



# Mental Health Act 1959

## 1959 CHAPTER 72

### PART VI

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

##### *Removal to and from Scotland*

#### **81 Removal to Scotland of patients not subject to restriction**

- (1) If it appears to the Minister, in the case of a patient who is for the time being liable to be detained or subject to guardianship under this Act, being—
- (a) a patient who is so liable or subject by virtue of an application under Part IV of this Act;
  - (b) a patient who is so liable or subject by virtue of a hospital order or transfer direction without an order or direction restricting discharge;
  - (c) a patient who is so liable or subject by virtue of a guardianship order or a direction under section seventy-nine of this Act,

that it is in the patient's interests to remove him to Scotland, and that arrangements have been made for his reception into a mental hospital, asylum or house in Scotland where persons of unsound mind may be detained under the Lunacy (Scotland) Acts, 1857 to 1913, or for placing him in an institution for defectives or under guardianship within the meaning of the Mental Deficiency and Lunacy (Scotland) Act, 1913, the Minister may authorise the removal of the patient to Scotland and give any necessary directions for his conveyance to his destination.

- (2) Where a person removed in pursuance of an authority under this section is received into any such hospital, asylum or house as is mentioned in subsection (1) of this section, then—
- (a) if, immediately before his removal, he was liable to be detained in a hospital within the meaning of Part IV of this Act, he shall on his reception be treated for all purposes as having been so received by virtue of an order under section fourteen of the Lunacy (Scotland) Act, 1862;

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*Status: This is the original version (as it was originally enacted).*

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- (b) if, immediately before his removal, he was subject to guardianship under this Act, he shall on his reception be treated for all purposes as a person in whose case an order under section thirteen of the Lunacy (Scotland) Act, 1866 is in force ;

and for the purposes of paragraph (b) of subsection (1) of section nine of the said Act of 1866 the person entitled to discharge a patient transferred to Scotland under the foregoing provisions of this section shall be ascertained as if the person at whose instance he is detained were dead.

- (3) Where a person removed in pursuance of an authority under this section is placed in an institution for defectives or under guardianship within the meaning of the Mental Deficiency and Lunacy (Scotland) Act, 1913, then—
- (a) if before the removal the patient was liable to be detained or subject to guardianship as mentioned in paragraph (a) of subsection (1) of this section, he shall on being so placed be treated for all purposes as having been so placed by his parent or guardian under section four of that Act;
- (b) if before the removal the patient was liable to be detained or subject to guardianship as mentioned in paragraph (b) or paragraph (c) of the said subsection (1), he shall on being so placed be treated for all purposes as if he were detained in the institution or placed under guardianship in pursuance of a judicial order under section seven of the Mental Deficiency and Lunacy (Scotland) Act, 1913, made on the date on which he is so placed.

## **82 Removal to Scotland of patients subject to restriction on discharge**

- (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 by virtue of an order or direction under Part V of this Act, not being a patient to whom section eighty-one of this Act applies, that it is in the patient's interests to remove him to Scotland and that arrangements have been made for him in accordance with the following provisions of this section, the Secretary of State may by warrant authorise the removal of the patient to Scotland, and may give any necessary directions for his conveyance to his destination.
- (2) Where the patient is liable to be detained by virtue of a hospital order and an order restricting his discharge is in force, arrangements may be made for his reception into a State Mental Hospital within the meaning of the Criminal Justice (Scotland) Act, 1949, or a mental hospital, asylum or house where persons of unsound mind may be detained in pursuance of an order under section fourteen of the Lunacy (Scotland) Act, 1862, or for placing him in a State institution within the meaning of section twenty-eight of the Mental Deficiency and Lunacy (Scotland) Act, 1913.
- (3) Where the patient is liable to be detained by virtue of a transfer direction and a direction restricting his discharge is in force, arrangements may be made for his reception into a hospital eligible to receive patients under section six of the Criminal and Dangerous Lunatics (Scotland) Amendment Act, 1871, or under subsection (1) of section four of the Criminal Lunatics (Scotland) Act, 1935, or for placing him in an institution for defectives within the meaning of the Mental Deficiency and Lunacy (Scotland) Act, 1913.
- (4) Where the patient is liable to be detained in a hospital by virtue of a direction under section seventy-one of this Act, arrangements may be made for his reception into a State Mental Hospital within the meaning of the Criminal Justice (Scotland) Act, 1949,

or a mental hospital, asylum or house where persons of unsound mind may be detained in pursuance of an order under section fourteen of the Lunacy (Scotland) Act, 1862.

### **83 Application of Scottish enactments to patients removed under s. 82**

(1) Where a patient is removed to Scotland in pursuance of such arrangements as are mentioned in subsection (2) of section eighty-two of this Act, then—

- (a) if in pursuance of those arrangements he is received into a mental hospital, asylum or house where persons of unsound mind may be detained in pursuance of an order under section fourteen of the Lunacy (Scotland) Act, 1862, subsection (2) of section eighty-one of this Act shall apply to him as it applies to a patient removed under that section to such a hospital, asylum or house as aforesaid, but, unless the Secretary of State otherwise directs, any power to discharge the patient, to grant him leave of absence or to transfer him from the hospital, asylum or house shall, so long as the order restricting the discharge of the patient would have continued in force apart from his removal, be exercisable only with the consent of the Secretary of State ;
- (b) if in pursuance of those arrangements he is placed in a State institution, he shall be treated as if he were detained therein in pursuance of a judicial order under section seven of the Mental Deficiency and Lunacy (Scotland) Act, 1913, made on the date on which he is so placed;

and for the purposes of paragraph (a) of this subsection any reference in section fourteen of the Lunacy (Scotland) Act, 1862, to a mental hospital shall be construed as including a reference to a State Mental Hospital.

(2) Where a patient is removed in pursuance of such arrangements as are mentioned in subsection (3) of the said section eighty-two, then—

- (a) if in pursuance of those arrangements he is received into a hospital being a State Mental Hospital, he shall be treated as if he had been ordered to be detained therein under subsection (1) of section four of the Criminal Lunatics (Scotland) Act, 1935 ;
- (b) if in pursuance of those arrangements he is detained in any other hospital described in that subsection, he shall be treated as if he had been ordered to be removed to that hospital under section six of the Criminal and Dangerous Lunatics (Scotland) Amendment Act, 1871 ;
- (c) if in pursuance of those arrangements he is removed to an institution for defectives, he shall be treated as if he were detained under an order for his transfer to that institution made under section ten of the Mental Deficiency and Lunacy (Scotland) Act, 1913, on the date of his removal;

and in any such case the patient shall be treated as if the sentence or order by virtue of which he was detained before the transfer direction was given had been imposed or made by a court in Scotland.

(3) Where a patient is removed in pursuance of such arrangements as are mentioned in subsection (4) of the said section eighty-two, the patient shall be treated as if he had been ordered by a court in Scotland to be kept in strict custody until Her Majesty's pleasure shall be known in pursuance of section eighty-seven or section eighty-eight of the Lunacy (Scotland) Act, 1857, and as if an order for his safe custody in the place of reception had been made on behalf of Her Majesty under the said section eighty-seven or the said section eighty-eight.

## **84 Removal to England and Wales of state mental patients**

- (1) In subsection (2) of section sixty-four of the Criminal Justice (Scotland) Act, 1949 (which provides for the removal of state mental patients from mental hospitals in Scotland to mental hospitals in England and Wales) the reference to a mental hospital in England shall be construed as a reference to any hospital within the meaning of this Act,
- (2) Where, under the said subsection (2) an order is made by the Secretary of State for the removal of a state mental patient from a mental hospital in Scotland to a hospital in England and Wales, then—
  - (a) if the patient is a person ordered to be kept in safe custody during Her Majesty's pleasure in pursuance of section eighty-seven or section eighty-eight of the Lunacy (Scotland) Act, 1857, the patient shall, on his reception into the hospital in England and Wales, be treated as if he had been removed to that hospital in pursuance of a direction of the Secretary of State under section seventy-one of this Act;
  - (b) in any other case, the patient shall be treated, on his reception into the hospital in England and Wales, as if he had been removed to that hospital in pursuance of a transfer direction under Part V of this Act, and a direction restricting his discharge may be given under section seventy-four of this Act accordingly;

and in any such case the patient shall be treated as if the sentence or order by virtue of which he was detained before being removed under this section had been imposed or made by a court in England and Wales.

### *Removal to and from Northern Ireland*

## **85 Removal to Northern Ireland of patients not subject to restriction**

- (1) If it appears to the Minister, in the case of a patient who is for the time being liable to be detained or subject to guardianship as mentioned in subsection (1) of section eighty-one of this Act, that it is in the patient's interest to remove him to Northern Ireland and that arrangements have been made—
  - (a) for his reception into a mental hospital within the meaning of the Mental Health Act (Northern Ireland), 1948; or
  - (b) for his reception into an institution within the meaning of that Act or for placing him under the guardianship of the Northern Ireland Hospitals Authority;

the Minister may authorise the removal of the patient to Northern Ireland and give any necessary directions for his conveyance to his destination.

- (2) Where a person is removed under this section to Northern Ireland, and is received in pursuance of the arrangements into a mental hospital, he shall, on his reception, be treated for all purposes as having been so received in pursuance of a judicial order made under Part II of the Mental Health Act (Northern Ireland), 1948, on the date on which he is so received.
- (3) Where a person is removed under this section to Northern Ireland, and is received in pursuance of the arrangements into an institution within the meaning of the said Act of 1948, or is placed under the guardianship of the Northern Ireland Hospitals Authority, he shall, on being so received or placed, be treated for all purposes as if he had been

so received or placed in pursuance of a judicial order made under Part III of that Act on the date on which he is so received or placed.

## **86 Removal to Northern Ireland of patients subject to restriction on discharge**

- (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 by virtue of an order or direction under Part V of this Act, not being a patient to whom section eighty-five of this Act applies, that it is in the patient's interests to remove him to Northern Ireland and that arrangements have been made—
- (a) for his reception into a mental hospital within the meaning of the Mental Health Act (Northern Ireland), 1948; or
  - (b) for his reception into an institution within the meaning of that Act,
- the Secretary of State may by warrant authorise the removal of the patient to Northern Ireland, and may give any necessary directions for his conveyance to his destination.

- (2) Where a patient liable to be detained by virtue of a hospital order and subject to an order restricting his discharge is removed under this section, then—
- (a) if in pursuance of the arrangements he is received into a mental hospital, he shall be treated as if he were subject to a judicial order made under Part II of the said Act of 1948 on the date of his reception and continued under section fourteen of that Act on any occasion on which it would otherwise have expired during the continuance of the order restricting his discharge;
  - (b) if in pursuance of the arrangements he is received into an institution within the meaning of that Act, he shall be treated as if he were subject to a judicial order made under Part III of the said Act on the date of his reception and continued under section thirty-nine of that Act on any occasion on which it would otherwise have expired during the continuance of the order restricting his discharge, and section thirty-four of that Act (which provides for the revocation or variation of judicial orders) shall have effect accordingly;

but in either case, unless the Ministry of Home Affairs for Northern Ireland otherwise directs, any power to discharge the patient, to grant him leave of absence or to transfer him from the hospital or institution shall, during the continuance of the order restricting the discharge of the patient, be exercisable only with the consent of that Ministry.

- (3) Where a patient liable to be detained by virtue of a transfer direction and subject to a direction restricting his discharge is removed under this section, he shall, upon being received into such a hospital or institution as aforesaid in pursuance of the arrangements, be treated as if the sentence or order by virtue of which he was detained before the transfer direction was given had been imposed or made by a court in Northern Ireland, and as if—
- (a) where the patient is received into such a mental hospital as aforesaid, he had been transferred to that hospital under section sixteen of the Prison Act (Northern Ireland) 1953;
  - (b) where he is received into such an institution as aforesaid, he had been transferred to that institution under section V thirty-seven of the said Act of 1948.
- (4) Where a patient who is liable to be detained by virtue of a direction under section seventy-one of this Act is removed under this section, he shall, on his reception into a mental hospital or institution in pursuance of the arrangements, be treated as if he had been ordered by a court in Northern Ireland to be kept in safe custody during the

pleasure of the Governor of Northern Ireland in pursuance of section seventeen of the Lunacy (Ireland) Act, 1821, or of section two of the Trial of Lunatics Act, 1883, as the case may be, and as if—

- (a) where he is received into a mental hospital, an order had been made by or on behalf of the Governor of Northern Ireland for his safe custody in that hospital;
  - (b) where he is received into an institution within the meaning of the said Act of 1948, he had been transferred to that institution under section thirty-seven of that Act.
- (5) References in this section to the continuance of the order restricting the discharge of a patient are references to the time for which that order would have continued in force apart from removal of the patient under this section.

### **87 Removal to England and Wales of patients other than criminal patients**

- (1) If it appears to the Ministry of Health and Local Government for Northern Ireland, in the case of a patient being—
- (a) a certified patient within the meaning of the Mental Health Act (Northern Ireland), 1948, or
  - (b) a person declared under Part III of that Act to be a person requiring special care (other than a person to whom section eighty-eight of this Act applies),
- that it is in the patient's interests to remove him to England and Wales, and that arrangements have been made for his admission to a hospital or for placing him under guardianship there, the Ministry may authorise his removal to England and Wales, and may give any necessary directions for his conveyance to his destination.
- (2) Where a patient removed under this section is received into a hospital in pursuance of such arrangements as aforesaid, this Act shall apply to him as if he had been admitted to the hospital in pursuance of an application for admission for treatment under Part IV of this Act, and had been so admitted on the date on which he is so received.
- (3) Where a patient so removed is received into guardianship in pursuance of such arrangements as aforesaid, this Act shall apply to him as if he had been received into guardianship in pursuance of a guardianship application under the said Part IV accepted on the date on which he is so received.

### **88 Removal to England and Wales of criminal patients**

- (1) If it appears to the Ministry of Home Affairs for Northern Ireland, in the case of a patient being a criminal lunatic within the meaning of this section, that it is in the patient's interests to remove him to England and Wales, and that arrangements have been made for his admission to a hospital there, the Ministry may authorise his removal to England and Wales, and may give any necessary directions for his conveyance to his destination.
- (2) Where a patient removed under this section is received into a hospital in England and Wales in pursuance of such arrangements as aforesaid, then—
- (a) if the patient is a person ordered to be kept in custody under section seventeen of the Lunacy (Ireland) Act, 1821, or under section two of the Trial of Lunatics Act, 1883, he shall, on his reception into the hospital in . England and Wales, be treated as if he had been removed to that hospital in pursuance of a direction under section seventy-one of this Act;

- (b) in any other case, the patient shall be treated, on his reception into the hospital in England and Wales, as if he had been removed to that hospital in pursuance of a transfer direction under Part V of this Act, and as if a direction restricting his discharge had been given under section seventy-four of this Act;

and in any such case the patient shall be treated as if the sentence or order by virtue of which he was detained before being removed under this section had been imposed or made by a court in England and Wales.

- (3) In this section " criminal lunatic" means a criminal lunatic within the meaning of the Lunacy (Ireland) Act, 1901, or a person detained in a mental hospital or institution within the meaning of the Mental Health Act (Northern Ireland), 1948, in pursuance of an order made by the Governor of Northern Ireland or the Minister of Home Affairs for Northern Ireland under section thirty-seven of that Act, or of directions given by the Ministry of Home Affairs for Northern Ireland under section sixteen of the Prison Act (Northern Ireland), 1953.

*Other provisions as to removal*

**89 Removal of certain patients from Channel Islands and Isle of Man to England and Wales**

- (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 of 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 England and Wales.
- (2) A patient removed under this section shall, on his reception into the hospital in England and Wales, be treated as if he had been removed to that hospital in pursuance of a direction under section seventy-one of this Act.
- (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.

**90 Removal of alien patients**

If it appears to the Secretary of State, in the case of any patient being an alien who is receiving treatment for mental illness as an in-patient—

- (a) in a hospital in England and Wales; or  
(b) in a mental hospital or institution within the meaning of the Mental Health (Northern Ireland) Act, 1948,

that proper arrangements have been made for the removal of the 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, 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.

*Return of patients absent without leave*

**91 Persons absent from Scottish institutions**

- (1) Where a lunatic, defective, or state mental patient liable to detention under the Lunacy (Scotland) Acts, 1857 to 1913, the Mental Deficiency (Scotland) Acts, 1913 and 1940, the Criminal Lunatics (Scotland) Act, 1935, or the Criminal Justice (Scotland) Act, 1949, in an institution to which this section applies is absent from the institution without leave, he may, not later than the expiration of any period within which he might be retaken in Scotland under the said enactments, be retaken in England or Wales by a mental welfare officer, by any constable or by any person for the time being authorised by or by virtue of any such enactment to apprehend him without warrant and may be returned to that institution by any person so authorised.
- (2) The institutions to which this section applies are mental hospitals, institutions for mental defectives and State Mental Hospitals within the meaning of the enactments specified in the foregoing subsection, and private asylums licensed thereunder.

**92 Patients absent from Northern Irish institutions**

- (1) Any person who, under section sixty-three of the Mental Health Act (Northern Ireland), 1948 (which provides for the retaking of patients absent without leave), is liable to be retaken in Northern Ireland may, within the period within which he might be so retaken, be taken into custody in England or Wales by a mental welfare officer, by any constable or by any person for the time being authorised by or by virtue of that section to retake him, and may be returned by any person so authorised to any hospital, institution or place to which he could lawfully be returned if retaken under that enactment.
- (2) Any person being a criminal lunatic within the meaning of section eighty-eight of this Act who is unlawfully at large in England or Wales may be taken into custody in England or Wales by a mental welfare officer, by any constable or by any person authorised by subsection (1) of section thirty-eight of the Prison Act (Northern Ireland), 1953, to arrest him without warrant, and may be returned by any person so authorised to the place in which he is required by the law in force in Northern Ireland to be detained.

**93 Patients absent from hospitals in England and Wales**

- (1) Subject to the provisions of this section, any person who, under section forty or section one hundred and forty of this Act or under the said section forty as applied by section forty-six of this Act, may be taken into custody in England and Wales may be taken into custody in, and returned to England and Wales 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 Scotland, Northern Ireland, the Channel Islands or the Isle of Man, the expression " constable " includes a Scottish' 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 forty-three 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.



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*Status: This is the original version (as it was originally enacted).*

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- (3) For the purposes of the said enactments in their application by virtue of this section to Scotland or Northern Ireland, any reference to a mental welfare officer shall be construed as including a reference—
- (a) in Scotland, to any person (other than a constable) who, under the Lunacy (Scotland) Acts, 1857 to 1913, the Mental Deficiency (Scotland) Acts, 1913 and 1940, or the Criminal Lunatics (Scotland) Act, 1935, would have power to apprehend a person absent without leave from an institution to which section ninety-one of this Act applies;
  - (b) in Northern Ireland, to any person (other than a constable) who, under section sixty-three of the Mental Health Act (Northern Ireland) 1948, would be authorised to retake a patient absent without leave from a hospital to which that section applies.
- (4) This section shall not apply to any person who is subject to guardianship.

### *Supplemental*

#### **94 Regulations for purposes of Part VI**

Section fifty-six of this Act shall have effect as if references therein to Part IV of this Act included references to this Part of this Act so far as it applies to patients removed to England and Wales thereunder or under subsection (2) of section sixty-four of the Criminal Justice (Scotland) Act, 1949.

#### **95 General provisions as to patients removed from England and Wales**

Where a patient liable to be detained or subject to guardianship by virtue of an application, order or direction under Part IV or Part V of this Act is removed from England and Wales 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.

#### **96 Interpretation of Part VI**

- (1) References in this Part of this Act to a hospital, being a hospital in England and Wales, shall be construed as references to a hospital within the meaning of Part IV of this Act.
- (2) Where a patient is treated by virtue of this Part of this Act as if he had been removed to a hospital in England and Wales in pursuance of a direction under Part V of this Act, that direction shall be deemed to have been given on the date of his reception into the hospital.
- (3) A patient removed to England and Wales under this Part of this Act or under subsection (2) of section sixty-four of the Criminal Justice (Scotland) Act, 1949, shall be treated for the purposes of this Act as suffering from such form of mental disorder as may be recorded in his case in pursuance of regulations made by virtue of section ninety-four of this Act, and references in this Act to the form or forms of mental disorder specified in the relevant application, order or direction shall be construed as including references to the form or forms of mental disorder so recorded.