

*Status: Point in time view as at 01/10/2007. This version of this schedule contains provisions that are not valid for this point in time.*  
*Changes to legislation: There are currently no known outstanding effects for the Mental Health Act 2007, SCHEDULE 4. (See end of Document for details)*

## SCHEDULES

VALID FROM 03/11/2008

### SCHEDULE 4

Section 32

#### SUPERVISED COMMUNITY TREATMENT: AMENDMENTS TO OTHER ACTS

##### *Administration of Justice Act 1960*

1 After section 5 of the Administration of Justice Act 1960 (c. 65) insert—

##### **“5A Power to order continuation of community treatment order**

- (1) Where the defendant in any proceedings from which an appeal lies under section 1 of this Act would, but for the decision of the court below, be liable to recall, and immediately after that decision the prosecutor is granted, or gives notice that he intends to apply for, leave to appeal, the court may make an order under this section.
- (2) For the purposes of this section, a person is liable to recall if he is subject to a community treatment order (within the meaning of the Mental Health Act 1983) and, when that order was made, he was liable to be detained in pursuance of an order or direction under Part 3 of that Act.
- (3) An order under this section is an order providing for the continuation of the community treatment order and the order or direction under Part 3 of that Act so long as any appeal under section 1 of this Act is pending.
- (4) Where the court makes an order under this section, the provisions of the Mental Health Act 1983 with respect to persons liable to recall (including provisions as to the extension of the community treatment period, the removal or discharge of community patients, the revocation of community treatment orders and the re-detention of patients following revocation) shall apply accordingly.
- (5) An order under this section shall (unless the appeal has previously been disposed of) cease to have effect at the expiration of the period for which the defendant would, but for the decision of the court below, have been—
  - (a) liable to recall; or
  - (b) where the community treatment order is revoked, liable to be detained in pursuance of the order or direction under Part 3 of the Mental Health Act 1983.
- (6) Where the court below has power to make an order under this section, and either no such order is made or the defendant is discharged by virtue of subsection (4) or (5) of this section before the appeal is disposed of,

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the defendant shall not be liable to be again detained as the result of the decision of the Supreme Court on the appeal.”

*Criminal Appeal Act 1968*

- 2 (1) The Criminal Appeal Act 1968 (c. 19) is amended as follows.
- (2) In section 8 (supplementary provisions as to retrial), after subsection (3A) insert—
- “(3B) If the person ordered to be retried—
- (a) was liable to be detained in pursuance of an order or direction under Part 3 of the Mental Health Act 1983;
- (b) was then made subject to a community treatment order (within the meaning of that Act); and
- (c) was subject to that community treatment order immediately before the determination of his appeal,
- the order or direction under Part 3 of that Act and the community treatment order shall continue in force pending the retrial as if the appeal had not been allowed, and any order made by the Court of Appeal under this section for his release on bail shall have effect subject to the community treatment order.”
- (3) After section 37 insert—
- “37A Continuation of community treatment order on appeal by the Crown**
- (1) The following provisions apply where, immediately after a decision of the Court of Appeal from which an appeal lies to the Supreme Court, the prosecutor is granted, or gives notice that he intends to apply for, leave to appeal.
- (2) If, but for the decision of the Court of Appeal, the defendant would be liable to recall, the Court of Appeal may make an order under this section.
- (3) For the purposes of this section, a person is liable to recall if he is subject to a community treatment order (within the meaning of the Mental Health Act 1983) and, when that order was made, he was liable to be detained in pursuance of an order or direction under Part 3 of that Act.
- (4) An order under this section is an order providing for the continuation of the community treatment order and the order or direction under Part 3 of that Act so long as an appeal to the Supreme Court is pending.
- (5) Where an order is made under this section the provisions of the Mental Health Act 1983 with respect to persons liable to recall (including provisions as to the extension of the community treatment period, the removal or discharge of community patients, the revocation of community treatment orders and the re-detention of patients following revocation) shall apply accordingly.
- (6) An order under this section shall (unless the appeal has previously been disposed of) cease to have effect at the expiration of the period for which the defendant would, but for the decision of the Court of Appeal, have been—
- (a) liable to recall; or

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(b) where the community treatment order is revoked, liable to be detained in pursuance of the order or direction under Part 3 of the Mental Health Act 1983.

(7) Where the Court of Appeal have power to make an order under this section, and either no such order is made or the defendant is discharged, by virtue of subsection (5) or (6) of this section, before the appeal is disposed of, the defendant shall not be liable to be again detained as the result of the decision of the Supreme Court on the appeal.”

*Courts-Martial (Appeals) Act 1968*

3 (1) The Courts-Martial (Appeals) Act 1968 (c. 20) is amended as follows.

(2) In section 20 (implementation of authority for retrial etc), after subsection (4) insert—

“(4A) Where retrial is authorised in the case of a person who—

- (a) was liable to be detained in pursuance of an order or direction under Part 3 of the Mental Health Act 1983;
- (b) was then made subject to a community treatment order (within the meaning of that Act); and
- (c) was subject to that community treatment order immediately before the date of the authorisation,

the order or direction under Part 3 of that Act and the community treatment order shall continue in force until the relevant time (as defined in subsection (3A)) as if his conviction had not been quashed.

(4B) An order under subsection (1E)(a) is of no effect in relation to a person for so long as he is subject to a community treatment order.”

(3) In section 43 (detention of accused), after subsection (3) insert—

“(3A) The relevant provisions of the Mental Health Act 1983 with respect to community treatment orders (within the meaning of that Act) shall also apply for the purposes of subsection (3).”

(4) After that section insert—

**“43A Continuation of community treatment order**

(1) The Appeal Court may make an order under this section where—

- (a) but for the decision of the Appeal Court, the accused would be liable to recall; and
- (b) immediately after that decision, the Director of Service Prosecutions is granted leave to appeal or gives notice that he intends to apply for leave to appeal.

(2) For the purposes of this section, a person is liable to recall if he is subject to a community treatment order (within the meaning of the Mental Health Act 1983) and, when that order was made, he was liable to be detained in pursuance of an order or direction under Part 3 of that Act.

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- (3) An order under this section is an order providing for the continuation of the community treatment order and the order or direction under Part 3 of that Act so long as any appeal to the Supreme Court is pending.
- (4) Where the Appeal Court makes an order under this section, the relevant provisions of the Mental Health Act 1983 with respect to persons liable to recall (including provisions as to the extension of the community treatment period, the removal or discharge of community patients, the revocation of community treatment orders and the re-detention of patients following revocation) shall apply accordingly.
- (5) An order under this section shall (unless the appeal has been previously disposed of) cease to have effect at the end of the period for which the accused would, but for the decision of the Appeal Court, have been—
  - (a) liable to recall; or
  - (b) where the community treatment order is revoked, liable to be detained in pursuance of the order or direction under Part 3 of the Mental Health Act 1983.
- (6) Where the Appeal Court has power to make an order under this section and either no such order is made or the accused is discharged by virtue of subsection (4) or (5) above before the appeal is disposed of, the accused shall not be liable to be again detained as a result of the decision of the Supreme Court on the appeal.”

*Juries Act 1974*

In Schedule 1 to the Juries Act 1974 (c. 23) (mentally disordered persons and persons disqualified from serving), at the end of paragraph 2 insert “ or subject to a community treatment order under section 17A of that Act ”.

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