 of this Act) he is liable to be detained;

and, in determining for the purposes of paragraph (b) above or any other provision of this Act whether a person who is or has been absent without leave is at any time liable to be detained, a report furnished under section 30 or 31B of this Act before the first day of his absence shall not be taken to have renewed the authority for his detention unless the period of renewal began before that day.]

- (4) A patient shall not be taken into custody under this section if the period for which he is liable to be detained is that specified in section [<sup>F29</sup>21(3B) (subject, where applicable, to section 21(3C)), 24(3), 25(2), 26(3) or 26A(2)] of this Act and that period has expired.

### Extent Information

**E1** For extent of s. 28, see ss. 128, 129

### Textual Amendments

**F28** S. 28(3) substituted (1.4.1996) by 1995 c. 52, ss. 5(1), 7(2)

**F29** Words in s. 28(4) substituted (S.) (9.3.1992) by Mental Health (Detention) (Scotland) Act 1991 (c. 47, SIF 85), s. 3(2); S.I. 1992/357, art. 2

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## 29 Transfer of patients: hospital.

- (1) A patient who is for the time being liable to be detained in a hospital by virtue of an application for admission under this Part of this Act may be transferred by the managers of that hospital, as follows—
  - (a) to another hospital with the consent of the managers of that hospital; or
  - (b) into the guardianship of a local authority with the consent of that authority; or
  - (c) into the guardianship of any person approved by a local authority with the consent of that person.
- (2) Any transfer of a patient under the last foregoing subsection shall be intimated to his nearest relative and to the Mental Welfare Commission by the managers of the hospital to which the patient is transferred or, as the case may be, by the local authority concerned within 7 days of the date of transfer.
- (3) Where a patient is transferred in pursuance of this section, the provisions of this Part of this Act (including this subsection) shall apply to him as follows, that is to say—
  - (a) where the patient, being liable to be detained in a hospital by virtue of an application for admission, is transferred to another hospital, as if the application were an application for admission to that other hospital, and as if the patient had been admitted to that other hospital at the time when he was originally admitted in pursuance of the application;
  - (b) where the patient, being liable to be detained as aforesaid, is transferred into guardianship, as if the application were a guardianship application duly forwarded to the local authority at the time aforesaid.
- (4) Where a patient is transferred to a State hospital under subsection (1)(a) of this section he or his nearest relative may, within 28 days of the date of the transfer, appeal by way of summary application to a sheriff of the sheriffdom within which the hospital from which the patient was transferred is situated against the decision of the managers of that hospital to transfer the patient; and on any such appeal the sheriff shall order the return of the patient to the hospital from which he was transferred unless he is satisfied that the patient, on account of his dangerous, violent or criminal propensities, requires treatment under conditions of special security, and cannot suitably be cared for in a hospital other than a State hospital.

*Duration of authority for detention and discharge of patients: hospital*

## 30 Duration of authority: hospital.

- (1) Subject to the provisions of this Part of this Act, a patient admitted to a hospital in pursuance of an application for admission may be detained in a hospital for a period not exceeding 6 months beginning with the day on which he was so admitted, but shall not be so detained for any longer period unless the authority for his detention is renewed under the following provisions of this section.
- (2) Authority for the detention of a patient may, unless the patient has previously been discharged, be renewed under this section—
  - (a) from the expiration of the period referred to in subsection (1) of this section, for a further period of 6 months;
  - (b) from the expiration of any period of renewal under paragraph (a) of this subsection, for a further period of one year, and so on for periods of one year at a time.

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- (3) The responsible medical officer shall within the period of 2 months ending on the day when a patient who is liable to be detained in a hospital under this Part of this Act would cease to be so liable under this section in default of the renewal of the authority for his detention—
- (a) examine the patient or obtain from another medical practitioner a report on the condition of the patient; and
  - (b) consult such other person or persons who appear to him to be principally concerned with the patient's medical treatment,
- and thereafter assess the need for the detention of the patient to be continued; and if it appears to him that the grounds set out in section 17(1) of this Act apply to the patient he shall furnish to the managers of the hospital where the patient is liable to be detained and to the Mental Welfare Commission a report to that effect in the prescribed form, along with the report first mentioned if such a report has been obtained.
- (4) Subject to subsection (6) of this section and section 33(2) and (4) of this Act, where a report is duly furnished to the managers of a hospital under subsection (3) of this section, the authority for the detention of the patient shall be thereby renewed for the period prescribed in that case by subsection (2) of this section.
- (5) Where a report under this section is furnished to them in respect of a patient, the managers of the hospital shall, unless they discharge the patient, cause him and his nearest relative to be informed.
- (6) Any patient may within the period for which the authority for his detention is renewed by virtue of a report furnished in respect of him under this section [<sup>F30</sup>or section 31B of this Act] appeal to the sheriff to order his discharge and the provisions of section 33(2) and (4) of this Act shall apply in relation to such an appeal.

#### Textual Amendments

**F30** Words in s. 30(6) inserted (1.4.1996) by 1995 c. 52, ss. 5(2), 7(2)

#### [<sup>F31</sup>31 Special provisions as to patients absent without leave: hospital.

- (1) Where a patient is absent without leave—
- (a) on the day on which (apart from this section) he would cease to be liable to be detained under this Part of this Act; or
  - (b) within the period of one week ending with that day,
- he shall not cease to be so liable until the relevant time.
- (2) For the purposes of subsection (1) above the relevant time—
- (a) where the patient is taken into custody under section 28 of this Act, is the end of the period of one week beginning with the day on which he is returned to the hospital;
  - (b) where the patient returns to the hospital within the period during which he can be taken into custody under section 28 of this Act, is the end of the period of one week beginning with the day on which he so returns; and
  - (c) otherwise, is the end of the period during which he can be taken into custody under section 28 of this Act.]

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#### Textual Amendments

**F31** Ss. 31-31B substituted (1.4.1996) for s. 31 by 1995 c. 52, ss. 5(3), 7(2)

### 31A <sup>F32</sup>Patients who are taken into custody or return within 28 days: hospital.

- (1) This section applies where a patient who is absent without leave is taken into custody under section 28 of this Act, or returns to the hospital, not later than the end of the period of 28 days beginning with the first day of his absence without leave.
- (2) Where the period for which the patient is liable to be detained is extended by section 31 of this Act, any examination and report to be made and furnished in respect of the patient under section 30(3) of this Act may be made and furnished within the period as so extended.
- (3) Where the authority for the detention of a patient is renewed by virtue of subsection (2) above after the day on which (apart from section 31 of this Act) that authority would have expired, the renewal shall take effect as from that day.

#### Textual Amendments

**F32** Ss. 31-31B substituted (1.4.1996) for s. 31 by 1995 c. 52, ss. 5(3), 7(2)

### 31B <sup>F33</sup>Patients who are taken into custody or return after more than 28 days: hospital.

- (1) This section applies where a patient who is absent without leave is taken into custody under section 28 of this Act, or returns to the hospital, later than the end of the period of 28 days beginning with the first day of his absence without leave.
- (2) The responsible medical officer shall, within the period of one week beginning with the day on which the patient returns, or is returned, to the hospital—
  - (a) examine the patient or obtain from another medical practitioner a report on the condition of the patient; and
  - (b) consult—
    - (i) such other person or persons who appear to him to be principally concerned with the patient's medical treatment; and
    - (ii) a mental health officer,
 and thereafter assess the need for the detention of the patient to be continued; and if it appears to him that the grounds set out in section 17(1) of this Act apply to the patient he shall furnish to the managers of the hospital where the patient is liable to be detained and to the Mental Welfare Commission a report to that effect in the prescribed form, along with the report first mentioned if such a report has been obtained.
- (3) Where a report under this section is furnished to them in respect of a patient, the managers of a hospital shall, unless they discharge the patient, cause him and his nearest relative to be informed.
- (4) Where the patient would (apart from any renewal of the authority for his detention on or after the day on which he is returned or returns to the hospital) be liable to be

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detained after the end of the period of one week beginning with that day, he shall cease to be so liable at the end of that period unless a report is duly furnished in respect of him under subsection (2) above.

- (5) Where the patient would (apart from section 31 of this Act) have ceased to be liable to be detained on or before the day on which a report is duly furnished in respect of him under subsection (2) above, the report shall renew the authority for his detention for the period prescribed in that case by section 30(2) of this Act.
- (6) Where the authority for the detention of the patient is renewed by virtue of subsection (5) above—
  - (a) the renewal shall take effect as from the day on which (apart from section 31 of this Act and subsection (5) above) the authority would have expired; and
  - (b) if (apart from this paragraph) the renewed authority would expire on or before the day on which the report is furnished, the report shall further renew the authority, as from the day on which it would expire, for the period prescribed in that case by section 30(2) of this Act.
- (7) Where the authority for the detention of the patient would expire within the period of two months beginning with the day on which a report is duly furnished in respect of him under subsection (2) above, the report shall, if it so provides, have effect also as a report duly furnished under section 30(3) of this Act; and the reference in this subsection to authority includes any authority renewed under subsection (5) above by the report.

#### Textual Amendments

**F33** Ss. 31-31B substituted (1.4.1996) for s. 31 by 1995 c. 52, ss. 5(3), 7(2)

### 32 Special provisions as to patients sentenced to imprisonment etc.: hospital.

- (1) Where a patient who is liable to be detained in a hospital under this Part of this Act is detained in custody in pursuance of any sentence or order passed or made by a court in the United Kingdom (including an order committing or remanding him in custody) and is so detained for a period exceeding 6 months, he shall, at the end of that period, cease to be so liable.
- (2) Where any such patient is detained in custody as aforesaid for a period not exceeding 6 months, or for successive periods that do not in the aggregate exceed 6 months, then—
  - (a) if apart from this subsection the patient would have ceased to be liable to be detained as aforesaid on or before the day he is discharged from custody, he shall not cease to be so liable until the end of that day; and
  - (b) in any case, sections 28 <sup>[F34]</sup>, 31 and 31A] of this Act shall apply in relation to the patient as if he had absented himself without leave on that day.
- <sup>[F35]</sup>(3) In its application by virtue of subsection (2) above section 28(3) of this Act shall have effect with the substitution of the words “end of the period of 28 days beginning with the first day of his absence without leave.” for the words from “later of” onwards.]

#### Extent Information

**E2** For extent of s. 32, see ss. 128, 129

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#### Textual Amendments

**F34** Words in s. 32(2)(b) substituted (1.4.1996) by 1995 c. 52, ss. 5(4)(a), 7(2)

**F35** S. 32(3) inserted (1.4.1996) by 1995 c. 52, ss. 5(4)(b), 7(2)

### 33 Discharge of patients: hospital.

(1) Subject to the provisions of this and the next following section, a patient who is liable to be detained in a hospital under this Part of this Act shall cease to be so liable if an order in writing discharging him from detention (in this Act referred to as “an order for discharge”) is made in accordance with the following provisions of this section.

(2) An order for discharge may be made in respect of a patient by the responsible medical officer, the Mental Welfare Commission or, where an appeal has been taken under sections 26, [F3626A,]30 or 34 of this Act, by the sheriff:

Provided that such an order shall not be made by the responsible medical officer in respect of a patient detained in a State hospital without the consent of the managers of the hospital.

(3) The responsible medical officer or the Mental Welfare Commission shall make an order for discharge in respect of a patient where he is or they are satisfied that—

- (a) he is not suffering from mental disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment; or
- (b) it is not necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment.

(4) Where an appeal is made to the sheriff by a patient under sections 26, [F3626A,]30 or 34 of this Act, the sheriff shall order the discharge of the patient if he is satisfied that—

- (a) the patient is not at the time of the hearing of the appeal suffering from mental disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment; or
- (b) it is not necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment.

(5) Subject to the provisions of this section and section 34 of this Act, an order for discharge in respect of a patient may also be made by the managers of the hospital or by the nearest relative of the patient.

(6) An order for discharge made in respect of a patient by the managers of a hospital shall, with the consent of the responsible medical officer, take effect on the expiration of a period of 7 days from the date on which the order was made, and where the responsible medical officer does not so consent he shall furnish to the managers a report certifying that in his opinion the grounds set out in section 17(1) of this Act apply in relation to the patient.

[F37(7) Where an order for discharge is made in respect of a patient in relation to whom an application for admission has been submitted but has not been finally determined, the managers of the hospital shall notify the sheriff to whom the application has been submitted of the making of the order for discharge.]

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#### Textual Amendments

- F36** In s. 33(2)(4) "26A," inserted (9.3.1992) by [Mental Health \(Detention\) \(Scotland\) Act 1991 \(c. 47, SIF 85\), s. 3\(3\)\(a\)](#); [S.I. 1992/357, art.2](#)
- F37** [S. 33\(7\)](#) inserted (9.3.1992) by [Mental Health \(Detention\) \(Scotland\) Act 1991 \(c. 47, SIF 85\), s. 3\(3\)\(b\)](#); [S.I. 1992/357, art.2](#)

### 34 Restrictions on discharge by nearest relative: hospital.

- (1) An order for the discharge of a patient who is liable to be detained in a hospital shall not be made by his nearest relative except after giving not less than 7 days' notice in writing to the managers of the hospital; and if within that period the responsible medical officer furnishes to the managers a report certifying that, in his opinion, the grounds set out in section 17(1) of this Act apply in relation to the patient—
  - (a) any order for the discharge of the patient made by that relative in pursuance of the notice shall be of no effect; and
  - (b) no further order for the discharge of the patient shall be made by that relative during the period of 6 months beginning with the date of the report.
- (2) In any case where a report under subsection (1) of this section is furnished in respect of a patient, the managers shall cause the nearest relative of the patient to be informed and that relative may, within the period of 28 days beginning with the day on which he is so informed, appeal to the sheriff to order the discharge of the patient and the provisions of section 33(2) and (4) of this Act shall apply in relation to such an appeal.
- (3) An order for discharge in respect of a patient detained in a State hospital shall not be made by his nearest relative.

#### *Appeals: hospital*

### 35 Appeals to the sheriff: hospital.

- (1) Where an appeal lies to the sheriff in respect of a report on a patient under any of sections 26, 30 or 34 of this Act, the managers of the hospital where the patient is liable to be detained shall, when intimating that a report has been furnished in pursuance of any of the said sections, inform any person having a right so to appeal, whether the patient or his nearest relative or both, of that right and of the period within which it may be exercised.
- (2) An appeal under any of the said sections [<sup>F38</sup>or under section 26A of this Act] shall be made by way of summary application to a sheriff of the sheriffdom—
  - (a) within which the patient is resident at the time when the appeal is made; or
  - (b) where the patient is a resident patient in a hospital at the time when the appeal is made, within which the hospital is situated.
- (3) For the purpose of advising whether any appeal to the sheriff under any of the said sections [<sup>F38</sup>or under section 26A of this Act] should be made by or in respect of a patient who is liable to be detained under this Part of this Act, or of furnishing information as to the condition of a patient for the purposes of such an appeal or of advising the nearest relative of any such patient as to the exercise of any power to order the discharge of the patient, any medical practitioner authorised by or on behalf



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of the patient or by the nearest relative of the patient, as the case may be, may, at any reasonable time, visit the patient and may examine him in private.

- (4) Any medical practitioner authorised for the purposes of subsection (3) of this section to visit and examine a patient may require the production of and inspect any records relating to the detention or treatment of the patient in any hospital.

#### Textual Amendments

**F38** Words in s. 35(2)(3) inserted (9.3.1992) by [Mental Health \(Detention\) \(Scotland\) Act 1991 \(c. 47, SIF 85\), s. 3\(4\)](#); [S.I. 1992/357, art.2](#)

### *<sup>F39</sup> Community care orders*

#### Textual Amendments

**F39** [Ss. 35A-35K](#) inserted (1.4.1996) by [1995 c. 52, ss. 4\(1\), 7\(2\)](#)

### <sup>F40</sup> 35A Community care orders.

- (1) As respects a patient who is liable to be detained in a hospital in pursuance of an application for admission the responsible medical officer may, in accordance with section 35B of this Act, make an application (in this Act referred to as a “community care application”) to the sheriff for an order (in this Act referred to as a “community care order”) providing that the patient shall, instead of continuing to be liable to be so detained, be subject to the conditions specified in the order, being conditions imposed with a view to ensuring that he receives—
- (a) medical treatment; and
  - (b) after-care services provided for him under section 8 of this Act.
- (2) Sections 21(1), (2)(a) and (b), (3), (4) and (5) and 113 of this Act shall apply with respect to a community care application as they apply with respect to an application for admission.
- (3) The sheriff shall, as respects a community care application—
- (a) make a community care order in respect of the patient, subject to the conditions set out in the application or to such other conditions as the sheriff considers appropriate; or
  - (b) refuse the application.
- (4) A community care order shall specify—
- (a) the conditions to which the patient is to be subject;
  - (b) the name of the medical practitioner (the “special medical officer”) who is to be principally concerned with the patient’s medical treatment while the order is in force, who shall be a practitioner approved for the purposes of section 20 of this Act by a Health Board as having special experience in the diagnosis or treatment of mental disorder; and
  - (c) the name of the person (the “after-care officer”) who is to be responsible for co-ordinating the provision of the after-care services to be provided for the patient under section 8 of this Act while the order is in force, who shall be a



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mental health officer of the local authority which is to provide the after-care services to be so provided.

- (5) The sheriff may defer the making of a community care order until such arrangements as appear to him to be necessary for the provision of medical treatment and after-care services to the patient following the making of the order have been made to the sheriff's satisfaction.
- (6) If, on the date when a patient ceases to be liable to be detained in a hospital in pursuance of an application for admission, a community care application has been made in respect of him but has not been determined, his liability to be so detained shall continue until the community care order comes into force or, as the case may be, the application is refused by the sheriff.
- (7) If, on the date when a patient ceases to be liable to be detained in a hospital in pursuance of an application for admission, a community care order has been made in respect of him but has not come into force, his liability to be so detained shall continue until the order comes into force.
- (8) On the coming into force of a community care order in respect of a patient, he shall cease to be liable to be detained in a hospital under this Part of this Act.
- (9) The responsible medical officer shall, within 7 days of the making of a community care order, send a copy of the order to—
  - (a) the patient and any other person who has been consulted under subsection (3) (a) or (f) or (4) of section 35B of this Act;
  - (b) the Mental Welfare Commission;
  - (c) the patient's special medical officer; and
  - (d) the patient's after-care officer.
- (10) The patient's after-care officer shall, on receiving a copy of the community care order, take such steps as are practicable to explain to the patient, both orally and in writing—
  - (a) the purpose and effect of the order and of the conditions specified in it;
  - (b) the patient's right of appeal to the sheriff under section 35F of this Act; and
  - (c) that the patient may make representations to the Mental Welfare Commission, and shall send a copy of any written explanation to any other person who has been consulted under subsection (3)(a) or (4) of section 35B of this Act.

#### Textual Amendments

**F40** S. 35A inserted (1.4.1996) by 1995 c. 52, ss. 4(1), 7(2)

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

**C5** S. 35A modified (1.4.1996) by S.I. 1996/742, arts. 1, 3, Sch. para. 1

### <sup>F41</sup>35B Community care applications.

- (1) A community care application may be made at any time after the expiry of the period of 28 days beginning with the day on which the patient was admitted to a hospital in pursuance of an application for admission.
- (2) Before making a community care application the responsible medical officer shall—

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- (a) consult the persons specified in subsection (3) below; and
  - (b) consider the matters specified in subsection (5) below.
- (3) The persons referred to in subsection (2)(a) above are—
- (a) the patient and, if practicable and the patient does not object, his nearest relative;
  - (b) the persons who have been principally concerned with the patient’s medical treatment in hospital;
  - (c) the medical practitioner who is to be the patient’s special medical officer and the other persons who are to be concerned with the patient’s medical treatment after the community care order comes into force;
  - (d) the person who is to be the patient’s after-care officer;
  - (e) each other person who the responsible medical officer believes is to have a continuing professional involvement in any aspect of the after-care services which are to be provided for the patient under section 8 of this Act after the order comes into force; and
  - (f) any person who the responsible medical officer believes will play a substantial part in the care of the patient after the order comes into force but will not be professionally concerned with the after-care services to be so provided.
- (4) If the patient has a propensity to violent or dangerous behaviour the responsible medical officer may consult the patient’s nearest relative notwithstanding any objection by the patient to such consultation under subsection (3)(a) above.
- (5) The matters referred to in subsection (2)(b) above are—
- (a) the after-care services mentioned in subsection (3)(e) above; and
  - (b) the conditions which should be specified in the order with a view to ensuring that the patient receives medical treatment and such after-care services.
- (6) A community care application shall be in the prescribed form and shall include—
- (a) the conditions which the responsible medical officer considers should be specified in the community care order for the purpose mentioned in subsection (5)(b) above;
  - (b) the name of the medical practitioner who is to be the patient’s special medical officer after the order comes into force;
  - (c) the name of the person who is to be the patient’s after-care officer after the order comes into force; and
  - (d) subject to section 35C(1) of this Act, the period for which the responsible medical officer considers the order should have effect.
- (7) A community care application shall be accompanied by—
- (a) two medical recommendations, in the prescribed form and complying with subsection (8) below, one of which shall be given by a medical practitioner approved for the purposes of section 20 of this Act by a Health Board as having special experience in the diagnosis or treatment of mental disorder and the other of which shall, if practicable, be given by another medical practitioner who has previous acquaintance with the patient; and
  - (b) a report in the prescribed form from the person who is to be the patient’s after-care officer after the order comes into force, and complying with subsection (9) below.

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- (8) The medical recommendations referred to in subsection (7)(a) above shall consist of statements of opinion that both the following conditions are satisfied, namely—
- (a) that the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment, but that the grounds set out in section 17(1) of this Act for admission to and detention in a hospital do not apply to the patient; and
  - (b) that the patient requires to be subject to a community care order—
    - (i) with a view to ensuring that he receives medical treatment and the after-care services to be provided for him under section 8 of this Act; and
    - (ii) in the interests of his health or safety or with a view to the protection of other persons;
- and for the purposes of subsection (7)(a) above the recommendations do not comply with this subsection unless the patient is described in each of them as suffering from the same form of mental disorder (that is to say, mental illness [F42 (including personality disorder)] or mental handicap), whether or not he is described in either recommendation as suffering also from the other form.
- (9) The report referred to in subsection (7)(b) above shall include—
- (a) information as to—
    - (i) the patient’s social circumstances;
    - (ii) the after-care services which are to be provided for the patient under section 8 of this Act after the order comes into force;
    - (iii) the care, other than medical treatment and the after-care services so provided, which is to be provided for the patient after the order comes into force; and
  - (b) a statement that in the opinion of the person making the report the patient requires to be subject to a community care order—
    - (i) with a view to ensuring that he receives medical treatment and the after-care services to be so provided; and
    - (ii) in the interests of his health or safety or with a view to the protection of other persons.
- (10) Before making a community care application the responsible medical officer shall take such steps as are reasonably practicable to inform any person, other than the patient, who has been consulted under subsection (3)(a) or (4) above of his right, by virtue of section 35A(2) of this Act, to be heard by the sheriff regarding the proposed community care order.

#### Textual Amendments

**F41** S. 35B inserted (1.4.1996) by 1995 c. 52, ss. 4(1), 7(2)

**F42** Words in s. 35B(8) inserted (13.9.1999) by 1999 asp 1, s. 3(1)(b)

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

**C6** S. 35B modified (1.4.1996) by S.I. 1996/742, arts. 1, 3, Sch. para. 2

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<sup>F43</sup>**35C Duration and renewal of community care order.**

- (1) Subject to section 35J of this Act and the following provisions of this section, a community care order shall have effect for such period, not exceeding 6 months, as may be specified in the order.
- (2) A community care order may be renewed under this section—
  - (a) from the expiry of the period referred to in subsection (1) above, for a further period not exceeding 6 months;
  - (b) from the expiry of any period of renewal under paragraph (a) above, for a further period not exceeding one year, and so on for periods not exceeding one year at a time.
- (3) The special medical officer shall, within the period of two months ending with the day on which the community care order, if not renewed, would expire—
  - (a) examine the patient; and
  - (b) consult—
    - (i) the patient and, if practicable and the patient does not object, his nearest relative;
    - (ii) the patient’s after-care officer;
    - (iii) the other persons concerned with the patient’s medical treatment or professionally concerned with any aspect of the after-care services provided for him under section 8 of this Act; and
    - (iv) any person who the special medical officer believes plays a substantial part in the care of the patient but is not professionally concerned with the after-care services so provided.
- (4) If the patient has a propensity to violent or dangerous behaviour the responsible medical officer may consult the patient’s nearest relative notwithstanding any objection by the patient to such consultation under subsection (3)(b)(i) above.
- (5) If, after the examination and consultation required by subsection (3) above and any consultation under subsection (4) above, the special medical officer considers that the conditions set out in section 35B(8)(a) and (b) of this Act continue to apply to the patient, he shall send to the Mental Welfare Commission a report to that effect in the prescribed form, and the community care order shall thereby be renewed for such period as is, subject to subsection (2) above, specified in the report.
- (6) The special medical officer shall notify—
  - (a) the patient and any other person who has been consulted under subsection (3)(b)(i) or (iv) or (4) above; and
  - (b) the patient’s after-care officer,
 of any renewal of the community care order and of the period of such renewal.
- (7) Subsection (10) of section 35A of this Act shall apply in relation to a renewal of a community care order under this section as it applies in relation to a community care order made under that section, but with the substitution of references to subsections (3)(b)(i) and (4) of this section for the references to subsections (3)(a) and (4) of section 35B.

**Textual Amendments**

**F43** S. 35C inserted (1.4.1996) by 1995 c. 52, ss. 4(1), 7(2)

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

C7 S. 35C modified (1.4.1996) by S.I. 1996/742, arts. 1, 3, Sch. para. 3

**<sup>F44</sup>35D Variation of conditions in community care order.**

- (1) This section applies where the special medical officer, after consulting—
  - (a) the patient and, if practicable and the patient does not object, his nearest relative;
  - (b) the other persons concerned with the patient’s medical treatment;
  - (c) the patient’s after-care officer;
  - (d) the other persons professionally concerned with any aspect of the after-care services provided for the patient under section 8 of this Act; and
  - (e) any person who the special medical officer believes plays a substantial part in the care of the patient but is not professionally concerned with the after-care services so provided,considers that the conditions specified in the order should be varied (whether by adding further conditions or deleting or amending existing conditions).
- (2) If the patient has a propensity to violent or dangerous behaviour the special medical officer may consult the patient’s nearest relative notwithstanding any objection by the patient to such consultation under subsection (1)(a) above.
- (3) Where this section applies the special medical officer shall prepare a note, in the prescribed form, of the proposed variation of the conditions and shall send a copy of the note to—
  - (a) the patient and any other person who has been consulted under subsection (1) (a) or (2) above;
  - (b) the patient’s after-care officer; and
  - (c) the sheriff clerk for the sheriff of the sheriffdom within which the patient is resident.
- (4) If the patient wishes to object to or make representations concerning the proposed variation of the conditions he shall, within 7 days of receiving the copy of the note under subsection (3) above, so advise the sheriff clerk; and in that event the sheriff shall not approve the variation without holding a hearing.
- (5) If the patient does not indicate, in accordance with subsection (4) above, that he wishes to be heard concerning the proposed variation of the conditions the sheriff shall, if he thinks fit, approve the variation without a hearing.
- (6) Where a variation of conditions is approved under this section the special medical officer shall send a copy of the variation as so approved to—
  - (a) the patient and any other person who has been consulted under subsection (1) (a) or (e) or (2) above;
  - (b) the Mental Welfare Commission; and
  - (c) the patient’s after-care officer.
- (7) Subsection (10) of section 35A of this Act shall apply in relation to a variation of conditions approved under this section as it applies in relation to a community care order made under that section, but with the substitution of references to subsections (1) (a) and (2) of this section for the references to subsections (3)(a) and (4) of section 35B.

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### Textual Amendments

F44 S. 35D inserted (1.4.1996) by 1995 c. 52, ss. 4(1), 7(2)

### <sup>F45</sup>35E Change of special medical officer or after-care officer.

- (1) This subsection applies where a patient’s special medical officer, after consulting the persons mentioned in subsection (3) below, agrees with another medical practitioner (“the new special medical officer”), who shall be a practitioner approved for the purposes of section 20 of this Act by a Health Board as having special experience in the diagnosis or treatment of mental disorder, that the new special medical officer should, from a date so agreed, assume principal responsibility for the patient’s medical treatment while the community care order is in force.
- (2) This subsection applies where a patient’s after-care officer, after consulting the persons mentioned in subsection (4) below, agrees with another person (“the new after-care officer”), who shall be a mental health officer of the local authority which is providing (or, if different, the local authority which is to provide) the after-care services to be provided for the patient under section 8 of this Act while the community care order is in force, that the new after-care officer should, from a date so agreed, assume responsibility for co-ordinating the provision of the after-care services to be so provided.
- (3) The persons referred to in subsection (1) above are—
  - (a) the patient and, if practicable and the patient does not object, his nearest relative;
  - (b) the other persons concerned or to be concerned with the patient’s medical treatment (including the new special medical officer);
  - (c) the patient’s after-care officer;
  - (d) the other persons professionally concerned or to be so concerned with any aspect of the after-care services provided or to be provided for the patient under section 8 of this Act; and
  - (e) any person who the special medical officer believes plays or is to play a substantial part in the care of the patient but is not, and will not be, professionally concerned with the after-care services so provided or to be so provided.
- (4) The persons referred to in subsection (2) above are—
  - (a) the patient and, if practicable and the patient does not object, his nearest relative;
  - (b) the patient’s special medical officer;
  - (c) the other persons concerned or to be concerned with the patient’s medical treatment;
  - (d) the other persons professionally concerned or to be so concerned with any aspect of the after-care services provided or to be provided for the patient under section 8 of this Act (including the new after-care officer); and
  - (e) any person who the after-care officer believes plays or is to play a substantial part in the care of the patient but is not, and will not be, professionally concerned with the after-care services so provided or to be so provided.

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- (5) If the patient has a propensity to violent or dangerous behaviour the special medical officer or, as the case may be, the after-care officer may consult the patient's nearest relative notwithstanding any objection by the patient to such consultation under subsection (3)(a) or, as the case may be, (4)(a) above.
- (6) Where subsection (1) or (2) above applies the new special medical officer or, as the case may be, the new after-care officer shall, from the agreed date, assume responsibility as mentioned in that subsection and shall within seven days of that date intimate the change, in the prescribed form, to—
  - (a) the patient and any other person who has been consulted under paragraph (a) or (e) of subsection (3) or, as the case may be, (4) above or subsection (5) above;
  - (b) the Mental Welfare Commission; and
  - (c) the patient's after-care officer or, as the case may be, special medical officer.
- (7) On a change of special medical officer or after-care officer by virtue of this section, the community care order shall have effect in respect of the patient as if the new special medical officer or, as the case may be, the new after-care officer had been the special medical officer or after-care officer specified in the community care order by virtue of section 35A(4) of this Act.

#### Textual Amendments

**F45** S. 35E inserted (1.4.1996) by 1995 c. 52, ss. 4(1), 7(2)

#### <sup>F46</sup>**35F** Appeal against community care order.

- (1) Any patient subject to a community care order may, at any time when the order is in force following renewal under section 35C(5) of this Act, appeal to the sheriff for revocation of the order.
- (2) An appeal under subsection (1) above shall be by way of summary application and shall be made to the sheriff of the sheriffdom within which the patient is resident.
- (3) On an appeal under subsection (1) above—
  - (a) if the sheriff is satisfied that the patient—
    - (i) does not require to be subject to a community care order with a view to ensuring that he receives medical treatment and after-care services provided for him under section 8 of this Act; and
    - (ii) does not require to be subject to such an order in the interests of his health or safety or with a view to the protection of other persons, he shall revoke the order; and
  - (b) in any other case, the sheriff shall refuse the appeal and affirm the order, either without amendment or subject to such variation as he considers appropriate.
- (4) Where, under subsection (3)(a) above, the sheriff revokes a community care order he may order that the revocation shall have effect either immediately or from such date, not later than 28 days after the date of his decision, as he may specify.
- (5) The special medical officer shall notify the patient's after-care officer of any revocation or variation of a community care order under this section.



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### Textual Amendments

**F46** S. 35F inserted (1.4.1996) by 1995 c. 52, ss. 4(1), 7(2)

### <sup>F47</sup> 35G Admission to hospital for reassessment.

- (1) This section applies where, as respects a patient in respect of whom a community care order is in force, the special medical officer, after consulting the persons mentioned in subsection (2) below, considers that the patient's mental condition—
  - (a) has, since the making of the order or, where the order has been renewed under section 35C(5) of this Act, the most recent renewal, deteriorated; and
  - (b) is, or is likely to become, such as to give grounds for serious concern regarding his health or safety or the protection of other persons.
- (2) The persons referred to in subsection (1) above are—
  - (a) if practicable and the patient does not object, his nearest relative;
  - (b) the other persons concerned with the patient's medical treatment;
  - (c) the patient's after-care officer;
  - (d) the other persons professionally concerned with any aspect of the after-care services provided for the patient under section 8 of this Act; and
  - (e) any person who the special medical officer believes plays a substantial part in the care of the patient but is not professionally concerned with the after-care services so provided.
- (3) If the patient has a propensity to violent or dangerous behaviour the special medical officer may consult the patient's nearest relative notwithstanding any objection by the patient to such consultation under subsection (2)(a) above.
- (4) Where this section applies, the special medical officer shall—
  - (a) examine the patient and prepare a report on his condition; and
  - (b) arrange for another medical practitioner to carry out such an examination and provide such a report.
- (5) Where both reports conclude that—
  - (a) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to be admitted to and detained in a hospital for assessment, or for assessment followed by medical treatment, for at least a limited period; and
  - (b) he ought to be so admitted and detained in the interests of his own health or safety or with a view to the protection of other persons,
 the special medical officer may, with the consent of the patient's after-care officer, direct the patient to attend a hospital specified in the direction to be admitted and detained there by virtue of this section, and the direction shall be sufficient authority for the patient's removal to the hospital so specified and for his admission to and detention in that hospital in accordance with this section.
- (6) Reports under subsection (4) above and directions under subsection (5) above shall be in the prescribed form.
- (7) The special medical officer shall send a copy of the reports under subsection (4) above and of the direction under subsection (5) above to—



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- (a) any person who has been consulted under subsection (2)(a) or (e) or (3) above;
  - (b) the Mental Welfare Commission;
  - (c) the managers of the hospital specified in the direction; and
  - (d) the patient's after-care officer.
- (8) Subject to section 35H(4)(b) of this Act, a patient admitted to a hospital by virtue of this section may be detained there for a period not exceeding 7 days beginning with the day on which he is admitted and shall not be further detained in a hospital by virtue of this section immediately after the expiry of the period of detention.
- (9) While a patient is detained in a hospital by virtue of this section the period for which, under section 35C of this Act, the community care order has effect shall continue to run but the conditions to which he is subject under the order shall not apply in relation to him.

#### Textual Amendments

F47 S. 35G inserted (1.4.1996) by 1995 c. 52, ss. 4(1), 7(2)

#### <sup>F48</sup>35H Reassessment: further provisions.

- (1) Where a patient is detained in a hospital by virtue of section 35G of this Act, the responsible medical officer shall—
  - (a) examine the patient and prepare a report, in the prescribed form, on his condition; and
  - (b) arrange for another medical practitioner to carry out such an examination and provide such a report.
- (2) If the responsible medical officer is not a practitioner approved for the purposes of section 20 of this Act by a Health Board as having special experience in the diagnosis or treatment of mental disorder, the medical practitioner referred to in subsection (1) (b) above shall require to be such a practitioner.
- (3) Where both reports conclude that the conditions set out in section 35B(8)(a) and (b) of this Act apply in relation to the patient, the patient shall, as soon as is practicable, be discharged from hospital and the conditions to which he is subject under the community care order shall again apply in relation to him.
- (4) Where both reports conclude that the grounds set out in section 17(1)(a) and (b) of this Act apply in relation to the patient and, within the period specified in section 35G(8) of this Act, an application for admission is made in respect of the patient—
  - (a) the community care order in respect of the patient shall cease to have effect; and
  - (b) the submission to the sheriff, in accordance with section 21(1) of this Act, of the application for admission shall be sufficient authority for the detention of the patient in a hospital until the expiry of a further period of 21 days immediately following the expiry of the period specified in section 35G(8).
- (5) The responsible medical officer shall send to the Mental Welfare Commission copies of the reports prepared under subsection (1) above.

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- (6) A patient detained in a hospital by virtue of section 35G of this Act shall cease to be liable to be so detained, and the community care order in respect of him shall cease to have effect—
- (a) if the period mentioned in subsection (8) of that section expires without the patient having been discharged from hospital or an application for his admission having been submitted to the sheriff; or
  - (b) where an application for his admission has been submitted to the sheriff within that period, if the period of 21 days mentioned in subsection (4)(b) above expires without the sheriff having approved the application.
- (7) For the purposes of this section, an application for admission is submitted to the sheriff when it is lodged with his sheriff clerk.

#### Textual Amendments

**F48** S. 35H inserted (1.4.1996) by 1995 c. 52, ss. 4(1), 7(2)

#### <sup>F49</sup>35I Revocation of community care order.

- (1) Where the special medical officer, after consulting the persons mentioned in subsection (2) below, considers that the patient—
- (a) does not require to be subject to a community care order with a view to ensuring that he receives medical treatment and after-care services provided for him under section 8 of this Act; and
  - (b) does not require to be subject to such an order in the interests of his health or safety or with a view to the protection of other persons,
- he shall revoke the order and shall notify the patient, his nearest relative (if practicable), his after-care officer, any person falling within subsection (2)(e) below and the Mental Welfare Commission of the revocation.
- (2) The persons to be consulted under subsection (1) above are—
- (a) the patient and, if practicable and the patient does not object, his nearest relative;
  - (b) the other persons concerned with the patient's medical treatment;
  - (c) the patient's after-care officer;
  - (d) the other persons professionally concerned with any aspect of the after-care services provided for the patient under section 8 of this Act; and
  - (e) any person who the special medical officer believes plays a substantial part in the care of the patient but is not professionally concerned with the after-care services so provided.
- (3) If the patient has a propensity to violent or dangerous behaviour the special medical officer may consult the patient's nearest relative notwithstanding any objection by the patient to such consultation under subsection (2)(a) above.
- (4) Where the Mental Welfare Commission consider that the patient—
- (a) does not require to be subject to a community care order with a view to ensuring that he receives medical treatment and after-care services provided for him under section 8 of this Act; and

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- (b) does not require to be subject to such an order in the interests of his health or safety or with a view to the protection of other persons,  
they shall revoke the order and shall notify the persons mentioned in subsection (5) below of the revocation.
- (5) The persons to be notified under subsection (4) above are—
- (a) the patient and (if practicable) his nearest relative;
  - (b) the patient’s special medical officer;
  - (c) the patient’s after-care officer; and
  - (d) any person who the Mental Welfare Commission believes plays a substantial part in the care of the patient but is not professionally concerned with the after-care services provided for the patient under section 8 of this Act.

#### Textual Amendments

**F49** S. 35I inserted (1.4.1996) by 1995 c. 52, ss. 4(1), 7(2)

### <sup>F50</sup> 35J Patients in custody or admitted to hospital in pursuance of emergency recommendations.

- (1) This section applies where a patient who is subject to a community care order—
- (a) is detained in custody in pursuance of any sentence or order passed or made by a court in the United Kingdom (including an order committing or remanding him in custody); or
  - (b) is detained in a hospital under section 24, 26 or 26A of this Act.
- (2) For so long as the patient is detained as mentioned in subsection (1)(a) or (b) above the period for which, under section 35C of this Act, the community care order has effect shall continue to run but the conditions to which he is subject under that order shall not apply in relation to him.
- (3) If the patient is detained as mentioned in paragraph (a) of subsection (1) above for a period of, or successive periods amounting in the aggregate to, 6 months or less, or is detained as mentioned in paragraph (b) of that subsection, and, apart from this subsection, the community care order—
- (a) would have ceased to have effect during the period for which he is so detained; or
  - (b) would cease to have effect during the period of 28 days beginning with the day on which he ceases to be so detained,
- the order shall be deemed not to have ceased, and shall not cease, to have effect until the end of that period of 28 days.
- (4) Where the period for which the patient is subject to a community care order is extended by subsection (3) above, any examination and report to be made and furnished in respect of the patient under section 35C(3) and (5) of this Act may be made and furnished within the period as so extended.
- (5) Where, by virtue of subsection (4) above, a community care order is renewed for a further period after the day on which (apart from subsection (3) above) the order would have ceased to have effect, the further period shall be deemed to have commenced with that day.

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#### Textual Amendments

**F50** S. 35J inserted (1.4.1996) by 1996 c. 52, ss. 4(1), 7(2)

### <sup>F51</sup>**35K Patients moving from England and Wales to Scotland.**

- (1) A community care application may be made in respect of a patient who is subject to after-care under supervision under the <sup>M10</sup>Mental Health Act 1983 and who intends to leave England and Wales in order to reside in Scotland.
- (2) Sections 35A to 35J of this Act shall apply in relation to a patient in respect of whom a community care application is or is to be made by virtue of this section subject to such modifications as may be prescribed.]

#### Textual Amendments

**F51** S. 35K inserted (1.4.1996) by 1995 c. 52, ss. 4(1), 7(2)

#### Marginal Citations

**M10** 1983 c. 20.

### *Grounds for reception into guardianship*

### **36 Patients liable to be received into guardianship.**

A person may, in pursuance of an application for reception into guardianship under section 37(1) of this Act, be received into guardianship on the grounds that—

- (a) he is suffering from mental disorder of a nature or degree which warrants his reception into guardianship; and
- (b) it is necessary in the interests of the welfare of the patient that he should be so received.

### *Procedure for reception of patients: guardianship*

### **37 Reception of patients into guardianship.**

- (1) A patient who has attained the age of 16 years may be received into guardianship for the period allowed by this Part of this Act, in pursuance of an application in the prescribed form (in this Act referred to as “a guardianship application”) approved by the sheriff and made in accordance with the provisions of this Part of this Act.
- (2) The person named as guardian in a guardianship application may be—
  - (a) the local authority to whom the application is addressed; or
  - (b) a person chosen by that authority; or
  - (c) any other person who has been accepted as a suitable person to act in that behalf by that authority,

and any person chosen or accepted as aforesaid may be a local authority or any other person including the applicant.

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- (3) A guardianship application shall be founded on and accompanied by 2 medical recommendations in the prescribed form and a recommendation by a mental health officer in such form; and
- (a) each medical recommendation shall include—
    - (i) a statement of the form of mental disorder from which the patient is suffering being mental illness [<sup>F52</sup>(including personality disorder)] or mental handicap or both; and
    - (ii) a statement that the ground set out in section 36(a) of this Act applies in relation to the patient,being statements of opinion, together with the grounds on which those statements are based;
  - (b) the recommendation by the mental health officer shall include—
    - (i) a statement, being a statement of opinion, that the ground set out in section 36(b) of this Act applies in relation to the patient, together with the grounds on which the statement is based; and
    - (ii) a statement as to whether he is related to the patient and of any pecuniary interest that he may have in the reception of the patient into guardianship.
- (4) A guardianship application shall be of no effect unless the patient is described in each of the medical recommendations as suffering from the same form of mental disorder, whether or not he is described in either of those recommendations as suffering also from the other form.

#### Textual Amendments

**F52** Words in s. 37(3)(a)(i) inserted (13.9.1999) by 1999 asp. 1, s. 3(1)(b)

### 38 General provisions as to applications: guardianship.

- (1) Subject to the provisions of this section, a guardianship application may be made either by the nearest relative of the patient or by a mental health officer; and every such application shall be addressed to the local authority for the area in which the patient resides.
- (2) The nearest relative of the patient shall not make a guardianship application unless he has personally seen the patient within the period of 14 days ending with the date on which the proposed application is submitted to the sheriff for his approval.
- (3) A local authority shall, if so required by the nearest relative of a patient residing in their area, direct a mental health officer as soon as practicable to take the patient's case into consideration with a view to making a guardianship application in respect of the patient; and if in any such case that officer decides not to make an application he shall inform the nearest relative of his reasons in writing.
- (4) A mental health officer shall make a guardianship application in respect of a patient within the area of the local authority by whom that officer was appointed in any case where he is satisfied that such an application ought to be made and is of the opinion, having regard to any wishes expressed by relatives of the patient and to any other relevant circumstances, that it is necessary or proper for the application to be made by him.

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- (5) A mental health officer who proposes to make a guardianship application shall—
- (a) interview the patient within the period of 14 days ending with the date on which the proposed application is submitted to the sheriff for his approval; and
  - (b) take such steps as are reasonably practicable to inform the nearest relative of the patient of the proposed application, and of his right to object thereto in accordance with the provisions of section 40 of this Act.
- (6) An application under this section by a mental health officer may be made outside the area of the local authority by whom he is appointed.

### **39 Medical recommendations: guardianship.**

The medical recommendations required for the purposes of a guardianship application shall satisfy the following requirements—

- (a) such recommendations shall be signed on or before the date of the application and shall be given by medical practitioners (neither being the applicant) who have personally examined the patient separately, in which case not more than 5 days must have elapsed between the days on which the separate examinations took place, or, where no objection has been made by the patient or his nearest relative, together;
- (b) one of the recommendations shall be given by a practitioner approved for the purposes of this section by a Health Board as having special experience in the diagnosis or treatment of mental disorder and the other recommendation shall, if practicable, be given by the patient's general medical practitioner or another medical practitioner who has previous acquaintance with him;
- (c) such recommendations shall contain a statement as to whether the person signing the recommendation is related to the patient and of any pecuniary interest that that person may have in the reception of the patient into guardianship.

### **40 Approval of applications by the sheriff: guardianship.**

- (1) A guardianship application shall be submitted to a sheriff of the sheriffdom—
- (a) within which the patient is resident at the time when the application is submitted; or
  - (b) where the patient is a resident patient in a hospital at the time when the application is submitted, within which the hospital is situated,  
 .....<sup>F53</sup> within 7 days of the last date on which the patient was examined for the purposes of any medical recommendation accompanying the application, together with a statement of the willingness to act of the guardian named in the application.
- (2) Subject to the following provisions of this section and to section 113 of this Act, the sheriff, in considering [<sup>F54</sup>whether to approve] an application submitted to him under this section may make such inquiries and hear such persons (including the patient) as he thinks fit, and, where an application is the subject of objection by the nearest relative of the patient, shall afford that relative and any witness that relative may call an opportunity of being heard.

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- (3) The sheriff shall not withhold approval to an application so submitted without affording to the applicant and any witness the applicant may call an opportunity of being heard.
- (4) Any proceedings under this section shall, where the patient or applicant so desires or the sheriff thinks fit, be conducted in private.
- (5) Every such application shall, after it is approved by the sheriff, be forwarded to the local authority for the area in which the patient resides.
- (6) The sheriff in the exercise of the functions conferred on him by this section shall have the like jurisdiction, and the like powers as regards the summoning and examination of witnesses, the administration of oaths, the awarding of expenses, and otherwise, as if he were acting in the exercise of his civil jurisdiction.

#### Textual Amendments

- F53** Words repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 39:1\)](#), [s. 51\(2\)\(a\)](#)
- F54** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 39:1\)](#), [s. 51\(2\)\(b\)](#)

#### 41 Effect of applications: guardianship.

- (1) Where a patient has been received into guardianship in pursuance of an application under this Part of this Act, the local authority concerned shall notify the Mental Welfare Commission of that reception together with a copy of the application and recommendations relating to the patient's reception within 7 days of its taking place.
- (2) Where a guardianship application has been approved by the sheriff and forwarded to the local authority concerned within a period of 7 days from the date on which the sheriff approved the application, the application shall, subject to the following provisions of this section and to regulations made by the Secretary of State, confer on the authority or person named in the application as guardian, to the exclusion of any other person, the following powers—
  - (a) power to require the patient to reside at a place specified by the authority or person named as guardian;
  - (b) power to require the patient to attend at places and times so specified for the purpose of medical treatment, occupation, education or training;
  - (c) power to require access to the patient to be given, at any place where the patient is residing, to any medical practitioner, mental health officer or other person so specified.
- (3) Nothing in the provisions of subsection (2) of this section or of regulations made thereunder shall confer any power on a guardian in respect of a patient received into his guardianship to intrude with any property of that patient.
- (4) No person who is appointed as a guardian of a patient under this Act shall administer corporal punishment to that patient, and any person who contravenes the provisions of this subsection shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale and the court shall intimate the conviction to the Mental Welfare Commission.



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## **42 Rectification of application and recommendations: guardianship.**

- (1) If within the period of 14 days beginning with the day on which a patient has been received into guardianship in pursuance of a guardianship application, the application, or any medical recommendation given for the purposes of the application, is found to be in any respect incorrect or defective, the application or recommendation may, not later than 7 days after the expiration of the said period, with the approval of the sheriff, be amended by the person by whom it was signed; and upon such amendment being made the application or recommendation shall have effect, and shall be deemed to have had effect, as if it had been originally made as so amended.
- (2) Without prejudice to the provisions of subsection (1) of this section, if within the period first mentioned therein it appears to the designated medical officer that one of the medical recommendations on which the guardianship application is founded is insufficient to warrant reception into guardianship in pursuance of the application, he may give notice in writing to that effect within that period to the applicant and to the sheriff; and where any such notice is given in respect of a recommendation that recommendation shall be disregarded, but the application shall be, and shall be deemed always to have been, sufficient if—
  - (a) a fresh recommendation complying with the relevant provisions of this Part of this Act (other than the provisions relating to the time of signature and the interval between medical examinations) is furnished to the local authority concerned and to the sheriff; and
  - (b) the sheriff is satisfied that that recommendation and the other recommendations on which the application is founded together comply with those provisions.
- (3) Where the medical recommendations upon which an application under this Part of this Act is founded are, taken together, insufficient to warrant reception into guardianship in pursuance of the application, a notice under subsection (2) of this section may be given in respect of either of those recommendations; but this subsection shall not apply in a case where the application is of no effect by virtue of section 37(4) of this Act.

### *Care and treatment of patients: guardianship*

## **43 Regulations as to guardianship.**

- (1) Subject to the provisions of this Part of this Act, the Secretary of State may make regulations for regulating the exercise by the guardians of patients received into guardianship under this Part of this Act of their powers as such, and for imposing on such guardians, and upon any local authority concerned, such duties as he considers necessary or expedient in the interests of the patients.
- (2) Regulations under this section may in particular make provision for requiring the patients to be visited, on such occasions or at such intervals as may be prescribed by the regulations, on behalf of such local authorities as may be so prescribed.

## **44 Return of patients absent without leave: guardianship.**

- (1) Where a patient who is for the time being subject to guardianship under this Part of this Act absents himself without the leave of the guardian from the place at which he is required by the guardian to reside, he may, subject to the provisions of this section, be taken into custody and returned to that place by the guardian, by any officer on the

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staff of a local authority, by any constable, or by any person authorised in writing by the guardian or a local authority.

- [<sup>F55</sup>(2) A patient shall not be taken into custody under this section after the later of—
- (a) the end of the period of six months beginning with the first day of his absence without leave; and
  - (b) the end of the period for which (apart from section 48 of this Act) he is subject to guardianship;

and, in determining for the purposes of paragraph (b) above or any other provision of this Act whether a person who is or has been absent without leave is at any time subject to guardianship, a report furnished under section 47 or 48B of this Act before the first day of his absence shall not be taken to have renewed the authority for his guardianship unless the period of renewal began before that day.]

#### Textual Amendments

**F55** S. 44(2) substituted (1.4.1996) by 1995 c. 52, ss. 5(5), 7(2)

#### 45 Transfer of patients: guardianship.

- (1) A patient who is for the time being subject to the guardianship of any person, including a local authority, by virtue of a guardianship application may be transferred by the local authority concerned into the guardianship of another such person with the consent of that other person; but no patient shall be so transferred except with the consent of his guardian, or, if that consent is refused, with the approval of the sheriff to the transfer.
- (2) Any transfer of a patient under the last foregoing subsection shall be intimated to his nearest relative and to the Mental Welfare Commission by the local authority concerned within 7 days of the date of transfer.
- (3) Where a patient is transferred under this section, the provisions of this Part of this Act (including this subsection) shall apply to him as if the person into whose guardianship he is transferred had been the person named in the guardianship application.

#### 46 Transfer of guardianship in case of death, incapacity etc. of guardian.

- (1) If any person (other than a local authority) having the guardianship of a patient received into guardianship under this Part of this Act—
  - (a) dies; or
  - (b) gives notice in writing to the local authority concerned that he desires to relinquish the functions of guardian,the guardianship of the patient shall thereupon vest in the local authority concerned, but without prejudice to any power to transfer the patient into the guardianship of another person under section 45 of this Act.
- (2) If any such person, not having given notice under subsection (1)(b) of this section, is incapacitated by illness or any other cause from performing the functions of guardian of the patient, those functions may, during his incapacity, be performed on his behalf by the local authority concerned, or by any other person approved for the purpose by that authority.

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- (3) Where the guardianship of a patient is transferred to a local authority or other person by or under subsection (1) of this section, section 45(3) of this Act shall apply as if the patient had been transferred into the guardianship of that authority or person in pursuance of that section.

*Duration of authority for guardianship and discharge of patients*

**47 Duration of authority: guardianship.**

- (1) Subject to the provisions of this Part of this Act, a patient received into guardianship in pursuance of a guardianship application, may be kept under guardianship for a period not exceeding 6 months beginning with the day on which he was so received, but shall not be so kept for any longer period unless the authority for his guardianship is renewed under the following provisions of this section.
- (2) Authority for the guardianship of a patient may, unless the patient has previously been discharged, be renewed under this section—
- (a) from the expiration of the period referred to in subsection (1) of this section, for a further period of 6 months;
  - (b) from the expiration of any period of renewal under paragraph (a) of this subsection, for a further period of one year, and so on for periods of one year at a time.
- (3) Within the period of 2 months ending with the day on which a patient who is subject to guardianship under this Part of this Act would cease under this section to be so liable in default of the renewal of the authority for his guardianship—
- (a) the responsible medical officer shall examine the patient or obtain from another medical practitioner a report on the condition of the patient; and, if it appears to him that the ground set out in section 36(a) of this Act continues to apply in relation to the patient, he shall furnish to such mental health officer as the local authority concerned may direct a report to that effect in the prescribed form along with the report first mentioned if such a report has been obtained; and
  - (b) that mental health officer shall consider whether the ground set out in section 36(b) of this Act continues to apply in relation to the patient; and, if it appears to him that it does continue so to apply, he shall furnish to the local authority concerned and to the Mental Welfare Commission a report to that effect in the prescribed form along with the report or reports furnished to him under paragraph (a) of this subsection.
- (4) Subject to subsection (6) of this section and section 50(2) and (5) of this Act, where a report is duly furnished to a local authority under subsection (3) of this section, the authority for the guardianship of the patient shall be thereby renewed for the period prescribed in that case by subsection (2) of this section.
- (5) Where a report under this section is furnished to them in respect of a patient, the local authority shall, unless they discharge the patient, cause him, his nearest relative and his guardian, to be informed.)
- (6) Any patient may within the period for which the authority for his guardianship is renewed by virtue of a report furnished in respect of him under this section [F56] or

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section 48B of this Act] appeal to the sheriff to order his discharge and the provisions of section 50(2) and (5) of this Act shall apply in relation to such an appeal.

#### Textual Amendments

**F56** Words in s. 47(6) inserted (1.4.1996) by 1995 c. 52, ss. 5(6), 7(2)

### [<sup>F57</sup> 48 Special provisions as to patients absent without leave: guardianship.

- (1) Where a patient is absent without leave—
  - (a) on the day on which (apart from this section) he would cease to be subject to guardianship under this Part of this Act; or
  - (b) within the period of one week ending with that day,  
he shall not cease to be so subject until the relevant time.
- (2) For the purposes of subsection (1) above the relevant time—
  - (a) where the patient is taken into custody under section 44 of this Act, is the end of the period of one week beginning with the day on which he is returned to the place where he ought to be;
  - (b) where the patient returns to the place where he ought to be within the period during which he can be taken into custody under section 44 of this Act, is the end of the period of one week beginning with the day on which he so returns; and
  - (c) otherwise, is the end of the period during which he can be taken into custody under section 44 of this Act.]

#### Textual Amendments

**F57** Ss. 48, 48A, 48B substituted for s. 48 (1.4.1996) by 1995 c. 52, ss. 5(7), 7(2)

### 48A <sup>F58</sup>Patients who are taken into custody or return within 28 days: guardianship.

- (1) This section applies where a patient who is absent without leave is taken into custody under section 44 of this Act, or returns to the place where he ought to be, not later than the end of the period of 28 days beginning with the first day of his absence without leave.
- (2) Where the period for which the patient is subject to guardianship is extended by section 48 of this Act, any examination and report to be made and furnished in respect of the patient under section 47(3) of this Act may be made and furnished within the period as so extended.
- (3) Where the authority for the guardianship of a patient is renewed by virtue of subsection (2) above after the day on which (apart from section 44 of this Act) that authority would have expired, the renewal shall take effect as from that day.

#### Textual Amendments

**F58** S. 48, 48A, 48B substituted for s. 48 (1.4.1996) by 1995 c. 52, ss. 5(7), 7(2)

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**48B** <sup>F59</sup>**Patients who are taken into custody or return after more than 28 days: guardianship.**

- (1) This section applies where a patient who is absent without leave is taken into custody under section 44 of this Act, or returns to the place where he ought to be, later than the end of the period of 28 days beginning with the first day of his absence without leave.
- (2) Within the period of one week beginning with the day on which the patient returns, or is returned, to the place where he ought to be—
  - (a) the responsible medical officer shall examine the patient or obtain from another medical practitioner a report on the condition of the patient; and, if it appears to him that the ground set out in section 36(a) of this Act continues to apply in relation to the patient, he shall furnish to such mental health officer as the local authority concerned may direct a report to that effect in the prescribed form, along with the report first mentioned if such a report has been obtained; and
  - (b) the mental health officer shall consider whether the ground set out in section 36(a) of this Act continues to apply in relation to the patient; and, if it appears to him it does continue so to apply, he shall furnish to the local authority concerned and to the Mental Welfare Commission a report to that effect in the prescribed form along with the report or reports furnished to him under paragraph (a) of this subsection.
- (3) Where a report under this section is furnished to them in respect of a patient, the local authority shall, unless they discharge the patient, cause him, his nearest relative and his guardian to be informed.
- (4) Where the patient would (apart from any renewal of the authority for his guardianship on or after the day on which he is returned or returns to the place where he ought to be) be subject to guardianship after the end of the period of one week beginning with that day, he shall cease to be so subject at the end of that period unless a report is duly furnished in respect of him under subsection (2) above.
- (5) Where the patient would (apart from section 48 of this Act) have ceased to be subject to guardianship on or before the day on which a report is duly furnished in respect of him under subsection (2) above, the report shall renew the authority for his guardianship for the period prescribed in that case by section 47(2) of this Act.
- (6) Where the authority for the guardianship of the patient is renewed by virtue of subsection (5) above—
  - (a) the renewal shall take effect as from the day on which (apart from section 48 of this Act and subsection (5) above) the authority would have expired; and
  - (b) if (apart from this paragraph) the renewed authority would expire on or before the day on which the report is furnished, the report shall further renew the authority, as from the day on which it would expire, for the period prescribed in that case by section 47(2) of this Act.
- (7) Where the authority for the guardianship of the patient would expire within the period of two months beginning with the day on which a report is duly furnished in respect of him under subsection (2) above, the report shall, if it so provides, have effect also as a report duly furnished under section 47(3) of this Act; and the reference in this subsection to authority includes any authority renewed under subsection (5) above by the report.

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#### Textual Amendments

**F59** S. 48, 48A, 48B substituted for s. 48 (1.4.1996) by 1995 c. 52, ss. 5(7), 7(2)

### 49 Special provisions as to patients sentenced to imprisonment, etc.: guardianship.

- (1) Where a patient who is subject to guardianship under this Part of this Act is detained in custody in pursuance of any sentence or order passed or made by a court in the United Kingdom (including an order committing or remanding him in custody) and is so detained for a period exceeding 6 months, he shall, at the end of that period, cease to be so subject.
- (2) Where any such patient is detained in custody as aforesaid for a period not exceeding 6 months, or for successive periods that do not in the aggregate exceed 6 months, then—
  - (a) if apart from this subsection the patient would have ceased to be subject as aforesaid on or before the day he is discharged from custody, he shall not cease to be so subject until the end of that day; and
  - (b) in any case, sections 44 <sup>[F60]</sup>, 48 and 48A] of this Act shall apply in relation to the patient as if he had absented himself without leave on that day.
- <sup>[F61]</sup>(3) In its application by virtue of subsection (2) above section 44(2) of this Act shall have effect with the substitution of the words “end of the period of 28 days beginning with the first day of his absence without leave.” for the words from “later of” onwards.]

#### Textual Amendments

**F60** Words in s. 49(2) substituted (1.4.1996) by 1995 c. 52, ss. 5(8)(a), 7(2)

**F61** S. 49(3) inserted (1.4.1996) by 1995 c. 52, ss. 5(8)(b), 7(2)

### 50 Discharge of patients: guardianship.

- (1) Subject to the provisions of this section and section 51 of this Act, a patient who is for the time being subject to guardianship under this Part of this Act shall cease to be so subject if an order in writing discharging him from guardianship (in this Act referred to as “an order for discharge”) is made in accordance with the following provisions of this section.
- (2) An order for discharge may be made in respect of a patient by the responsible medical officer, the Mental Welfare Commission or, where an appeal has been taken under sections 47 or 51 of this Act, by the sheriff.
- (3) The responsible medical officer or the Mental Welfare Commission shall make an order for discharge in respect of a patient where he is or they are satisfied that he is not suffering from mental disorder of a nature or degree which warrants his remaining under guardianship.
- (4) The local authority concerned or the Mental Welfare Commission shall make an order for discharge where they are satisfied that it is not necessary in the interests of the welfare of the patient that he should remain under guardianship.
- (5) Where an appeal is made to the sheriff by a patient under sections 47 or 51 of this Act, the sheriff shall order the discharge of the patient if he is satisfied that—

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- (a) the patient is not at the time of the hearing of the appeal suffering from mental disorder of a nature or degree which warrants his remaining under guardianship; or
  - (b) it is not necessary in the interests of the welfare of the patient that he should remain under guardianship.
- (6) Subject to the provisions of this section and section 51 of this Act, an order for discharge in respect of a patient may also be made by the nearest relative of the patient.
- (7) A patient subject to guardianship shall cease to be so subject where the sheriff has approved under section 21 of this Act an application for his admission to a hospital.

## **51 Restrictions on discharge by nearest relative: guardianship.**

- (1) An order for the discharge of a patient who is subject to guardianship shall not be made by his nearest relative except after giving not less than 14 days' notice in writing to the local authority concerned; and within that period—
- (a) if it appears to the local authority that the ground set out in section 36(b) of this Act continues to apply in relation to the patient they shall inform the responsible medical officer of the notice given by the nearest relative; and
  - (b) if it appears to the responsible medical officer that the ground set out in section 36(a) of this Act continues to apply in relation to the patient he shall inform the local authority; and
  - (c) the local authority shall inform the nearest relative of the views taken by them and by the responsible medical officer,
- and in that event—
- (i) any order for the discharge of the patient made by that relative in pursuance of the notice shall cease to have effect; and
  - (ii) no further order for the discharge of the patient shall be made by that relative during the period of 6 months beginning with the date on which that relative is so informed.
- (2) In any case where the local authority informs the nearest relative under subsection (1) of this section that relative may, within the period of 28 days beginning with the day on which he is so informed, appeal to the sheriff to order the discharge of the patient, and the provisions of section 50(2) and (5) of this Act shall apply in relation to such an appeal.

### *Appeals: guardianship*

## **52 Appeals to the sheriff: guardianship.**

- (1) Where an appeal lies to the sheriff under either of sections 47 or 51 of this Act, the local authority concerned shall when intimating that a report has been furnished in pursuance of the said section 47, or when informing the nearest relative under the said section 51, inform any person having a right so to appeal, whether the patient or his nearest relative, or both, of that right, and of the period within which it may be exercised.
- (2) An appeal under either of the said sections shall be made by way of summary application to a sheriff of the sheriffdom within which the patient is resident at the time when the appeal is made.



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- (3) For the purpose of advising whether any appeal to the sheriff under either of the said sections should be made by or in respect of a patient who is subject to guardianship under this Part of this Act, or of furnishing information as to the condition of a patient for the purposes of such an appeal or of advising the nearest relative of any such patient as to the exercise of any power to order the discharge of the patient, any medical practitioner authorised by or on behalf of the patient or by the nearest relative of the patient, as the case may be, may, at any reasonable time, visit the patient and may examine him in private.

### *Functions of relatives of patients*

## **53 Definition of relative and nearest relative.**

- (1) For the purposes of this section, “relative” means any of the following, that is to say—
- (a) spouse;
  - (b) child;
  - (c) father or mother;
  - (d) brother or sister;
  - (e) grandparent;
  - (f) grandchild;
  - (g) uncle or aunt;
  - (h) nephew or niece;
- (2) In deducing relationships for the purposes of this section, an illegitimate person shall be treated as the legitimate child of his mother.
- (3) In this Act, subject to the provisions of this section and to the following provisions of this Part of this Act, the “nearest relative” means the person first listed in subsection (1) of this section who is caring for the patient, or was so caring immediately before the admission of the patient to a hospital or his reception into guardianship, failing whom the person first so listed, brothers and sisters of the whole blood being preferred to brothers and sisters of the half-blood, and the elder or eldest of two or more relatives listed in any paragraph of that subsection being preferred to the other or others of those relatives, regardless of sex.
- (4) Where the person who, under subsection (3) of this section, would be the nearest relative of a patient—
- (a) in the case of a patient ordinarily resident in the United Kingdom, the Channel Islands or the Isle of Man, is not so resident; or
  - (b) being the husband or wife of the patient, is permanently separated from the patient, either by agreement or under an order of a court, or has deserted or has been deserted by the patient for a period and the spouse concerned is still in desertion; or
  - (c) not being the husband, wife, father, or mother of the patient, is for the time being under 18 years of age,
- the nearest relative of the patient shall be ascertained without regard to that person.
- (5) In this section “spouse” includes a person who is living with the patient as if he or she were the husband or wife of the patient, as the case may be (or, if the patient is for the time being an in-patient in a hospital, was so living until the patient was admitted), and has been or had been so living for a period of not less than 6 months; but a person shall

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not be treated by virtue of this subsection as the nearest relative of a married patient unless the husband or wife of the patient is disregarded by virtue of paragraph (b) of subsection (4) of this section.

- (6) A person, other than a relative, with whom the patient ordinarily resides (or, if the patient is for the time being an in-patient in a hospital, last ordinarily resided before he was admitted), and with whom he has or had been ordinarily residing for a period of not less than five years, shall be treated for the purposes of this Part of this Act as if he were a relative but—
- (a) shall be treated for the purposes of subsection (3) of this section as if mentioned last in subsection (1) of this section; and
  - (b) shall not be treated by virtue of this subsection as the nearest relative of a married patient unless the husband or wife of the patient is disregarded by virtue of paragraph (b) of subsection (4) of this section.

#### [<sup>F62</sup>54] **Children and young persons in care of local authority.**

Where—

[<sup>F63</sup>(a) the parental rights and responsibilities in relation to a patient who is a child or young person have been transferred to a local authority by virtue of section 86(1) of the Children (Scotland) Act 1995;]

(b) a patient who is a child or young person is in the care of a local authority by virtue of a care order made under the Children Act 1989,

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

#### **Textual Amendments**

**F62** S. 54 substituted by Children Act 1989 (c. 41, SIF 20), s. 108(5), **Sch. 13 para. 50**: S.I. 1991/828, **art. 3(2)** (with Schedule 14 para. 1(1))

**F63** S. 54(a) substituted (1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4, para. 33(3)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as substituted (7.3.1997) by S.I. 1997/744, **art. 2**)

#### **55 Nearest relative of child under guardianship etc.**

[<sup>F64</sup>(1) Where—

- (a) a guardian has been appointed for a child who has not attained the age of eighteen years; or
- (b) there is in force a residence order, or a custody order, granted by a court in the United Kingdom, or an analogous order granted by a court outwith the United Kingdom (being an order which is entitled to recognition in Scotland), identifying a person as the person with whom a child under the age of sixteen years is to live,

that guardian or person shall, to the exclusion of any other person, be deemed to be the child's nearest relative.]

- (2) Section 53(4) of this Act shall apply in relation to a person who is, or who is one of the persons, deemed to be the nearest relative of a patient by virtue of this section as it applies in relation to a person who would be the nearest relative under subsection (3) of that section.

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[<sup>F65</sup>(3) In this section “guardian” does not include a guardian under this Part of this Act or, in relation to a child, a guardian whose appointment takes effect under section 7, or on an order under section 11(1), of the Children (Scotland) Act 1995 where there is a parent who has parental responsibilities and parental rights in relation to the child.]

<sup>F66</sup>(4) . . . . .

**Textual Amendments**

- F64** S. 55(1) substituted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4**, para. 33(4)(a) (with s. 103(1)); S.I. 1996/2203, art. 3, **Sch.**
- F65** S. 55(3) substituted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4**, para. 33(4)(b) (with s. 103(1)); S.I. 1996/2203, art. 3, **Sch.**
- F66** S. 55(4) repealed (1.11.1996) by 1995 c. 36, s. 105(4)(5), **Sch. 4**, para. 33(4)(c), **Sch. 5** (with s. 103(1)); S.I. 1996/2203, art. 3, **Sch.**

**56 Appointment by sheriff of acting nearest relative.**

- (1) The sheriff may, upon application made in accordance with the provisions of this section in respect of a patient, by order direct that the functions under this Act of the nearest relative of the patient shall, during the continuance in force of the order, be exercisable by the applicant, or by any other person specified in the application, being a person who, in the opinion of the sheriff, is a proper person to act as the nearest relative of the patient, and who is willing to do so.
- (2) An order under this section may be made on the application of—
  - (a) any relative (including the nearest relative) of the patient;
  - (b) any other person with whom the patient is residing (or, if the patient is then an in-patient in a hospital, was last residing before he was admitted); or
  - (c) a mental health officer,but in relation to an application made by such an officer subsection (1) of this section shall have effect as if for the words “the applicant” there were substituted the words “the local authority”.
- (3) An application for an order under this section may be made upon any of the following grounds, that is to say—
  - (a) that the patient has no nearest relative within the meaning of this Act, or that it is not reasonably practicable to ascertain whether he has such a relative or who that relative is;
  - (b) that the nearest relative of the patient is incapable of acting as such by reason of mental disorder or other illness;
  - (c) where the application is made by the nearest relative of the patient, that he is unwilling or considers it undesirable to continue to act as such.
- (4) While an order made under this section is in force, the provisions of this Part of this Act (other than this section and section 57 of this Act) shall apply in relation to the patient as if for any reference to the nearest relative of the patient there were substituted a reference to the person having the functions of that relative and (without prejudice to section 57 of this Act) shall so apply notwithstanding that the person who was the nearest relative of the patient when the order was made is no longer his nearest relative.

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## **57 Discharge and variation of orders under s. 56.**

- (1) An order made under section 56 of this Act in respect of a patient may be discharged by the sheriff upon application made—
  - (a) by the person having the functions of the nearest relative of the patient by virtue of the order;
  - (b) by the nearest relative of the patient.
- (2) An order made under the said section 56 in respect of a patient may be varied by the sheriff, on the application of the person having the functions of the nearest relative by virtue of the order or on the application of a mental health officer, by substituting for the first-mentioned person a local authority or any other person who, in the opinion of the sheriff, is a proper person to exercise those functions, being an authority or person who is willing to do so.
- (3) If the person having the functions of the nearest relative of a patient by virtue of an order under the said section 56 dies, the foregoing provisions of this section shall apply as if for any reference to that person there were substituted a reference to any relative of the patient, and until the order is discharged or varied under those provisions the functions of the nearest relative under this Part of this Act shall not be exercisable by any person.
- (4) An order under the said section 56 shall, unless previously discharged under subsection (1) of this section, cease to have effect—
  - (a) if the patient was on the date of the order liable to be detained in pursuance of an application for admission or subject to guardianship under this Part of this Act, or becomes so liable or so subject within the period of 3 months beginning with that date, when he ceases to be so liable or so subject (otherwise than on being transferred in pursuance of sections 29 or 45 of this Act);
  - (b) if the patient was not on the date of the order and has not within the said period become so liable or so subject, at the expiration of that period.
- (5) The discharge or variation under this section of an order made under the said section 56 shall not affect the validity of anything previously done in pursuance of the order.

### *Supplementary*

## **58 Regulations for purposes of Part V.**

The Secretary of State may make regulations for prescribing anything which, under this Part of this Act, is required or authorised to be prescribed.

## **59 Interpretation of Part V.**

- (1) In this Part of this Act the expression “responsible medical officer” means—
  - (a) in relation to a patient who is liable to be detained in a hospital, any medical practitioner employed on the staff of that hospital who may be authorised by the managers to act (either generally or in any particular case or class of case or for any particular purpose) as the responsible medical officer;
  - (b) in relation to a patient subject to guardianship, any medical practitioner authorised by the local authority to act (either generally or in any particular case or class of case or for any particular purpose) as the responsible medical officer.

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- (2) In relation to a patient who is subject to guardianship under this Part of this Act, any reference in this Act to the local authority concerned is a reference—
- (a) where a guardianship application is effective, to the local authority to whom that application is addressed;
  - (b) where the patient has been transferred to guardianship by the managers of a hospital under section 29(1) of this Act, to the local authority who received him into guardianship or approved his guardian.
- (3) In this Act the expression “absent without leave” means absent from any hospital or other place and liable to be taken into custody and returned under section 28 or 44 of this Act, and kindred expressions shall be construed accordingly.
- [<sup>F67</sup>(4) In this Part of this Act, “court holidays” means any day which is a court holiday by virtue of section 10(2) of the Bail Etc (Scotland) Act 1980.]

#### Textual Amendments

- F67** S. 59(4) added (9.3.1992) by [Mental Health \(Detention\) \(Scotland\) Act 1991 \(c. 47, SIF 85\), s. 3\(5\); S.I. 1992/357, art.2](#)

## PART VI

### DETENTION OF PATIENTS CONCERNED IN CRIMINAL PROCEEDINGS ETC. AND TRANSFER OF PATIENTS UNDER SENTENCE

*Provisions for compulsory detention and guardianship of patients charged with offences etc.*

#### 60 Effect of hospital orders.

- (1) A hospital order made under section [<sup>F68</sup>section 58 of the Criminal Procedure (Scotland) Act 1995] shall be sufficient authority—
- (a) for a constable, a mental health officer [<sup>F69</sup>, an officer on the staff of the hospital specified in the order], or any other person directed to do so by the court to convey the patient to the hospital specified in the order within a period of [<sup>F70</sup>7] days; and
  - (b) for the managers of the hospital to admit him at any time within that period, and thereafter to detain him in accordance with the provisions of this Act.
- (2) A patient who is admitted to a hospital in pursuance of a hospital order shall be treated for the purposes of Part V of this Act (other than section 23) as if he had been so admitted on the date of the order in pursuance of an application for admission, except that the power to order the discharge of the patient under section 33 of this Act shall not be exercisable by his nearest relative; and accordingly the provisions of the said Part V specified in Part I of the Second Schedule to this Act shall apply in relation to him, subject to the exceptions and modifications set out in that Part and the remaining provisions of the said Part V shall not apply.
- (3) Subject to the provisions of [<sup>F71</sup>section 59(3) of the said Act of 1995], where a patient is admitted to a hospital in pursuance of a hospital order any previous application or

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hospital order by virtue of which he was liable to be detained in a hospital shall cease to have effect:

Provided that, if the order first-mentioned or the conviction to which it relates is quashed on appeal, this subsection shall not apply and section 32 of this Act shall have effect as if during any period for which the patient was liable to be detained under the order he had been detained in custody as mentioned in that section.

- (4) If within the period of [<sup>F72</sup>7] days referred to in subsection (1) of this section it appears to the Secretary of State that by reason of an emergency or other special circumstances it is not practicable for the patient to be received into the hospital specified in the order, he may give directions for the admission of the patient to such other hospital as appears to be appropriate in lieu of the hospital so specified; and where such directions are given the Secretary of State shall cause the person having the custody of the patient to be informed, and the hospital order shall have effect as if the hospital specified in the directions were substituted for the hospital specified in the order.

[<sup>F73</sup>(5) Where—

- (a) a patient admitted to a hospital in pursuance of a hospital order is absent without leave;
- (b) a warrant to arrest him has been issued under section 13 of the <sup>M11</sup>Criminal Procedure (Scotland) Act 1975; and
- (c) he is held pursuant to the warrant in any country or territory other than the United Kingdom, any of the Channel Islands and the Isle of Man,

he shall be treated as having been taken into custody under section 28 of this Act on first being so held.]

#### Textual Amendments

- F68** Words in s. 60(1) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4**, para. 50(2)(a) (with Sch. 3, paras. 1, 3)
- F69** Words in s. 60(1)(a) inserted (1.1.1998) by 1997 c. 48, s. 62(1), **Sch. 1**, para. 9(2)(a) (with s. 33(6)); S.I. 1997/2323, art. 4, **Sch. 2**
- F70** Words in s. 60(1)(a) substituted (1.1.1998) by 1997 c. 48, ss. 62(1), 65(2)(4), **Sch. 1**, para. 9(2)(a) (with s. 33(6)); S.I. 1997/2323, art. 4, **Sch. 2**
- F71** Words in s. 60(3) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4**, para. 50(2)(b) (with s. 3, Sch. 3, paras. 1, 3)
- F72** Words in s. 60(4) substituted (1.1.1998) by 1997 c. 48, s. 62(1), **Sch. 1**, para. 9(2)(b) (with s. 33(6)); S.I. 1997/2323, art. 4, **Sch. 2**
- F73** S. 60(5) inserted (1.4.1996) by 1995 c. 52, ss. 5(9), 7(2)

#### Marginal Citations

- M11** 1975 c. 21.

## 61 Effect of guardianship orders.

- (1) A guardianship order made under [<sup>F74</sup>section 58 of the Criminal Procedure (Scotland) Act 1995] shall confer on the authority or person therein named as guardian the like powers as a guardianship application effective under Part V of this Act.
- (2) A patient who is received into guardianship in pursuance of a guardianship order shall be treated for the purposes of Part V of this Act (other than section 42) as if he had

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been so received on the date of the order in pursuance of a guardianship application as aforesaid, except that the power to order the discharge of the patient under section 50 of this Act shall not be exercisable by his nearest relative; and accordingly the provisions of the said Part V specified in Part III of the Second Schedule to this Act shall apply in relation to him subject to the exceptions and modifications set out therein, and the remaining provisions of the said Part V shall not apply.

- (3) Where a patient is received into guardianship in pursuance of a guardianship order any previous application or order by virtue of which he was subject to guardianship shall cease to have effect:

Provided that, if the order first-mentioned or the conviction to which it relates is quashed on appeal, this subsection shall not apply and section 49 of this Act shall have effect as if during any period for which the patient was subject to guardianship under the order he had been detained in custody as mentioned in that section.

#### Textual Amendments

**F74** Words in s. 61(1) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4**, para. 50(3) (with s. 3, **Sch. 3**, paras. 1, 3)

## 62 Effect of restriction orders.

- (1) The special restrictions applicable to a patient in respect of whom a restriction order made under [<sup>F75</sup>section 59 of the Criminal Procedure (Scotland) Act 1995] is in force are as follows, that is to say—

- (a) none of the provisions of Part V of this Act relating to the duration, renewal and expiration of authority for the detention of patients shall apply, and the patient shall continue to be liable to be detained by virtue of the relevant hospital order until he is absolutely discharged under sections 63 to 68 of this Act;
- [<sup>F76</sup>(aa) none of the provisions of Part V of this Act relating to community care orders shall apply;]
- (b) the following powers shall be exercisable only with the consent of the Secretary of State, that is to say—
- (i) power to grant leave of absence to the patient under section 27 of this Act; and
- (ii) power to transfer the patient under section 29 of this Act;
- and if leave of absence is granted under the said section 27 the power to recall the patient under that section shall be vested in the Secretary of State as well as in the responsible medical officer; and
- (c) the power to take the patient into custody and return him under section 28 of this Act may be exercised at any time,

and in relation to any such patient the provisions of the said Part V specified in Part II of the Second Schedule to this Act shall have effect subject to the exceptions and modifications set out in that Part and the remaining provisions of Part V shall not apply.

- [<sup>F77</sup>(1A) Where the managers of a hospital specified in a restriction order propose to admit the patient to a hospital unit in that hospital, they shall, if that unit was not so specified, notify the Secretary of State and the Mental Welfare Commission of the patient's



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proposed admission to and detention in that unit; and the patient shall not be so admitted unless the Secretary of State has consented to the proposed admission.]

- (2) While a person is a restricted patient within the meaning of section 63 of this Act or a person to whom section 67 (persons treated as restricted patients) of this Act applies, the responsible medical officer shall at such intervals (not exceeding one year) as the Secretary of State may direct examine and report to the Secretary of State on that person; and every report shall contain such particulars as the Secretary of State may require.
- (3) Without prejudice to the provisions of [<sup>F78</sup>section 59(3) of the said Act of 1995], where a restriction order in respect of a patient ceases to have effect while the relevant hospital order continues in force, the provisions of section 60 of this Act and Part I of the Second Schedule to this Act shall apply to the patient as if he had been admitted to the hospital in pursuance of a hospital order (without a restriction order) made on the date on which the restriction order ceased to have effect.

#### Textual Amendments

- F75** Words in s. 62(1) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4**, para. 50(4) (with **Sch. 3**, paras. 1, 3)
- F76** S. 62(1)(aa) inserted (1.4.1996) by 1995 c. 52, ss. 4(2), 7(2), **Sch. 2**, para. 4
- F77** S. 62(1A) inserted (1.1.1998) by 1997 c. 48, s. 62(1), **Sch. 1**, para. 9(3)(a); S.I. 1997/2323 art. 4, Sch. 2
- F78** Words in s. 62(3) substituted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1**, para. 9(3)(b); S.I. 1997/1712 art. 3, Sch.

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

- C8** S. 62(1) extended (1.4.1996) by 1995 c. 46, **ss. 57(2)(b)**, 59(1), 309(2) (with 24(2))

#### [<sup>F79</sup>62A Effect of hospital direction.

- (1) A hospital direction made under section 59A of the <sup>M12</sup>Criminal Procedure (Scotland) Act 1995 shall be sufficient authority—
  - (a) for a constable, a mental health officer, an officer on the staff of the hospital specified in the direction or other person directed to do so by the court to convey the person in respect of whom the direction has been made to the hospital specified in the direction within a period of 7 days; and
  - (b) for the managers of the hospital so specified to admit him at any time within that period and thereafter to detain him in accordance with the provisions of this Act.
- (2) Where the managers of a hospital specified in a hospital direction propose to admit the patient to a hospital unit in that hospital, they shall, if that unit was not so specified, notify the Secretary of State and the Mental Welfare Commission of the patient's proposed admission to and detention in that unit; and the patient shall not be so admitted unless the Secretary of State has consented to the proposed admission.
- (3) If within the period of 7 days referred to in subsection (1) of this section it appears to the Secretary of State that by reason of an emergency or other special circumstance it is not practicable for the person to whom the hospital direction relates to be received into the hospital specified in the direction, he may give a direction under this subsection

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for the admission of that person to such other hospital as appears to be appropriate in lieu of the hospital so specified.

- (4) Where a direction is given by the Secretary of State under subsection (3) of this section, he shall cause the person having custody of the person to whom the hospital direction relates to be informed, and the hospital direction shall have effect as if the hospital specified in the direction under subsection (3) of this section were substituted for the hospital specified in the hospital direction.
- (5) Where a patient has been admitted to a hospital under a hospital direction—
- (a) none of the provisions of Part V of this Act relating to the duration, renewal and expiration of authority for the detention of patients shall apply, and the patient shall continue to be liable to be detained by virtue of the relevant hospital direction until he is remitted to prison in accordance with section 65(2) or 74(3) of this Act or he is discharged in accordance with section 74(8B) of this Act;
  - (b) the following powers shall be exercisable only with the consent of the Secretary of State, that is to say—
    - (i) power to grant leave of absence to the patient under section 27 of this Act;
    - (ii) power to transfer the patient under section 29 of this Act;
 and if leave of absence is granted under the said section 27 the power to recall shall be vested in the Secretary of State as well as in the responsible medical officer;
  - (c) the power to take the patient into custody and return him under section 28 of this Act may be exercised at any time,
- and in relation to any such patient the provisions of the said Part V specified in Part II of the Second Schedule to this Act shall have effect subject to the exceptions and modifications set out in that Part and the remaining provisions of Part V shall not apply.]

#### Textual Amendments

**F79** S. 62A inserted (S.) (1.1.1998) by 1997 c. 48, s. 7(1); S.I. 1997/2323, art. 4, Sch. 2

#### Marginal Citations

**M12** 1995 c.46.

## 63 Right of appeal of restricted patients etc.

- (1) In this section and in sections 64 to 67 of this Act—
- “restricted patient” means a patient who is subject to a restriction order [F80, to a hospital direction] or to a restriction direction;
- [F81“relevant hospital order”, “relevant hospital direction” and “relevant transfer direction”, in relation to a restricted patient, mean the hospital order, hospital direction or transfer direction by virtue of which he is liable to be detained in a hospital.]
- (2) A restricted patient detained in a hospital may appeal by way of summary application to a sheriff of the sheriffdom within which the hospital in which he is liable to be detained is situated—

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- (a) in the period between the expiration of 6 months and the expiration of 12 months beginning with the date of the relevant hospital order [<sup>F82</sup>, hospital direction] or transfer direction; and
  - (b) in any subsequent period of 12 months,
- to order his discharge under section 64 or 65 of this Act.
- (3) The provisions of section 35(3) and (4) of this Act shall have effect in relation to an appeal under sections 63 to 67 of this Act as they have in relation to an appeal under Part V of this Act.

#### Textual Amendments

- F80** Words in s. 63(1) in definition of “restricted patient” expressed to be substituted (S.) (1.1.1998) by 1997 c. 48, s. 7(2)(a)(i); S.I. 1997/2323, art. 4, Sch. 2
- F81** S. 63(1): definition of “relevant hospital order” and “relevant transfer direction” substituted (S.) (1.1.1998) by 1997 c. 48, s. 7(2)(a)(ii); S.I. 1997/2323, art. 4, Sch. 2
- F82** Words in s. 63(2)(a) inserted (S.) (1.1.1998) by 1997 c. 48, s. 7(2)(b); S.I. 1997/2323, art. 4, Sch. 2

#### 64 Right of appeal of patients subject to restriction orders.

- [<sup>F83</sup>(A1) Where an appeal to the sheriff is made by a restricted patient who is subject to a restriction order, the sheriff shall refuse the appeal if satisfied that the patient is, at the time of the hearing of the appeal, suffering from a mental disorder the effect of which is such that it is necessary, in order to protect the public from serious harm, that the patient continue to be detained in a hospital, whether for medical treatment or not.
- (B1) The burden of proof of the matters as to which the sheriff is to be satisfied for the purposes of subsection (A1) of this section is on the Scottish Ministers.
- (C1) Nothing in section 102 (State hospitals) of the National Health Service (Scotland) Act 1978 (c.29) prevents or restricts the detention of a patient in a State hospital in pursuance of the refusal, under subsection (A1) of this section, of an appeal.]
- (1) [<sup>F84</sup>Where the sheriff has decided, under subsection (A1) of this section, not to refuse an appeal], the sheriff shall direct the absolute discharge of the patient if he is satisfied-
- (a) that the patient is not, at the time of the hearing of the appeal, suffering from mental disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment; or
  - (b) that it is not necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment; and (in either case)
  - (c) that it is not appropriate for the patient to remain liable to be recalled to hospital for further treatment.
- (2) Where in the case of any such patient as is mentioned in subsection (1) of this section the sheriff is satisfied as to the matters referred to in paragraph (a) or (b) of that subsection but not as to the matters referred to in paragraph (c) of that subsection he shall direct the conditional discharge of the patient.
- (3) Where a patient is absolutely discharged under subsection (1) of this section he shall [<sup>F85</sup>, on the occurrence of any of the events mentioned in subsection (4A) of this section,] cease to be liable to be detained by virtue of the relevant hospital order, and the restriction order shall cease to have effect accordingly.

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- (4) Where a patient is conditionally discharged under subsection (2) of this section [F86 the conditional discharge shall have effect on the occurrence of any of the events mentioned in subsection (4A) of this section and, when it does, the following provisions shall apply in relation to the patient—]
- (a) he may be recalled by the Secretary of State under section 68(3) of this Act as if he had been conditionally discharged under subsection (2) of that section; and
  - (b) he shall comply with such conditions (if any) as may be imposed at the time of discharge by the sheriff or at any subsequent time by the Secretary of State.

[F87(4A) The events are—

- (a) the expiry of the appeal period, no appeal having been lodged within it;
- (b) the receipt by both the Court of Session and the managers of the hospital in which the patient is detained of notice from the Scottish Ministers that they do not intend to move the Court to make an order under section 66A(3) of this Act;
- (c) the refusal by the Court to make such an order;
- (d) the recall of any such order or the expiry of its effect.

(4B) In subsection (4A) of this section—

“appeal” means an appeal under section 66A of this Act;

“appeal period” means, in relation to an appeal, the period within which, under section 66A(2) of this Act, the appeal has to be lodged in order to be competent.]

- (5) The Secretary of State may from time to time vary any condition imposed (whether by the sheriff or by him) under subsection (4) of this section.
- (6) Where a restriction order in respect of a patient ceases to have effect after he has been conditionally discharged under subsection (2) of this section the patient shall, unless previously recalled, be deemed to be absolutely discharged on the date when the order ceases to have effect and shall cease to be liable to be detained by virtue of the relevant hospital order.
- (7) The sheriff may defer a direction for the conditional discharge of a patient until such arrangements as appear to the sheriff to be necessary for that purpose have been made to his satisfaction; and where by virtue of any such deferment no direction has been given on an appeal before the time when the patient’s case comes before the sheriff on a subsequent appeal, the previous appeal shall be treated as one on which no direction under this section can be given.
- (8) This section is without prejudice to section 68 of this Act.

#### Textual Amendments

- F83** S. 64(A1)(B1)(C1) inserted (13.9.1999) by 1999 asp 1, s. 1(a)(5)  
**F84** Words in s. 64(1) substituted (13.9.1999) by 1999 asp 1, s. 1(b)(5)  
**F85** Words in s. 64(3) substituted (13.9.1999) by 1999 asp 1, s. 2(1)(a)  
**F86** Words in s. 64(4) inserted (13.9.1999) by 1999 asp 1, s. 2(1)(b)  
**F87** S. 64(4A)(4B) inserted (13.9.1999) by 1999 asp 1, s. 2(1)(c)

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## 65 Right of appeal of patients subject to restriction directions.

- (1) Where an appeal to the sheriff is made by a restricted patient who is subject [<sup>F88</sup>to a hospital direction or] to a restriction direction, the sheriff—
- (a) shall notify the Secretary of State if, in his opinion, the patient would, if subject to a restriction order, be entitled to be absolutely or conditionally discharged under section 64 of this Act; and
  - (b) if he notifies the Secretary of State that the patient would be entitled to be conditionally discharged, may recommend that [<sup>F89</sup>the patient] should continue to be detained in a hospital.
- [<sup>F90</sup>(2) If the sheriff notifies the Secretary of State—
- (a) that the patient would be entitled to be absolutely discharged, the Secretary of State shall by warrant direct that the patient be remitted to any prison or other institution or place in which he might have been detained had he not been [<sup>F91</sup>conveyed under a relevant hospital direction or removed under a relevant transfer direction to a hospital specified in the direction]] and that he shall be dealt with there as if he had not been [<sup>F91</sup>so conveyed or removed];
  - (b) that the patient would be entitled to be conditionally discharged, the Secretary of State may—
    - (i) by warrant give such direction as is mentioned in paragraph (a) above; or
    - (ii) decide that the patient should continue to be detained in a hospital,
- [<sup>F92</sup> . . .
- [<sup>F93</sup>(3) Where a direction has been given under subsection (2) of this section, on the person's arrival in the prison or other institution or place to which he has been remitted by virtue of such a direction the relevant hospital direction or, as the case may be, the relevant transfer direction together with the restriction direction given in respect of the person shall cease to have effect.]

### Textual Amendments

- F88** Words in s. 65(1) inserted (S.)(1.1.1998) by 1997 c. 48, s. 7(3)(a); S.I. 1997/2323, art. 4, Sch. 2
- F89** Words in s. 65 substituted (1.10.1993) by 1993 c. 9, s. 47(1), Sch. 5 para. 2(2); S.I. 1993/2050, art. 3(4)
- F90** S. 65(2) substituted (1.10.1993) by 1993 c. 9, s. 47(1), Sch. 5 para. 2(3); S.I. 1993/2050, art. 3(4)
- F91** Words in s. 65(2)(a) substituted (S.)(1.1.1998) by 1997 c. 48, s. 7(3)(b)(i); S.I. 1997/2323, art. 4, Sch. 2
- F92** Words in s. 65(2) repealed (S.)(1.1.1998) by 1997 c. 48, ss. 7(3)(b)(ii), 62(2) Sch. 3; S.I. 1997/2323, art. 4, Sch. 2
- F93** S. 65(3) inserted (S.)(1.1.1998) by 1997 c. 48, s. 7(3)(c); S.I. 1997/2323, art. 4, Sch. 2

## 66 Further consideration of case of conditionally discharged patient.

- (1) Where a restricted patient has been conditionally discharged under sections 64 or 68(2) of this Act and is subsequently recalled under section 68(3) of this Act to hospital he may, within one month of the day on which he returns or is returned to hospital, appeal against such recall to a sheriff of the sheriffdom in which the hospital in which he is liable to be detained by virtue of the warrant under the said section 68(3) is situated.

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- [<sup>F94</sup>(1A) The sheriff shall refuse an appeal under subsection (1) above if satisfied that the patient is, at the time of the hearing of the appeal, suffering from a mental disorder the effect of which is such that it is necessary, in order to protect the public from serious harm, that the patient continue to be detained in a hospital, whether for medical treatment or not.
- (1B) The burden of proof of the matters as to which the sheriff is to be satisfied for the purposes of subsection (1A) of this section is on the Scottish Ministers.
- (1C) Nothing in section 102 (State hospitals) of the National Health Service (Scotland) Act 1978 (c.29) prevents or restricts the detention of a patient in a State hospital in pursuance of the refusal, under subsection (1A) of this section, of an appeal.]
- (2) Where a restricted patient has been conditionally discharged as aforesaid but is not recalled to hospital he may appeal—
- (a) in the period between the expiration of 12 months and the expiration of 2 years beginning with the date on which he was conditionally discharged; and
  - (b) in any subsequent period of 2 years,
- to a sheriff of the sheriffdom in which he resides.
- (3) [<sup>F95</sup>Where the sheriff has decided, under subsection (1A) of this section not to refuse an appeal under subsection (1) and in any appeal under subsection (2) of this section, if] the sheriff is satisfied as mentioned in section 64(1) or (2) of this Act, he shall uphold the appeal and—
- (a) where he is satisfied as mentioned in the said section 64(1), he shall direct the absolute discharge of the patient;
  - (b) where he is satisfied as mentioned in the said section 64(2), he shall direct, or (as the case may be) continue, the conditional discharge of the patient; and, in either case, he may vary any condition to which the patient is subject in connection with his discharge or impose any condition which might have been imposed in connection therewith.
- [<sup>F96</sup>(3A) A conditional discharge under subsection (3)(b) of this section shall have effect on the occurrence of any of the events mentioned in subsection (4A) of section 64 of this Act.]
- (4) Where a patient is absolutely discharged in an appeal under subsection (1) or (2) of this section he shall [<sup>F97</sup>on the occurrence of any of the events mentioned in subsection (4A) of section 64 of this Act] cease to be liable to be detained by virtue of the relevant hospital order, and the restriction order shall cease to have effect accordingly.

#### Textual Amendments

- F94** S. 66(1A)-(1C) inserted (13.9.1999) by 1999 asp 1, s. 1(2)(a)(5)
- F95** Words in s. 66(3) substituted (13.9.1999) by 1999 asp 1, s. 1(2)(b)(5)
- F96** S. 66(3A) inserted (13.9.1999) by 1999 asp 1, s. 1(2)(c)(5)
- F97** Words in s. 66(4) substituted (13.9.1999) by 1999 asp 1, s. 1(2)(d)(5)

#### [<sup>F98</sup>66A Appeal to Court of Session against sheriff's decisions under sections 64, 65 and 66

- (1) It shall be competent to appeal to the Court of Session against the decision of the sheriff under section 64 or 66 or a notification or recommendation by the sheriff under section 65 of this Act.



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- (2) An appeal under subsection (1) of this section shall be competent only if it is lodged within 14 days of the decision, notification or recommendation appealed against.
- (3) Where an appeal has been lodged under subsection (1) of this section against a decision of the sheriff to direct the discharge of a patient under section 64 or 66 or a notification or recommendation by the sheriff under section 65 of this Act, the Court of Session may, on a motion by the Scottish Ministers, order—
- (a) that the patient who is the subject of the appeal shall continue, in accordance with subsection (4) of this section, to be detained; and
  - (b) that the relevant order or direction shall continue to have effect accordingly.
- (4) An order under subsection (3) of this section has the effect of continuing the patient's detention—
- (a) where no appeal is made to the House of Lords against the decision of the Court of Session on an appeal under this section, until the expiry of the time allowed, without leave, to appeal to the House of Lords against the decision; and
  - (b) where such an appeal has been made, until it is abandoned or finally determined.]

#### Textual Amendments

**F98** S. 66A inserted (13.9.1999) by 1999 asp 1, s. 2(2)

### 67 Application of sections 63 to 66 to other persons treated as restricted patients.

- (1) Sections 63, 64 and 66 of this Act shall apply to a person who—
- (a) is subject to—
    - (i) a direction which by virtue of section 69(3) of this Act; <sup>F99</sup> . . .
    - <sup>F99</sup>(ii) . . . . .
 has the like effect as a hospital order and a restriction order; or
  - (b) is treated as subject to a hospital order and a restriction order by virtue of section 80(2) of the <sup>M13</sup>Mental Health Act 1983 or section 81(2) of this Act, as they apply to a restricted patient who is subject to a restriction order and references in the said sections 63, 64 and 66 to the relevant hospital order or restriction order shall be construed as references to the direction under section 69(1) of this Act <sup>F100</sup> . . .
- (2) Sections 63 and 65 of this Act shall apply to a person who is treated as subject to a transfer direction and a restriction direction by virtue of section 80(2) of the Mental Health Act 1983 or section 81(2) of this Act as they apply to a restricted patient who is subject to a restriction direction and references in the said sections 63 and 65 to the relevant transfer direction or the restriction direction shall be construed as references to the transfer direction or restriction direction to which that person is treated as subject by virtue of the said section 80(2) or 81(2).

#### Textual Amendments

**F99** S. 67(1)(a)(ii) and the word “or” immediately preceding it repealed (31.3.1996) by 1995 c. 20, ss. 117, 118(2), Sch. 6 Pt. I para. 165(a), Sch. 7 Pt. I; S.I. 1996/517, art. 3(2)



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**F100** Words in s. 67(1) repealed 31.3.1996) by 1995 c. 20, ss. 117, 118(2), Sch. 6 Pt. I para. 165(b), **Sch. 7 Pt. I**; S.I. 1996/517, **art. 3(2)**

#### Marginal Citations

**M13** 1983 c. 20.

### 68 Powers of Secretary of State in respect of patients subject to restriction orders.

- (1) If the Secretary of State is satisfied that a restriction order in respect of a patient is no longer required for the protection of the public from serious harm, he may direct that the patient shall cease to be subject to the special restrictions set out in section 62(1) of this Act; and, where the Secretary of State so directs, the restriction order shall cease to have effect and subsection (3) of that section shall apply accordingly.
- (2) At any time while a restriction order is in force in respect of a patient, the Secretary of State may, if he thinks fit, by warrant discharge the patient from hospital, either absolutely or subject to conditions; and where a person is absolutely discharged under this subsection he shall thereupon cease to be liable to be detained by virtue of the relevant hospital order, and the restriction order shall cease to have effect accordingly.
- [<sup>F101</sup>(2A) The Scottish Ministers shall not, however, discharge a patient from hospital under subsection (2) of this section if they are satisfied that the patient is suffering from a mental disorder the effect of which is such that it is necessary, in order to protect the public from serious harm, that the patient continue to be detained in a hospital, whether for medical treatment or not.
- (2B) Nothing in section 102 (State hospitals) of the National Health Service (Scotland) Act 1978 (c.29) prevents or restricts the detention of a patient in a State hospital in pursuance of the decision of Scottish Ministers, under subsection (2A) of this section, not to discharge the patient.]
- (3) The Secretary of State may, at any time during the continuance in force of a restriction order in respect of a patient who has been conditionally discharged under subsection (2) of this section, and without prejudice to his further discharge as aforesaid, by warrant recall the patient to such hospital as may be specified in the warrant; and thereupon—
  - (a) if the hospital so specified is not the hospital from which the patient was conditionally discharged, the hospital order and the restriction order shall have effect as if the hospital specified in the warrant were substituted for the hospital specified in the hospital order;
  - (b) in any case, the patient shall be treated for the purposes of section 28 of this Act as if he had absented himself without leave from the hospital specified in the warrant, and if the restriction order was made for a specified period, that period shall not in any event expire until the patient returns to the hospital or is returned to the hospital under that section.
- (4) If a restriction order ceases to have effect in respect of a patient after the patient has been conditionally discharged under this section, the patient shall, unless previously recalled under the last foregoing subsection, be deemed to be absolutely discharged on the date when the order ceases to have effect, and shall cease to be liable to be detained by virtue of the relevant hospital order accordingly.
- (5) The Secretary of State may, if satisfied that the attendance at any place in Great Britain of a patient who is subject to a restriction order is desirable in the interests of justice or

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for the purposes of any public inquiry, direct him to be taken to that place; and where a patient is directed under this subsection to be taken to any place he shall, unless the Secretary of State otherwise directs, be kept in custody while being so taken, while at that place, and while being taken back to the hospital in which he is liable to be detained.

#### Textual Amendments

**F101** S. 68(2A)(2B) inserted (S.) (13.9.1999) by 1999 asp 1, s. 1(3)(5)

### 69 Persons ordered to be kept in custody during Her Majesty's pleasure.

- (1) The Secretary of State may by warrant direct that any person who, by virtue of any enactment to which this subsection applies, is required to be kept in custody during Her Majesty's pleasure or until the directions of Her Majesty are known shall be detained in a State hospital or such other hospital as he may specify and, where that person is not already detained in the hospital, give directions for his removal there.
- (2) The enactments to which subsection (1) of this section applies are section 16 of the <sup>M14</sup>Courts-Martial (Appeals) Act 1968, section 116 of the <sup>M15</sup>Army Act 1955, section 116 of the <sup>M16</sup>Air Force Act 1955, and section 63 of the <sup>M17</sup>Naval Discipline Act 1957.
- (3) A direction under this section in respect of any person shall have the like effect as [<sup>F102</sup>a hospital order together with a restriction order].

#### Textual Amendments

**F102** Words in s. 69(3) substituted (31.3.1996) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 166**; S.I. 1996/517, **art. 3(2)** (which substituting Act (1995 c. 20) was repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with s. 3, **Sch. 3 para. 3**)) and those same words in s. 69(3) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 50(5)**

#### Marginal Citations

**M14** 1968 c. 20.  
**M15** 1955 c. 18.  
**M16** 1955 c. 19.  
**M17** 1957 c. 53.

*Transfer to hospital or guardianship of prisoners etc.*

### 70 Removal to hospital of persons in prison awaiting trial etc.

- (1) If in the case of a person committed in custody while awaiting trial or sentence it appears to the Secretary of State that the grounds are satisfied upon which an application may be made for his admission to a hospital under Part V of this Act he may apply to the sheriff for an order that that person be removed to and detained in such hospital <sup>F103</sup> . . . as may be specified in the order; and the sheriff, if satisfied by reports from 2 medical practitioners (complying with the provisions of this section) that the grounds are satisfied as aforesaid may make an order accordingly.

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- (2) An order under this section (in this Act referred to as “a transfer order”) shall cease to have effect at the expiration of the period of 14 days beginning with the date on which it is made, unless within that period the person with respect to whom it was made has been received into the hospital specified therein.
- (3) A transfer order with respect to any person shall have the like effect as a hospital order made in his case together with a restriction order in respect of him made without limit of time.
- (4) Of the medical practitioners whose reports are taken into account under subsection (1) of this section, at least one shall be a practitioner approved for the purposes of section 20 of this Act by a Health Board as having special experience in the diagnosis or treatment of mental disorder.
- (5) A transfer order shall specify the form or forms of mental disorder, being mental illness [<sup>F104</sup>(including personality disorder)] or mental handicap or both, from which the patient is found by the sheriff to be suffering; and no such order shall be made unless the patient is described by each of the practitioners whose evidence is taken into account as aforesaid as suffering from the same form of mental disorder, whether or not he is also described by either of them as suffering from the other form.

#### Textual Amendments

**F103** Words in s. 70(1) repealed (1.1.1998) by 1997 c. 48, ss. 8, 62(2), Sch. 3; S.I. 1997/2323, art. 4, Sch. 2

**F104** Words in s. 70(5) inserted (13.9.1999) by 1999 asp 1, s. 3(1)(b)

## 71 Removal to hospital of persons serving sentences of imprisonment and other prisoners.

- (1) If in the case of a person to whom this section applies the Secretary of State is satisfied by the like reports as are required for the purposes of section 70 of this Act that the grounds are satisfied upon which an application may be made for his admission to a hospital under Part V of this Act the Secretary of State may make a direction (in this Act referred to as “a transfer direction”) in respect of him.
- (2) This section applies to the following persons, that is to say—
  - (a) persons serving sentences of imprisonment;
  - <sup>F105</sup>(b) .....
  - (c) persons detained under the <sup>M18</sup>Immigration Act 1971.
- (3) Subsections (2), (4) and (5) of section 70 of this Act shall apply for the purposes of this section and of any transfer direction given by virtue of this section as they apply for the purposes of that section and of any transfer order thereunder, with the substitution for any references to the sheriff of a reference to the Secretary of State.
- (4) [<sup>F106</sup>Subject to section 71A of this Act,] a transfer direction with respect to any person shall have the like effect as a hospital order made in his case.
- (5) Where a transfer direction is given in respect of any person that person may, within one month of his transfer to a hospital thereunder, appeal to the sheriff to cancel the direction, and the sheriff shall cancel the direction unless he is satisfied that the grounds are satisfied upon which an application may be made for the admission of the person to a hospital under Part V of this Act; and, if a transfer direction is so

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cancelled, the Secretary of State shall direct that the person be remitted to any prison or other institution in which he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed.

- (6) Subsections (2), (3) and (4) of section 35 of this Act shall apply to an appeal under subsection (5) of this section in like manner as they apply to an appeal referred to in that section.
- (7) References in this section to a person serving a sentence of imprisonment include references—
- (a) to a person detained in pursuance of any sentence or order for detention made by a court <sup>F107</sup> . . . (other than an order under [<sup>F108</sup>section 54, 57, 118 or 190 of the Criminal Procedure (Scotland) Act 1995], or under any enactment to which section 69 of this Act applies);
  - (b) to a person committed by a court to a prison or other institution to which the <sup>M19</sup>Prisons (Scotland) Act 1952, applies in default of payment of any fine to be paid on his conviction.

#### Textual Amendments

**F105** s. 71(2)(b) repealed (1.10.1993) by 1993 c. 9, s. 47(3), **Sch. 7 Pt. I**; S.I. 1993/2050, **art. 3(4)**

**F106** Words in s. 71(4) inserted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 9(4)** (with s. 33(6)); S.I. 1997/1712, **art. 3**

**F107** Words in s. 71(7)(a) repealed (1.10.1993) by 1993 c. 9, ss. 4(2), 5, 6, 10, 47(3), **Sch. 7 Pt. I**; S.I. 1993/2050, **art. 3(4)**

**F108** Words in s. 71(7)(a) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 50(6)**

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

**C9** S. 71 extended (1.1.1998) by 1997 c. 48, s. 9(1)(d) (with s. 33(6)); S.I. 1997/2323, art. 4, **Sch. 2**

#### Marginal Citations

**M18** 1971 c. 77.

**M19** 1952 c. 61.

#### [<sup>F109</sup>71A Further provision as to persons removed to hospital under section 71.

- (1) Where the Secretary of State is satisfied, in relation to a person in respect of whom he has made a transfer direction under section 71(1) of this Act, that—
- (a) either—
    - (i) the person is not suffering from mental disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment; or
    - (ii) it is not necessary for the health or safety of the person or for the protection of other persons that he should receive such treatment; and
  - (b) it is not appropriate for the person to remain liable to be recalled to hospital for further treatment,

he shall by warrant direct that the person be remitted to any prison or other institution or place in which he might have been detained had he not been removed to hospital and that he be dealt with there as if he had not been so removed.

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- (2) Where the Secretary of State is satisfied as to the matters mentioned in subsection (1) (a) above, but not as to the matters mentioned in subsection (1)(b) above, he may either—
  - (a) by warrant give such direction as is mentioned in subsection (1) above; or
  - (b) decide that the person shall continue to be detained in hospital.
- (3) If a direction is given under subsection (1) or (2)(a) above, then on the person’s arrival in the prison or other institution or place to which he is remitted by virtue of that subsection the transfer direction shall cease to have effect.]

**Textual Amendments**

**F109** S. 71A inserted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 9(5)**; S.I. 1997/1712, art. 3, **Sch.**

**72 Restriction on discharge of prisoners removed to hospital.**

- (1) Where a transfer direction is given in respect of any person, the Secretary of State, if he thinks fit, may by warrant direct that that person shall be subject to the special restrictions set out in section 62(1) of this Act.
- (2) A direction under this section (in this Act referred to as “a restriction direction”) shall have the like effect as a restriction order in respect of the patient made under [F110section 59 of the M20Criminal Procedure (Scotland) Act 1995].

**Textual Amendments**

**F110** Words in s. 72(2) substituted (S.)(1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1, para. 9(6)**; S.I. 1997/1712, art. 3, **Sch. art. 4**

**Marginal Citations**

**M20** 1995 c.46.

**73 Further provisions as to persons removed to hospital while awaiting trial etc.**

- (1) Subject to the following provisions of this section any transfer order made in respect of a person under section 70(1) of this Act shall cease to have effect if the proceedings in respect of him are dropped or when his case is disposed of by the court to which he was committed, or by which he was remanded, but without prejudice to any power of that court to make a hospital order or other order under [F111section 53, 57, 58 or 59 of the Criminal Procedure (Scotland) Act 1995] in his case.
- (2) Where a transfer order has been made in respect of any such person as aforesaid, then, if the Secretary of State is notified by the responsible medical officer at any time before that person is brought before the court to which he was committed, or by which he was remanded, that he no longer requires treatment for mental disorder, the Secretary of State may by warrant direct that he be remitted to any place where he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed, and on his arrival at the place to which he is so remitted the transfer order shall cease to have effect.

F112(3) . . . . .

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### Textual Amendments

**F111** Words in s. 73(1) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4**, para. 50(7)(a)

**F112** S. 73(3) repealed (1.10.1993) by 1993 c. 9, s. 47(3), **Sch. 7 Pt.I**; S.I. 1993/2050, **art. 3(4)**

## [74] <sup>F113</sup> Further provision as to transfer directions and restriction directions.

(1) This subsection applies where a transfer direction and a restriction direction have been given in respect of a person—

- (a) serving a sentence of imprisonment; or
- (b) who is detained (other than in respect of a criminal offence) under or by virtue of the Immigration Act 1971,

if the Secretary of State is satisfied, at a time when the person would but for those directions be, by virtue of the circumstance mentioned in paragraph (a) or (b) above, in prison or being detained other than in a hospital, as to the matters mentioned in subsection (2) below.

<sup>F114</sup>(1A) [ This subsection applies if the Secretary of State is satisfied as regards a person who has been conveyed to a hospital under a hospital direction as to the matters mentioned in subsection (2) below at a time when the person, by virtue of a sentence of imprisonment imposed on him at the time that direction was made, would but for that direction be in prison or being detained other than in a hospital.]

<sup>F115</sup>(1B) Neither of subsections (1) and (1A) above apply, however, where the Scottish Ministers are satisfied, at the respective times mentioned in these subsections, that the person is, at the relevant time, suffering from a mental disorder the effect of which is such that it is necessary, in order to protect the public from serious harm, that the person continue to be detained in a hospital, whether for treatment or not.

(1C) Nothing in section 102 (State hospitals) of the National Health Service (Scotland) Act 1978 (c.29) prevents or restricts the detention of a person in a State hospital in consequence of subsection (1B) above.]

(2) The matters referred to in subsection (1) [<sup>F116</sup>and (1A)] above are—

- (a) that either—
  - (i) the person is not suffering from mental disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment; or
  - (ii) that it is not necessary for the health or safety of the person or for the protection of other persons that he should receive such treatment; and
- (b) that it is not appropriate for the person to remain liable to be recalled to hospital for further treatment.

(3) Where subsection (1) [<sup>F117</sup>or (1A)] above applies, the Secretary of State shall by warrant direct that the person be remitted to any prison or other institution or place in which he might have been detained had he not been [<sup>F117</sup>conveyed or] removed to hospital and that he be dealt with there as if he had not been [<sup>F118</sup>so conveyed or removed].

(4) Where subsection (1) [<sup>F119</sup>or (1A)] above does not apply only because the Secretary of State is not satisfied as to the matter mentioned in subsection (2)(b) above, he may either—



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- (a) by warrant give such direction as is mentioned in subsection (3) above; or
  - (b) decide that the person shall continue to be detained in hospital.
- (5) If a direction is given under subsection (3) or (4)(a) above, then on the person's arrival in the prison or other institution or place to which remitted by virtue of that subsection the transfer direction and the restriction direction [<sup>F120</sup>or, as the case may be, the hospital direction] shall cease to have effect.
- (6) This subsection applies where a transfer direction and a restriction direction have been given in respect of such person as is mentioned in subsection (1) above and he has thereafter been released under Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993 .
- (7) Where subsection (6) above applies—
- (a) the transfer direction and the restriction direction shall forthwith cease to have effect; and
  - (b) the person shall thereupon be discharged from hospital unless a report is furnished in respect of him under subsection (9) below.
- (8) A transfer direction or restriction direction given in respect of a person detained (other than in respect of a criminal offence) under or by virtue of the Immigration Act 1971 shall, if it does not first cease to have effect under subsection (5) above or under section 65(2) of this Act, cease to have effect when his liability to be so detained comes to an end.
- [<sup>F121</sup>(8A) This subsection applies where a hospital direction has been made in respect of a person and he has thereafter been released under [<sup>F122</sup>Part I of the <sup>M21</sup>Prisoners and Criminal Proceedings (Scotland) Act 1993].
- (8B) Where subsection (8A) above applies—
- (a) the hospital direction shall forthwith cease to have effect; and
  - (b) the person shall thereupon be discharged from hospital unless a report is furnished in respect of him under subsection (9) below.]
- (9) Not earlier than 28 days before [<sup>F123</sup>—
- (a)] a restriction direction given in respect of a person ceases to have effect other than by virtue of subsection (8) above [<sup>F124</sup>; or
  - (b) a hospital direction ceases to have effect,] the responsible medical officer shall obtain from another medical practitioner a report on the condition of the person in the prescribed form and thereafter shall assess the need for the detention of the person to be continued; and, if it appears to the responsible medical officer that it is necessary in the interests of the health or safety of the person or for the protection of others that the person should continue to be liable to be detained in hospital, the officer shall furnish to the managers of the hospital where the person is liable to be detained and to the Mental Welfare Commission a report to that effect in the prescribed form along with the report of the other medical practitioner.
- (10) Where a report has been furnished under subsection (9) above the person shall, after the restriction direction [<sup>F125</sup>or, as the case may be, hospital direction] ceases to have effect, be treated as if he had, on the date on which the restriction direction [<sup>F125</sup>or, as the case may be, hospital direction] ceased to have effect, been admitted to the hospital in pursuance of an application for admission; but the provisions of sections 30(5) and (6) and 35 of this Act shall apply to the person and that report as they apply to a



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patient the authority for whose detention in hospital has been renewed in pursuance of subsection (4) of, and to a report under subsection (3) of, the said section 30.

(11) For the purposes of section 40(2) of the Prisons (Scotland) Act 1989 (discounting from sentence periods while unlawfully at large) a person who, having been transferred to hospital in pursuance of a transfer direction [<sup>F126</sup>or, as the case may be, hospital direction] from a prison or young offenders institution, is at large in circumstances in which he is liable to be taken into custody under any provision of this Act, shall be treated as unlawfully at large and absent from the prison or young offenders institution.

(12) In this section “prescribed” means prescribed by regulations made by the Secretary of State.

#### Textual Amendments

**F113** S. 74 substituted (1.10.1993) for ss. 74 and 75 by 1993 c. 9, **ss. 4(3), 5, 6, 10**; S.I. 1993/2050, **art. 3(4)**

**F114** S. 74(1A) inserted (1.1.1998) by 1997 c. 48, **s. 7(4)(a)**; S.I. 1997/2323, **art. 4**

**F115** S. 74(1B)(1C) inserted (13.9.1999) by 1999 asp 1, **s. 1(4)(5)**

**F116** Words in s. 74(2) inserted (S.)(1.1.1998) by 1997 c. 48, **s. 7(4)(b)**; S.I. 1997/2323, **art. 4**

**F117** Words in s. 74(3) inserted (S.)(1.1.1998) by 1997 c. 48, **s. 7(4)(c)(ii)**; S.I. 1997/2323, **art. 4**

**F118** Words in s. 74(3) substituted (S.)(1.1.1998) by 1997 c. 48, **s. 7(4)(c)(iii)**; S.I. 1997/2323, **art. 4**

**F119** Words in s. 74(4) inserted (S.)(1.1.1998) by 1997 c. 48, **s. 7(4)(d)**; S.I. 1997/2323, **art. 4**

**F120** Words in s. 74(5) inserted (S.)(1.1.1998) by 1997 c. 48, **s. 7(4)(e)**; S.I. 1997/2323, **art. 4**

**F121** S.74(8A)(8B) inserted (S.)(1.1.1998) by 1997 c. 48, **s. 7(4)(f)**; S.I. 1997/2323, **art. 4**

**F122** Words in s. 74(8A) substituted (*retrospectively to* 1.1.1998) by 1998 c. 37, ss. 119, 121(2), **Sch. 8, para. 55(1)(2)**

**F123** Words in s. 74(9) inserted (S.)(1.1.1998) by 1997 c. 48, **s. 7(4)(g)(i)**; S.I. 1997/2323, **art. 4**

**F124** S. 74(9): paragraph (b) and word “or” preceding it inserted (S.)(1.1.1998) by 1997 c. 48, **s. 7(4)(g)(ii)**; S.I. 1997/2323, **art. 4**

**F125** Words in s. 74(10) inserted (S.)(1.1.1998) by 1997 c. 48, **s. 7(4)(h)**; S.I. 1997/2323, **art. 4**

**F126** Words in s. 74(11) inserted (S.)(1.1.1998) by 1997 c. 48, **s. 7(4)(i)**; S.I. 1997/2323, **art. 4**

#### Marginal Citations

**M21** 1993 c.9.

### Supplementary

#### 76 Interpretation of Part VI.

(1) In the following provisions of this Part of this Act, that is to say—

- (a) section 60(2) and (3);
- (b) section 61;
- (c) section 62(1); and
- (d) section 68

and in [<sup>F127</sup>section 59(3) of the Criminal Procedure (Scotland) Act 1995] any reference to a hospital order, a guardianship order or a restriction order in respect of a patient subject to a hospital order shall be construed as including a reference to any order or direction under this Part of this Act having the like effect as the first-mentioned order; and the exceptions and modifications set out in the Second Schedule to this Act in

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respect of the provisions of Part V of this Act described in that Schedule accordingly include those which are consequential on the provisions of this subsection.

- (2) References in this Part of this Act to persons serving a sentence of imprisonment shall be construed in accordance with section 71(7) of this Act.

#### Textual Amendments

F127 Words in s. 76 substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), Sch. 4, para. 50(8)

## PART VII

### REMOVAL AND RETURN OF PATIENTS WITHIN UNITED KINGDOM ETC.

#### *Removal to and from England and Wales*

#### 77 Removal of patients to England and Wales.

- (1) If it appears to the Secretary of State, in the case of a patient who is for the time being liable to be detained or subject to guardianship under this Act, that it is in the interests of the patient to remove him to England and Wales, and that arrangements have been made for admitting him to a hospital or, as the case may be, for receiving him into guardianship there, the Secretary of State may authorise his removal to England and Wales and may give any necessary directions for his conveyance to his destination.
- (2) Where a patient who is liable to be detained under this Act by virtue of an application, order or direction under any enactment in force in Scotland is removed under this section and admitted to a hospital in England and Wales, he shall be treated as if on the date of his admission he had been so admitted in pursuance of an application made, or an order or direction made or given, on that date under the corresponding enactment in force in England and Wales, and, where he is subject to an order or direction under any enactment in this Act restricting his discharge, as if he were subject to an order or direction under the corresponding enactment in force in England and Wales.
- (3) Where a patient who is subject to guardianship under this Act by virtue of an application or order under any enactment in force in Scotland is removed under this section and received into guardianship in England and Wales, he shall be treated as if on the date on which he arrives at the place where he is to reside he had been so received in pursuance of an application or order under the corresponding enactment in force in England and Wales and as if the application had been accepted or, as the case may be, the order had been made on that date.
- (4) Where a patient removed under this section was immediately before his removal liable to be detained under this Act by virtue of a transfer direction given while he was serving a sentence of imprisonment (within the meaning of section 71(7) of this Act) imposed by a court in Scotland, he shall be treated as if the sentence had been imposed by a court in England and Wales.
- (5) Where a person so removed as aforesaid was immediately before his removal subject to a restriction order or a restriction direction, being an order or direction of limited duration, the restriction order or restriction direction to which he is subject by virtue

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of subsection (2) of this section shall expire on the date on which the first-mentioned order or direction would have expired if he had not been so removed.

[<sup>F128</sup>(5A) Where a patient removed under this section was immediately before his removal liable to be detained under this Act by virtue of a hospital direction made by a court in Scotland, he shall be treated as if any sentence of imprisonment passed at the time at which the hospital direction was made had been imposed by a court in England and Wales.]

(6) In this section references to a hospital in England and Wales shall be construed as references to a hospital within the meaning of Part II of the <sup>M22</sup>Mental Health Act 1983.

**Textual Amendments**

**F128** S. 77(5A) inserted (1.1.1998) by 1997 c. 48, s. 62(1), **Sch. 1, para. 9(8)** (with s. 33(6)); S.I. 1997/2323, art. 4, **Sch. 2**

**Marginal Citations**

**M22** 1983 c. 20.

[<sup>F129</sup>77A **Transfer of responsibility for patients to England and Wales.**

- (1) If it appears to the Secretary of State, in the case of a patient who—
- (a) is subject to a restriction order under section 59 of the <sup>M23</sup>Criminal Procedure (Scotland) Act 1995; and
  - (b) has been conditionally discharged under section 64 or 68 of this Act,
- that a transfer under this section would be in the interests of the patient, the Secretary of State may, with the consent of the Minister exercising corresponding functions in England and Wales, transfer responsibility for the patient to that Minister.
- (2) Where responsibility for such a patient is transferred under this section, the patient shall be treated—
- (a) as if on the date of the transfer he had been conditionally discharged under the corresponding enactment in force in England and Wales; and
  - (b) as if he were subject to a restriction order under the corresponding enactment in force in England and Wales.]

**Textual Amendments**

**F129** S. 77A inserted (1.10.1997) by 1997 c. 43, s. 48, **Sch. 3 Pt. II para. 6** (with s. 57(8)); S.I. 1997/2200, art. 2

**Marginal Citations**

**M23** 1995 c.46.

**78 Position of nearest relative on removal to England and Wales.**

- (1) Where a patient is removed from Scotland to England and Wales in pursuance of arrangements under this Part of this Act, and at the time of his removal there is in force an order under Part V of this Act directing that the functions of his nearest relative under this Act shall be exercisable by a person other than the nearest relative within

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the meaning of the said Part V, the order, so far as it so directs, shall, on the patient's admission to a hospital or reception into guardianship in England and Wales, have effect as if it were an order made by a county court under Part II of the Mental Health Act 1983, and accordingly may be discharged or varied by the county court under that Act and not by the sheriff under this Act.

- (2) Where a patient is removed as aforesaid and the person who, apart from any such order, is treated by virtue of any of the provisions of section 53 to 57 of this Act as the nearest relative within the meaning of Part V of this Act would not be treated by virtue of section 26 of the said Act of 1983 as the nearest relative within the meaning of Part II of that Act, that person shall, after the admission of the patient to a hospital or his reception into guardianship in England and Wales, be treated as the nearest relative within the meaning of Part II of the said Act of 1983, subject, however, to any order made or treated by the foregoing subsection as made, by the county court under section 29 of that Act and without prejudice to the operation of the other provisions of Part II of that Act with respect to the nearest relative of a patient.
- (3) An order of the sheriff under section 56 of this Act may be proved by a certificate under the hand of the sheriff clerk.

## 79 Position of nearest relative on removal to Scotland.

- (1) Where a patient is removed from England and Wales to Scotland in pursuance of arrangements under the Mental Health Act 1983, and at the time of his removal there is in force an order under Part II of that Act directing that the functions of his nearest relative under that Act shall be exercisable by a person other than the nearest relative within the meaning of that Part of that Act, the order, so far as it so directs, shall, on his admission to a hospital or reception into guardianship in Scotland, have effect as if it were an order made by a sheriff under Part V of this Act, and accordingly may be discharged or varied by the sheriff under this Act and not by the county court under that Act.
- (2) Where a patient is removed as aforesaid and the person who, apart from any such order, is treated by virtue of sections 26 to 28 of the said Act of 1983 as the nearest relative within the meaning of Part II of that Act would not be treated by virtue of section 53 of this Act as the nearest relative within the meaning of Part V of this Act, that person shall, after the admission of the patient to a hospital or his reception into guardianship in Scotland, be treated as the nearest relative within the meaning of Part V of this Act, subject, however, to any order made, or treated by the foregoing subsection as made, by the sheriff under section 56 of this Act and without prejudice to the operation of the other provisions of Part V of this Act with respect to the nearest relative of a patient.
- (3) An entry made in a book or other document required to be kept for the purposes of section 12 of the <sup>M24</sup>County Courts Act 1984 (which relates to the keeping of records of proceedings of county courts) and relating to an order of a county court under section 29 or section 52 or 53 of the <sup>M25</sup>Mental Health Act 1959 or section 30 of the <sup>M26</sup>Mental Health Act 1983, or a copy of such an entry purporting to be signed and certified as a true copy by the registrar of the county court, shall, in Scotland, be evidence of the like matters and to the like extent as in England and Wales.

### Marginal Citations

M24 1984 c. 28.

M25 1959 c. 72.

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M26 1983 c. 20.

### *Removal to and from Northern Ireland*

## 80 Removal of patients to Northern Ireland.

- (1) If it appears to the Secretary of State, in the case of a patient who is for the time being liable to be detained or subject to guardianship under this Act, that it is in the interests of the patient to remove him to Northern Ireland, and that arrangements have been made for admitting him to a hospital or, as the case may be, for receiving him into guardianship there, the Secretary of State may authorise his removal to Northern Ireland and may give any necessary directions for his conveyance to his destination.
- (2) Subject to the provisions of subsection (4) of this section, where a patient who is liable to be detained under this Act by virtue of an application, order or direction under any enactment in force in Scotland is removed under this section and admitted to a hospital in Northern Ireland, he shall be treated as if on the date of his admission he had been so admitted in pursuance of an application made, or an order or direction made or given, on that date under the corresponding enactment in force in Northern Ireland, and, where he is subject to an order or direction under any enactment in this Act restricting his discharge, as if he were subject to <sup>[F130]</sup>a restriction order or a restriction direction] under the corresponding enactment in force in Northern Ireland.
- (3) Where a patient who is subject to guardianship under this Act by virtue of an application or order under any enactment in force in Scotland is removed under this section and received into guardianship in Northern Ireland, he shall be treated as if on the date on which he arrives at the place where he is to reside he had been so received in pursuance of an application or order under the corresponding enactment in force in Northern Ireland, and as if the application had been accepted or, as the case may be, the order had been made on that date.
- (4) Where a person removed under this section was immediately before his removal liable to be detained by virtue of an application for admission under this Act, he shall, on his admission to a hospital in Northern Ireland, be treated as if <sup>[F131]</sup>he were detained for treatment under Part II of the Mental Health (Northern Ireland) Order 1986 by virtue of a report under Article 12(1) of that Order made on the date of his admission].
- (5) Where a patient removed under this section was immediately before his removal liable to be detained under this Act by virtue of a transfer direction given while he was serving a sentence of imprisonment (within the meaning of section 71(7) of this Act) imposed by a court in Scotland, he shall be treated as if the sentence had been imposed by a court in Northern Ireland.
- (6) Where a person removed under this section was immediately before his removal subject to a restriction order or a restriction direction, being an order or direction of limited duration, <sup>[F132]</sup>the restriction order or restriction direction] to which he is subject by virtue of subsection (2) of this section shall expire on the date on which the first-mentioned order or direction would have expired if he had not been so removed.
- <sup>[F133]</sup>(6A) Where a patient removed under this section was immediately before his removal liable to be detained under this Act by virtue of a hospital direction made by a court in Scotland, he shall be treated as if any sentence of imprisonment passed at the time at which the hospital direction was made had been imposed by a court in Northern Ireland.]

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(7) In this section “hospital” has the same meaning as in the Mental Health [F134(Northern Ireland) Order 1986].

#### Textual Amendments

**F130** Words substituted by S.I. 1986/596, art. 3(2)

**F131** Words substituted by S.I. 1986/596, art. 3(3)

**F132** Words substituted by S.I. 1986/596, art. 3(4)

**F133** S. 80(6A) inserted (1.1.1998) by 1997 c. 48, s. 62(1), Sch. 1, para. 9(9) (with s. 33(6)); S.I. 1997/2323, art. 4, Sch. 2

**F134** Words substituted by S.I. 1986/596, art. 3(5)

### [F135]80A Transfer of responsibility for patients to Northern Ireland.

- (1) If it appears to the Secretary of State, in the case of a patient who—
  - (a) is subject to a restriction order under section 59 of the Criminal Procedure (Scotland) Act 1995; and
  - (b) has been conditionally discharged under section 64 or 68 of this Act,that a transfer under this section would be in the interests of the patient, the Secretary of State may, with the consent of the Minister exercising corresponding functions in Northern Ireland, transfer responsibility for the patient to that Minister.
- (2) Where responsibility for such a patient is transferred under this section, the patient shall be treated—
  - (a) as if on the date of the transfer he had been conditionally discharged under the corresponding enactment in force in Northern Ireland; and
  - (b) as if he were subject to a restriction order under the corresponding enactment in force in Northern Ireland.]

#### Textual Amendments

**F135** S. 80A inserted (1.10.1997) by 1997 c. 43, s. 48, Sch. 3 Pt. II para. 7; S.I. 1997/2200, art. 2

### 81 Removal to Scotland of patients from Northern Ireland.

- (1) If it appears to the responsible authority, in the case of a patient who is for the time being liable to be detained or subject to guardianship under the Mental Health [F136(Northern Ireland) Order 1986 (otherwise than by virtue of Article 42, 43 or 45 of that Order)], that it is in the interests of the patient to remove him to Scotland, and that arrangements have been made for admitting him to a hospital or, as the case may be, for receiving him into guardianship there, the responsible authority may authorise his removal to Scotland and may give any necessary directions for his conveyance to his destination.
- (2) Subject to the provisions of [F137subsections (4) and (4A)] of this section, where a patient who is liable to be detained under [F137the Mental Health (Northern Ireland) Order 1986] by virtue of an application, order or direction under any enactment in force in Northern Ireland is removed under this section and admitted to a hospital in Scotland, he shall be treated as if on the date of his admission he had been so admitted in pursuance of an application forwarded to the managers of the hospital, or an order



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or direction made or given, on that date under the corresponding enactment in force in Scotland and, where he is subject to [F137 a restriction order or restriction direction under that Order], as if he were subject to a restriction order or a restriction direction under the corresponding enactment in force in Scotland.

- (3) Where a patient who is subject to guardianship under [F138 the Mental Health (Northern Ireland) Order 1986] by virtue of an application or order under any enactment in force in Northern Ireland is removed under this section and received into guardianship in Scotland, he shall be treated as if on the date on which he arrives at the place where he is to reside he had been so received in pursuance of an application or order under the corresponding enactment in force in Scotland and as if the application had been forwarded or, as the case may be, the order had been made on that date.
- [F139](4) Where a person removed under this section was immediately before his removal liable to be detained for treatment by virtue of a report under Article 12(1) or 13 of the Mental Health (Northern Ireland) Order 1986, he shall be treated on his admission to a hospital in Scotland as if he had been admitted thereto in pursuance of an application for admission forwarded to the managers of that hospital on the date of his admission.
- (4A) Where a person removed under this section was immediately before his removal liable to be detained by virtue of an application for assessment under Article 4 of the Mental Health (Northern Ireland) Order 1986, he shall be treated on his admission to a hospital in Scotland, as if he had been admitted thereto in pursuance of an emergency recommendation made on the date of his admission.]
- (5) Where a patient removed under this section was immediately before his removal liable to be detained under the Mental Health [F140 (Northern Ireland) Order 1986], by virtue of a transfer direction given while he was serving a sentence of imprisonment (within the meaning of [F140 Article 53(5) of that Order]) imposed by a court in Northern Ireland, he shall be treated as if the sentence had been imposed by a court in Scotland.
- (6) Where a patient removed under this section was immediately before his removal subject to [F141 a restriction order or restriction direction] of limited duration, the restriction order or restriction direction to which he is subject by virtue of subsection (2) of this section shall expire on the date on which the [F141 first-mentioned restriction order or restriction direction] would have expired if he had not been so removed.
- (7) In this section “the responsible authority” means the Department of Health and Social Services for Northern Ireland or, in relation to a patient who is subject to [F142 restriction order or restriction direction], the Secretary of State.

#### Textual Amendments

- F136** Words substituted by [S.I. 1986/596, art. 3\(6\)](#)
- F137** Words substituted by [S.I. 1986/596, art. 3\(7\)](#)
- F138** Words substituted by [S.I. 1986/596, art. 3\(8\)](#)
- F139** [S. 81\(4\)\(4A\)](#) substituted by [S.I. 1986/596, art. 3\(9\)](#)
- F140** Words substituted by [S.I. 1986/596, art. 3\(10\)](#)
- F141** Words substituted by [S.I. 1986/596, art. 3\(11\)](#)
- F142** Words substituted by [S.I. 1986/596, art. 3\(12\)](#)



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## [<sup>F143</sup>81A Transfer of responsibility for patients to Scotland from Northern Ireland.

- (1) If it appears to the relevant Minister, in the case of a patient who—
  - (a) is subject to a restriction order under Article 47(1) of the <sup>M27</sup>Mental Health (Northern Ireland) Order 1986; and
  - (b) has been conditionally discharged under Article 48(2) or 78(2) of that Order, that a transfer under this section would be in the interests of the patient, that Minister may, with the consent of the Secretary of State, transfer responsibility for the patient to the Secretary of State.
- (2) Where responsibility for such a patient is transferred under this section, the patient shall be treated—
  - (a) as if on the date of the transfer he had been conditionally discharged under section 64 or 68 of this Act; and
  - (b) as if he were subject to a restriction order within the meaning of this Act.
- (3) Where a patient responsibility for whom is transferred under this section was immediately before the transfer subject to a restriction order of limited duration, the restriction order to which he is subject by virtue of subsection (2) above shall expire on the date on which the first-mentioned order would have expired if the transfer had not been made.
- (4) In this section “the relevant Minister” means the Minister exercising in Northern Ireland functions corresponding to those of the Secretary of State.]

### Textual Amendments

**F143** S. 81A inserted (1.10.1997) by 1997 c. 43, s. 48, **Sch. 3**, Pt. II, para. 8; S.I. 1997/2200, **art. 2**

### Marginal Citations

**M27** S.I. 1986/596 (N.I.4).

### *Other provisions as to removal*

## 82 Removal of certain patients from Channel Islands and Isle of Man to Scotland.

- (1) The Secretary of State may by warrant direct that any offender found by a court in any of the Channel Islands or in the Isle or Man to be insane or to have been insane at the time of the alleged offence, and ordered to be detained during Her Majesty’s pleasure, be removed to a hospital in Scotland.
- (2) A patient removed under this section shall, on his reception into the hospital in Scotland, be treated as if he had been removed to that hospital in pursuance of an order under [<sup>F144</sup>section 57(2)(a) and (b) of the Criminal Procedure (Scotland) Act 1995].
- (3) The Secretary of State may by warrant direct that any patient removed under this section from any of the Channel Islands or from the Isle of Man be returned to the Island from which he was so removed, there to be dealt with according to law in all respects as if he had not been removed under this section.

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#### Textual Amendments

**F144** Words in s. 82(2) substituted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 9(10)** (with s. 33(6)); S.I. 1997/1712, art. 3, **Sch**

### [<sup>F145</sup>82A Responsibility for patients transferred from Channel Islands or Isle of Man to Scotland.

- (1) This section applies to any patient responsibility for whom is transferred to the Secretary of State by the authority exercising corresponding functions in any of the Channel Islands or the Isle of Man under a provision corresponding to section 82B of this Act.
- (2) The patient shall be treated—
  - (a) as if on the date of the transfer he had been conditionally discharged under section 64 or 68 of this Act; and
  - (b) as if he were subject to a restriction order within the meaning of this Act.
- (3) Where the patient was immediately before the transfer subject to an order restricting his discharge, being an order of limited duration, the restriction order to which he is subject by virtue of subsection (2) above shall expire on the date on which the first-mentioned order would have expired if the transfer had not been made.]

#### Textual Amendments

**F145** S. 82A inserted (1.10.1997) by 1997 c. 43, s. 48, **Sch. 3 Pt. II para. 9**; S.I. 1997/2200, art. 2

### [<sup>F146</sup>82B Transfer of responsibility for patients to Channel Islands or Isle of Man.

If it appears to the Secretary of State, in the case of a patient who—

- (a) is subject to a restriction order under section 59 of the <sup>M28</sup>Criminal Procedure (Scotland) Act 1995; and
- (b) has been conditionally discharged under section 64 or 68 of this Act,

that a transfer under this section would be in the interests of the patient, the Secretary of State may, with the consent of the authority exercising corresponding functions in any of the Channel Islands or in the Isle of Man, transfer responsibility for the patient to that authority.]

#### Textual Amendments

**F146** S. 82B inserted (1.10.1997) by 1997 c. 43, s. 48, **Sch. 3 Pt. II para. 10**; S.I. 1997/2200, art. 2

#### Marginal Citations

**M28** 1995 c.46.

### 83 Removal of alien patients.

If it appears to the Secretary of State, in the case of any patient who is neither a British citizen nor a Commonwealth citizen having the right of abode in the United Kingdom

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by virtue of section 2(1)(b) of the <sup>M29</sup>Immigration Act 1971 and who is receiving treatment for mental illness [<sup>F147</sup>(including personality disorder)] as an in-patient in a hospital in Scotland, that proper arrangements have been made for the removal of that patient to a country or territory outside the United Kingdom, the Isle of Man and the Channel Islands and for his care or treatment there, and that it is in the interests of the patient to remove him, the Secretary of State may by warrant authorise the removal of the patient from the place where he is receiving treatment as aforesaid, and may give such directions as the Secretary of State thinks fit for the conveyance of the patient to his destination in that country or territory and for his detention in any place or on board any ship or aircraft until his arrival at any specified port or place in any such country or territory.

#### Textual Amendments

**F147** Words in s. 83 inserted (13.9.1999) by 1999 asp 1, s. 3(1)(b)

#### Marginal Citations

**M29** 1971 c. 77.

### *Return of patients absent without leave*

## **84 Patients absent from hospitals in Scotland.**

- (1) Subject to the provisions of this section, any person who, under section 28 or section 121 of this Act or under the said section 28 as applied by section 32 of this Act may be taken into custody in Scotland, may be taken into custody in, and returned to Scotland from, any other part of the United Kingdom or the Channel Islands or the Isle of Man.
- (2) For the purposes of the enactments referred to in subsection (1) of this section, in their application by virtue of this section to England and Wales, Northern Ireland, the Channel Islands or the Isle of Man, the expression “constable” includes an English constable, an officer or constable of the Royal Ulster Constabulary, a member of the police in Jersey, an officer of police within the meaning of section 43 of the Larceny (Guernsey) Law 1958, or any corresponding law for the time being in force, or a constable in the Isle of Man, as the case may be.
- (3) For the purposes of the said enactments in their application by virtue of this section to England and Wales or Northern Ireland, any reference to a mental health officer shall be construed as including a reference—
  - (a) in England and Wales, to any approved social worker within the meaning of the <sup>M30</sup>Mental Health Act 1983.
  - (b) in Northern Ireland, to any [<sup>F148</sup>approved social worker within the meaning of the Mental Health (Northern Ireland) Order 1986].
- (4) This section shall not apply to any person who is subject to guardianship.

#### Textual Amendments

**F148** Words substituted by S.I. 1986/596, art. 3(13)

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#### **Marginal Citations**

**M30** 1983 c. 20.

### **85 Patients absent from hospitals in Northern Ireland.**

Any person (other than a person subject to guardianship) who—

- (a) under [<sup>F149</sup>Article 29 or 132 of the Mental Health (Northern Ireland) Order 1986] (which provide respectively for the retaking of patients absent without leave and for the retaking of patients escaping from custody); or
- (b) under the said [<sup>F149</sup>Article 29 as applied by Article 31 of the said Order] (which makes special provision as to persons sentenced to imprisonment);

may be taken into custody in Northern Ireland, may be taken into custody in, and returned to Northern Ireland from, Scotland by a mental health officer, by any constable or by any person authorised by or by virtue of the [<sup>F149</sup>said Order] to take him into custody.

#### **Textual Amendments**

**F149** Words substituted by [S.I. 1986/596, art. 3\(14\)](#)

### *Supplementary*

### **86 Regulations for purposes of Part VII.**

Section 58 of this Act shall have effect as if references therein to Part V of this Act included references to this Part of this Act and to Part VI of the <sup>M31</sup>Mental Health Act 1983, so far as the said Parts apply to patients removed to Scotland thereunder.

#### **Marginal Citations**

**M31** 1983 s. 20.

### **87 General provisions as to patients removed from Scotland.**

- (1) Where a patient liable to be detained or subject to guardianship by virtue of an application, order or direction under Part V or Part VI of this Act is removed from Scotland in pursuance of arrangements under this Part of this Act, the application, order or direction shall cease to have effect when he is duly received into a hospital or other institution, or placed under guardianship, in pursuance of those arrangements.
- (2) The Secretary of State shall, where he authorises the removal from Scotland of a patient under any of the provisions of this Part of this Act, send notification of that authorisation to the Mental Welfare Commission and to the nearest relative of the patient not less than 7 days before the date of the removal of the patient.

### **88 Intimation of removal of patients to Scotland.**

- (1) Where a patient is admitted to a hospital in Scotland or received into guardianship there in pursuance of arrangements under this Part of this Act, or under Part VI of the

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Mental Health Act 1983, the responsible medical officer shall, within 28 days of such admission or reception as aforesaid, furnish to the managers of the hospital, or, as the case may be, the local authority concerned, a report in the prescribed form stating the form of mental disorder, being mental illness [<sup>F150</sup>(including personality disorder)] or mental handicap or both, from which, in the opinion of the responsible medical officer, the patient is suffering; and for the purposes of this Act the reason for his admission or reception as aforesaid, and for his being liable to detention or subject to guardianship, shall be that he is suffering from the form or forms of mental disorder so stated.

- (2) Where a patient has been admitted to a hospital or received into guardianship as aforesaid, the managers of the hospital or the local authority concerned, as the case may be, shall send notification to the Mental Welfare Commission of that admission or reception together with a copy of the report relating to the patient, made in pursuance of the last foregoing subsection, within 7 days of the receipt by them of that report.

#### Textual Amendments

**F150** Words in s. 88(1) inserted (13.9.1999) by 1999 asp 1, s. 3(1)(b)

## 89 Interpretation of Part VII.

- (1) Where a patient is treated by virtue of this Part of this Act as if he had been removed to a hospital in Scotland in pursuance of a direction under Part VI of this Act, that direction shall be deemed to have been given on the date of his reception into the hospital.
- (2) In relation to a patient who has been received into guardianship in Scotland in pursuance of arrangements under this Part of this Act or under Part VI of the <sup>M32</sup>Mental Health Act 1959 or under Part VI of the <sup>M33</sup>Mental Health Act 1983, any reference in this Act to the local authority concerned shall be construed as a reference to the local authority for the place where he was received into guardianship as aforesaid.

#### Marginal Citations

**M32** 1959 c. 72.

**M33** 1983 c. 20.

## PART VIII

### STATE HOSPITALS

<sup>F151</sup>90 .....

#### Textual Amendments

**F151** S. 90 repealed (1.4.1995) by 1994 c. 16, s. 2(3); S.I. 1995/576, art. 2

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## 91 Administrative provisions.

- (1) <sup>F152</sup> .....
- (2) The Secretary of State may by order constitute in accordance with the provisions of Schedule 1 to this Act a committee to manage, [<sup>F153</sup>by virtue of section 102(4)(a) of the National Health Service (Scotland) Act 1978], a State hospital; and a committee so constituted shall be called a State Hospital Management Committee.
- (3) The Secretary of State may by order dissolve a State Hospital Management Committee and any such order may contain such provision as he considers necessary or expedient in connection with the dissolution of the Committee and the winding up of its affairs including provision for the transfer of employment of staff, property, rights and liabilities.
- (4) A State Hospital Management Committee may—
- (a) pay to its members such remuneration; and
  - (b) make provision for the payment of such pensions, allowances or gratuities to or in respect of its members,
- as the Secretary of State may, with the approval of the Treasury, determine; and such determination may make different provision for different cases or different classes of case.
- (5) A State Hospital Management Committee may appoint such officers and servants on such terms as to remuneration and conditions of service as the Secretary of State may, with the approval of the Treasury, determine; and such determination may make different provision for different cases or different classes of case.
- (6) Section 79(1) of the <sup>M34</sup>National Health Service (Scotland) Act 1978 (which enables the Secretary of State to acquire land for the purposes of that Act) shall have effect as if the reference to the purposes of that Act included a reference to the purposes of this Part of this Act and as if the reference to any hospital vested in the Secretary of State included a reference to any State hospital.

### Textual Amendments

**F152** S. 91(1) repealed (1.4.1995) by 1994 c. 16, s. 2(3); S.I. 1995/576, art. 2

**F153** Words in s. 91(2) substituted (1.4.1995) by 1994 c. 16, s. 2(4); S.I. 1995/576, art. 2

### Marginal Citations

**M34** 1978 c. 29.

## PART IX

### PROTECTION OF PROPERTY OF PATIENTS

## 92 Duties of local authority in relation to property.

- (1) Where a local authority is satisfied—
- (a) that any person in their area is incapable, by reason of mental disorder, of adequately managing and administering his property and affairs;
  - (b) that a curator bonis ought to be appointed in respect of that person; and

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- (c) that no arrangements have been made or are being made in that behalf, they shall petition the court for such appointment as aforesaid; and, where that person is a patient in a hospital or has been placed under guardianship, the authority shall, on the grant of any such petition, so inform the managers of the hospital or, as the case may be, the guardian within 28 days therefrom.
- (2) In relation to persons suffering from mental disorder, section 48 of the <sup>M35</sup>National Assistance Act 1948 (which imposes a duty on certain local authorities to provide protection for property of persons admitted to hospitals, etc.) shall have effect as if—
- (a) in subsection (1) the reference to a person admitted as a patient to hospital included a reference to a person admitted to a private hospital within the meaning of this Act or subject to guardianship thereunder; and
- (b) references to moveable property in subsections (1) and (2) included a reference to heritable property.

#### Marginal Citations

M35 1948 c. 29.

### 93 Power of Mental Welfare Commission to petition for appointment of curator bonis.

Where the Mental Welfare Commission are satisfied—

- (a) that any person is incapable, by reason of mental disorder, of adequately managing and administering his property and affairs;
- (b) that a curator bonis ought to be appointed in respect of that person; and
- (c) that no arrangements have been made or are being made in that behalf,

they may petition the court for such appointment as aforesaid; and, where that person is a patient in a hospital or has been placed under guardianship, the Commission shall, on the grant of any such petition, so inform the managers of the hospital or, as the case may be, the local authority concerned within 28 days therefrom.

### 94 Powers of managers in relation to property of patients.

- (1) The managers of any hospital may receive and hold money and valuables on behalf of any person who is liable to be detained in that hospital under this Act or who is receiving treatment for mental disorder as a patient in that hospital, where the medical officer in charge of his treatment has stated that in his opinion that person is incapable, by reason of his mental disorder, of managing and administering his property and affairs; and a receipt or discharge given by the managers for any such money or valuables as aforesaid shall be treated as a valid receipt or discharge given by that person.
- (2) The managers shall not, under subsection (1) of this section, receive or hold on behalf of any one person without the consent of the Mental Welfare Commission money or valuables exceeding in the aggregate such sums as the Secretary of State may from time to time direct.
- (3) Where the managers of the hospital hold money or valuables on behalf of a person in pursuance of subsection (1) of this section, they may expend that money or dispose of those valuables for the benefit of that person and in the exercise of the powers



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conferred by this subsection the managers shall have regard to the sentimental value that any article may have for the patient, or would have but for his mental disorder.

[<sup>F154</sup>(3A) The managers of a hospital may continue to—

- (a) hold money (and receive interest accruing thereon) and valuables on behalf of a person in pursuance of subsection (1) of this section, and
- (b) expend the money or dispose of the valuables in pursuance of subsection (3) of this section,

despite the person ceasing to be liable to be detained in the hospital under this Act or in receipt of treatment for mental disorder as a patient in the hospital.]

- (4) Without prejudice to the generality of subsection (3) of this section, where the managers of a hospital have received money on behalf of a person in pursuance of subsection (1) of this section, being either—
  - (a) money becoming payable to that person during his lifetime under an insurance policy on his life, or
  - (b) money becoming payable to him as proposer under an insurance policy following the death of the person insured,

they may arrange for part or all of the money to be used to refund premiums paid on the policy by another person on behalf of the first-mentioned person, if they are satisfied that such other person is legally entitled to such refund.

- (5) The managers of a hospital may in pursuance of their functions under this section make application for a special death certificate for the purposes of the First Schedule to the <sup>M36</sup>Industrial Assurance and Friendly Societies Act 1948 and of Schedule 5 to the <sup>M37</sup>Friendly Societies Act 1974.
- (6) The managers of a hospital shall not act on behalf of any person in pursuance of the foregoing provisions of this section where a curator bonis, tutor, judicial factor, [<sup>F155</sup>receiver or controller or any person having the powers of a receiver or controller] has been appointed for that person under the law in force in Scotland, England and Wales or Northern Ireland, as the case may be; and where such an appointment as aforesaid has been made the managers shall account for any intromission under this section to any such curator bonis, tutor, judicial factor, [<sup>F155</sup>receiver or controller or any person having the powers of a receiver or controller] as aforesaid.

#### Textual Amendments

**F154** S. 94(3A) inserted (11.1.2000) by 1999 c. 32, ss. 1, 2(2)

**F155** Words substituted by S.I. 1986/596, art. 3(15)

#### Marginal Citations

**M36** 1948 c. 39.

**M37** 1974 c. 46.

## 95 Reciprocal arrangements in relation to Northern Ireland as to exercise of powers.

- (1) Where a curator bonis, tutor or judicial factor has been appointed under the law in force in Scotland for any person suffering from mental disorder, the provisions of that law shall apply in relation to the property and affairs of that person in Northern Ireland unless [<sup>F156</sup>he is a patient in relation to whom powers have been exercised under Part

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VIII of the Mental Health (Northern Ireland) Order 1986, or a person as to whom powers are exercisable and have been exercised under Article 97(2) of that Order].

(2) [<sup>F157</sup>Part VIII of the Mental Health (Northern Ireland) Order 1986 shall apply in relation to the property and affairs in Scotland of a patient in relation to whom powers have been exercised under that Part, or a person as to whom powers are exercisable and have been exercised under Article 97(2) of that Order, as it applies in relation to his property and affairs in Northern Ireland] unless a curator bonis, tutor or judicial factor has been appointed for him in Scotland.

(3) In this section references to property do not include references to land or interests in land:

Provided that this subsection shall not prevent the receipt of rent or other income arising from land or interests in land.

#### Textual Amendments

**F156** Words substituted by [S.I. 1986/596, art. 3\(16\)](#)

**F157** Words substituted by [S.I. 1986/596, art. 3\(17\)](#)

## PART X

### CONSENT TO TREATMENT

#### 96 Preliminary.

- (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 recommendation;
  - (b) a patient who is liable to be detained by virtue of sections 25(2), 117 or 118 of this Act or [<sup>F158</sup>section 58(9) of the <sup>M38</sup>Criminal Procedure (Scotland) Act 1995];
  - (c) a patient who has been conditionally discharged under sections 64 or 68(2) of this Act and has not been recalled to hospital.
- (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

**F158** Words in [s. 96\(1\)\(b\)](#) substituted (1.8.1997) by [1997 c. 48, s. 62\(1\), Sch. 1 para. 9\(11\)](#); [S.I. 1997/1712, art. 3, Sch.](#)

#### Marginal Citations

**M38** [1995 c.46.](#)

#### 97 Treatment requiring consent and a second opinion.

- (1) This section applies to the following forms of medical treatment for mental disorder—

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- (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 102 of this Act, a patient shall not be given any form of treatment to which this section applies unless he has consented to it and—
- (a) a medical practitioner (not being the responsible medical officer) appointed for the purposes of this Part of this Act by the Mental Welfare Commission and two other persons (not being medical practitioners) appointed for the purposes of this paragraph by the Commission have certified in writing that the patient is capable of understanding the nature, purpose and likely effects of the treatment in question and has consented to it; and
  - (b) the medical practitioner referred to in paragraph (a) of this subsection 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) of this section the medical practitioner concerned shall consult such person or persons who appear to him to be principally concerned with the patient's medical treatment.
- (4) Where any person has given a certificate under subsection (2)(a) or (b) of this section he shall send a copy thereof to the Mental Welfare Commission within 7 days of the day on which the certificate was given.
- (5) A medical practitioner or other person appointed as is mentioned in subsection (2)(a) of this section may, for the purpose of exercising his functions under this Part of this Act or (as the case may be) subsection (2)(a) of this section, at any reasonable time—
- (a) in private visit and interview any patient; and
  - (b) in the case of a medical practitioner, examine any patient and require the production of and inspect any records relating to the treatment of the patient.
- (6) 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.

## 98 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; and
  - (b) the administration of medicine to a patient by any means (not being a form of treatment specified under paragraph (a) of this subsection or section 97 of this Act) 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 3 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) of this section.
- (3) Subject to section 102 of this Act, a patient shall not be given any form of treatment to which this section applies unless—

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- (a) he has consented to that treatment and either the responsible medical officer or a medical practitioner appointed for the purposes of this Part of this Act by the Mental Welfare Commission 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 medical practitioner (not being the responsible medical officer) appointed as aforesaid 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) of this section the medical practitioner concerned shall consult such person or persons who appear to him to be principally concerned with the patient's medical treatment.
- (5) Where any person has given a certificate under subsection (3)(a) or (b) of this section he shall send a copy thereof to the Mental Welfare Commission within 7 days of the day on which the certificate was given.
- (6) 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.

## 99 Review of treatment.

- (1) Where a patient is given treatment in accordance with section 97(2) or 98(3)(b) of this Act a report on the treatment and the patient's condition shall be given by the responsible medical officer to the Mental Welfare Commission—
  - (a) on the next occasion on which the responsible medical officer furnishes a report [F159 under section 30 or 31B of this Act renewing the authority for the detention of the patient]; and
  - (b) at any other time if so required by the Mental Welfare Commission.
- (2) The Mental Welfare Commission may at any time give notice to the responsible medical officer directing that, subject to section 102 of this Act, a certificate given in respect of a patient under section 97(2) or 98(3)(b) of this Act shall not apply to treatment given to him after a date specified in the notice, and sections 97 and 98 of this Act shall then apply to any such treatment as if that certificate had not been given.

### Textual Amendments

F159 Words in s. 99(1)(a) substituted (1.4.1996) by 1995 c. 52, ss. 5(10), 7(2)

## 100 Plans of treatment.

Any consent or certificate under section 97 or 98 of this Act 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.

## 101 Withdrawal of consent.

- (1) Where the consent of a patient to any treatment has been given for the purposes of section 97 or 98 of this Act, the patient may, subject to section 102 of this Act, at any

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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) of this section to any treatment given under a plan of treatment to which a patient has consented, a patient who has consented to such a plan may, subject to section 102 of this Act, at any time withdraw his consent to further treatment, or to further treatment of any description, under the plan.

## **102 Urgent treatment.**

- (1) Sections 97 and 98 of this Act shall not apply to any treatment—
- (a) which is immediately necessary to save a patient's life; or
  - (b) which (not being irreversible) is immediately necessary to prevent a serious deterioration of his condition; or
  - (c) which (not being irreversible or hazardous) is immediately necessary to alleviate serious suffering by the patient; or
  - (d) which (not being irreversible or hazardous) is immediately necessary and represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or to others.
- (2) Sections 99(2) and 101 of this Act shall not preclude the continuation of any treatment or of treatment under any plan pending compliance with sections 97 and 98 of this Act 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.
- (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.
- (4) Where a patient is given treatment under this section the responsible medical officer shall, within 7 days of the day on which the treatment is given, notify the Mental Welfare Commission as to—
- (a) which of paragraphs (a) to (d) of subsection (1) of this section applied in relation to the patient; and
  - (b) the nature of the treatment given to the patient.

## **103 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 97 or 98 of this Act, if the treatment is given by or under the direction of the responsible medical officer.

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## PART XI

### MISCELLANEOUS AND GENERAL

#### Offences

#### 104 False statements.

- (1) Any person who makes any statement or entry which is false in a material particular in any application, recommendation, report, record or other document required or authorised to be made for any of the purposes of this Act or, with intent to deceive, makes use of any such entry or statement which he knows to be false, shall be guilty of an offence.
- (2) Any person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or both; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

#### 105 Ill-treatment of patients.

- (1) It shall be an offence for any person being an officer on the staff of or otherwise employed in a hospital or nursing home, or being a manager of a hospital or a person carrying on a nursing home—
  - (a) to ill-treat or wilfully neglect a patient for the time being receiving treatment for mental disorder as an in-patient in that hospital or nursing home; or
  - (b) to ill-treat or wilfully neglect, on the premises of which the hospital or nursing home forms part, a patient for the time being receiving such treatment there as an out-patient.
- (2) It shall be an offence for any individual to ill-treat or wilfully neglect a patient who is for the time being subject to his guardianship under this Act or otherwise in his custody or care.
- [<sup>F160</sup>(2A) It shall be an offence for any individual to ill-treat or wilfully neglect a patient in respect of whom a community care order is for the time being in force.]
- (3) Any person guilty of an offence against this section shall be liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

#### Textual Amendments

**F160** S. 105(2A) inserted (1.4.1996) by 1995 c. 52, ss. 4(2), 7(2), Sch. 2, para. 6

#### 106 Protection of mentally handicapped females.

- (1) It shall be an offence, subject to the exception mentioned in this section,—

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- (a) for a man to have unlawful sexual intercourse with a woman who is protected by the provisions of this section;
  - (b) for any person to procure or encourage any woman who is protected by the provisions of this section to have unlawful sexual intercourse;
  - (c) for the owner or occupier of any premises or any person having or assisting in the management or control of premises to induce any woman who is protected by the provisions of this section to resort to or be upon such premises for the purpose of unlawful sexual intercourse with any man.
- (2) A person shall not be guilty of an offence against this section if he did not know and had no reason to suspect that the woman in respect of whom he is charged was protected by the provisions of this section.
  - (3) Any person guilty of an offence under this section shall be liable on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine.
  - (4) [<sup>F161</sup>Section 16 of the <sup>M39</sup>Criminal Law (Consolidation)(Scotland) Act 1995] (which relates to warrants to search where there is reasonable cause to suspect that a woman or girl is being unlawfully detained for immoral purposes) shall apply in the case of a woman who is protected by the provisions of this section in the same manner as that section applies in the case of a girl who is under the age of 16 years.
  - (5) If on the trial of an indictment for rape the jury are satisfied that the accused is guilty of an offence against paragraph (a) of subsection (1) of this section, but are not satisfied that he is guilty of rape, the jury may acquit him of rape and find him guilty of such offence as aforesaid, and in that event he shall be liable to be punished as if he had been convicted on an indictment for such offence as aforesaid.
  - (6) A woman is protected by the provisions of this section if she is suffering from a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning.
  - (7) In this section “woman” includes girl.

#### Textual Amendments

**F161** Words in s. 106(4) substituted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 9(12)**; S.I. 1997/1712, art. 3, **Sch.**

#### Marginal Citations

**M39** 1995 c.39.

## 107 Protection of patients.

- (1) Without prejudice to the last foregoing section, it shall be an offence, subject to the exception mentioned in this section,—
  - (a) for a man who is an officer on the staff or is otherwise employed in a hospital or nursing home, or who is a manager of a hospital or who is a person carrying on a nursing home to have unlawful sexual intercourse with a woman who is for the time being receiving treatment for mental disorder as an in-patient in that hospital or nursing home, or to have such intercourse on the premises of which the hospital or nursing home forms part with a woman who is for the time being receiving such treatment there as an out-patient;



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- (b) for a man to have unlawful sexual intercourse with a woman suffering from mental disorder who is subject to his guardianship under this Act or is otherwise in his custody or care under this Act or in the care of a local authority under the <sup>M40</sup>Social Work (Scotland) Act 1968 or resident in a house provided by a local authority under that Act.
- (2) It shall not be an offence under this section for a man to have sexual intercourse with a woman if he does not know and has no reason to suspect her to be a person suffering from mental disorder.
- (3) In this section any reference to having unlawful sexual intercourse with a woman shall include a reference to committing a homosexual act as defined in [<sup>F162</sup>section 13(4) of the Criminal Law (Consolidation) (Scotland) Act 1995].
- (4) Any person guilty of an offence under this section shall be liable on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine.

#### Textual Amendments

**F162** Words in s. 107(3) substituted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 9(13)**; S.I. 1997/1712, art. 3, **Sch.**

#### Marginal Citations

**M40** 1968 c. 49.

### 108 Assisting patients to absent themselves without leave etc.

- (1) Any person who induces or knowingly assists any other person—
- (a) being liable to be detained in a hospital or being subject to guardianship under this Act, to absent himself without leave; or
- (b) being in legal custody by virtue of section 120 of this Act, to escape from such custody,
- shall be guilty of an offence.
- (2) Any person who knowingly harbours a patient who is absent without leave or is otherwise at large and liable to be retaken under this Act, or gives him any assistance with intent to prevent, hinder or interfere with his being taken into custody or returned to the hospital or other place where he ought to be, shall be guilty of an offence.
- (3) Any person guilty of an offence against this section shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

### 109 Obstruction.

- (1) Any person who refuses to allow the inspection of any premises, or without reasonable cause refuses to allow the visiting, interviewing or examination of any person, by a person authorised in that behalf by or under this Act [<sup>F163</sup>or to give access to any person to a person so authorised], or to produce for the inspection of any person so authorised

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any document or record the production of which is duly required by him, or otherwise obstructs any such person in the exercise of his functions, shall be guilty of an offence.

- (2) Without prejudice to the generality of the last foregoing subsection, any person who insists on being present when requested to withdraw by a person authorised as aforesaid to interview or examine a person in private, shall be guilty of an offence.
- (3) Any person guilty of an offence against this section shall be liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 3 on the standard scale, or both.

#### Textual Amendments

**F163** Words in s. 109(1) inserted (1.4.1996) by 1995 c. 52, ss. 4(2), 7(2), Sch. 2, para. 7

### Miscellaneous provisions

#### 110 Duty to give information to patients and nearest relatives.

- (1) The managers of a hospital in which a patient is detained under the provisions of this Act, or in the case of a patient subject to guardianship, the local authority concerned shall take such steps as are practicable to ensure that the patient understands—
  - (a) under which of those provisions he is for the time being detained or subject to guardianship and the effect of that provision; and
  - (b) what rights of appeal to the sheriff are available to him in respect of his detention or guardianship under that provision; and
  - (c) that he may make representations to the Mental Welfare Commission,
 and those steps shall be taken as soon as practicable after the commencement of the patient's detention or his reception into guardianship, or any renewal of the authority for his detention or guardianship.
- (2) The managers of a hospital 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 33 and 34 of this Act; and
  - (b) Part X and sections 115, 116 and 119 of this Act;
 and those steps shall be taken as soon as practicable after the commencement of the patient's detention in the hospital.
- (3) The steps to be taken under this section shall include giving the requisite information both orally and in writing.
- (4) The managers of a hospital in which a patient is detained as aforesaid or, as the case may be, the local authority concerned in relation to a patient subject to guardianship 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 subsection (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 56(4) of this Act shall have effect as if subsection (4) of this section were contained in part V of this Act.

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### **111 Duty of managers to inform nearest relative of discharge of detained patients.**

- (1) Where a patient liable to be detained in a hospital under this Act is to be discharged otherwise than by virtue of an order for discharge made by his nearest relative [<sup>F164</sup>or the making of a community care order], the managers of the hospital shall, subject to subsection (2) of this section, 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) of this section 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 56(4) of this Act shall have effect as if this section were contained in Part V of this Act.

#### **Textual Amendments**

**F164** Words in s. 111(1) inserted (1.4.1996) by 1995 c. 52, ss. 4(2), 7(2), Sch. 2, para. 8

### **112 Religious persuasion of patients.**

In any arrangements that may be made for the detention of a patient or his reception into guardianship in pursuance of this Act, regard shall be had to the religious persuasion to which the patient belongs or appears to belong.

### **113 Duty of sheriff to give patient opportunity to be heard.**

- (1) In any appeal to the sheriff under this Act, or in any proceedings relating to an application for admission to a hospital or for reception into guardianship, the sheriff shall give the patient an opportunity to be heard, either—
  - (a) in person (unless cause to the contrary has been shown); or
  - (b) by means of a representative.
- (2) Where it is established to the satisfaction of the sheriff that it would be prejudicial to the patient's health or treatment if he were present during any such appeal or proceedings, the sheriff may exclude the patient (but not his representative) from the whole or part of that appeal or those proceedings.

### **114 Provision for personal expenses of in-patients in hospital.**

- (1) The Secretary of State may pay to persons who are receiving treatment as in-patients (whether liable to be detained or not) in any hospital, other than a private hospital, being a hospital wholly or mainly used for the treatment of persons suffering from mental disorder, such amounts as he thinks fit in respect of their occasional personal expenses where it appears to him that they would otherwise be without resources to meet those expenses.
- (2) For the purposes of the <sup>M41</sup>National Health Service (Scotland) Act 1978, the making of payments under this section to persons for whom services are provided under that Act shall be treated as included among those services.

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### Marginal Citations

M41 1978 c. 29.

## 115 Correspondence of patients.

- (1) Any postal packet addressed to any person by a patient detained in a hospital under this Act and delivered by him for dispatch 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) of this section, if the hospital is a State hospital and the managers of the hospital consider that the postal packet is likely—
    - (i) to cause distress to the person to whom it is addressed or to any other person (not being a person on the staff of the hospital); or
    - (ii) to cause danger to any person,
 and any request for the purposes of paragraph (a) of this subsection shall be made by a notice in writing given to the managers of the hospital, the responsible medical officer or the Secretary of State.
- (2) Subject to subsection (3) of this section a postal packet addressed to a patient detained in a State hospital under 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) of this section 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 [<sup>F165</sup>or the Scottish Ministers] or member of either House of Parliament [<sup>F165</sup>or member of the Scottish Parliament][<sup>F166</sup>or of the Northern Ireland Assembly];
  - (b) the Mental Welfare Commission, any Commissioner thereof or any person appointed by them under section 3(9)(b) of this Act;
  - (c) the Parliamentary Commissioner for Administration, the Health Service Commissioner for Scotland, or the Commissioner for Local Administration in Scotland;
  - (d) any judge or clerk of court;
  - (e) a Health Board, the Common Services Agency for the Scottish Health Service or a local council established under section 7 of the <sup>M42</sup>National Health Service (Scotland) Act 1978;
  - (f) a local authority within the meaning of section 235 of the <sup>M43</sup>Local Government (Scotland) Act 1973;
  - (g) the managers of the hospital in which the patient is detained;
  - (h) any legally qualified person instructed by the patient to act as his legal advisor; or
  - (i) the European Commission on Human Rights or the European Court of Human Rights.
- (4) The managers of the hospital may open and inspect any postal packet for the purpose of determining whether it is one to which subsection (1) or (2) of this section applies and, if so, whether or not it should be withheld under that subsection; and the power to

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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) of this section the managers of the hospital shall record that fact in writing and shall, within 7 days of the date on which they withheld the postal packet or anything contained in it, notify the Mental Welfare Commission of—
  - (a) the name of the patient concerned; and
  - (b) the nature of the postal packet or contents withheld; and
  - (c) the reason for withholding the postal packet or contents.
- (6) Where a postal packet or anything contained in it is withheld under subsection (1)(b) or (2) of this section the managers of the hospital shall within 7 days give notice of that fact to the patient and, in a case under subsection (2) of this section, 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 116 of this Act.
- (7) The functions of the managers of a hospital under this section shall be discharged on their behalf by a person on the staff of the hospital appointed by them for that purpose, and different persons may be appointed to discharge different functions.
- (8) The Secretary of State may make regulations with respect to the exercise of the powers conferred by this section.
- (9) In this section and in section 116 of this Act “postal packet” has the same meaning as in the <sup>M44</sup>Post Office Act 1953; and the provisions of this section and section 116 of this Act shall have effect notwithstanding anything in section 56 of that Act.

#### Textual Amendments

**F165** Words in s. 115(3)(a) inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I**, para. 74(2) (with art. 5); S.I. 1998/3178, **art. 2**

**F166** Words in s. 115(3)(a) inserted (2.12.1999) by S.I. 1999/663, art. 2(1), **Sch. 1 para. 24** (with art. 5(1)); S.I. 1999/3208, **art. 2**

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

**C10** s. 115(3)(c) extended in part (1.7.1999) by S.I. 1999/1351, **art. 17(2)(c)** (with art. 18); S.I. 1998/3178, **art. 2**

#### Marginal Citations

**M42** 1978 c. 29.

**M43** 1973 c. 65.

**M44** 1953 c. 36.

## 116 Review of decision to withhold postal packet.

- (1) The Mental Welfare Commission shall review any decision to withhold a postal packet or anything contained in it under subsection (1)(b) or (2) of section 115 of this Act if an application in that behalf is made—
  - (a) in a case under the said subsection (1)(b), by the patient; or
  - (b) in a case under the said subsection (2), either by the patient or by the person by whom the postal packet was sent;

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and any such application shall be made within 6 months of the receipt by the applicant of the notice referred to in subsection (6) of that section.

- (2) On an application under subsection (1) of this section the Commission may direct that the postal packet or anything contained in it which is the subject of the application shall not be withheld and the managers of the hospital in which the patient is detained shall comply with any such direction.
- (3) The Secretary of State may by regulations make provision with respect to the making and determination of applications under subsection (1) of this section, including provision for the production to the Mental Welfare Commission of any postal packet which is the subject of such an application.

## **117 Entry on premises and warrant to search for and remove patients.**

- (1) Where a mental health officer or a medical commissioner has reasonable cause to believe that a person suffering from mental disorder—
  - (a) has been or is being ill-treated, neglected or kept otherwise than under control, in any place; or
  - (b) being unable to care for himself, is living alone or uncared for in any place, he may, on production of some duly authenticated document showing that he is so authorised, demand admission at all reasonable times and, if admission is not refused, may enter and inspect that place.
- (2) If it appears to a justice of the peace on sworn information in writing by such officer or commissioner as aforesaid, that admission when demanded in pursuance of subsection (1) of this section has been refused or that a refusal of such admission is apprehended, he may issue a warrant authorising any constable named therein to enter, if need be by force, any premises specified in the warrant, and to remove, if it appears proper so to do, any person suffering from mental disorder to whom subsection (1) of this section applies to a place of safety with a view to the making of an application or emergency recommendation in respect of him under Part V of this Act, or of other arrangements for his treatment or care.
- (3) If it appears to a justice of the peace on sworn information in writing by any constable or other person who is authorised by or under this Act or under section 88 of the <sup>M45</sup>Mental Health Act 1983, to take a patient to any place, or to take into custody or retake a patient who is liable to be so taken or retaken—
  - (a) that there is reasonable cause to believe that that patient is to be found on any premises; and
  - (b) that admission to the premises has been refused or that a refusal of such admission is apprehended,
 the justice may issue a warrant authorising any constable named therein to enter the premises, if need be by force, and to remove the patient.
- (4) A patient who is removed to a place of safety in the execution of a warrant issued under this section may be detained there for a period not exceeding 72 hours.
- (5) In the execution of a warrant issued under subsection (2) of this section, the constable to whom it is addressed shall be accompanied by a medical practitioner, and in the execution of a warrant issued under subsection (3) of this section the constable to whom it is addressed may be accompanied—
  - (a) by a medical practitioner;

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- (b) by any person authorised by or under this Act or section 88 of the <sup>M46</sup>Mental Health Act 1983, to take or retake the patient.
- (6) It shall not be necessary in any information or warrant under subsection (2) of this section to name the person concerned.
- (7) In this section—
- (a) any reference to a justice of the peace includes a reference to the sheriff and to a stipendiary magistrate; and
  - (b) “place of safety” means a hospital as defined by this Act or residential home for persons suffering from mental disorder or any other suitable place the occupier of which is willing temporarily to receive the patient; but shall not include a police station unless by reason of emergency there is no place as aforesaid available for receiving the patient.

#### Marginal Citations

**M45** 1983 c. 20.

**M46** 1983 c. 20.

### 118 Mentally disordered persons found in public places.

- (1) If a constable finds in a place to which the public have access a person who appears to him to be suffering from mental disorder and to be in immediate need of care or control, the constable may, if he thinks it necessary to do so in the interests of that person or for the protection of other persons, remove that person to a place of safety within the meaning of the last foregoing section.
- (2) A person removed to a place of safety under this section may be detained there for a period not exceeding 72 hours for the purpose of enabling him to be examined by a medical practitioner and of making any necessary arrangements for his treatment or care.
- (3) Where a patient is removed as aforesaid, it shall, where practicable, be the duty of the constable who has so removed him without delay to inform some responsible person residing with the patient and the nearest relative of the patient of that removal.

### 119 Code of practice.

- (1) The [<sup>F167</sup>Scottish Ministers] 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 health officers in relation to the detention and discharge of patients in and from hospitals under this Act, [<sup>F168</sup>guardianship under this Act and after-care services provided under section 8 of this Act for patients subject to community care orders]; 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) Before preparing the code or making any alteration in it the [<sup>F167</sup>Scottish Ministers] shall consult such bodies as appear to him to be concerned.



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- (3) The [<sup>F167</sup>Scottish Ministers] shall lay copies of the code and of any alteration in the code before [<sup>F167</sup>Scottish Parliament]; and if [<sup>F167</sup>Scottish Parliament] passes a resolution requiring the code or any alteration in it to be withdrawn the [<sup>F167</sup>Scottish Ministers] shall withdraw the code or alteration and, where he withdraws the code, shall prepare a code in substitution for the one which is withdrawn.
- (4) No resolution shall be passed by [<sup>F167</sup>the Scottish Parliament] under subsection (3) of this section in respect of a code or alteration after the expiration of the period of 40 days beginning with the day on which a copy of the code or alteration was laid before [<sup>F167</sup>the Scottish Parliament]; but for the purposes of this subsection no account shall be taken of any time during which [<sup>F167</sup>the Scottish Parliament] is dissolved [<sup>F167</sup> or is in recess] for more than four days.
- (5) The [<sup>F167</sup>Scottish Ministers] shall publish the code as for the time being in force.

#### Textual Amendments

**F167** Words in s. 119 substituted (1.7.1999) by S.I. 1999/1820, art. 4, Sch. 2 pt. I, para. 74(3) (with art. 5); S.I. 1998/3178, art. 2

**F168** Words in s. 119(1)(a) inserted (1.4.1996) by 1995 c. 52, ss. 4(2), 7(2), Sch. 2 para. 9

### Supplementary

#### 120 Provisions as to custody, conveyance and detention.

- (1) Any person required or authorised by or by virtue of this Act to be conveyed to any place or to be kept in custody or detained in a place of safety or at any place to which he is taken under section 68(5) of this Act shall, while being so conveyed, detained or kept, as the case may be, be deemed to be in legal custody.
- (2) A constable or any other person required or authorised by or by virtue of this Act to take any person into custody, or to convey or detain any person shall, for the purposes of taking him into custody or conveying or detaining him, have all the powers, authorities, protection and privileges which a constable has within the area for which he acts as constable.
- (3) In this section “convey” includes any other expression denoting removal from one place to another.

#### 121 Retaking of patients escaping from custody.

- (1) If any person being in legal custody by virtue of section 120 of this Act escapes, he may, subject to the provisions of this section, be retaken—
  - (a) in any case, by the person who had his custody immediately before the escape, or by any constable or mental health officer;
  - (b) if at the time of the escape he was liable to be detained in a hospital, or subject to guardianship under this Act, by any other person who could take him into custody under section 28 or 44 of this Act if he had absented himself without leave.
- (2) A person who escapes as aforesaid when liable to be detained or subject to guardianship as mentioned in paragraph (b) of subsection (1) of this section (not being

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a person subject to a restriction order under Part VI of this Act or an order or direction having the like effect as such an order) shall not be retaken under this section after the expiration of the period within which he could be retaken under section 28 or 44 of this Act if he had absented himself without leave on the day of the escape; and subsection (3) of the said section 28 and subsection (2) of the said section 44 shall apply, with the necessary modifications, accordingly.

- (3) A person who escapes while being taken to or detained in a place of safety under section 117 or 118 of this Act shall not be retaken under this section after the expiration of the period of 72 hours beginning with the time when he escapes or the period during which he is liable to be so detained whichever expires first.
- (4) This section, so far as it relates to the escape of a person liable to be detained in a hospital, shall apply in relation to a person who escapes—
  - (a) while being taken to a hospital in pursuance of an application for admission approved by the sheriff;
  - (b) while being taken to or from a hospital in pursuance of section 29 of this Act, or of any order, direction or authorisation under Parts VI and VII of this Act; or
  - (c) while being taken to or detained in a place of safety in pursuance of an order under Part VI of this Act pending his admission to a hospital,as if he were liable to be detained in that hospital and, if he had not previously been received therein, as if he had been so received.
- (5) In computing for the purposes of sections 22 and 60 of this Act the periods therein mentioned relating to the removal, admission or reception of patients, no account shall be taken of any time during which the patient is at large and liable to be retaken by virtue of this section.
- (6) Section 31 (in the case of a patient who is liable to be detained in a hospital) and section 48 (in the case of a patient who is subject to guardianship) of this Act shall, with any necessary modifications, apply in relation to a patient who is at large and liable to be retaken by virtue of this section as it applies in relation to a patient who is absent without leave within the meaning of section 28 or section 44 of this Act respectively, and references therein to the said section 28 or the said section 44 (as the case may be) shall be construed accordingly.

#### **[<sup>F169</sup>121A] Warrants for arrest of escaped mental patients.**

- (1) On an application being made to a justice alleging that any person is a convicted mental patient liable to be retaken under section 18, 38(7) or 138 of the Mental Health Act 1983, section 28, 44 or 121 of the this Act or [<sup>F170</sup>Articles 29, 45(6) and 132 of the <sup>M47</sup>Mental Health (Northern Ireland) Order 1986] (retaking of mental patients who are absent without leave or have escaped from custody), the justice may issue a warrant to arrest him and bring him before any sheriff.
- (2) Where a person is brought before a sheriff in pursuance of a warrant for his arrest under this section, the sheriff shall, if satisfied that he is the person named in the warrant and if satisfied that he is a convicted mental patient as mentioned in subsection (1) above, order him to be kept in custody or detained in a place of safety pending his admission to hospital.
- (3) Section 137 of the Mental Health Act 1983 and [<sup>F171</sup>Article 131 of the Mental Health (Northern Ireland) Order 1986] (custody, conveyance and detention of certain mental patients) shall apply to a convicted mental patient required by this section to be

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conveyed to any place or to be kept in custody or detained in a place of safety as they apply to a person required by or by virtue of the said Act of 1983 or 1961, as the case may be, to be so conveyed, kept or detained.

(4) In this section—

“convicted mental patient” means a person liable after being convicted of an offence to be detained under Part III of the Mental Health Act 1983, Part VI of this Act, Part III of [<sup>F172</sup>the Mental Health (Northern Ireland) Order 1986] or section 52, 59(1) to (10) or 60 of the Criminal Procedure (Scotland) Act 1995 in pursuance of a hospital order or transfer direction together with an order or direction restricting his discharge or a person liable to be detained under section 38 of the said Act of 1983;

“place of safety” has the same meaning as in Part III of the said Act of 1983 or Part III of [<sup>F172</sup>the said Order of 1986] or section 297 of the said Act of 1995, as the case may be.]

#### Textual Amendments

**F169** S. 121A inserted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4**, para. 50(9)

**F170** Words in s. 121A(1) substituted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1**, para. 9(14)(a); S.I. 1997/1712, art. 3, **Sch.**

**F171** Words in s. 121A(3) substituted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1**, para. 9(14)(b); S.I. 1997/1712, art. 3, **Sch.**

**F172** S. 121A(4): Words in definition of “convicted mental patient” and “place of safety” substituted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1**, para. 9(14)(c); S.I. 1997/1712, art. 3, **Sch.**

#### Marginal Citations

**M47** S.I. 1986/595 (N.I. 4).

## 122 Protection for acts done in pursuance of this Act.

- (1) No person shall be liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings to which he would have been liable apart from this section in respect of any act purporting to be done in pursuance of this Act or any regulations thereunder, unless the act was done in bad faith or without reasonable care.
- (2) Outwith Scotland, section 139 of the <sup>M48</sup>Mental Health Act 1983 (which relates to protection for acts done in pursuance of that Act) shall apply in respect of any act purporting to be done in pursuance of this Act or any regulations thereunder as it applies in relation to an act purporting to be done in pursuance of that Act or any regulations or rules thereunder.

#### Marginal Citations

**M48** 1983 c. 20.

## 123 Inquiries.

The Secretary of State may cause an inquiry to be held in any case where he thinks it advisable to do so in connection with any matter arising under this Act, and subsections

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(2) to (9) of section 210 of the <sup>M49</sup>Local Government (Scotland) Act 1973 (which relates to the holding of local inquiries) shall apply to any inquiry held under this Act.

#### Marginal Citations

M49 1973 c. 65.

### 124 General provisions as to regulations and orders.

- (1) Any power of the Secretary of State to make regulations or orders 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.

### 125 Interpretation.

- (1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

“absent without leave” has the meaning assigned to it by section 59 of this Act;

[<sup>F173</sup>“after-care officer” has the meaning assigned to it by section 35A(4) (c) of this Act;]

“application for admission” and “guardianship application” have the meanings respectively assigned to them by sections 18 and 37 of this Act;

[<sup>F173</sup>“community care application” and “community care order” have the meanings respectively assigned to them by section 35A(1) of this Act;]

“health service” has the meaning given by section 108(1) of the <sup>M50</sup>National Health Service (Scotland) Act 1978;

“hospital” means—

- (a) any hospital vested in the Secretary of State under the National Health Service (Scotland) Act 1978;

[<sup>F174</sup>(aa) any hospital managed by a National Health Service trust established under section 12A of the said Act of 1978;]

- (b) any private hospital registered under Part IV of this Act; and

- (c) any State hospital;

[<sup>F175</sup>“hospital direction” has the meaning assigned to it by section 59A(1) of the <sup>M51</sup>Criminal Procedure (Scotland) Act 1995;]

“hospital order” and “guardianship order” have the meanings respectively assigned to them by [<sup>F176</sup>section 58 of the Criminal Procedure (Scotland) Act 1995];

[<sup>F177</sup>“hospital unit” means any part of a hospital which is treated as a separate unit;]

“local authority” has the same meaning as in the <sup>M52</sup>Social Work (Scotland) Act 1968;

“managers of a hospital” means—

- (a) in relation to a hospital vested in the Secretary of State under the National Health Service (Scotland) Act 1978, the Health Board responsible for the administration of that hospital;

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- [<sup>F178</sup>(aa) in relation to a hospital managed by a National Health Service trust established under section 12A (National Health Service trusts) of the said Act of 1978, the directors of the trust;]
- (b) in relation to a private hospital registered under Part IV of this Act, the person or persons carrying on the hospital;
- (c) in relation to a State hospital, the Secretary of State or, if the Secretary of State has appointed a State Hospital Management Committee to manage that hospital, that Committee, or, if the management of that hospital has been delegated to a Health Board [<sup>F179</sup>, to a Special Health Board, to an NHS trust] or to the Common Services Agency for the Scottish Health Service, that Board [<sup>F179</sup>, trust] or Agency, as the case may be;
- “medical practitioner” means a registered medical practitioner within the meaning of Schedule 1 to the <sup>M53</sup>Interpretation Act 1978;
- “medical treatment” includes nursing, and also includes care and training under medical supervision;
- “mental health officer” means an officer of a local authority appointed to act as a mental health officer for the purposes of this Act;
- “nearest relative”, in relation to a patient, has the meaning assigned to it in Part V of this Act;
- “patient” (except in Part IX of this Act) means a person suffering or appearing to be suffering from mental disorder;
- “private hospital” has the meaning assigned to it in Part IV of this Act;
- “responsible medical officer” has the meaning assigned to it by section 59 of this Act;
- “restriction direction” has the meaning assigned to it by section 72 of this Act;
- “restriction order” means an order made under [<sup>F180</sup>section 59 of the Criminal Procedure (Scotland) Act 1995];
- [<sup>F173</sup>“special medical officer” has the meaning assigned to it by section 35A(4)(b) of this Act]
- <sup>F181</sup> . . .
- “State hospital” has the meaning assigned to it in [<sup>F182</sup>section 102(2) of the National Health Service (Scotland) Act 1978];
- <sup>F181</sup> . . .
- “transfer direction” has the meaning assigned to it by section 71 of this Act;
- “transfer order” has the meaning assigned to it by section 70 of this Act;
- “voluntary organisation” means a body the activities of which are carried on otherwise than for profit, but does not include any public or local authority.
- (2) Unless the context otherwise requires, any reference in this Act to any other enactment is a reference thereto as amended, and includes a reference thereto as extended or applied by or under any other enactment, including this Act.
- (3) Without prejudice to the last foregoing subsection, any reference in this Act to an enactment of the Parliament of Northern Ireland, or to an enactment which that Parliament has power to amend, shall be construed, in relation to Northern Ireland, as a reference to that enactment as amended by any Act of that Parliament, whether passed before or after this Act.
- (4) In relation to a person who is liable to be detained or subject to guardianship by virtue of an order or direction under Part VI of this Act or under [<sup>F183</sup>section 54, 57, 58

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or 59 of the Criminal Procedure (Scotland) Act 1995], any reference in this Act to any enactment contained in Part V of this Act shall be construed as a reference to that enactment as it applies to that person by virtue of the said Part VI or any of the provisions of the said sections.

- (5) Any reference, however expressed, in this Act to a patient admitted to or detained in, or liable to be admitted to or detained in, a hospital or received, or liable to be received, into guardianship under this Act (other than under Part V thereof) or under Part VI of this Act shall include a reference to a patient who is admitted to or detained in, or liable to be admitted to or detained in, a hospital or received or liable to be received into guardianship under the <sup>M54</sup>Criminal Procedure (Scotland) Act 1975.

### Extent Information

- E3** For extent of s. 125 see ss. 128, 129

### Textual Amendments

- F173** S. 125(1): Definitions of “after-care officer”, “community care application”, “community care order” and “special medical officer” inserted (1.4.1996) by 1995 c. 52, ss. 4(2), 7(2), **Sch. 2 Para. 10**
- F174** In the definition of “hospital” paragraph (aa) inserted by National Health Service and Community Care Act 1990 (c. 9, SIF 113:2), s. 66(1), **Sch. 9 para. 28(4)(a)**
- F175** S. 125(1): Definition of “hospital direction” inserted (S.)(1.1.1998) by 1997 c. 48, s. 7(5); S.I. 1997/2323 art. 4, Sch.2
- F176** S. 125: Words in definition of “hospital order” and “guardianship order” substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 50(10)(a)** (with Sch. 3, paras. 1, 3)
- F177** S. 125(1): Definition of “hospital unit” inserted (1.1.1998) by 1997 c. 48, s. 62(1), **Sch. 1**, para. 9(15); S.I. 1997/2323 art. 4, Sch. 2
- F178** In the definition of “managers of a hospital” paragraph (aa) inserted by National Health Service and Community Care Act 1990 (c. 9, SIF 113:2), s. 66(1), **Sch. 9 para. 28(4)(b)**
- F179** Words in definition of “managers of a hospital” inserted (1.10.1999) by 1999 c. 8, s. 65, **Sch. 4 para. 70**; S.S.I. 1999/90, art. 2, **Sch. 1**
- F180** S. 125: Words in definition of “restriction order” substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 50(10)(b)** (with Sch. 3, paras. 1, 3)
- F181** The definitions of “standard scale” and “statutory maximum” in s. 125(1) repealed (5.11.1993) by 1993 c. 50, s. 1(1), **Sch. 1 Pt. XIV**
- F182** S. 125(1): Words in definition of “state hospital” substituted (1.4.1995) by 1994 c. 16, s. 2(5); S.I. 1995/576, **art. 2**
- F183** Words in s. 125(4) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 50(10)(C)** (with Sch. 3, paras. 1, 3)

### Marginal Citations

- M50** 1978 c. 29.  
**M51** 1995 c.46.  
**M52** 1968 c. 49.  
**M53** 1978 c. 30.  
**M54** 1975 c. 21.

## 126 Preservation of amendments.

- (1) Notwithstanding the repeal by this Act of the <sup>M55</sup>Mental Health (Scotland) Act 1960 (“the 1960 Act”)—

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- (a) the definition of “nursing home” in section 10 of the <sup>M56</sup>Nursing Homes Registration (Scotland) Act 1938 (which defines, *inter alia*, the expression “nursing home”) shall continue to have effect with the amendment made by section 15(2) of the 1960 Act (which substituted a new paragraph (ii) for paragraphs (ii) and (iii)) but subject to the amendment made to that definition, in consequence of this Act, by Schedule 3 to this Act; and
  - (b) the amendments made by Schedule 4 of the 1960 Act shall, insofar as not otherwise repealed, continue to have effect but subject to any amendments made to them, in consequence of this Act, by Schedule 3 to this Act or by any other enactment.
- (2) Notwithstanding the repeal by this Act of the <sup>M57</sup>Mental Health (Amendment) (Scotland) Act 1983 (“the 1983 Act”)—
- (a) paragraph (bb) of section 64(5) of the <sup>M58</sup>Local Government (Scotland) Act 1973 (which was inserted by section 7(2) of the 1983 Act) shall continue to have effect but subject to the amendment made, in consequence of this Act, by Schedule 3 to this Act;
  - (b) Sections 174, 174A, 175, 176, 178, 184, 280, 375A, 376, 377, 379, 385, 443, and 462 of, and paragraph 4(b) of Schedule 5 to, the Criminal Procedure (Scotland) Act 1975 shall continue to have effect with the amendments made by the 1983 Act but subject to any amendments made, in consequence of this Act, by Schedule 3 to this Act;
  - <sup>F184</sup>(c) .....
  - (d) section 80 of the <sup>M59</sup>Mental Health Act 1983 shall continue to have effect with the amendments made by paragraph 1 of Schedule 2 to the 1983 Act.

**Textual Amendments**  
**F184** S. 126(2)(c) repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, **Sch. 1, Pt. 1** (with ss. 191-195, 202)

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**Marginal Citations**  
**M55** 1960 c. 61.  
**M56** 1938 c. 73.  
**M57** 1983 c. 39.  
**M58** 1973 c. 65.  
**M59** 1983 c. 20.

**127 Consequential and transitional provisions and repeals.**

- (1) Schedule 3 (consequential amendments) and Schedule 4 (transitional and saving provisions) to this Act shall have effect but without prejudice to the operation of sections 15 to 17 of the <sup>M60</sup>Interpretation Act 1978 (which relate to the effect of repeals).
- (2) The enactments specified in Schedule 5 to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

**Marginal Citations**  
**M60** 1978 c. 30.



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## **128 Application to England and Wales.**

The following provisions of this Act shall extend to England and Wales, that is to say—

- section 10;
- section 68(5);
- section 77;
- section 78;
- section 84 and, so far as applied by that section, sections 28, 32 and 121;
- section 108, except so far as it relates to patients subject to guardianship;
- section 120;
- section 122(2);
- section 127 and Schedules 2 and 5 so far as they relate to enactments extending to England and Wales;

but except as aforesaid, and except so far as it relates to the interpretation or commencement of the said provisions, this Act shall not extend to England and Wales.

## **129 Application to Northern Ireland.**

The following provisions of this Act shall extend to Northern Ireland, that is to say—

- sections 80 and 81;
- section 84 and, so far as applied by that section, sections 28, 32 and 121;
- section 85;
- section 95;
- section 108, except so far as it relates to patients subject to guardianship;
- section 120;
- section 122(2);
- section 127 and Schedules 2 and 5 so far as they relate to enactments extending to Northern Ireland;

but except as aforesaid, and except so far as it relates to the interpretation or commencement of the said provisions, this Act shall not extend to Northern Ireland.

## **130 Short title and commencement.**

This Act may be cited as the Mental Health (Scotland) Act 1984 and shall come into force on 30th September 1984.

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## SCHEDULES

### SCHEDULE 1

Section 91(2).

#### STATE HOSPITAL MANAGEMENT COMMITTEES

##### PART I

###### *Constitution*

- 1 A State Hospital Management Committee shall be a body corporate and shall have a common seal.
- 2 A State Hospital Management Committee shall consist of a chairman appointed by the Secretary of State and such number of other members so appointed as the Secretary of State thinks fit.
- 3 Not less than one half of the members of a State Hospital Management Committee shall be persons other than medical practitioners.
- 4 The application of the seal of a State Hospital Management Committee to any document shall be attested by at least one member of the Committee and by the person for the time being acting as secretary of the Committee.
- 5 Every document purporting to be an instrument issued by a State Hospital Management Committee and to be sealed and attested as aforesaid or to be duly signed on behalf of the Committee, shall be received in evidence and shall be deemed to be such an instrument without further proof, unless the contrary is shown.

##### PART II

###### *Supplementary Provisions*

- 6 Regulations may make provision—
  - (a) as to the appointment, tenure and vacation of office of the chairman and other members of a State Hospital Management Committee;
  - (b) as to the delegation of functions to committees or sub-committees [<sup>F185</sup>constituted in accordance with the regulations]; and
  - (c) as to the procedure of a State Hospital Management Committee, its committees and sub-committees.

#### Textual Amendments

**F185** Words substituted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 27, [Sch. 5 para. 13](#)

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- 7 The proceedings of a State Hospital Management Committee shall not be invalidated by any vacancy in membership or by any defect in the appointment of any member thereof.
- 8 The following provisions of the <sup>M61</sup>National Health Service (Scotland) Act 1978 shall apply to a State Hospital Management Committee as they apply to a Health Board, that is to say—
- (a) section 77 (which gives default powers to the Secretary of State);
  - (b) section 78 (which gives emergency powers to the Secretary of State);
  - (c) sections 85(1), (2A), (4) and (6) (which contain provisions as to expenditure being met by the Secretary of State);
  - (d) sections 85A(1) and (3) (which impose financial duties); . . . <sup>F186</sup>
  - (e) section 86 (which provides for the auditing and examination of accounts) [<sup>F187</sup>; and]
  - [<sup>F187</sup>(f) paragraphs 7A to 7C and 8A of Schedule 1 (which relate to the transfer of staff).]

#### Textual Amendments

**F186** Words repealed by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 27, [Sch. 5 para. 13](#)

**F187** [Sch. 1 para. 8\(f\)](#) and word inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 27, [Sch. 5 para. 13](#)

#### Marginal Citations

**M61** [1978 c. 29](#).

## SCHEDULE 2

### APPLICATION OF PROVISIONS OF PART V TO PATIENTS SUBJECT TO HOSPITAL OR GUARDIANSHIP ORDERS

#### PART I

HOSPITAL ORDER WITHOUT RESTRICTION ORDER (SECTION 60(1));  
TRANSFER FROM PRISON WITHOUT RESTRICTION (SECTION 71).

- 1 Sections 27, 31, [<sup>F188</sup>to 31B,]32, [<sup>F189</sup>35A,] 53, 54, 55, 56 and 58 shall apply in relation to the patient without modification.

#### Extent Information

**E4** For extent of Sch. 2, see [ss. 128, 129](#)

#### Textual Amendments

**F188** Words in [Sch. 2 para. 1](#) inserted (1.4.1996) by [1995 c. 52, ss. 5\(11\)\(a\), 7\(2\)](#)

**F189** Words in [Sch. 2 para. 1](#) inserted (1.4.1996) by [1995 c. 52, ss. 4\(2\), 7\(2\), Sch. 2, para. 5\(a\)](#)

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- 2 Sections 22, 28, 29, 30, 33, 35, [F190 35B,] 57 and 59 shall apply in relation to the patient with the modifications specified in paragraphs 3 to 10 of this Part of this Schedule.

#### Extent Information

**E5** For extent of Sch. 2, see ss. 128, 129

#### Textual Amendments

**F190** Words in Sch. 2, para. 2 inserted (1.4.1996) by 1995 c. 52, ss. 4(2), 7(2), Sch. 2, para. 5(b)

- 3 In section 22—
- (a) subsection (1) shall be omitted; and
  - (b) in subsection (2) for the reference to an application for admission there shall be substituted a reference to the order or direction by virtue of which the patient is liable under Part VI of this Act to be detained.
- 4 In section 28 subsection (4) shall be omitted.
- 5 In section 29(3) for the words from “as follows” to the end of the subsection there shall be substituted the words “as if the order or direction by virtue of which he was liable under Part VI of this Act to be detained before being transferred were an order or direction for his admission or removal to the hospital to which he is transferred.”.
- 6 In section 30—
- (a) in subsection (1), for the words “an application for admission” and “day on which he was so admitted” there shall be substituted the words “an order or direction by virtue of which he is liable under Part VI of this Act to be detained” and “date of the relevant order or direction” respectively; and
  - (b) in subsection (3), for the words “this Part” there shall be substituted the words “Part VI”.
- 7 In section 33—
- (a) in subsection (1), for the words “this Part” there shall be substituted the words “Part VI”;
  - (b) in subsection (4), for “26, [F191 26A,] 30 or 34” there shall be substituted “30”; and
  - (c) in subsection (5) the words “by the nearest relative of the patient or” shall be omitted. [F192; and
  - (d) subsection (7) shall be omitted]

#### Textual Amendments

**F191** Word in Sch. 2 Pt. I para. 7(b) inserted (9.3.1992) by Mental Health (Detention) (Scotland) Act 1991 (c. 47, SIF 85), s. 3(6)(a)(i); S.I. 1992/357, art.2

**F192** Sch. 2 Pt. I para. 7(d) and word “; and” preceding it inserted (9.3.1992) by Mental Health (Detention) (Scotland) Act 1991 (c. 47, SIF 85), s. 3(6)(a)(ii); S.I. 1992/357, art.2

- 8 In section 35(1)—
- (a) the words “any of sections 26, 30 or 34 of” shall be omitted;
  - (b) for the words “any of the said sections” there shall be substituted the words “Part V of this Act”; and

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(c) the words from “whether” to “both” shall be omitted.

[<sup>F193</sup>8A In section 35B(1) for the words “an application for admission” there shall be substituted the words “an order or direction by virtue of which he is liable under Part VI of this Act to be detained.”]

**Textual Amendments**

**F193** Sch. 2 para. 8A inserted (1.4.1996) by 1995 c. 52, s. 4(2), Sch. 2 para. 5(c)

9 In section 57(4) for paragraphs (a) and (b) there shall be substituted the words “on the date when the patient ceases to be liable to be detained in pursuance of the order or direction by virtue of which he was liable under Part VI of this Act to be detained (otherwise than on being transferred in pursuance of section 29(1)(b) or (c) of this Act.”.

10 In section 59 subsections (1)(b) [<sup>F194</sup>, (2) and (4)] shall be omitted.

**Textual Amendments**

**F194** Words in Sch. 2 Pt. I para. 10 substituted (9.3.1992) by Mental Health (Detention) (Scotland) Act 1991 (c. 47, SIF 85), s. 3(6)(a)(iii); S.I. 1992/357, art.2

## PART II

HOSPITAL ORDER WITH RESTRICTION ORDER, (SECTION 62) AND ORDERS OR DIRECTIONS HAVING THE LIKE EFFECT (SECTIONS 69, 70 AND 72).

1 Sections 53, 54, 56 and 58 shall apply in relation to the patient without modification.

2 Section 22, 27, 28, 29, 55, 57 and 59 shall apply in relation to the patient with the modifications specified in paragraphs 3 to 9 of this Part of this Schedule.

3 In section 22—

- (a) subsection (1) shall be omitted;
- (b) in subsection (2) for the words “application under this Part” there shall be substituted the words “order or direction by virtue of which he is liable under Part VI of this Act to be detained” and paragraph (b) shall be omitted;
- (c) subsections (3) and (4) shall be omitted.

4 In section 27—

- (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 (2) the word “either” and the words from “or from any specified period” to the end of the subsection shall be omitted; and
- [<sup>F195</sup>(bb) subsections (2A) to (2C) shall be omitted;]
- (c) in subsection (5) after the words “responsible medical officer” and after the words “that officer” there shall be inserted the words “or the Secretary of State”.

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### Textual Amendments

**F195** Sch. 2, Pt. II para. 4(bb) inserted (1.4.1996) by 1995 c. 52, ss. 6(4), 7(2)

5 In section 28 subsections (3) and (4) shall be omitted.

[<sup>F196</sup>6 In section 29—

(a) for subsection (1) there shall be substituted—

(“ A patient who is for the time being detained in a hospital or a hospital unit specified in a restriction order or a hospital direction or notified to the Secretary of State under section 62(1A) or 62A(2) of this Act may, with the consent of the Secretary of State, be transferred by the managers of the hospital—

(a) to another hospital, with the consent of the managers of that hospital; or

(b) to another hospital unit—

(i) in the hospital managed by them; or

(ii) in another hospital with the consent of the managers of that hospital.”;

(b) in subsection (2)—

(i) after the word “hospital” there shall be inserted the words “within which or”; and

(ii) the words after “transferred” shall be omitted; and

(c) in subsection (3) for the words from “as follows” to the end of the subsection there shall be substituted the words “as if the order or direction by virtue of which he was liable under Part VI of this Act to be detained before being transferred were an order or direction for his admission or removal to the hospital or hospital unit to which he is transferred.”.]

### Textual Amendments

**F196** Sch. 2 Pt. II para. 6 substituted (1.1.1998) by 1997 c. 48, s. 62(1), Sch. 1 para. 9(16) (with s. 33(6)); S.I. 1997/2323, art. 4, Sch. 2

7 In section 55 subsection (3) shall be omitted.

8 In section 57(4) for paragraphs (a) and (b) there shall be substituted the words “on the date when the patient ceases to be liable to be detained in pursuance of the order or direction by virtue of which he was liable under Part VI of this Act to be detained (otherwise than on being transferred in pursuance of section 29(1)(b) or (c) of this Act).”.

9 In section 59, subsections (1)(b) [<sup>F197</sup>, (2) and (4)] shall be omitted.

### Textual Amendments

**F197** Words in Sch. 2 Pt. II para. 9 substituted (9.3.1992) by Mental Health (Detention) (Scotland) Act 1991 (c. 47, SIF 85), s. 3(6)(b); S.I. 1992/357, art. 2

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### PART III

#### GUARDIANSHIP ORDER (SECTION 61(2))

- 1 Sections 43, 44, 46, 48, [F198 to 48B], 53, 55, 56 and 58 shall apply in relation to the patient without modification.

#### Textual Amendments

F198 Words in Sch. 2 Pt. III para. 1 inserted (1.4.1996) by 1995 c. 52, ss. 5(11)(a), 7(2)

- 2 Sections 41, 45, 47, 49, 50, 52, 57 and 59 shall apply in relation to the patient with the modifications specified in paragraphs 3 to 10 of this Part of this Schedule.
- 3 In section 41—
- (a) in subsection (1) for the words “an application under this Part of this Act” and “the application” there shall be substituted the words “a guardianship order” and “the order” respectively; and
  - (b) in subsection (2) for the words from “Where” to “shall” and “named in the application” there shall be substituted the words “Where a guardianship order has been made in respect of a patient the order shall” and “named in the order” respectively.
- 4 In section 45(1) and (3) for the words “guardianship application” there shall be substituted the words “guardianship order”.
- 5 In section 47—
- (a) in subsection (1) for the words “guardianship application” and “the day on which he was so received” there shall be substituted the words “guardianship order” and “the date of the order” respectively;
  - (b) in subsection (3) for the words “this Part” there shall be substituted the words “Part VI”.
- 6 In section 49(1) for the words “this Part” there shall be substituted the words “Part VI”.
- 7 In section 50—
- (a) in subsection (1) for the words “this Part” there shall be substituted the words “Part VI”;
  - (b) in subsection (5) for the words “sections 47 or 51” there shall be substituted the words “section 47”; and
  - (c) subsection (6) shall be omitted.
- 8 In section 52(1)—
- (a) for the words “either of sections 47 or 51” and “either of the said sections” there shall be substituted the words “section 47” and “the said section” respectively; and
  - (b) the words from “whether” to “both” shall be omitted.
- 9 In section 57(4) for paragraphs (a) and (b) there shall be substituted the words “on the date when the patient ceases to be subject to guardianship under this Act”.
- 10 In section 59(1)—
- (a) in subsection (1) paragraph (a) shall be omitted; and



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- (b) in subsection (2) for paragraphs (a) and (b) there shall be substituted the words “to the local authority to whose guardianship he is subject or who approved his guardian.” [F199]; and
- (c) subsection (4) shall be omitted.]

#### Textual Amendments

**F199** Sch. 2 Pt. III para. 10(c) and word “; and” preceding it inserted (9.3.1992) by [Mental Health \(Detention\) \(Scotland\) Act 1991 \(c. 47, SIF 85\)](#), [s. 3\(6\)\(c\)](#); S.I. 1992/357, [art.2](#)

### SCHEDULE 3

Section 127(1).

#### CONSEQUENTIAL AMENDMENTS

##### *The Improvement of Land Act 1864 (c. 114)*

- 1 In section 68 for the words “Mental Health (Scotland) Act 1960” there shall be substituted the words “Mental Health (Scotland) Act 1984”.

##### *The Colonial Prisoners Removal Act 1884 (c. 31)*

- 2 In section 10(4)—
- (a) in paragraph (a) for the words “section sixty-four of the Mental Health (Scotland) Act 1960” there shall be substituted the words “section 69 of the Mental Health (Scotland) Act 1984”; and
  - (b) in paragraph (b) for the words “sixty-six” and “sixty-seven” there shall be substituted “71” and “72” respectively.

##### *Nursing Homes Registration (Scotland) Act 1938 (c. 73)*

- 3 In section 10(1)(ii) for the words “Mental Health (Scotland) Act 1960” there shall be substituted the words “Mental Health (Scotland) Act 1984”.

##### *The Polish Resettlement Act 1947 (c. 19)*

- 4 In section 11(3)(b) for the words “Mental Health (Scotland) Act 1960” there shall be substituted the words “Mental Health (Scotland) Act 1984”.

##### *The Army Act 1955 (c. 18)*

- 5 In section 116(7) for the words “section 64 of the Mental Health (Scotland) Act 1960” there shall be substituted the words “section 69 of the Mental Health (Scotland) Act 1984”.

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*The Air Force Act 1955 (c. 19)*

- 6 In section 116(7) for the words “section 64 of the Mental Health (Scotland) Act 1960” there shall be substituted the words “section 69 of the Mental Health (Scotland) Act 1984”.

*The Naval Discipline Act 1957 (c. 53)*

- 7 In section 71(6) for the words “section 64 of the Mental Health (Scotland) Act 1960” there shall be substituted the words “section 69 of the Mental Health (Scotland) Act 1984”.

*Local Government (Scotland) Act 1966 (c. 51)*

- 8 In Part II of Schedule 4 in paragraph 25 for the words “section 15(4) of the Mental Health (Scotland) Act 1960” there shall be substituted the words “Section 12(3) of the Mental Health (Scotland) Act 1984”.

*The Criminal Justice Act 1967 (c. 80)*

- 9 In section 72—
- (a) in subsection (1)(b) for the words “section 36 or 106 of the Mental Health (Scotland) Act 1960” there shall be substituted the words “section 28, 44 or 121 of the Mental Health (Scotland) Act 1984”;
  - (b) in subsection (3) for the words “section 105 of the Mental Health (Scotland) Act 1960” and “1960” there shall be substituted the words “section 120 of the Mental Health (Scotland) Act 1984” and “1984” respectively; and
  - (c) in subsection (4) for the words “Part V of the Mental Health (Scotland) Act 1960” and “or 1960” there shall be substituted the words “Part VI of the Mental Health (Scotland) Act 1984” and “or Part VI of the said Act of 1984” respectively.

*The Courts-Martial (Appeals) Act 1968 (c. 20)*

- 10 In section 20(4) for the words “Part V of the Mental Health (Scotland) Act 1960” there shall be substituted the words “Part VI of the Mental Health (Scotland) Act 1984”.
- 11 In section 23(1) for the words “Section 64 of the Mental Health (Scotland) Act 1960” there shall be substituted the words “section 69 of the Mental Health (Scotland) Act 1984”.
- 12 In section 25(4) for the words “Mental Health (Scotland) Act 1960” there shall be substituted the words “Mental Health (Scotland) Act 1984”.
- 13 In section 43(4) for the words “Mental Health (Scotland) Act 1960” there shall be substituted the words “Mental Health (Scotland) Act 1984”.

*The Social Work (Scotland) Act 1968 (c. 49)*

- 14 In section 1(4)(b) for the words “Mental Health (Scotland) Act 1960” there shall be substituted the words “Mental Health (Scotland) Act 1984”.
- 15 In section 16(3) for the words “Mental Health (Scotland) Act 1960” there shall be substituted the words “Mental Health (Scotland) Act 1984”.

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- 16 In section 46—
- (a) in subsection (1) for the words “Part IV of the Mental Health (Scotland) Act 1960” there shall be substituted the words “Part V of the Mental Health (Scotland) Act 1984”; and
  - (b) in subsection (2) for the words “section 23(3) of the said Act of 1960” there shall be substituted the words “section 17(2) of the said Act of 1984”.

- 17 In section 94(1)—
- (a) in the definition of “hospital” for the words “Mental Health (Scotland) Act 1960” and “Part VII of the said Act of 1960” there shall be substituted the words “Mental Health (Scotland) Act 1984” and “Part VIII of the said Act of 1984” respectively;
  - (b) in the definition of “mental disorder” for the words “section 6 of the Mental Health (Scotland) Act 1960” there shall be substituted the words “section 1(2) of the Mental Health (Scotland) Act 1984”; and
  - (c) in the definition of “mental health officer” for the words “said Act of 1960” there shall be substituted the words “said Act of 1984”.

*The Local Authority Social Services Act 1970 (c. 42)*

- 18 In Schedule 1 for the words “Mental Health (Scotland) Act 1960 (c.61.)” there shall be substituted the words “Mental Health (Scotland) Act 1984”.

*Chronically Sick and Disabled Persons Act 1970 (c. 44)*

- 19 In section 18(2) for the words “section 6 of the Mental Health (Scotland) Act 1960” there shall be substituted the words “section 1(2) of the Mental Health (Scotland) Act 1984”.

*The Guardianship Act 1973 (c. 29)*

- 20 In section 10(7) for the words “Mental Health (Scotland) Act 1960” there shall be substituted the words “Mental Health (Scotland) Act 1984”.

*Local Government (Scotland) Act 1973 (c. 65)*

- 21 In section 64(5) for paragraph (bb) there shall be substituted the following paragraph—
- “(bb) section 9 of the Mental Health (Scotland) Act 1984 (appointment of mental health officers);”.

*The Rehabilitation of Offenders Act 1974 (c. 53)*

- 22 In section 5(7) for the words “Part V of the Mental Health (Scotland) Act 1960” there shall be substituted the words “Part VI of the Mental Health (Scotland) Act 1984”.

*The Criminal Procedure (Scotland) Act 1975 (c. 21)*

- 23 In section 13—

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- (a) in subsection (1)(b) for the words “section 36 or 106 of the Mental Health (Scotland) Act 1960” there shall be substituted the words “section 28, 44 or 121 of the Mental Health (Scotland) Act 1984”;
  - (b) in subsection (3) for the words “section 105 of the Mental Health (Scotland) Act 1960” and “1960” where it second appears there shall be substituted the words “section 120 of the Mental Health (Scotland) Act 1984” and “1984” respectively; and
  - (c) in subsection (4) for the words “Part V of the Mental Health (Scotland) Act 1960” there shall be substituted the words “Part VI of the Mental Health (Scotland) Act 1984”.
- 24 In section 25(2) for the words “Part IV of the Mental Health (Scotland) Act 1960” there shall be substituted the words “Part V of the Mental Health (Scotland) Act 1984”.
- 25 In section 174A(1) for the words “section 6(1) of the Mental Health (Scotland) Act 1960” there shall be substituted the words “Section 1(2) of the Mental Health (Scotland) Act 1984”.
- 26 In section 175(1) for the words “23(1)”, “25(1A)(a)” and “Mental Health (Scotland) Act 1960” there shall be substituted the words “17(1)”, “36(a)” and “Mental Health (Scotland) Act 1984” respectively.
- 27 In section 176(1) for the words “section 27 of the Mental Health (Scotland) Act 1960” there shall be substituted the words “section 20 or section 39 of the Mental Health (Scotland) Act 1984”.
- 28 In section 178—
- (a) in subsection (1) for the words “section 60(3) of the Mental Health (Scotland) Act 1960” there shall be substituted the words “section 62(1) of the Mental Health (Scotland) Act 1984”;
  - (b) in subsection (2) for the words “section 27 of the Mental Health (Scotland) Act 1960” there shall be substituted the words “section 20 or section 39 of the Mental Health (Scotland) Act 1984”; and
  - (c) in subsection (3) for the words “section 58(4) of the Mental Health (Scotland) Act 1960” there shall be substituted the words “section 60(4) of the Mental Health (Scotland) Act 1984”.
- 29 In section 184—
- (a) in subsection (1) for the words “section 27 of the Mental Health (Scotland) Act 1960” and “Part V of that Act” there shall be substituted the words “section 20 or 39 of the Mental Health (Scotland) Act 1984” and “Part VI of that Act” respectively;
  - (b) in subsection 2(a) for the words “Mental Health (Scotland) Act 1960” there shall be substituted the words “Mental Health (Scotland) Act 1984”.
- 30 In section 322—
- (a) in subsection (1)(b) for the words “section 36 or 106 of the Mental Health (Scotland) Act 1960” there shall be substituted the words “section 28, 44, or 121 of the Mental Health (Scotland) Act 1984”;
  - (b) in subsection (3) for the words “section 105 of the Mental Health (Scotland) Act 1960” and “1960” where it second occurs there shall be substituted the words “section 120 of the Mental Health (Scotland) Act 1984” and “1984” respectively; and

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- (c) in subsection (4) for the words “Part V of the Mental Health (Scotland) Act 1960” there shall be substituted the words “Part VI of the Mental Health (Scotland) Act 1984”.
- 31 In section 330(2) for the words “Part IV of the Mental Health (Scotland) Act 1960” there shall be substituted the words “Part V of the Mental Health (Scotland) Act 1984”.
- 32 In section 375(A)(1) for the words “section 6(1) of the Mental Health (Scotland) Act 1960” there shall be substituted the words “section 1(2) of the Mental Health (Scotland) Act 1984”.
- 33 In section 376(1) for the words “23(1)”, “25(1)(a)” and “Mental Health (Scotland) Act 1960” there shall be substituted the words “17(1)”, “36(a)” and “Mental Health (Scotland) Act 1984” respectively.
- 34 In section 377(1) for the words “section 27 of the Mental Health (Scotland) Act 1960” there shall be substituted the words “section 20 or section 39 of the Mental Health (Scotland) Act 1984”.
- 35 In section 379—
- (a) in subsection (1) for the words “section 60(3) of the Mental Health (Scotland) Act 1960” there shall be substituted the words “section 62(1) of the Mental Health (Scotland) Act 1984”;
  - (b) in subsection (2) for the words “section 27 of the Mental Health (Scotland) Act 1960” there shall be substituted the words “section 20 or section 39 of the Mental Health (Scotland) Act 1984”; and
  - (c) in subsection (3) for the words “section 58(4) of the Mental Health (Scotland) Act 1960” there shall be substituted the words “section 62(1) of the Mental Health (Scotland) Act 1984”.
- 36 In section 385—
- (a) in subsection (1) for the words “section 27 of the Mental Health (Scotland) Act 1960” and “Part V of that Act” there shall be substituted the words “section 20 or 39 of the Mental Health (Scotland) Act 1984” and “Part VI of that Act” respectively;
  - (b) in subsection 2(a) for the words “Mental Health (Scotland) Act 1960” there shall be substituted the words “Mental Health (Scotland) Act 1984”.
- 37 In section 462—
- (a) in the definition of “hospital” for the words “Part III of the Mental Health (Scotland) Act 1960” there shall be substituted the words “Part IV of the Mental Health (Scotland) Act 1984”;
  - (b) in the definition of “responsible medical officer” for the words “section 53 of the Mental Health (Scotland) Act 1960” there shall be substituted the words “section 59 of the Mental Health (Scotland) Act 1984”; and
  - (c) in the definition of “State hospital” for the words “Part VII of the Mental Health (Scotland) Act 1960” there shall be substituted the words “Part VIII of the Mental Health (Scotland) Act 1984”.

*The Adoption (Scotland) Act 1978 (c. 28)*

- 38 In section 32(3)(c) for the words “section 23 of the Mental Health (Scotland) Act 1960” there shall be substituted the words “section 17 or 39 of the Mental Health (Scotland) Act 1984”.

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*The National Health Service (Scotland) Act 1978 (c. 29)*

39 In section 100(1) for the words “Mental Health (Scotland) Act 1960” there shall be substituted the words “Mental Health (Scotland) Act 1984”.

40 In section 102(1) for the words “Mental Health (Scotland) Act 1960” there shall be substituted the words “Mental Health (Scotland) Act 1984”.

41 In section 108(1) in the definitions of “illness” and “state hospital” for the words “Mental Health (Scotland) Act 1960” there shall be substituted the words “Mental Health (Scotland) Act 1984”.

F200 42 .....

**Textual Amendments**

**F200** Sch. 3 para. 42 repealed (5.2.1994) by 1993 c. 46, s. 20, Sch.3

*The Child Care Act 1980 (c. 5)*

43 In section 79(5)(d) for the words “Mental Health (Scotland) Act 1960” there shall be substituted the words “Mental Health (Scotland) Act 1984”.

*The Reserve Forces Act 1980 (c. 9)*

44 In paragraph (2)(b) of Schedule 2 for the words “Mental Health (Scotland) Act 1960” there shall be substituted the words “Mental Health (Scotland) Act 1984”.

*The Concessionary Travel for Handicapped Persons (Scotland) Act 1980 (c. 29)*

45 In section 2(1)(a) for the words “Mental Health (Scotland) Act 1960” there shall be substituted the words “Mental Health (Scotland) Act 1984”.

*Solicitors (Scotland) Act 1980 (c. 46)*

46 In section 18(1) for the words “Mental Health (Scotland) Act 1960” there shall be substituted the words “Mental Health (Scotland) Act 1984”.

*Tenants’ Rights, Etc. (Scotland) Act 1980 (c. 52)*

47 In section 1(10)(o) for the words “section 89 of the Mental Health (Scotland) Act 1960” there shall be substituted the words “section 90 of the Mental Health (Scotland) Act 1984”.

*The Contempt of Court Act 1981 (c. 49)*

48 In paragraph (10)(b) of Schedule 1 for the words “section 68(1) of the Mental Health (Scotland) Act 1960” there shall be substituted the words “section 73(1) of the Mental Health (Scotland) Act 1984”.

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*The Mental Health Act 1983 (c. 20)*

- 49 In section 69(2)(a) for the words “section 73(2) of the Mental Health (Scotland) Act 1960” there shall be substituted the words “section 77(2) of the Mental Health (Scotland) Act 1984”.
- 50 In section 79(1)(c) for the words “section 73(2) of the Mental Health (Scotland) Act 1960” there shall be substituted the words “section 77(2) of the Mental Health (Scotland) Act 1984”.
- 51 In section 80, in subsections (4) and (7) for the words “Mental Health (Scotland) Act 1960” there shall be substituted the words “Mental Health (Scotland) Act 1984”.
- 52 In section 88(3)(a) for the words “Mental Health (Scotland) Act 1960” there shall be substituted the words “Mental Health (Scotland) Act 1984”.
- 53 In section 90 for the words “Part VI of the Mental Health (Scotland) Act 1960” there shall be substituted the words “Part VII of the Mental Health (Scotland) Act 1984”.
- 54 In section 92(3) for the words “Part VI of the Mental Health (Scotland) Act 1960” there shall be substituted the words “Part VII of the Mental Health (Scotland) Act 1984”.
- 55 In section 116(2) for the words “Mental Health (Scotland) Act 1960” there shall be substituted the words “Mental Health (Scotland) Act 1984”.
- 56 In section 135—
- (a) in subsection (2) for the words “Mental Health (Scotland) Act 1960” there shall be substituted the words “Mental Health (Scotland) Act 1984”.
  - (b) in subsection (4) for the words “Mental Health (Scotland) Act 1960” there shall be substituted the words “Mental Health (Scotland) Act 1984”.

SCHEDULE 4

Section 127(1).

TRANSITIONAL AND SAVINGS PROVISIONS

- 1 Where, apart from this paragraph, anything done under or in pursuance of, for the purposes of, any enactment which is repealed by this Act (in this Schedule referred to as “a repealed enactment”) would cease to have effect by virtue of that repeal it shall have effect as if it had been done under, or in pursuance of, or for the purposes of, the corresponding provision of this Act.
- 2 Without prejudice to any express amendment by this Act, where any enactment or document refers either expressly or by implication, to a repealed enactment, the reference shall, except where the context otherwise requires, be construed as, or as including, a reference to the corresponding provision of this Act.
- 3 Where any period of time specified in a repealed enactment 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.
- 4 (1) Nothing in this Act shall affect a repealed enactment in its operation in relation to offences committed before the commencement of this Act.
- (2) Where an offence, for the continuance of which a penalty was provided, has been committed under a repealed enactment proceedings may, in the same manner as if the offence had been committed under the corresponding provision of this Act, be



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taken under this Act in respect of the continuance, after the commencement of this Act, of the offence.

- 5 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 <sup>M62</sup>Mental Health (Scotland) Act 1960 immediately before 30th September 1984 as if the provisions of this Act which derive from provisions amended by section 5 of the <sup>M63</sup>Mental Health (Amendment) (Scotland) Act 1983 and any amendments in Schedule 2 to that Act which are consequential on those sections were included in this Act in the form which 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**

**M62** 1960 c. 61.

**M63** 1983 c. 39.

- 6 This Act shall apply to any application made before 30th September 1984 as if the provisions of this Act which derive from provisions amended by sections 8(1) or (2) or (3b) or (3c) or 9 of the <sup>M64</sup>Mental Health (Amendment) (Scotland) Act 1983 and any amendments in Schedule 2 to that Act which are consequential on those sections were included in this Act in the form which the provisions from which they derive would take if those amendments were disregarded.

**Marginal Citations**

**M64** 1983 c. 39.

- 7 Where on 30th September 1984 a person who has not attained the age of 16 years is subject to guardianship by virtue of a guardianship application the authority for his guardianship shall terminate on that day.
- 8 This Act shall apply to any emergency recommendation or admission following thereon made before 30th September 1984 as if the provisions of this Act which derive from provisions amended by section 12 of the Mental Health (Amendment) (Scotland) Act 1983 and the repeal in Schedule 3 to that Act which is consequential on that section were included in this Act in the form which the provisions from which they derive would take if those amendments were disregarded; but, when the period during which a patient may be detained in pursuance of such an emergency recommendation expires, it shall not be competent for the patient to be further detained immediately thereafter under the said provisions of this Act in the form which they take as so amended.
- 9 This Act shall apply in relation to any renewal of authority made before 30th September 1984 as if the provisions of this Act which derive from provisions amended by section 16(a) to (d) of the Mental Health (Amendment) (Scotland) Act 1983 and any amendments in Schedule 2 to that Act which are consequential on that section were included in this Act in the form which the provisions from which they derive would take if those amendments were disregarded; and, where an authority has been renewed before that date for a period of 2 years of which less than 16 months has expired on that date, that period shall expire at the end of 18 months from the date on which it began.

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- 10 This Act shall apply in relation to the definition of “nearest relative” in any proceedings commenced before 30th September 1984 as if the provisions of this Act which derive from provisions amended by section 19 of the Mental Health (Amendment) (Scotland) Act 1983 and any amendments in Schedule 2 to that Act which are consequential on that section were included in this Act in the form which the provisions from which they derive would take if those amendments were disregarded.
- 11 (1) Section 98(3) of this Act shall not apply to any treatment given to a patient in the period of 6 months beginning with 30th September 1984 if—
- (a) the detention of the patient began before the beginning of that period; and
  - (b) that subsection has not been complied with in respect of any treatment previously given to him in that period.
- (2) The Secretary of State may by order reduce the length of the period mentioned in sub-paragraph (1) of this paragraph.
- 12 In the case of a patient who is detained at 30th September 1984 the steps to be taken under section 110 shall be taken as soon as practicable after that date, except where such steps have already been taken.
- 13 Section 113 of this Act shall not apply in relation to proceedings commenced before 30th September 1984.

## SCHEDULE 5

Section 127(2).

## REPEALS

Chapter	Short title	Extent of repeal
1960 c. 61.	The Mental Health (Scotland) Act 1960.	The whole Act.
1961 (N.I.) c. 15.	The Mental Health (Northern Ireland) Act 1961.	In Schedule 5, Part II.
1963 c. 39.	The Criminal Justice (Scotland) Act 1963.	In Schedule 5, the entry relating to the Mental Health (Scotland) Act 1960.
1967 c. 28.	The Superannuation (Miscellaneous Provisions) Act 1967.	Section 14.
1968 c. 20.	The Courts-Martial (Appeals) Act 1968.	In Schedule 4, the entry relating to the Mental Health (Scotland) Act 1960.
1968 c. 46.	The Health Services and Public Health Act 1968.	Section 75.
1968 c. 49.	The Social Work (Scotland) Act 1968.	In Schedule 8, paragraphs 50 to 59.

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1969 c. 39.	The Age of Majority (Scotland) Act 1969.	In Schedule 1, Part 1, the entry relating to the Mental Health (Scotland) Act 1960.
1969 c. 54.	The Children and Young Persons Act 1969.	In Schedule 5, paragraphs 42 and 43.
1971 c. 77.	The Immigration Act 1971.	Section 30.
1972 c. 58.	The National Health Service (Scotland) Act 1972.	Section 52(1).
		In Schedule 6, paragraphs 105 to 117.
1974 c. 46.	The Friendly Societies Act 1974.	In Schedule 9, paragraph 17.
1975 c. 21.	The Criminal Procedure (Scotland) Act 1975.	In Schedule 9, paragraphs 17 to 29.
1976 c. 67.	The Sexual Offences (Scotland) Act 1976.	In Schedule 1, the entry relating to the Mental Health (Scotland) Act 1960.
1976 c. 83.	The Health Services Act 1976.	Section 19(3), (4)(c).
1978 c. 29.	The National Health Service (Scotland) Act 1978.	In Schedule 16, paragraphs 12 and 13.
1980 c. 5.	The Child Care Act 1980.	In Schedule 5, paragraphs 15 and 16.
1980 c. 44.	The Education (Scotland) Act 1980.	In Schedule 4, paragraph 2.
1980 c. 62.	The Criminal Justice (Scotland) Act 1980.	In section 80, subsection (4).
1982 c. 51.	The Mental Health (Amendment) Act 1982.	In Schedule 3 in Part I, paragraph 31.
1983 c. 20.	The Mental Health Act 1983.	In Schedule 4, paragraph 16.
1983 c. 39.	The Mental Health (Amendment) (Scotland) Act 1983.	The whole Act.

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