

KEELING SCHEDULE SHOWING AMENDMENTS TO BE MADE TO THE MENTAL HEALTH ACT 1983 BY THE MENTAL HEALTH BILL INTRODUCED INTO PARLIAMENT ON 6 NOVEMBER 2024. THIS SCHEDULE HAS BEEN PREPARED BY THE DEPARTMENT OF HEALTH AND SOCIAL CARE TO ASSIST THE READER IN REVIEWING THE CHANGES TO THE ACT THAT THE BILL WOULD EFFECT, AND HAS BEEN PRODUCED FOR ILLUSTRATIVE PURPOSES ONLY. WHILST EVERY EFFORT HAS BEEN MADE TO ENSURE ITS ACCURACY, IT HAS NOT BEEN SUBJECT TO LEGAL REVIEW AND SHOULD NOT BE RELIED ON AS SUCH. THE DEPARTMENT OF HEALTH AND SOCIAL CARE WOULD BE GRATEFUL IF READERS NOTIFY IT OF ANY ERRORS AND OMISSIONS.

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## Mental Health Act 1983

### 1983 Chapter 20

#### Part I

#### **INTRODUCTORY 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 mentally disordered patients, the management of their property and other related matters.

(2) In this Act—

“autism” means a lifelong developmental disorder of the mind that affects how people perceive, communicate and interact with others;

“learning disability” means a state of arrested or incomplete development of the mind which includes significant impairment of intelligence;

“mental disorder” means any disorder or disability of the mind; and

“mentally disordered” shall be construed accordingly;

“psychiatric disorder” means mental disorder other than autism or learning disability;

and other expressions shall have the meanings assigned to them in section 145 below.

(2A) For the purposes of this Act, a person’s learning disability has “serious behavioural consequences” if it is associated with abnormally aggressive or seriously irresponsible conduct by the person.”

~~(2A) But a person with learning disability shall not be considered by reason of that disability to be—~~

~~(a) suffering from mental disorder for the purposes of the provisions mentioned in subsection (2B) below; or~~

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~~(b) requiring treatment in hospital for mental disorder for the purposes of sections 17E and 50 to 53 below;~~

~~unless that disability is associated with abnormally aggressive or seriously irresponsible conduct on his part.~~

~~(2B) The provisions are—~~

~~(a) sections 3, 7, 17A, 20 and 20A below;~~

~~(b) sections 35 to 38, 45A, 47, 48 and 51 below; and~~

~~(c) section 72(1)(b) and (c) and (4) below.~~

~~(3) Dependence on alcohol or drugs is not considered to be a disorder or disability of the mind for the purposes of subsection (2) above.~~

~~(4) In subsection (2A) above, “learning disability” means a state of arrested or incomplete development of the mind which includes significant impairment of intelligence and social functioning.]5~~

## **1A “Appropriate medical treatment”**

In this Act—

(a) references to appropriate medical treatment, in relation to a person suffering from mental disorder, are references to medical treatment which, taking into account the nature and degree of the disorder and all other circumstances—

(i) has a reasonable prospect of alleviating, or preventing the worsening of, the disorder or one or more of its symptoms or manifestations, and

(ii) is appropriate in the person’s case;

(b) references to medical treatment, in relation to mental disorder, are references to medical treatment the purpose of which is to alleviate, or prevent a worsening of, the disorder or one or more of its symptoms or manifestations.”

## **Part II**

### **COMPULSORY ADMISSION TO HOSPITAL AND GUARDIANSHIP**

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*Procedure for hospital admission*

**2. Admission for assessment.**

(1) A patient may be admitted to a hospital and detained there for the period allowed by subsection (4) below in pursuance of an application (in this Act referred to as “an application for admission for assessment”) made in accordance with subsections (2) and (3) below.

(2) An application for admission for assessment may be made in respect of a patient on the grounds that—

(a) he is suffering from mental disorder of a nature or degree which warrants the detention of the patient in a hospital for assessment (or for assessment followed by medical treatment) for at least a limited period; ~~and~~

(b) serious harm may be caused to the health or safety of the patient or of another person unless the patient is so detained; and

(c) given the nature, degree and likelihood of the harm, the patient ought to be so detained.

~~(b) he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons.~~

(3) An application for admission for assessment shall be founded on the written recommendations in the prescribed form of two registered medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in subsection (2) above are complied with.

(4) Subject to the provisions of section 29(4) below, a patient admitted to hospital in pursuance of an application for admission for assessment may be detained for a period not exceeding 28 days beginning with the day on which he is admitted, but shall not be detained after the expiration of that period unless before it has expired he has become liable to be detained by virtue of a subsequent application, order or direction under the following provisions of this Act.

**3. Admission for treatment.**

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(1) A patient may be admitted to a hospital and detained there for the period allowed by the following provisions of this Act in pursuance of an application (in this Act referred to as “an application for admission for treatment” ) made in accordance with this section.

(2) An application for admission for treatment may be made in respect of a patient on the grounds that—

(a) the patient is suffering from psychiatric disorder of a nature or degree which makes it appropriate for the patient to receive medical treatment in a hospital,

(b) serious harm may be caused to the health or safety of the patient or of another person unless the patient receives medical treatment,

(c) it is necessary, given the nature, degree and likelihood of the harm, for the patient to receive medical treatment,

(d) the necessary treatment cannot be provided unless the patient is detained under this Act, and

(e) appropriate medical treatment is available for the patient.

~~(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~~

~~(b).....~~

~~(c) it is necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment and it cannot be provided unless he is detained under this section; and~~

~~(d) appropriate medical treatment is available for him.~~

(3) An application for admission for treatment shall be founded on the written recommendations in the prescribed form of two registered medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in subsection (2) above are complied with; and each such recommendation shall include—

(a) such particulars as may be prescribed of the grounds for that opinion so far as it relates to the conditions set out in paragraphs (a) and (e) ~~(d)~~ of that subsection; and

(b) a statement of the reasons for that opinion so far as it relates to the conditions set out in paragraph (b) to (d) ~~(e)~~ of that subsection, specifying whether other methods of dealing with the patient are available and, if so, why they are not appropriate.

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~~(4) In this Act, references to appropriate medical treatment, in relation to a person suffering from mental disorder, are references to medical treatment which is appropriate in his case, taking into account the nature and degree of the mental disorder and all other circumstances of his case.~~

#### **4. Admission for assessment in cases of emergency.**

(1) In any case of urgent necessity, an application for admission for assessment may be made in respect of a patient in accordance with the following provisions of this section, and any application so made is in this Act referred to as “an emergency application” .

(2) An emergency application may be made either by an approved mental health professional or by **the patient’s nominated person** ~~the nearest relative of the patient~~; and every such application shall include a statement that it is of urgent necessity for the patient to be admitted and detained under section 2 above, and that compliance with the provisions of this Part of this Act relating to applications under that section would involve undesirable delay.

(3) An emergency application shall be sufficient in the first instance if founded on one of the medical recommendations required by section 2 above, given, if practicable, by a practitioner who has previous acquaintance with the patient and otherwise complying with the requirements of section 12 below so far as applicable to a single recommendation, and verifying the statement referred to in subsection (2) above.

(4) An emergency application shall cease to have effect on the expiration of a period of 72 hours from the time when the patient is admitted to the hospital unless—

(a) the second medical recommendation required by section 2 above is given and received by the managers within that period; and

(b) that recommendation and the recommendation referred to in subsection (3) above together comply with all the requirements of section 12 below (other than the requirement as to the time of signature of the second recommendation).

(5) In relation to an emergency application, section 11 below shall have effect as if in subsection (5) of that section for the words “the period of 14 days ending with the date of the application” there were substituted the words “the previous 24 hours”.

#### **5. Application in respect of patient already in hospital.**

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(1) An application for the admission of a patient to a hospital may be made under this Part of this Act notwithstanding that the patient is already an in-patient in that hospital or, in the case of an application for admission for treatment that the patient is for the time being liable to be detained in the hospital in pursuance of an application for admission for assessment; and where an application is so made the patient shall be treated for the purposes of this Part of this Act as if he had been admitted to the hospital at the time when that application was received by the managers.

(2) If, in the case of a patient who is an in-patient in a hospital, it appears to the registered medical practitioner or approved clinician in charge of the treatment of the patient that an application ought to be made under this Part of this Act for the admission of the patient to hospital, he may furnish to the managers a report in writing to that effect; and in any such case the patient may be detained in the hospital for a period of 72 hours from the time when the report is so furnished.

(3) The registered medical practitioner or approved clinician in charge of the treatment of a patient in a hospital may nominate one (but not more than one) person to act for him under subsection (2) above in his absence.

(3A) For the purposes of subsection (3) above—

(a) the registered medical practitioner may nominate another registered medical practitioner, or an approved clinician, on the staff of the hospital; and

(b) the approved clinician may nominate another approved clinician, or a registered medical practitioner, on the staff of the hospital.

(4) If, in the case of a patient who is receiving treatment for mental disorder as an in-patient in a hospital, it appears to a nurse of the prescribed class—

**(a) that the patient is suffering from mental disorder to such a degree that serious harm may be caused to the health or safety of the patient or of another person unless the patient is immediately restrained from leaving the hospital; and**

~~(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 others for him to be immediately restrained from leaving the hospital;~~

(b) that it is not practicable to secure the immediate attendance of a practitioner or clinician for the purpose of furnishing a report under subsection (2) above, the nurse may record that fact in writing; and in that event the patient may be detained in the hospital for a period of six hours from the time when that fact is so recorded or until the

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earlier arrival at the place where the patient is detained of a practitioner or clinician having power to furnish a report under that subsection.

(5) A record made under subsection (4) above shall be delivered by the nurse (or by a person authorised by the nurse in that behalf) to the managers of the hospital as soon as possible after it is made; and where a record is made under that subsection the period mentioned in subsection (2) above shall begin at the time when it is made.

(6) The reference in subsection (1) above to an in-patient does not include an in-patient who is liable to be detained in pursuance of an application under this Part of this Act or a community patient and the references in subsections (2) and (4) above do not include an in-patient who is liable to be detained in a hospital under this Part of this Act or a community patient.

(7) In subsection (4) above “prescribed” means prescribed by an order made by the Secretary of State.

## **6. Effect of application for admission.**

(1) An application for the admission of a patient to a hospital under this Part of this Act, duly completed in accordance with the provisions of this Part of this Act, shall be sufficient authority for the applicant, or any person authorised by the applicant, to take the patient and convey him to the hospital at any time within the following period, that is to say—

(a) in the case of an application other than an emergency application, the period of 14 days beginning with the date on which the patient was last examined by a registered medical practitioner before giving a medical recommendation for the purposes of the application;

(b) in the case of an emergency application, the period of 24 hours beginning at the time when the patient was examined by the practitioner giving the medical recommendation which is referred to in section 4(3) above, or at the time when the application is made, whichever is the earlier.

(2) Where a patient is admitted within the said period to the hospital specified in such an application as is mentioned in subsection (1) above, or, being within that hospital, is treated by virtue of section 5 above as if he had been so admitted, the application shall be sufficient authority for the managers to detain the patient in the hospital in accordance with the provisions of this Act.

(3) Any application for the admission of a patient under this Part of this Act which appears to be duly made and to be founded on the necessary medical recommendations may be

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acted upon without further proof of the signature or qualification of the person by whom the application or any such medical recommendation is made or given or of any matter of fact or opinion stated in it.

(4) Where a patient is admitted to a hospital in pursuance of an application for admission for treatment, any previous application under this part of this Act by virtue of which he was liable to be detained in a hospital or subject to guardianship shall cease to have effect.

### *Guardianship*

#### **7. Application for guardianship.**

(1) A patient who has attained the age of 16 years may be received into guardianship, for the period allowed by the following provisions of this Act, in pursuance of an application (in this Act referred to as “a guardianship application”) made in accordance with this section.

(2). A guardianship application may be made in respect of a patient on the grounds that—

(a) the patient is suffering from—

(i) psychiatric disorder,

(ii) autism, or

(iii) learning disability which has serious behavioural consequences,

of a nature or degree which warrants the patient’s reception into guardianship under this section, and

~~(a) he is suffering from mental disorder, F1. . . of a nature or degree which warrants his reception into guardianship under this section; and~~

(b) it is necessary in the interests of the welfare of the patient or for the protection of other persons that the patient should be so received.

(3) A guardianship application shall be founded on the written recommendations in the prescribed form of two registered medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in subsection (2) above are complied with; and each such recommendation shall include—



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(a) such particulars as may be prescribed of the grounds for that opinion so far as it relates to the conditions set out in paragraph (a) of that subsection; and

(b) a statement of the reasons for that opinion so far as it relates to the conditions set out in paragraph (b) of that subsection.

(4) A guardianship application shall state the age of the patient or, if his exact age is not known to the applicant, shall state (if it be the fact) that the patient is believed to have attained the age of 16 years.

(5) The person named as guardian in a guardianship application may be either a local social services authority or any other person (including the applicant himself); but a guardianship application in which a person other than a local social services authority is named as guardian shall be of no effect unless it is accepted on behalf of that person by the local social services authority for the area in which he resides, and shall be accompanied by a statement in writing by that person that he is willing to act as guardian.

## **8. Effect of guardianship application, etc.**

(1) Where a guardianship application, duly made under the provisions of this Part of this Act and forwarded to the local social services authority within the period allowed by subsection (2) below is accepted by that authority, the application shall, subject 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—

(a) the power to require the patient to reside at a place specified by the authority or person named as guardian;

(b) the power to require the patient to attend at places and times so specified for the purpose of medical treatment, occupation, education or training;

(c) the power to require access to the patient to be given, at any place where the patient is residing, to any registered medical practitioner, approved mental health professional or other person so specified.

(2) The period within which a guardianship application is required for the purposes of this section to be forwarded to the local social services authority is the period of 14 days beginning with the date on which the patient was last examined by a registered medical practitioner before giving a medical recommendation for the purposes of the application.

(3) A guardianship application which appears to be duly made and to be founded on the necessary medical recommendations may be acted upon without further proof of the

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signature or qualification of the person by whom the application or any such medical recommendation is made or given, or of any matter of fact or opinion stated in the application.

(4) If within the period of 14 days beginning with the day on which a guardianship application has been accepted by the local social services authority 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, within that period and with the consent of that authority, 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.

(5) Where a patient is received into guardianship in pursuance of a guardianship application, any previous application under this Part of this Act by virtue of which he was subject to guardianship or liable to be detained in a hospital shall cease to have effect.

## **9. Regulations as to guardianship.**

(1) Subject to the provisions of this Part of this Act, the Secretary of State may make regulations—

(a) for regulating the exercise by the guardians of patients received into guardianship under this Part of this Act of their powers as such; and

(b) for imposing on such guardians, and upon local social services authorities in the case of patients under the guardianship of persons other than local social services authorities, 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 social services authorities as may be so prescribed, and shall provide for the appointment, in the case of every patient subject to the guardianship of a person other than a local social services authority, of a registered medical practitioner to act as the nominated medical attendant of the patient.

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

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(1) If any person (other than a local social services authority) who is the guardian of a patient received into guardianship under this Part of this Act—

(a) dies; or

(b) gives notice in writing to the local social services authority that he desires to relinquish the functions of guardian,

the guardianship of the patient shall thereupon vest in the local social services authority, but without prejudice to any power to transfer the patient into the guardianship of another person in pursuance of regulations under section 19 below.

(2) If any such person, not having given notice under subsection (1)(b) above, 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 social services authority or by any other person approved for the purposes by that authority.

(3) If it appears to the county court, upon application made by an approved mental health professional acting on behalf of the local social services authority, that any person other than a local social services authority having the guardianship of a patient received into guardianship under this Part of this Act has performed his functions negligently or in a manner contrary to the interests of the welfare of the patient, the court may order that the guardianship of the patient be transferred to the local social services authority or to any other person approved for the purpose by that authority.

(4) Where the guardianship of a patient is transferred to a local social services authority or other person by or under this section, subsection (2)(c) of section 19 below shall apply as if the patient had been transferred into the guardianship of that authority or person in pursuance of regulations under that section.

(5) In this section “the local social services authority”, in relation to a person (other than a local social services authority) who is the guardian of a patient, means the local social services authority for the area in which that person resides (or resided immediately before his death).

*General provisions as to applications and recommendations*

## **11. General provisions as to applications.**

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(1) Subject to the provisions of this section, an application for admission for assessment, an application for admission for treatment and a guardianship application may be made either by **the patient's nominated person** nearest relative of the patient or by an approved mental health professional ; and every such application shall specify the qualification of the applicant to make the application.

(1A) No application mentioned in subsection (1) above shall be made by an approved mental health professional if the circumstances are such that there would be a potential conflict of interest for the purposes of regulations under section 12A below.

(2) Every application for admission shall be addressed to the managers of the hospital to which admission is sought and every guardianship application shall be forwarded to the local social services authority named in the application as guardian, or, as the case may be, to the local social services authority for the area in which the person so named resides.

(3) Before or within a reasonable time after an application for the admission of a patient for assessment is made by an approved mental health professional, that professional shall take such steps as are practicable to inform the person (if any) appearing to be **the patient's nominated person** ~~the nearest relative of the patient~~ that the application is to be or has been made and of the power of **the nominated person** ~~the nearest relative~~ under section 23(2)(a) below.

**(4) Before an approved mental health professional makes an application for admission for treatment or a guardianship application in respect of a patient who appears to have a nominated person, the professional must consult that person.**

~~(4) An approved mental health professional may not make an application for admission for treatment or a guardianship application in respect of a patient in either of the following cases—~~

~~(a) the nearest relative of the patient has notified that professional, or the local social services authority on whose behalf the professional is acting, that he objects to the application being made; or~~

~~(b) that professional has not consulted the person (if any) appearing to be the nearest relative of the patient, but the requirement to consult that person does not apply if it appears to the professional that in the circumstances such consultation is not reasonably practicable or would involve unreasonable delay.~~

**(4A) But the consultation requirement imposed by subsection (4) does not apply if it appears to the approved mental health professional that consultation—**

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(a) is not reasonably practicable, or

(b) would involve unreasonable delay.

(4B) A patient's nominated person may object to the making of an application for admission for treatment or the making of a guardianship application by an approved mental health professional by—

(a) notifying the professional, or

(b) notifying the local social services authority on whose behalf the professional is acting.

(4C) Where a nominated person objects under subsection (4B) to the making of an application, the application may be made only if it is accompanied by a report certifying that, in the opinion of the approved mental health professional, the patient, if not admitted for treatment or received into guardianship, would be likely to act in a manner that is dangerous to other persons or to the patient.

(5) None of the applications mentioned in subsection (1) above shall be made by any person in respect of a patient unless that person has personally seen the patient within the period of 14 days ending with the date of the application.

*[subsection (6) was repealed by the Mental Health Act 2007]*

(7) Each of the applications mentioned in subsection (1) above shall be sufficient if the recommendations on which it is founded are given either as separate recommendations, each signed by a registered medical practitioner, or as a joint recommendation signed by two such practitioners.

## **12 General provisions as to medical recommendations.**

(1) The recommendations required for the purposes of an application for the admission of a patient under this Part of this Act or a guardianship application (in this Act referred to as "medical recommendations") shall be signed on or before the date of the application, and shall be given by practitioners who have personally examined the patient either together or separately, but where they have examined the patient separately not more than five days must have elapsed between the days on which the separate examinations took place.

(2) Of the medical recommendations given for the purposes of any such application, one shall be given by a practitioner approved for the purposes of this section by the Secretary

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of State as having special experience in the diagnosis or treatment of mental disorder; and unless that practitioner has previous acquaintance with the patient, the other such recommendation shall, if practicable, be given by a registered medical practitioner who has such previous acquaintance.

(2A) A registered medical practitioner who is an approved clinician shall be treated as also approved for the purposes of this section under subsection (2) above as having special experience as mentioned there.

(3) No medical recommendation shall be given for the purposes of an application mentioned in subsection (1) above if the circumstances are such that there would be a potential conflict of interest for the purposes of regulations under section 12A below.

#### **12ZA. Agreement for exercise of approval function: England**

(1) The Secretary of State may enter into an agreement with another person for an approval function of the Secretary of State to be exercisable by the Secretary of State concurrently—

- (a) with that other person, and
- (b) if a requirement under section 12ZB has effect, with the other person by whom the function is exercisable under that requirement.

(2) In this section and sections 12ZB and 12ZC, “approval function” means—

- (a) the function under section 12(2), or
- (b) the function of approving persons as approved clinicians.

(3) An agreement under this section may, in particular, provide for an approval function to be exercisable by the other party—

- (a) in all circumstances or only in specified circumstances;
- (b) in all areas or only in specified areas.

(4) An agreement under this section may provide for an approval function to be exercisable by the other party—

- (a) for a period specified in the agreement, or
- (b) for a period determined in accordance with the agreement.

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(5) The other party to an agreement under this section must comply with such instructions as the Secretary of State may give with respect to the exercise of the approval function.

(6) An instruction under subsection (5) may require the other party to cease to exercise the function to such extent as the instruction specifies.

(7) The agreement may provide for the Secretary of State to pay compensation to the other party in the event of an instruction such as is mentioned in subsection (6) being given.

(8) An instruction under subsection (5) may be given in such form as the Secretary of State may determine.

(9) The Secretary of State must publish instructions under subsection (5) in such form as the Secretary of State may determine; but that does not apply to an instruction such as is mentioned in subsection (6).

(10) An agreement under this section may provide for the Secretary of State to make payments to the other party; and the Secretary of State may make payments to other persons in connection with the exercise of an approval function by virtue of this section.

### **12ZB Requirement to exercise approval functions: England**

(1) The Secretary of State may impose a requirement on NHS England “NHS England” or a Special Health Authority for an approval function of the Secretary of State to be exercisable by the Secretary of State concurrently—

(a) with NHS England or (as the case may be) Special Health Authority, and

(b) if an agreement under section 12ZA has effect, with the other person by whom the function is exercisable under that agreement.

(2) The Secretary of State may, in particular, require the body concerned to exercise an approval function—

(a) in all circumstances or only in specified circumstances;

(b) in all areas or only in specified areas.

(3) The Secretary of State may require the body concerned to exercise an approval function—

(a) for a period specified in the requirement, or

(b) for a period determined in accordance with the requirement.

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(4) Where a requirement under subsection (1) is imposed, NHS England or (as the case may be) Special Health Authority must comply with such instructions as the Secretary of State may give with respect to the exercise of the approval function.

(5) An instruction under subsection (4) may be given in such form as the Secretary of State may determine.

(6) The Secretary of State must publish instructions under subsection (4) in such form as the Secretary of State may determine.

(7) Where NHS England or a Special Health Authority has an approval function by virtue of this section, the function is to be treated for the purposes of the National Health Service Act 2006 as a function that it has under that Act.

(8) The Secretary of State may make payments in connection with the exercise of an approval function by virtue of this section.

### **122C. Provision of information for the purposes of section 122A or 122B**

(1) A relevant person may provide another person with such information as the relevant person considers necessary or appropriate for or in connection with—

- (a) the exercise of an approval function; or
- (b) the exercise by the Secretary of State of the power—
  - (i) to enter into an agreement under section 122A;
  - (ii) to impose a requirement under section 122B; or
  - (iii) to give an instruction under section 122A(5) or 122B(4).

(2) The relevant persons are—

- (a) the Secretary of State;
- (b) a person who is a party to an agreement under section 122A; or
- (c) if the Secretary of State imposes a requirement under section 122B on NHS England or a Special Health Authority, NHS England or (as the case may be) Special Health Authority.

(3) This section, in so far as it authorises the provision of information by one relevant person to another relevant person, has effect notwithstanding any rule of common law which would otherwise prohibit or restrict the provision.



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(4) In this section, “information” includes documents and records.

### **12A. Conflicts of interest**

(1) The appropriate national authority may make regulations as to the circumstances in which there would be a potential conflict of interest such that—

- (a) an approved mental health professional shall not make an application mentioned in section 11(1) above;
- (b) a registered medical practitioner shall not give a recommendation for the purposes of an application mentioned in section 12(1) above.

(2) Regulations under subsection (1) above may make—

- (a) provision for the prohibitions in paragraphs (a) and (b) of that subsection to be subject to specified exceptions;
- (b) different provision for different cases; and
- (c) transitional, consequential, incidental or supplemental provision.

(3) In subsection (1) above, “ the appropriate national authority ” means—

- (a) in relation to applications in which admission is sought to a hospital in England or to guardianship applications in respect of which the area of the relevant local social services authority is in England, the Secretary of State;
- (b) in relation to applications in which admission is sought to a hospital in Wales or to guardianship applications in respect of which the area of the relevant local social services authority is in Wales, the Welsh Ministers.

(4) References in this section to the relevant local social services authority, in relation to a guardianship application, are references to the local social services authority named in the application as guardian or (as the case may be) the local social services authority for the area in which the person so named resides.

### **13. Duty of approved mental health professionals to make applications for admission or guardianship**

(1) If a local social services authority have reason to think that an application for admission to hospital or a guardianship application may need to be made in respect of a

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patient within their area, they shall make arrangements for an approved mental health professional to consider the patient's case on their behalf.

(1A) If that professional is–

- (a) satisfied that such an application ought to be made in respect of the patient; and
- (b) of the opinion, having regard to any wishes expressed by relatives of the patient or any other relevant circumstances, that it is necessary or proper for the application to be made by him,

he shall make the application.

(1B) Subsection (1C) below applies where–

- (a) a local social services authority makes arrangements under subsection (1) above in respect of a patient;
- (b) an application for admission for assessment is made under subsection (1A) above in respect of the patient;
- (c) while the patient is liable to be detained in pursuance of that application, the authority have reason to think that an application for admission for treatment may need to be made in respect of the patient; and
- (d) the patient is not within the area of the authority.

(1C) Where this subsection applies, subsection (1) above shall be construed as requiring the authority to make arrangements under that subsection in place of the authority mentioned there.

(2) Before making an application for the admission of a patient to hospital an approved mental health professional shall interview the patient in a suitable manner 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 of which the patient stands in need.

(3) An application under subsection (1A) above may be made outside the area of the local social services authority on whose behalf the approved mental health professional is considering the patient's case.

(4) It shall be the duty of a local social services authority, if so required by **the nominated person** ~~the nearest relative~~ residing in their area, to make arrangements under subsection (1) above for an approved mental health professional to consider the patient's case with a

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view to making an application for his admission to hospital; and if in any such case that professional decides not to make an application he shall inform **the nominated person** ~~the nearest relative~~ of his reasons in writing.

(5) Nothing in this section shall be construed as authorising or requiring an application to be made by an approved mental health professional in contravention of the provisions of section 11(4) above or of regulations under section 12A above, or as restricting the power of a local social services authority to make arrangements with an approved mental health professional to consider a patient's case or of an approved mental health professional to make any application under this Act.

#### **14. Social reports**

Where a patient is admitted to a hospital in pursuance of an application (other than an emergency application) made under this Part of this Act by his **nominated person** ~~nearest relative~~, the managers of the hospital shall as soon as practicable give notice of that fact to the local social services authority for the area in which the patient resided immediately before his admission; and that authority shall as soon as practicable arrange for an approved mental health professional to interview the patient and provide the managers with a report on his social circumstances.

#### **15. Rectification of applications and recommendations.**

(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 for assessment or for treatment 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, within that period and with the consent of the managers of the hospital, 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 subsection (1) above, if within the period mentioned in that subsection it appears to the managers of the hospital that one of the two medical recommendations on which an application for the admission of a patient 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 where any such notice is given in respect of a medical recommendation, that recommendation

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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 within that period; and

(b) 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) above may be given in respect of either of those recommendations.

(4) Nothing in this section shall be construed as authorising the giving of notice in respect of an application made as an emergency application, or the detention of a patient admitted in pursuance of such an application, after the period of 72 hours referred to in section 4(4) above, unless the conditions set out in paragraphs (a) and (b) of that section are complied with or would be complied with apart from any error or defect to which this section applies.

*Position of patients subject to detention or guardianship*

*[Section 16 was repealed by the Mental Health Act 2007]*

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

(1) The responsible clinician 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 subject to such conditions (if any) as that clinician considers necessary in the interests of the patient or for the protection of other persons.

(2) Leave of absence may be granted to a patient under this section either indefinitely or on specified occasions or for any specified period; and where leave is so granted for a

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specified period, that period may be extended by further leave granted in the absence of the patient.

(2A) But longer-term leave may not be granted to a patient unless the responsible clinician first considers whether the patient should be dealt with under section 17A instead.

(2B) For these purposes, longer-term leave is granted to a patient if—

(a) leave of absence is granted to him under this section either indefinitely or for a specified period of more than seven consecutive days; or

(b) a specified period is extended under this section such that the total period for which leave of absence will have been granted to him under this section exceeds seven consecutive days

(3) Where it appears to the responsible clinician 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) 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 clinician that it is necessary so to do in the interests of the patient's health or safety or for the protection of other persons, that clinician may, subject to subsection (5) below, 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.

(5) A patient to whom leave of absence is granted under this section shall not be recalled under subsection (4) above after he has ceased to be liable to be detained under this Part of this Act;

(6) Subsection (7) below applies to a person who is granted leave by or by virtue of a provision—

(a) in force in Scotland, Northern Ireland, any of the Channel Islands or the Isle of Man; and

(b) corresponding to subsection (1) above.

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(7) For the purpose of giving effect to a direction or condition imposed by virtue of a provision corresponding to subsection (3) above, the person may be conveyed to a place in, or kept in custody or detained at a place of safety in, England and Wales by a person authorised in that behalf by the direction or condition.

### **17A Community treatment orders**

(1) The responsible clinician may by order in writing discharge a detained patient from hospital subject to his being liable to recall in accordance with section 17E below.

(2) A detained patient is a patient who is liable to be detained in a hospital in pursuance of an application for admission for treatment.

(3) An order under subsection (1) above is referred to in this Act as a “community treatment order”.

(4) The responsible clinician may not make a community treatment order unless–

(a) in his opinion, the relevant criteria are met; ~~and~~

**(b) an approved mental health professional states in writing–**

**(i) that they agree that the relevant criteria are met; and**

**(ii) that it is appropriate to make the order; and**

**(c) where the responsible clinician is not the community clinician, the community clinician states in writing that they agree that the relevant criteria are met.**

~~(b) an approved mental health professional states in writing–~~

~~(i) that he agrees with that opinion; and~~

~~(ii) that it is appropriate to make the order–~~

(5) The relevant criteria are–

**(a) the patient is suffering from psychiatric disorder of a nature or degree which makes it appropriate for the patient to receive medical treatment,**

**(b) serious harm may be caused to the health or safety of the patient or of another person unless the patient receives medical treatment,**

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(c) it is necessary, given the nature, degree and likelihood of the harm, for the patient to receive medical treatment,

(d) subject to the patient being liable to be recalled as mentioned in paragraph (e), the necessary treatment can be provided without the patient being detained in a hospital,

(e) it is necessary that the responsible clinician should be able to exercise the power under section 17E(1) to recall the patient to hospital, and

(f) appropriate medical treatment is available for the patient.

~~(a) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment,~~

~~(b) it is necessary for his health or safety or for the protection of other persons that he should receive such treatment;~~

~~(c) subject to his being liable to be recalled as mentioned in paragraph (d) below, such treatment can be provided without his continuing to be detained in a hospital;~~

~~(d) it is necessary that the responsible clinician should be able to exercise the power under section 17E(1) below to recall the patient to hospital; and~~

~~(e) appropriate medical treatment is available for him~~

(6) In determining whether the criterion in subsection (5)(e) ~~(5)(d)~~ above is met, the responsible clinician shall, in particular, consider, having regard to the patient's history of ~~mental~~ **psychiatric** disorder and any other relevant factors, what risk there would be of a deterioration of the patient's condition if he were not detained in a hospital (as a result, for example, of his refusing or neglecting to receive the medical treatment he requires for his ~~mental~~ **psychiatric** disorder).

(7) In this Act—

“community patient” means a patient in respect of whom a community treatment order is in force;

“the community treatment order” , in relation to such a patient, means the community treatment order in force in respect of him; and

“the responsible hospital” , in relation to such a patient, means the hospital in which he was liable to be detained immediately before the community treatment order was made, subject to section 19A below.

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### **17AA Community treatment orders: role of nominated person**

(1) Before the responsible clinician makes a community treatment order in respect of a patient who appears to have a nominated person, the responsible clinician must consult that person.

(2) But the consultation requirement imposed by subsection (1) does not apply if it appears to the responsible clinician that consultation—

(a) is not reasonably practicable, or

(b) would involve unreasonable delay.

(3) A patient's nominated person may object to the making of a community treatment order by notifying the responsible clinician.

(4) Where the nominated person objects under subsection (3), the community treatment order may not be made unless the responsible clinician certifies in writing that—

(a) in the opinion of the responsible clinician, the patient should be discharged from hospital, and

(b) the patient, if so discharged without a community treatment order being in force, would be likely to act in a manner that is dangerous to other persons or to the patient.

### **17B Conditions to be included in community treatment orders**

(1) A community treatment order shall specify conditions to which the patient is to be subject while the order remains in force.

(2) But, subject to subsection (3) below, the order may specify conditions only if the responsible clinician, with the agreement of the **relevant professionals** ~~approved mental health professional mentioned in section 17A(4)(b) above,~~ thinks them necessary or appropriate for one or more of the following purposes—

(a) ensuring that the patient receives medical treatment;

(b) preventing risk of harm to the patient's health or safety;



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(c) protecting other persons.

(3) The order shall specify—

(a) a condition that the patient make himself available for examination under section 20A below; and

(b) a condition that, if it is proposed to give a certificate under Part 4A of this Act that falls within section 64C(4) below in his case, he make himself available for examination so as to enable the certificate to be given.

(4) The responsible clinician may from time to time by order in writing vary the conditions specified in a community treatment order.

(5) He may also suspend any conditions specified in a community treatment order.

**(5A) Where the responsible clinician is not the community clinician, the responsible clinician must consult the community clinician before varying or suspending conditions specified in a community treatment order, unless consultation would involve unreasonable delay.**

(6) If a community patient fails to comply with a condition specified in the community treatment order by virtue of subsection (2) above, that fact may be taken into account for the purposes of exercising the power of recall under section 17E(1) below.

(7) But nothing in this section restricts the exercise of that power to cases where there is such a failure.

**(8) In this section “the relevant professionals” means—**

**(a) the approved mental health professional making the statement required by section 17A(4)(b), and**

**(b) where section 17A(4)(c) applies, the community clinician.**

## **17C Duration of community treatment order**

A community treatment order shall remain in force until—

(a) the period mentioned in section 20A(1) below (as extended under any provision of this Act) expires, but this is subject to sections 21 and 22 below;

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(b) the patient is discharged in pursuance of an order under section 23 below or a direction under section 72 below;

(c) the application for admission for treatment in respect of the patient otherwise ceases to have effect; or

(d) the order is revoked under section 17F below, whichever occurs first.

### **17D Effect of community treatment order**

(1) The application for admission for treatment in respect of a patient shall not cease to have effect by virtue of his becoming a community patient.

(2) But while he remains a community patient—

(a) the authority of the managers to detain him under section 6(2) above in pursuance of that application shall be suspended; and

(b) reference (however expressed) in this or any other Act, or in any subordinate legislation (within the meaning of the Interpretation Act 1978), to patients liable to be detained, or detained, under this Act shall not include him.

(3) And section 20 below shall not apply to him while he remains a community patient.

(4) Accordingly, authority for his detention shall not expire during any period in which that authority is suspended by virtue of subsection (2)(a) above.

### **17E Power to recall to hospital**

(1) The responsible clinician may recall a community patient to hospital if in his opinion—

(a) the patient requires medical treatment in hospital for his **psychiatric** ~~mental~~ disorder; and

(b) there would be a risk of harm to the health or safety of the patient or to other persons if the patient were not recalled to hospital for that purpose.

(2) The responsible clinician may also recall a community patient to hospital if the patient fails to comply with a condition specified under section 17B(3) above.

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(2A) Where the responsible clinician is not the community clinician, the responsible clinician must consult the community clinician before recalling a community patient to hospital, unless consultation would involve unreasonable delay.

(3) The hospital to which a patient is recalled need not be the responsible hospital.

(4) Nothing in this section prevents a patient from being recalled to a hospital even though he is already in the hospital at the time when the power of recall is exercised; references to recalling him shall be construed accordingly.

(5) The power of recall under subsections (1) and (2) above shall be exercisable by notice in writing to the patient.

(6) A notice under this section recalling a patient to hospital shall be sufficient authority for the managers of that hospital to detain the patient there in accordance with the provisions of this Act.

## **17F Powers in respect of recalled patients**

(1) This section applies to a community patient who is detained in a hospital by virtue of a notice recalling him there under section 17E above.

(2) The patient may be transferred to another hospital in such circumstances and subject to such conditions as may be prescribed in regulations made by the Secretary of State (if the hospital in which the patient is detained is in England) or the Welsh Ministers (if that hospital is in Wales).

(3) If he is so transferred to another hospital, he shall be treated for the purposes of this section (and section 17E above) as if the notice under that section were a notice recalling him to that other hospital and as if he had been detained there from the time when his detention in hospital by virtue of the notice first began.

(4) The responsible clinician may by order in writing revoke the community treatment order if–

(a) in his opinion, the conditions mentioned in section 3(2) above are satisfied in respect of the patient; and

(b) an approved mental health professional states in writing–

(i) that he agrees with that opinion; and

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(ii) that it is appropriate to revoke the order.

(4A) Where the responsible clinician is not the community clinician, the responsible clinician must consult the community clinician before revoking a community treatment order, unless consultation would involve unreasonable delay.

(5) The responsible clinician may at any time release the patient under this section, but not after the community treatment order has been revoked.

(6) If the patient has not been released, nor the community treatment order revoked, by the end of the period of 72 hours, he shall then be released.

(7) But a patient who is released under this section remains subject to the community treatment order.

(8) In this section–

(a) “the period of 72 hours” means the period of 72 hours beginning with the time when the patient's detention in hospital by virtue of the notice under section 17E above begins; and

(b) references to being released shall be construed as references to being released from that detention (and accordingly from being recalled to hospital).

#### **17G. Effect of revoking community treatment order**

(1) This section applies if a community treatment order is revoked under section 17F above in respect of a patient.

(2) Section 6(2) above shall have effect as if the patient had never been discharged from hospital by virtue of the community treatment order.

(3) The provisions of this or any other Act relating to patients liable to be detained (or detained) in pursuance of an application for admission for treatment shall apply to the patient as they did before the community treatment order was made, unless otherwise provided.

(4) If, when the order is revoked, the patient is being detained in a hospital other than the responsible hospital, the provisions of this Part of this Act shall have effect as if–

(a) the application for admission for treatment in respect of him were an application for admission to that other hospital; and

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(b) he had been admitted to that other hospital at the time when he was originally admitted in pursuance of the application.

(5) But, in any case, section 20 and section 68 below shall have effect as if the patient had been admitted to hospital in pursuance of the application for admission for treatment on the day on which the order is revoked.

## **18. Return and readmission of patients absent without leave.**

(1) Where a patient who is for the time being liable to be detained under this Part of this Act in a hospital—

(a) absents himself from the hospital without leave granted under section 17 above; or

(b) 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 under that section; or

(c) 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 approved mental health professional, 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 paragraph (c) of subsection (1) above 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 the managers of the hospital shall respectively include references to an officer on the staff of the first-mentioned hospital and the managers of that hospital.

(2A) Where a community patient is at any time absent from a hospital to which he is recalled under section 17E above, he may, subject to the provisions of this section, be taken into custody and returned to the hospital by any approved mental health professional, by any officer on the staff of the hospital, by any constable, or by any person authorised in writing by the responsible clinician or the managers of the hospital

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(3) 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 any officer on the staff of a local social services authority, by any constable, or by any person authorised in writing by the guardian or a local social services authority.

(4) 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 21 below) he is liable to be detained or subject to guardianship or, in the case of a community patient, the community treatment order is in force;

(4A) In determining for the purposes of subsection (4)(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 or subject to guardianship, a report furnished under section 20 or 21B below before the first day of his absence without leave shall not be taken to have renewed the authority for his detention or guardianship unless the period of renewal began before that day.

(4B) Similarly, in determining for those purposes whether a community treatment order is at any time in force in respect of a person who is or has been absent without leave, a report furnished under section 20A or 21B below before the first day of his absence without leave shall not be taken to have extended the community treatment period unless the extension began before that day.

(5) 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 2(4), 4(4) or 5(2) or (4) above and that period has expired.

(6) In this Act “absent without leave” means absent from any hospital or other place and liable to be taken into custody and returned under this section, and related expressions shall be construed accordingly.

(7) In relation to a patient who has yet to comply with a requirement imposed by virtue of this Act to be in a hospital or place, references in this Act to his liability to be returned to the hospital or place shall include his liability to be taken to that hospital or place; and related expressions shall be construed accordingly.

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## **19. Regulations as to transfer of patients.**

(1) In such circumstances and subject to such conditions as may be prescribed by regulations made by the Secretary of State—

- (a) a patient who is for the time being liable to be detained in a hospital by virtue of an application under this Part of this Act may be transferred to another hospital or into the guardianship of a local social services authority or of any person approved by such an authority;
- (b) a patient who is for the time being subject to the guardianship of a local social services authority or other person by virtue of an application under this Part of this Act may be transferred into the guardianship of another local social services authority or person, or be transferred to a hospital.

(2) Where a patient is transferred in pursuance of regulations under this section, the provisions of this Part of this Act (including this subsection) shall apply to him as follows, that is to say—

- (a) in the case of a patient who is liable to be detained in a hospital by virtue of an application for admission for assessment or for treatment and 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) in the case of a patient who is liable to be detained in a hospital by virtue of such an application and is transferred into guardianship, as if the application were a guardianship application duly accepted at the said time;
- (c) in the case of a patient who is subject to guardianship by virtue of a guardianship application and is transferred into the guardianship of another authority or person, as if the application were for his reception into the guardianship of that authority or person and had been accepted at the time when it was originally accepted;
- (d) in the case of a patient who is subject to guardianship by virtue of a guardianship application and is transferred to a hospital, as if the guardianship application were an application for admission to that hospital for treatment and as if the patient had been admitted to the hospital at the time when the application was originally accepted.

**(2A) But, in the case of a patient falling within subsection (2)(d), section 20 and section 68 have effect as if the patient had been admitted to hospital in pursuance of an application for admission for treatment on the day on which the patient is transferred.**

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(3) Without prejudice to subsections (1) and (2) above, any patient, who is for the time being liable to be detained under this Part of this Act in a hospital vested in the Secretary of State for the purposes of his functions under the National Health Service Act 2006, in a hospital vested in the Welsh Ministers for the purposes of their functions under the National Health Service (Wales) Act 2006, in any accommodation used under either of those Acts by the managers of such a hospital or in a hospital vested in a National Health Service trust, NHS foundation trust or Local Health Board, may at any time be removed to any other such hospital or accommodation which is managed by the managers of, or is vested in the National Health Service trust, NHS foundation trust or Local Health Board or, the first-mentioned hospital; and paragraph (a) of subsection (2) above shall apply in relation to a patient so removed as it applies in relation to a patient transferred in pursuance of regulations made under this section.

**(3A) Before deciding to transfer a patient between hospitals in pursuance of regulations under subsection (1), or in pursuance of subsection (3), the person responsible for taking that decision must consult the patient's nominated person (if any), unless consultation—**

**(a) is not reasonably practicable, or**

**(b) would involve unreasonable delay.**

(4) Regulations made under this section may make provisions for regulating the conveyance to their destination of patients authorised to be transferred or removed in pursuance of the regulations or under subsection (3) above.

#### **19A. Regulations as to assignment of responsibility for community patients**

(1) Responsibility for a community patient may be assigned to another hospital in such circumstances and subject to such conditions as may be prescribed by regulations made by the Secretary of State (if the responsible hospital is in England) or the Welsh Ministers (if that hospital is in Wales).

(2) If responsibility for a community patient is assigned to another hospital—

(a) the application for admission for treatment in respect of the patient shall have effect (subject to section 17D above) as if it had always specified that other hospital;

(b) the patient shall be treated as if he had been admitted to that other hospital at the time when he was originally admitted in pursuance of the application (and as if he had subsequently been discharged under section 17A above from there); and



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(c) that other hospital shall become “the responsible hospital” in relation to the patient for the purposes of this Act

*Duration of authority and discharge*

**20. Duration of authority.**

(1) Subject to the following provisions of this Part—

(a) a patient admitted to hospital in pursuance of an application for admission for treatment may be detained in a hospital for a period not exceeding three months beginning with the day on which the patient was so admitted, but may not be so detained for any longer period unless the authority for the patient’s detention is renewed under this section;

(b) a patient placed under guardianship in pursuance of a guardianship application may be kept under guardianship for a period not exceeding six months beginning with the day on which the guardianship application was accepted, but may not be so kept for any longer period unless the authority for the patient’s guardianship is renewed under this section.

(2) Authority for the detention of a patient may, unless the patient has previously been discharged under section 23, be renewed—

(a) from the expiration of the period referred to in subsection (1)(a), for a further period of three months;

(b) from the expiration of any period of renewal under paragraph (a), for a further period of six months;

(c) from the expiration of any period of renewal under paragraph (b), for a further period of one year, and so on for periods of one year at a time.

(2A) Authority for the guardianship of a patient may, unless the patient has previously been discharged under section 23, be renewed—

(a) from the expiration of the period referred to in subsection (1)(b), for a further period of six months;

(b) from the expiration of any period of renewal under paragraph (a), for a further period of one year, and so on for periods of one year at a time.

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~~(1) Subject to the following provisions of this Part of this Act, a patient admitted to hospital in pursuance of an application for admission for treatment, and a patient placed under guardianship in pursuance of a guardianship application, may be detained in a hospital or kept under guardianship for a period not exceeding six months beginning with the day on which he was so admitted, or the day on which the guardianship application was accepted, as the case may be, but shall not be so detained or kept for any longer period unless the authority for his detention or guardianship is renewed under this section.~~

~~(2) Authority for the detention or guardianship of a patient may, unless the patient has previously been discharged under section 23 below, be renewed—~~

~~(a) from the expiration of the period referred to in subsection (1) above, for a further period of six months;~~

~~(b) from the expiration of any period of renewal under paragraph (a) above, for a further period of one year, and so on for periods of one year at a time.~~

~~(3) Within the period of two months ending on the day on which a patient who is liable to be detained in pursuance of an application for admission for treatment would cease under this section to be so liable in default of the renewal of the authority for his detention, it shall be the duty of the responsible clinician—~~

~~(a) to examine the patient; and~~

~~(b) if it appears to him that the conditions set out in subsection (4) below are satisfied, to furnish to the managers of the hospital where the patient is detained a report to that effect in the prescribed form; and where such a report is furnished in respect of a patient the managers shall, unless they discharge the patient under section 23 below, cause him to be informed.~~

~~(4) The conditions referred to in subsection (3) above are that—~~

~~(a) the patient is suffering from psychiatric disorder of a nature or degree which makes it appropriate for the patient to receive medical treatment in a hospital,~~

~~(b) serious harm may be caused to the health or safety of the patient or of another person unless the patient receives medical treatment,~~

~~(c) it is necessary, given the nature, degree and likelihood of the harm, for the patient to receive medical treatment,~~

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(d) the necessary treatment cannot be provided unless the patient continues to be liable to be detained, and

(e) appropriate medical treatment is available for the patient.

~~(a) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment in a hospital,~~

~~(b) .....~~

~~(c) it is necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment and that it cannot be provided unless he continues to be detained; and~~

~~(d) appropriate medical treatment is available for him.~~

(5) Before furnishing a report under subsection (3) above the responsible clinician shall consult ~~one or more persons who have been professionally concerned with the patient's medical treatment—~~

(a) one or more other persons who have been professionally concerned with the patient's medical treatment;

(b) if the patient appears to have a nominated person, the nominated person,

(5A) But the responsible clinician may not furnish a report under subsection (3) above unless a person—

(a) who has been professionally concerned with the patient's medical treatment; but

(b) who belongs to a profession other than that to which the responsible clinician belongs, states in writing that he agrees that the conditions set out in subsection (4) above are satisfied.

(6) Within the period of two 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, it shall be the duty of the appropriate practitioner —

(a) to examine the patient; and

(b) if it appears to him that the conditions set out in subsection (7) below are satisfied, to furnish to the guardian and, where the guardian is a person other than a local

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social services authority, to the responsible local social services authority a report to that effect in the prescribed form; and where such a report is furnished in respect of a patient, the local social services authority shall, unless they discharge the patient under section 23 below, cause him to be informed.

(6A) Before furnishing a report under subsection (6), the appropriate practitioner must, if the patient appears to have a nominated person, consult that person.

(7) The conditions referred to in subsection (6) above are that—

(a) the patient is suffering from—

(i) psychiatric disorder,

(ii) autism, or

(iii) learning disability which has serious behavioural consequences,

of a nature or degree which warrants the patient's reception into guardianship, and

(a) ~~the patient is suffering from [mental disorder]<sup>10</sup> 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 or for the protection of other persons that the patient should remain under guardianship.

(8) Where a report is duly furnished under subsection (3) or (6) above, the authority for the detention or guardianship of the patient shall be thereby renewed for the period prescribed in that case by subsection (2) or (2A) above.

## 20A Community treatment period

(1) Subject to the provisions of this Part of this Act, a community treatment order shall cease to be in force on expiry of the period of six months beginning with the day on which it was made.

(2) That period is referred to in this Act as “the community treatment period” .

(3) The community treatment period may, unless the order has previously ceased to be in force, be extended—

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(a) from its expiration for a period of six months;

(b) from the expiration of any period of extension under paragraph (a) above for a further period of one year, and so on for periods of one year at a time.

(4) Within the period of two months ending on the day on which the order would cease to be in force in default of an extension under this section, it shall be the duty of the responsible clinician—

(a) to examine the patient; and

(b) if it appears to him that the **criteria in section 17A(5) are met** ~~conditions set out in subsection (6) below are satisfied~~—and if a statement ~~under subsection (8) below is made,~~ **has been made**—

**(i) under subsection (8), and**

**(ii) where the responsible clinician is not the community clinician, under subsection (8A),**

to furnish to the managers of the responsible hospital a report to that effect in the prescribed form.

(5) Where such a report is furnished in respect of the patient, the managers shall, unless they discharge him under section 23 below, cause him to be informed.

~~(6) The conditions referred to in subsection (4) above are that—~~

~~(a) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment;~~

~~(b) it is necessary for his health or safety or for the protection of other persons that he should receive such treatment;~~

~~(c) subject to his continuing to be liable to be recalled as mentioned in paragraph (d) below, such treatment can be provided without his being detained in a hospital;~~

~~(d) it is necessary that the responsible clinician should continue to be able to exercise the power under section 17E(1) above to recall the patient to hospital; and~~

~~(e) appropriate medical treatment is available for him.~~

**(7) Subsection (6) of section 17A applies for the purposes of subsection (4)(b) of this section as it applies for the purposes of subsection (4)(a) of that section.**

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~~(7) In determining whether the criterion in subsection (6)(d) ~~(6)(c)~~ above is met, the responsible clinician shall, in particular, consider, having regard to the patient's history of mental disorder and any other relevant factors, what risk there would be of a deterioration of the patient's condition if he were to continue not to be detained in a hospital (as a result, for example, of his refusing or neglecting to receive the medical treatment he requires for his mental disorder).~~

(8) The statement referred to in subsection (4)(b)(i) above is a statement in writing by an approved mental health professional—

(a) that it appears to him that the **criteria in section 17A(5) are met**; ~~conditions set out in subsection (6) above are satisfied and~~

(b) that it is appropriate to extend the community treatment period.

**(8A) The statement referred to in subsection (4)(b)(ii) is a statement in writing by the community clinician that it appears to the community clinician that the conditions set out in subsection (6) are satisfied.**

**(8B) Before making a statement under subsection (8)(b) in respect of a patient who appears to have a nominated person, the approved mental health professional must consult the nominated person, unless consultation—**

**(a) is not reasonably practicable, or**

**(b) would involve unreasonable delay.”**

~~(9) Before furnishing a report under subsection (4) above the responsible clinician shall consult one or more other persons who have been professionally concerned with the patient's medical treatment.~~

(10) Where a report is duly furnished under subsection (4) above, the community treatment period shall be thereby extended for the period prescribed in that case by subsection (3) above.

## **20B. Effect of expiry of community treatment order**

(1) A community patient shall be deemed to be discharged absolutely from liability to recall under this Part of this Act, and the application for admission for treatment cease to have effect, on expiry of the community treatment order, if the order has not previously ceased to be in force.

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(2) For the purposes of subsection (1) above, a community treatment order expires on expiry of the community treatment period as extended under this Part of this Act, but this is subject to sections 21 and 22 below.

## **21. Special provisions as to patients absent without leave.**

(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 or subject to guardianship under this Part of this Act or, in the case of a community patient, the community treatment order would cease to be in force; or

(b) within the period of one week ending with that day,

he shall not cease to be so liable or subject, or the order shall not cease to be in force, 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 18 above, is the end of the period of one week beginning with the day on which he is returned to the hospital or place where he ought to be;

(b) where the patient returns himself to the hospital or place where he ought to be within the period during which he can be taken into custody under section 18 above, is the end of the period of one week beginning with the day on which he so returns himself; and

(c) otherwise, is the end of the period during which he can be taken into custody under section 18 above.

(3) Where a patient is absent without leave on the day on which (apart from this section) the managers would be required under section 68 below to refer the patient's case to the appropriate tribunal, that requirement shall not apply unless and until—

(a) the patient is taken into custody under section 18 above and returned to the hospital where he ought to be; or

(b) the patient returns himself to the hospital where he ought to be within the period during which he can be taken into custody under section 18 above.

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(4) Where a community patient is absent without leave on the day on which (apart from this section) the 72-hour period mentioned in section 17F above would expire, that period shall not expire until the end of the period of 72 hours beginning with the time when—

(a) the patient is taken into custody under section 18 above and returned to the hospital where he ought to be; or

(b) the patient returns himself to the hospital where he ought to be within the period during which he can be taken into custody under section 18 above.

(5) Any reference in this section, or in sections 21A to 22 below, to the time when a community treatment order would cease, or would have ceased, to be in force shall be construed as a reference to the time when it would cease, or would have ceased, to be in force by reason only of the passage of time.

#### **21A. Patients who are taken into custody or return within 28 days.**

(1) This section applies where a patient who is absent without leave is taken into custody under section 18 above, or returns himself to the hospital or 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 liable to be detained or subject to guardianship is extended by section 21 above, any examination and report to be made and furnished in respect of the patient under section 20(3) or (6) above may be made and furnished within the period as so extended.

(3) Where the authority for the detention or guardianship of the patient is renewed by virtue of subsection (2) above after the day on which (apart from section 21 above) that authority would have expired, the renewal shall take effect as from that day.

(4) In the case of a community patient, where the period for which the community treatment order is in force is extended by section 21 above, any examination and report to be made and furnished in respect of the patient under section 20A(4) above may be made and furnished within the period as so extended.

(5) Where the community treatment period is extended by virtue of subsection (4) above after the day on which (apart from section 21 above) the order would have ceased to be in force, the extension shall take effect as from that day.



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**21B. Patients who are taken into custody or return after more than 28 days.**

(1) This section applies where a patient who is absent without leave is taken into custody under section 18 above, or returns himself to the hospital or 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) It shall be the duty of the appropriate practitioner, within the period of one week beginning with the day on which the patient is returned or returns himself to the hospital or place where he ought to be (his “return day”)—

(a) to examine the patient; and

(b) if it appears to him that the relevant conditions are satisfied, to furnish to the appropriate body a report to that effect in the prescribed form;

and where such a report is furnished in respect of the patient the appropriate body shall cause him to be informed.

(3) Where the patient is liable to be detained or is a community patient (as opposed to subject to guardianship), the appropriate practitioner shall, before furnishing a report under subsection (2) above, consult—

(a) one or more other persons who have been professionally concerned with the patient's medical treatment; and

(b) an approved mental health professional.

(4) Where—

(a) the patient would (apart from any renewal of the authority for his detention or guardianship on or after his return day) be liable to be detained or subject to guardianship after the end of the period of one week beginning with that day; or

(b) in the case of a community patient, the community treatment order would (apart from any extension of the community treatment period on or after that day) be in force after the end of that period,

he shall cease to be so liable or subject, or the community treatment period shall be deemed to expire, at the end of that period unless a report is duly furnished in respect of him under subsection (2) above.

(4A) If, in the case of a community patient, the community treatment order is revoked under section 17F above during the period of one week beginning with his return day—

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(a) subsections (2) and (4) above shall not apply; and

(b) any report already furnished in respect of him under subsection (2) above shall be of no effect.

(5) Where the patient would (apart from section 21 above) have ceased to be liable to be detained or 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 detention or guardianship for the period prescribed in that case by section 20(2) or (2A) above.

(6) Where the authority for the detention or 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 21 above and that subsection) 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 20(2) or (2A) above.

(6A) In the case of a community patient, where the community treatment order would (apart from section 21 above) have ceased to be in force on or before the day on which a report is duly furnished in respect of him under subsection (2) above, the report shall extend the community treatment period for the period prescribed in that case by section 20A(3) above.

(6B) Where the community treatment period is extended by virtue of subsection (6A) above—

(a) the extension shall take effect as from the day on which (apart from section 21 above and that subsection) the order would have ceased to be in force; and

(b) if (apart from this paragraph) the period as so extended would expire on or before the day on which the report is furnished, the report shall further extend that period, as from the day on which it would expire, for the period prescribed in that case by section 20A(3) above.

(7) Where the authority for the detention or 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 20(3) or (6) above; and the

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reference in this subsection to authority includes any authority renewed under subsection (5) above by the report.

(7A) In the case of a community patient, where the community treatment order would (taking account of any extension under subsection (6A) above) cease to be in force 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 20A(4) above.

*[Subsections (8) and (9) were repealed by the Mental Health Act 2007]*

(10) In this section—

“the appropriate body” means—

- (a) in relation to a patient who is liable to be detained in a hospital, the managers of the hospital;
- (b) in relation to a patient who is subject to guardianship, the responsible local social services authority;
- (c) in relation to a community patient, the managers of the responsible hospital; and

“the relevant conditions” means—

- (a) in relation to a patient who is liable to be detained in a hospital, the conditions set out in subsection (4) of section 20 above;
- (b) in relation to a patient who is subject to guardianship, the conditions set out in subsection (7) of that section;
- (c) in relation to a community patient, the conditions set out in section 20A(6) above.

## **22. Special provisions as to patients sentenced to imprisonment, etc.**

(1) If—

- (a) a qualifying patient 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
- (b) he is so detained for a period exceeding, or for successive periods exceeding in the aggregate, six months,

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the relevant application shall cease to have effect on expiry of that period.

(2) A patient is a qualifying patient for the purposes of this section if—

(a) he is liable to be detained by virtue of an application for admission for treatment;

(b) he is subject to guardianship by virtue of a guardianship application; or

(c) he is a community patient.

(3) “The relevant application”, in relation to a qualifying patient, means—

(a) in the case of a patient who is subject to guardianship, the guardianship application in respect of him;

(b) in any other case, the application for admission for treatment in respect of him.

(4) The remaining subsections of this section shall apply if a qualifying patient is detained in custody as mentioned in subsection (1)(a) above but for a period not exceeding, or for successive periods not exceeding in the aggregate, six months.

(5) If apart from this subsection—

(a) the patient would have ceased to be liable to be detained or subject to guardianship by virtue of the relevant application on or before the day on which he is discharged from custody; or

(b) in the case of a community patient, the community treatment order would have ceased to be in force on or before that day,

he shall not cease and shall be deemed not to have ceased to be so liable or subject, or the order shall not cease and shall be deemed not to have ceased to be in force, until the end of that day.

(6) In any case (except as provided in subsection (8) below), sections 18, 21 and 21A above shall apply in relation to the patient as if he had absented himself without leave on that day.

(7) In its application by virtue of subsection (6) above section 18 above shall have effect as if—

(a) in subsection (4) for the words from “later of” to the end there were substituted “end of the period of 28 days beginning with the first day of his absence without leave”; and

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(b) subsections (4A) and (4B) were omitted.

(8) In relation to a community patient who was not recalled to hospital under section 17E above at the time when his detention in custody began—

(a) section 18 above shall not apply; but

(b) sections 21 and 21A above shall apply as if he had absented himself without leave on the day on which he is discharged from custody and had returned himself as provided in those sections on the last day of the period of 28 days beginning with that day.

### 23. Discharge of patients.

(1) Subject to the provisions of this section and section 25 below, a patient who is for the time being liable to be detained or subject to guardianship under this Part of this Act shall cease to be so liable or subject if an order in writing discharging him absolutely from detention or guardianship is made in accordance with this section.

(1A) Subject to the provisions of this section and section 25 below, a community patient shall cease to be liable to recall under this Part of this Act, and the application for admission for treatment cease to have effect, if an order in writing discharging him from such liability is made in accordance with this section.

(1B) An order under subsection (1) or (1A) above shall be referred to in this Act as “an order for discharge”.

(2) An order for discharge may be made in respect of a patient—

(a) where the patient is liable to be detained in a hospital in pursuance of an application for admission for assessment or for treatment by the responsible clinician, by the managers or by **the patient's nominated person** ~~the nearest relative of the patient~~.

(b) where the patient is subject to guardianship, by the responsible clinician, by the responsible local social services authority or by **the patient's nominated person** ~~the nearest relative of the patient~~.

(c) where the patient is a community patient, by the responsible clinician, by the managers of the responsible hospital or by **the patient's nominated person** ~~the nearest relative of the patient~~.

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(2A) Before making an order for discharge by virtue of subsection (2)(a), the responsible clinician must consult a person—

(a) who has been professionally concerned with the patient’s medical treatment, and

(b) who belongs to a profession other than that to which the responsible clinician belongs.

(2B) Before making an order for discharge by virtue of subsection (2)(b)—

(a) the responsible clinician must consult a person—

(i) who has been professionally concerned with the patient’s care or treatment, and

(ii) who belongs to a profession other than that to which the responsible clinician belongs

(b) the responsible local social services authority must ensure that whoever is taking the decision for the authority consults a person who has been professionally concerned with the patient’s care or treatment (whether or not a member of staff of the authority);

(c) the patient’s nominated person must consult the responsible local social services authority.

(2C) Before making an order for discharge by virtue of subsection (2)(c)—

(a) the responsible clinician must, if they are not the community clinician, consult the community clinician;

(b) the hospital managers must consult the community clinician.

(4) The powers conferred by this section on any authority trust (other than an NHS foundation trust, board or body of persons may be exercised subject to subsection (5) below by any three or more members of that authority trust, board or body authorised by them in that behalf or by three or more members of a committee or sub-committee of that authority trust, board or body which has been authorised by them in that behalf.

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(5) The reference in subsection (4) above to the members of an authority, trust, board or body or the members of a committee or sub-committee of an authority, trust, board or body,—

- (a) in the case of a Local Health Board or Special Health Authority or a committee or sub-committee of a Local Health Board or Special Health Authority, is a reference only to the chairman of the authority or board and such members (of the authority, board, committee or sub-committee, as the case may be) as are not also officers of the authority or board, within the meaning of the National Health Service Act 2006 or the National Health Service (Wales) Act 2006; and
- (b) in the case of a National Health Service trust or a committee or sub-committee of such a trust, is a reference only to the chairman of the trust and such directors or (in the case of a committee or sub-committee) members as are not also employees of the trust.

(6) The powers conferred by this section on any NHS foundation trust may be exercised by any three or more persons authorised by the board of the trust in that behalf each of whom is neither an executive director of the board nor an employee of the trust.

## **24. Visiting and examination of patients.**

(1) For the purpose of advising as to the exercise by **the nominated person** ~~the nearest relative~~ of a patient who is liable to be detained or subject to guardianship under this Part of this Act, or who is a community patient, of any power to order his discharge, any registered medical practitioner or approved clinician authorised by or on behalf of **the nominated person** ~~the nearest relative~~ of the patient may, at any reasonable time, visit the patient and examine him in private.

(2) Any registered medical practitioner or approved clinician authorised for the purposes of subsection (1) above 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 or to any after-care services provided for the patient under section 117 below.

## **25. Restrictions on discharge by **nominated person** ~~nearest relative~~.**

(1) An order for the discharge of a patient who is liable to be detained in a hospital shall not be made under section 23 above by his **nominated person** ~~nearest relative~~ except

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after giving not less than 72 hours' notice in writing to the managers of the hospital; and if, within 72 hours after such notice has been given, the responsible clinician furnishes to the managers a report certifying that in the opinion of that clinician the patient, if discharged, would be likely to act in a manner dangerous to other persons or to himself—

(a) any order for the discharge of the patient made by that **nominated person** ~~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 **nominated person** ~~relative~~ during the period of **three months** ~~six months~~ beginning with the date of the report.

(1A) Subsection (1) above shall apply to an order for the discharge of a community patient as it applies to an order for the discharge of a patient who is liable to be detained in a hospital, but with the reference to the managers of the hospital being read as a reference to the managers of the responsible hospital.

(2) In any case where a report under subsection (1) above is furnished in respect of a patient who is liable to be detained in pursuance of an application for admission for treatment, or in respect of a community patient, the managers shall cause the **nominated person** ~~nearest relative~~ of the patient to be informed.

*[Sections 25A to 25J is not affected by the amendments to be made by the draft Mental Health Bill and are not included in this Schedule]*

#### *Functions of relative of patients*

### **26.— Definition of “relative” and “nearest relative”.**

(1) In this Part of this Act “relative” means any of the following persons:—

(a) ~~husband or wife [or civil partner]~~<sup>1</sup>;

(b) ~~son or daughter;~~

(c) ~~father or mother;~~

(d) ~~brother or sister;~~

(e) ~~grandparent;~~



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~~(f) grandchild;~~

~~(g) uncle or aunt;~~

~~(h) nephew or niece.~~

~~(2) In deducing relationships for the purposes of this section, any relationship of the half-blood shall be treated as a relationship of the whole blood, and an illegitimate person shall be treated as the legitimate child of~~

~~(a) his mother, and~~

~~(b) if his father has parental responsibility for him within the meaning of section 3 of the Children Act 1989, his father.~~

~~(3) In this Part of 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 described in subsection (1) above who is for the time being surviving, relatives of the whole blood being preferred to relatives of the same description of the half blood and the elder or eldest of two or more relatives described in any paragraph of that subsection being preferred to the other or others of those relatives, regardless of sex.~~

~~(4) Subject to the provisions of this section and to the following provisions of this Part of this Act, where the patient ordinarily resides with or is cared for by one or more of his relatives (or, if he is for the time being an in-patient in a hospital, he last ordinarily resided with or was cared for by one or more of his relatives) his nearest relative shall be determined—~~

~~(a) by giving preference to that relative or those relatives over the other or others; and~~

~~(b) as between two or more such relatives, in accordance with subsection (3) above.~~

~~(5) Where the person who, under subsection (3) or (4) above, 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) is the husband or wife or civil partner of the patient, but 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 which has not come to an end; or~~

~~(c) is a person other than the husband, wife, civil partner, father or mother of the patient, and is for the time being under 18 years of age;~~

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~~the nearest relative of the patient shall be ascertained as if that person were dead.~~

~~(6) In this section “husband”, “wife” and “civil partner” include a person who is living with the patient as the patient's husband or wife or as if they were civil partners, 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 six months; but a person shall not be treated by virtue of this subsection as the nearest relative of a married patient or a patient in a civil partnership unless the husband, wife or civil partner of the patient is disregarded by virtue of paragraph (b) of subsection (5) above.~~

~~(7) 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) above as if mentioned last in subsection (1) above; and~~

~~(b) shall not be treated by virtue of this subsection as the nearest relative of a married patient [or a patient in a civil partnership unless the husband, wife or civil partner] of the patient is disregarded by virtue of paragraph (b) of subsection (5) above.~~

~~27. Children and young persons in care.~~

~~Where—~~

~~(a) a patient who is a child or young person is in the care of a local authority by virtue of a care order within the meaning of the Children Act 1989; or~~

~~(b) the rights and powers of a parent of a patient who is a child or young person are vested in a local authority by virtue of section 16 of the Social Work (Scotland) Act 1968,~~

~~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 or civil partner (if any).~~

~~28.— Nearest relative of minor under guardianship, etc.~~

~~(1) Where—~~

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~~(a) a guardian has been appointed for a person who has not attained the age of eighteen years; or~~

~~(b) a [person is named in a child arrangements]2 order (as defined by section 8 of the Children Act 1989) [as a person with whom a person who has not attained the age of eighteen years is to live]3;~~

~~the guardian (or guardians, where there is more than one) or the person [so named (or the persons so named, where there is more than one)]4 shall, to the exclusion of any other person, be deemed to be his nearest relative.~~

~~(2) Subsection (5) of section 26 above 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.~~

~~(3) In this section “guardian” does not include a guardian [includes a special guardian (within the meaning of the Children Act 1989), but]6 under this Part of this Act.~~

~~(4) In this section “court” includes a court in Scotland or Northern Ireland, and “enactment” includes an enactment of the Parliament of Northern Ireland, a Measure of the Northern Ireland Assembly and an Order in Council under Schedule 1 of the Northern Ireland Act 1974.~~

~~29.— Appointment by court of acting nearest relative.~~

~~(1) The county court may, upon application made in accordance with the provisions of this section in respect of a patient, by order direct that the functions of the nearest relative of the patient under this Part of this Act and sections 66 and 69 below shall, during the continuance in force of the order, be exercisable by the person specified in the order.~~

~~(1A) If the court decides to make an order on an application under subsection (1) above, the following rules have effect for the purposes of specifying a person in the order—~~

~~(a) if a person is nominated in the application to act as the patient's nearest relative and that person is, in the opinion of the court, a suitable person to act as such and is willing to do so, the court shall specify that person (or, if there are two or more such persons, such one of them as the court thinks fit);~~

~~(b) otherwise, the court shall specify such person as is, in its opinion, a suitable person to act as the patient's nearest relative and is willing to do so.~~

~~(2) An order under this section may be made on the application of— [~~

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~~(za) the patient;~~

~~(a) any 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) an approved mental health professional.~~

~~(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) that the nearest relative of the patient unreasonably objects to the making of an application for admission for treatment or a guardianship application in respect of the patient; [...]<sup>6</sup>~~

~~(d) that the nearest relative of the patient has exercised without due regard to the welfare of the patient or the interests of the public his power to discharge the patient [...]<sup>7</sup> under this Part of this Act, or is likely to do so [; or]<sup>8</sup>~~

~~(e) that the nearest relative of the patient is otherwise not a suitable person to act as such.~~

~~(4) If, immediately before the expiration of the period for which a patient is liable to be detained by virtue of an application for admission for assessment, an application under this section, which is an application made on the ground specified in subsection (3)(c) or (d) above, is pending in respect of the patient, that period shall be extended—~~

~~(a) in any case, until the application under this section has been finally disposed of; and~~

~~(b) if an order is made in pursuance of the application under this section, for a further period of seven days;~~

and for the purposes of this subsection an application under this section shall be deemed to have been finally disposed of at the expiration of the time allowed for appealing from the decision of the court or, if notice of appeal has been given within that time, when the appeal has been heard or withdrawn, and “pending” shall be construed accordingly.

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~~(5) An order made on the ground specified in subsection (3)(a), (b) or (c) above may specify a period for which it is to continue in force unless previously discharged under section 30 below.~~

~~(6) While an order made under this section is in force, the provisions of this Part of this Act (other than this section and section 30 below) and sections 66, 69, 132(4) and 133 below 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 30 below) shall so apply notwithstanding that the person who was the patient's nearest relative when the order was made is no longer his nearest relative; but this subsection shall not apply to section 66 below in the case mentioned in paragraph (h) of subsection (1) of that section.~~

~~30.— Discharge and variation of orders under s. 29.~~

~~(1) An order made under section 29 above in respect of a patient may be discharged by the county court upon application made—~~

~~(a) in any case, by [ the patient or]1 the person having the functions of the nearest relative of the patient by virtue of the order;~~

~~(b) where the order was made on the ground specified in paragraph (a), (b) or (c) of section 29(3) above, or where the person who was the nearest relative of the patient when the order was made has ceased to be his nearest relative, on the application of the nearest relative of the patient.~~

~~(1A) But, in the case of an order made on the ground specified in paragraph (c) of section 29(3) above, an application may not be made under subsection (1)(b) above by the person who was the nearest relative of the patient when the order was made except with leave of the county court.~~

~~(2) An order made under section 29 above in respect of a patient may be varied by the county court, on the application of the person having the functions of the nearest relative by virtue of the order or on the application of the patient or of an approved mental health professional , by substituting another person for the person having those functions].~~

~~(2A) If the court decides to vary an order on an application under subsection (2) above, the following rules have effect for the purposes of substituting another person—~~

~~(a) if a person is nominated in the application to act as the patient's nearest relative and that person is, in the opinion of the court, a suitable person to act as such and is willing to~~

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~~do so, the court shall specify that person (or, if there are two or more such persons, such one of them as the court thinks fit);~~

~~(b) otherwise, the court shall specify such person as is, in its opinion, a suitable person to act as the patient's nearest relative and 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 section 29 above dies—~~

~~(a) subsections (1) and (2) above shall apply as if for any reference to that person there were substituted a reference to any relative of the patient, and~~

~~(b) until the order is discharged or varied under those provisions the functions of the nearest relative under this Part of this Act and sections 66 and 69 below shall not be exercisable by any person.~~

~~(4) An order made on the ground specified in paragraph (c) or (d) of section 29(3) above shall, unless previously discharged under subsection (1) above, cease to have effect as follows]8—~~

~~(a) if—~~

~~(i) on the date of the order the patient was liable to be detained or subject to guardianship by virtue of a relevant application, order or direction; or~~

~~(ii) he becomes so liable or subject within the period of three months beginning with that date; or~~

~~(iii) he was a community patient on the date of the order,~~

~~it shall cease to have effect when he is discharged under section 23 above or 72 below or the relevant application, order or direction otherwise ceases to have effect (except as a result of his being transferred in pursuance of regulations under section 19 above);~~

~~(b) otherwise, it shall cease to have effect at the end of the period of three months beginning with the date of the order.~~

~~(4A) In subsection (4) above, reference to a relevant application, order or direction is to any of the following—~~

~~(a) an application for admission for treatment;~~

~~(b) a guardianship application;~~

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~~(c) an order or direction under Part 3 of this Act (other than under section 35, 36 or 38).~~

~~10~~

~~(4B) An order made on the ground specified in paragraph (a), (b) or (c) of section 29(3) above shall—~~

~~(a) if a period was specified under section 29(5) above, cease to have effect on expiry of that period, unless previously discharged under subsection (1) above;~~

~~(b) if no such period was specified, remain in force until it is discharged under subsection (1) above.~~

~~(5) The discharge or variation under this section of an order made under section 29 above shall not affect the validity of anything previously done in pursuance of the order.~~

*[Sections 27 to 30 are not affected by the amendments to be made by the draft Mental Health Bill and are not included in this Schedule]*

### *Nominated persons: appointment and removal*

#### **30A. Nominated person**

Schedule A1—

(a) confers power to appoint a nominated person for a patient for the purposes of this Act, and

(b) makes provision about the duration of an appointment of a nominated person.

#### **30B. Power of court to terminate appointment of nominated person**

(1) The county court may, on an application made in accordance with the provisions of this section, make an order terminating the appointment of a nominated person for a patient.

(2) An order under this section may be made on the application of—

(a) the patient,

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(b) an approved mental health professional, or

(c) any person engaged in caring for the patient or interested in the patient's welfare.

(3) An application for an order under this section may only be made on the grounds that—

(a) the nominated person unreasonably objects to the making of an application for admission for treatment or a guardianship application in respect of the patient;

(b) the nominated person has, without due regard to the welfare of the patient or the interests of the public, exercised the power to discharge the patient under this Part of this Act or is likely to do so;

(c) the nominated person unreasonably objects to the making of a community treatment order in respect of the patient;

(d) the patient has done anything which is clearly inconsistent with the nominated person remaining the patient's nominated person;

(e) the nominated person lacks the capacity or competence to act as a nominated person;

(f) the nominated person is otherwise not a suitable person to act as a nominated person.

(4) If, immediately before the expiry of the period for which a patient is liable to be detained by virtue of an application for admission for assessment, an application under this section, which is an application made on the ground specified in subsection (3)(a) or (b), is pending in respect of the patient, that period is extended—

(a) in any case, until the application under this section has been finally disposed of, and

(b) if an order is made in pursuance of the application under this section, for a further period of seven days.

(5) For the purposes of subsection (4)—

(a) an application under this section is “pending” until it is finally disposed of, and

(b) an application under this section is “finally disposed of”—

(i) when the time allowed for appealing against court's decision expires without an appeal being brought, or



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(ii) where an appeal is brought within that time, when the appeal has been heard or withdrawn.

(6) Where an order under this section terminates the appointment of a nominated person for a patient, the person is disqualified from being re-appointed for the period specified by the court in the order.

(7) In this section “patient” includes any person by or for whom a nominated person is appointed.

### *Supplemental*

#### **31. Procedure on applications to county court.**

Rules of court which relate to applications authorised by this Part of this Act to be made to the county court may make provision—

- (a) for the hearing and determination of such applications otherwise than in open court;
- (b) for the admission on the hearing of such applications of evidence of such descriptions as may be specified in the rules notwithstanding anything to the contrary in any enactment or rule of law relating to the admissibility of evidence;
- (c) for the visiting and interviewing of patients in private by or under the directions of the court.

#### **32. Regulations for purposes of Part II.**

(1) The Secretary of State may make regulations for prescribing anything which, under this Part of this Act, is required or authorised to be prescribed, and otherwise for carrying this Part of this Act into full effect.

(2) Regulations under this section may in particular make provision—

- (a) for prescribing the form of any application, recommendation, report, order, notice or other document to be made or given under this Part of this Act;

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(b) for prescribing the manner in which any such application, recommendation, report, order, notice or other document may be proved, and for regulating the service of any such application, report, order or notice;

(c) for requiring such bodies as may be so prescribed to keep such registers or other records as may be prescribed by the regulations in respect of patients liable to be detained or subject to guardianship under this Part of this Act or community patients, and to furnish or make available to those patients, and their relatives, such written statements of their rights and powers under this Act as may be so prescribed; **and**

(d) for the determination in accordance with the regulations of the age of any person whose exact age cannot be ascertained by reference to the registers kept under the Births and Deaths Registration Act 1953; **and**

~~(e) for enabling the functions under this Part of this Act of the nearest relative of a patient to be performed, in such circumstances and subject to such conditions (if any) as may be prescribed by the regulations, by any person authorised in that behalf by that relative;~~

~~and for the purposes of this Part of this Act any application, report or notice the service of which is regulated under paragraph (b) above shall be deemed to have been received by or furnished to the authority or person to whom it is authorised or required to be furnished, addressed or given if it is duly served in accordance with the regulations.~~

(3) Without prejudice to subsections (1) and (2) above, but subject to section 23(4) and (6) above, regulations under this section may determine the manner in which functions under this Part of this Act of the managers of hospitals, local social services authorities, Local Health Board, Special Health Authorities, National Health Service trusts or NHS foundation trusts are to be exercised, and such regulations may in particular specify the circumstances in which, and the conditions subject to which, any such functions may be performed by officers of or other persons acting on behalf of those managers, boards, authorities and trusts.

### **33. Special provisions as to wards of court.**

(1) An application for the admission to hospital of a minor who is a ward of court may be made under this Part of this Act with the leave of the court; and section 11(4) above shall not apply in relation to an application so made.

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(2) Where a minor who is a ward of court is liable to be detained in a hospital by virtue of an application for admission under this Part of this Act, any power exercisable under this Part of this Act or is a community patient or under section 66 below in relation to the patient by his **nominated person** ~~nearest relative~~ shall be exercisable by or with the leave of the court.

(3) Nothing in this Part of this Act shall be construed as authorising the making of a guardianship application in respect of a minor who is a ward of court, or the transfer into guardianship of any such minor.

(4) Where a community treatment order has been made in respect of a minor who is a ward of court, the provisions of this Part of this Act relating to community treatment orders and community patients have effect in relation to the minor subject to any order which the court makes in the exercise of its wardship jurisdiction; but this does not apply as regards any period when the minor is recalled to hospital under section 17E above.

#### **34. Interpretation of Part II.**

(1) In this Part of this Act—

“the appropriate practitioner” means—

- (a) in the case of a patient who is subject to the guardianship of a person other than a local social services authority, the nominated medical attendant of the patient; and
- (b) in any other case, the responsible clinician;

“the community clinician” means—

- (a) in relation to a patient who is liable to be detained in a hospital in pursuance of an application for admission for treatment, the approved clinician who would oversee the patient’s care if they were to become a community patient;
- (b) in relation to a community patient, the approved clinician overseeing the patient’s care as a community patient;

“the nominated medical attendant” , in relation to a patient who is subject to the guardianship of a person other than a local social services authority, means the person appointed in pursuance of regulations made under section 9(2) above to act as the medical attendant of the patient;

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“registered establishment” means an establishment which would not, apart from subsection (2) below, be a hospital for the purposes of this Part and which—

- (a) in England, is a hospital as defined by section 275 of the National Health Service Act 2006 that is used for the carrying on of a regulated activity, within the meaning of Part 1 of the Health and Social Care Act 2008, which relates to the assessment or medical treatment of mental disorder and in respect of which a person is registered under Chapter 2 of that Part; and
- (b) in Wales, is an establishment in respect of which a person is registered under Part 2 of the Care Standards Act 2000 as an independent hospital in which treatment or nursing (or both) are provided for persons liable to be detained under this Act;

“the relevant hospital” means—

- (a) in relation to a patient who is liable to be detained in a hospital, that hospital;
- (b) in relation to a community patient, the responsible hospital;

“the responsible clinician” means—

- (a) in relation to a patient liable to be detained by virtue of an application for admission for assessment or an application for admission for treatment, or a community patient, the approved clinician **nominated by the managers of the relevant hospital to have** ~~with~~ overall responsibility for the patient's case;
- (b) in relation to a patient subject to guardianship, the approved clinician authorised by the responsible local social services authority to act (either generally or in any particular case or for any particular purpose) as the responsible clinician

(2) Except where otherwise expressly provided, this Part of this Act applies in relation to a registered establishment, as it applies in relation to a hospital, and references in this Part of this Act to a hospital, and any reference in this Act to a hospital to which this Part of this Act applies, shall be construed accordingly.

(3) In relation to a patient who is subject to guardianship in pursuance of a guardianship application, any reference in this Part of this Act to the responsible local social services authority is a reference—

- (a) where the patient is subject to the guardianship of a local social services authority, to that authority;

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- (b) where the patient is subject to the guardianship of a person other than a local social services authority, to the local social services authority for the area in which that person resides.

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## Part III

### PATIENTS CONCERNED IN CRIMINAL PROCEEDINGS OR UNDER SENTENCE

#### *Application of Part 3: “relevant disorder”*

#### **34A Application of Part 3: “relevant disorder”**

In this Part “relevant disorder” means—

- (a) psychiatric disorder,
- (b) autism, or
- (c) learning disability which has serious behavioural consequences.

#### *Remands to hospital*

#### **35. Remand to hospital for report on accused's mental condition.**

(1) Subject to the provisions of this section, the Crown Court or a magistrates' court may remand an accused person to a hospital specified by the court for a report on his mental condition.

(2) For the purposes of this section an accused person is—

- (a) in relation to the Crown Court, any person who is awaiting trial before the court for an offence punishable with imprisonment or who has been arraigned before the court for such an offence and has not yet been sentenced or otherwise dealt with for the offence on which he has been arraigned;
- (b) in relation to a magistrates' court, any person who has been convicted by the court of an offence punishable on summary conviction with imprisonment and any person charged with such an offence if the court is satisfied that he did the act or made the omission charged or he has consented to the exercise by the court of the powers conferred by this section.

(3) Subject to subsection (4) below, the powers conferred by this section may be exercised if—

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(a) the court is satisfied, on the written or oral evidence of a registered medical practitioner, that there is reason to suspect that the accused person is suffering from **relevant** ~~mental~~ disorder ; and

(b) the court is of the opinion that it would be impracticable for a report on his mental condition to be made if he were remanded on bail;

but those powers shall not be exercised by the Crown Court in respect of a person who has been convicted before the court if the sentence for the offence of which he has been convicted is fixed by law.

(4) The court shall not remand an accused person to a hospital under this section unless satisfied, on the written or oral evidence of the approved clinician who would be responsible for making the report or of some other person representing the managers of the hospital, that arrangements have been made for his admission to that hospital and for his admission to it within the period of seven days beginning with the date of the remand; and if the court is so satisfied it may, pending his admission, give directions for his conveyance to and detention in a place of safety.

(5) Where a court has remanded an accused person under this section it may further remand him if it appears to the court, on the written or oral evidence of the approved clinician responsible for making the report, that a further remand is necessary for completing the assessment of the accused person's mental condition.

(6) The power of further remanding an accused person under this section may be exercised by the court without his being brought before the court if he is represented by an authorised person who is given an opportunity of being heard.

(7) An accused person shall not be remanded or further remanded under this section for more than 28 days at a time or for more than 12 weeks in all; and the court may at any time terminate the remand if it appears to the court that it is appropriate to do so.

(8) An accused person remanded to hospital under this section shall be entitled to obtain at his own expense an independent report on his mental condition from a registered medical practitioner or approved clinician chosen by him and to apply to the court on the basis of it for his remand to be terminated under subsection (7) above.

(9) Where an accused person is remanded under this section—

(a) a constable or any other person directed to do so by the court shall convey the accused person to the hospital specified by the court within the period mentioned in subsection (4) above; and

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(b) the managers of the hospital shall admit him within that period and thereafter detain him in accordance with the provisions of this section.

(10) If an accused person absconds from a hospital to which he has been remanded under this section, or while being conveyed to or from that hospital, he may be arrested without warrant by any constable and shall, after being arrested, be brought as soon as practicable before the court that remanded him; and the court may thereupon terminate the remand and deal with him in any way in which it could have dealt with him if he had not been remanded under this section.

### **36. Remand of accused person to hospital for treatment.**

(1) Subject to the provisions of this section, the Crown Court may, instead of remanding an accused person in custody, remand him to a hospital specified by the court if satisfied, on the written or oral evidence of two registered medical practitioners, that

(a) he is suffering from **relevant mental** disorder of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment; and

(b) appropriate medical treatment is available for him.

(2) For the purposes of this section an accused person is any person who is in custody awaiting trial before the Crown Court for an offence punishable with imprisonment (other than an offence the sentence for which is fixed by law) or who at any time before sentence is in custody in the course of a trial before that court for such an offence.

(3) The court shall not remand an accused person under this section to a hospital unless it is satisfied, on the written or oral evidence of the approved clinician who would **be nominated by the managers of the hospital to** have overall responsibility for his case or of some other person representing the managers of the hospital, that arrangements have been made for his admission to that hospital and for his admission to it within the period of seven days beginning with the date of the remand; and if the court is so satisfied it may, pending his admission, give directions for his conveyance to and detention in a place of safety.

(4) Where a court has remanded an accused person under this section it may further remand him if it appears to the court, on the written or oral evidence of the responsible clinician, that a further remand is warranted



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(5) The power of further remanding an accused person under this section may be exercised by the court without his being brought before the court if he is represented by an authorised person who is given an opportunity of being heard.

(6) An accused person shall not be remanded or further remanded under this section for more than 28 days at a time or for more than 12 weeks in all; and the court may at any time terminate the remand if it appears to the court that it is appropriate to do so.

(7) An accused person remanded to hospital under this section shall be entitled to obtain at his own expense an independent report on his mental condition from a registered medical practitioner or approved clinician chosen by him and to apply to the court on the basis of it for his remand to be terminated under subsection (6) above.

(8) Subsections (9) and (10) of section 35 above shall have effect in relation to a remand under this section as they have effect in relation to a remand under that section.

### **36A. Remands to hospital: nominated person**

Sections 30A and 30B and Schedule A1 (nominated person) apply in relation to a person remanded to hospital under section 35 or 36 as they apply in relation to a person subject to an order under section 41 (see section 41(3) and Part 2 of Schedule 1).

## *Hospital and guardianship orders*

### **37. Powers of courts to order hospital admission or guardianship.**

(1) Where a person is convicted before the Crown Court of an offence punishable with imprisonment other than an offence the sentence for which is fixed by law, or is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment, and the conditions mentioned in subsection (2) below are satisfied, the court may by order authorise his admission to and detention in such hospital as may be specified in the order or, as the case may be, place him under the guardianship of a local social services authority or of such other person approved by a local social services authority as may be so specified.

(1A) In the case of an offence the sentence for which would otherwise fall to be imposed under section 258, 268A, 273, 274, 282A, 283 or 285 of the Sentencing Code or under Chapter 7 of Part 10 of that Code, nothing in those provisions shall prevent a court from

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making an order under subsection (1) above for the admission of the offender to a hospital.

(1B) For the purposes of subsection (1A) above—

(a) a sentence falls to be imposed under section 258 of the Sentencing Code if the court is obliged by that section to pass a sentence of detention for life under section 250 of that Code;

(aa) a sentence falls to be imposed under section 268A or 282A of that Code if it is required by section 268B(2) or 282B(2) of that Code and the court is not of the opinion there mentioned;

(b) a sentence falls to be imposed under section 273 or 274 of that Code if the court is obliged by that section to pass a sentence of custody for life;

(c) a sentence falls to be imposed under section 283 or 285 of that Code if the court is obliged by that section to pass a sentence of imprisonment for life;

(d) a sentence falls to be imposed under Chapter 7 of Part 10 of that Code if it is required by section 311(2), 312(2), 313(2), 314(2) or 315(2) of that Code and the court is not of the opinion there mentioned.

(2) The conditions referred to in subsection (1) above are that—

(a) the court is satisfied, on the written or oral evidence of two registered medical practitioners, that the offender is suffering from **relevant** ~~mental~~ disorder and that either—

(i) the **relevant** ~~mental~~ disorder from which the offender is suffering is of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment and appropriate medical treatment is available for him; or

(ii) in the case of an offender who has attained the age of 16 years, the **relevant** ~~mental~~ disorder is of a nature or degree which warrants his reception into guardianship under this Act; and

(b) the court is of the opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the offender, and to the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of an order under this section.

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(3) Where a person is charged before a magistrates' court with any act or omission as an offence and the court would have power, on convicting him of that offence, to make an order under subsection (1) above in his case, then, if the court is satisfied that the accused did the act or made the omission charged, the court may, if it thinks fit, make such an order without convicting him.

(4) An order for the admission of an offender to a hospital (in this Act referred to as "a hospital order") shall not be made under this section unless the court is satisfied on the written or oral evidence of the approved clinician who would **be nominated by the managers of the hospital to** have overall responsibility for his case or of some other person representing the managers of the hospital that arrangements have been made for his admission to that hospital, and for his admission to it within the period of 28 days beginning with the date of the making of such an order; and the court may, pending his admission within that period, given such directions as it thinks fit for his conveyance to and detention in a place of safety.

(5) If within the said period of 28 days 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 instead of the hospital so specified; and where such directions are given—

(a) the Secretary of State shall cause the person having the custody of the patient to be informed, and

(b) the hospital order shall have effect as if the hospital specified in the directions were substituted for the hospital specified in the order.

(6) An order placing an offender under the guardianship of a local social services authority or of any other person (in this Act referred to as "a guardianship order") shall not be made under this section unless the court is satisfied that that authority or person is willing to receive the offender into guardianship.

(8) Where an order is made under this section, the court shall not—

(a) pass sentence of imprisonment or impose a fine or make a community order (within the meaning given by section 200 of the Sentencing Code or a youth rehabilitation order (within the meaning given by section 173 of that Code) in respect of the offence,

(b) if the order under this section is a hospital order, make a referral order (within the meaning given by section 83 of that Code) in respect of the offence, or

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(c) make in respect of the offender an order under section 376 of that Code (binding over of parent or guardian),

but the court may make any other order which it has power to make apart from this section; and for the purposes of this subsection “sentence of imprisonment” includes any sentence or order for detention.

### **38. Interim hospital orders.**

(1) Where a person is convicted before the Crown Court of an offence punishable with imprisonment (other than an offence the sentence for which is fixed by law) or is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment and the court before or by which he is convicted is satisfied, on the written or oral evidence of two registered medical practitioners—

(a) that the offender is suffering from **relevant mental** disorder ; and

(b) that there is reason to suppose that the **relevant mental** disorder from which the offender is suffering is such that it may be appropriate for a hospital order to be made in his case,

the court may, before making a hospital order or dealing with him in some other way, make an order (in this Act referred to as “an interim hospital order”) authorising his admission to such hospital as may be specified in the order and his detention there in accordance with this section.

(2) In the case of an offender who is subject to an interim hospital order the court may make a hospital order without his being brought before the court if he is represented by [an authorised person who]<sup>2</sup> is given an opportunity of being heard.

(3) At least one of the registered medical practitioners whose evidence is taken into account under subsection (1) above shall be employed at the hospital which is to be specified in the order.

(4) An interim hospital order shall not be made for the admission of an offender to a hospital unless the court is satisfied, on the written or oral evidence of the approved clinician who would **be nominated by the managers of the hospital to** have overall responsibility for his case or of some other person representing the managers of the hospital, that arrangements have been made for his admission to that hospital and for his admission to it within the period of 28 days beginning with the date of the order; and if the

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court is so satisfied the court may, pending his admission, given directions for his conveyance to and detention in a place of safety.

(5) An interim hospital order—

- (a) shall be in force for such period, not exceeding 12 weeks, as the court may specify when making the order; but
- (b) may be renewed for further periods of not more than 28 days at a time if it appears to the court, on the written or oral evidence of the responsible clinician, that the continuation of the order is warranted but no such order shall continue in force for more than twelve months in all and the court shall terminate the order if it makes a hospital order in respect of the offender or decides after considering the written or oral evidence of the [responsible clinician]<sup>4</sup> to deal with the offender in some other way.

(6) The power of renewing an interim hospital order may be exercised without the offender being brought before the court if he is represented by counsel or a solicitor and his counsel or solicitor is given an opportunity of being heard.

(7) If an offender absconds from a hospital in which he is detained in pursuance of an interim hospital order, or while being conveyed to or from such a hospital, he may be arrested without warrant by a constable and shall, after being arrested, be brought as soon as practicable before the court that made the order; and the court may thereupon terminate the order and deal with him in any way in which it could have dealt with him if no such order had been made.

**(8) Sections 30A and 30B and Schedule A1 (nominated person) apply in relation to an offender subject to an interim hospital order as they apply in relation to a person subject to an order under section 41 (see section 41(3) and Part 2 of Schedule 1).**

### **39. Information as to hospitals.**

(1) Where a court is minded to make a hospital order or interim hospital order in respect of any person it may request—

(a) the integrated care board...Local Health Board for the area in which that person resides or last resided; or

(b) NHS England or the National Assembly for Wales or any other integrated care board...Local Health Board that appears to the court to be appropriate,

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to furnish the court with such information as that integrated care board...Local Health Board or NHS England or the National Assembly for Wales have or can reasonably obtain with respect to the hospital or hospitals (if any) in their area or elsewhere at which arrangements could be made for the admission of that person in pursuance of the order, and that integrated care board... Local Health Board or NHS England or the National Assembly for Wales shall comply with any such request.

(1ZA) A request under this section to NHS England may relate only to services or facilities the provision of which NHS England arranges.

(1A) In relation to a person who has not attained the age of 18 years, subsection (1) above shall have effect as if the reference to the making of a hospital order included a reference to a remand under section 35 or 36 above or the making of an order under section 44 below.

(1B) Where the person concerned has not attained the age of 18 years, the information which may be requested under subsection (1) above includes, in particular, information about the availability of accommodation or facilities designed so as to be specially suitable for patients who have not attained the age of 18 years.

(2) *[Repealed by the Health Authorities Act 1995]*

### **39A. Information to facilitate guardianship orders.**

Where a court is minded to make a guardianship order in respect of any offender, it may request the local social services authority for the area in which the offender resides or last resided, or any other local social services authority that appears to the court to be appropriate—

(a) to inform the court whether it or any other person approved by it is willing to receive the offender into guardianship; and

(b) if so, to give such information as it reasonably can about how it or the other person could be expected to exercise in relation to the offender the powers conferred by section 40(2) below;

and that authority shall comply with any such request.

### **40. Effect of hospital orders, guardianship orders and interim hospital orders.**

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(1) A hospital order shall be sufficient authority—

(a) for a constable, an approved mental health professional 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 28 days; and

(b) for the managers of the hospital to admit him at any time within that period and thereafter detain him in accordance with the provisions of this Act.

(2) A guardianship order shall confer on the authority or person named in the order as guardian the same powers as a guardianship application made and accepted under Part II of this Act.

(3) Where an interim hospital order is made in respect of an offender—

(a) a constable or any other person directed to do so by the court shall convey the offender to the hospital specified in the order within the period mentioned in section 38(4) above; and

(b) the managers of the hospital shall admit him within that period and thereafter detain him in accordance with the provisions of section 38 above.

(4) A patient who is admitted to a hospital in pursuance of a hospital order, or placed under guardianship by a guardianship order, shall, subject to the provisions of this subsection, be treated for the purposes of the provisions of this Act mentioned in Part I of Schedule 1 to this Act as if he had been so admitted or placed on the date of the order in pursuance of an application for admission for treatment or a guardianship application, as the case may be, duly made under Part II of this Act, but subject to any modifications of those provisions specified in that Part of that Schedule.

(5) Where a patient is admitted to a hospital in pursuance of a hospital order, or placed under guardianship by a guardianship order, any previous application, hospital order or guardianship order by virtue of which he was liable to be detained in a hospital or subject to guardianship shall cease to have effect; but if the first-mentioned order, or the conviction on which it was made, is quashed on appeal, this subsection shall not apply and section 22 above shall have effect as if during any period for which the patient was liable to be detained or subject to guardianship under the order, he had been detained in custody as mentioned in that section.

(6) Where—

(a) a patient admitted to a hospital in pursuance of a hospital order is absent without leave;

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(b) a warrant to arrest him has been issued under section 72 of the M1Criminal Justice Act 1967; 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 18 above on first being so held.

#### *Restriction orders*

#### **41. Power of higher courts to restrict discharge from hospital.**

(1) Where a hospital order is made in respect of an offender by the Crown Court, and it appears to the court, having regard to the nature of the offence, the antecedents of the offender and the risk of his committing further offences if set at large, that it is necessary for the protection of the public from serious harm so to do, the court may, subject to the provisions of this section, further order that the offender shall be subject to the special restrictions set out in this section. . . ; and an order under this section shall be known as “a restriction order”.

(2) A restriction order shall not be made in the case of any person unless at least one of the registered medical practitioners whose evidence is taken into account by the court under section 37(2)(a) above has given evidence orally before the court.

(3) The special restrictions applicable to a patient in respect of whom a restriction order is in force are as follows—

(a) none of the provisions of Part II 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 duly discharged under the said Part II or absolutely discharged under section 42, 73, 74 or 75 below;

(aa) none of the provisions of Part II of this Act relating to community treatment orders and community patients shall apply;

(b) no application shall be made to the appropriate tribunal in respect of a patient under section 66 or 69(1) below;



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(c) the following powers shall be exercisable only with the consent of the Secretary of State, namely—

- (i) power to grant leave of absence to the patient under section 17 above;
- (ii) power to transfer the patient in pursuance of regulations under section 19 above or in pursuance of subsection 3 of that section; and
- (iii) power to order the discharge of the patient under section 23 above;

and if leave of absence is granted under the said section 17 power to recall the patient under that section shall vest in the Secretary of State as well as the responsible clinician; and

(d) the power of the Secretary of State to recall the patient under the said section 17 and power to take the patient into custody and return him under section 18 above may be exercised at any time;

and in relation to any such patient section 40(4) above shall have effect as if it referred to Part II of Schedule 1 to this Act instead of Part I of that Schedule.

(4) A hospital order shall not cease to have effect under section 40(5) above if a restriction order in respect of the patient is in force at the material time.

(5) 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 40 above and Part I of Schedule 1 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.

(6) While a person is subject to a restriction order the responsible clinician 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.

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

(1) If the Secretary of State is satisfied that in the case of any patient a restriction order 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

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41(3) above; and where the Secretary of State so directs, the restriction order shall cease to have effect, and section 41(5) above 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.

**(2A) Conditions amounting to a deprivation of a patient's liberty may be imposed under subsection (2) if the Secretary of State is satisfied that those conditions are necessary for the protection of the public from serious harm.**

(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) above by warrant recall the patient to such hospital as may be specified in the warrant.

(4) Where a patient is recalled as mentioned in subsection (3) above—

(a) if the hospital specified in the warrant 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 18 above as if he had absented himself without leave from the hospital specified in the warrant .

(5) If a restriction order in respect of a patient ceases to have effect after the patient has been conditionally discharged under this section, the patient shall, unless previously recalled under subsection (3) above, 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.

(6) 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 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.

**43. Power of magistrates' courts to commit for restriction order.**

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(1) If in the case of a person of or over the age of 14 years who is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment—

(a) the conditions which under section 37(1) above are required to be satisfied for the making of a hospital order are satisfied in respect of the offender; but

(b) it appears to the court, having regard to the nature of the offence, the antecedents of the offender and the risk of his committing further offences if set at large, that if a hospital order is made a restriction order should also be made,

the court may, instead of making a hospital order or dealing with him in any other manner, commit him in custody to the Crown Court to be dealt with in respect of the offence.

(2) Where an offender is committed to the Crown Court under this section, the Crown Court shall inquire into the circumstances of the case and may—

(a) if that court would have power so to do under the foregoing provisions of this Part of this Act upon the conviction of the offender before that court of such an offence as is described in section 37(1) above, make a hospital order in his case, with or without a restriction order;

(b) if the court does not make such an order, deal with the offender in any other manner in which the magistrates' court might have dealt with him.

(3) The Crown Court shall have the same power to make orders under sections 35, 36 and 38 above in the case of a person committed to the court under this section as the Crown Court has under those sections in the case of an accused person within the meaning of section 35 or 36 above or of a person convicted before that court as mentioned in section 38 above.

(4) The powers of a magistrates' court under section 14, 16 or 16A of the Sentencing Code (which enable such a court to commit an offender to the Crown Court where the court is of the opinion, or it appears to the court, as mentioned in the section in question) shall also be exercisable by a magistrates' court where it is of that opinion (or it so appears to it) unless a hospital order is made in the offender's case with a restriction order.

(5) The power of the Crown Court to make a hospital order, with or without a restriction order, in the case of a person convicted before that court of an offence may, in the same circumstances and subject to the same conditions, be exercised by such a court in the case of a person committed to the court under section 5 of the Vagrancy Act 1824 (which

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provides for the committal to the Crown Court of persons who are incorrigible rogues within the meaning of that section).

#### **44. Committal to hospital under s. 43.**

(1) Where an offender is committed under section 43(1) above and the magistrates' court by which he is committed is satisfied on written or oral evidence that arrangements have been made for the admission of the offender to a hospital in the event of an order being made under this section, the court may, instead of committing him in custody, by order direct him to be admitted to that hospital, specifying it, and to be detained there until the case is disposed of by the Crown Court, and may give such directions as it thinks fit for his production from the hospital to attend the Crown Court by which his case is to be dealt with.

(2) The evidence required by subsection (1) above shall be given by the approved clinician who would **be nominated by the managers of the hospital to** have overall responsibility for the offender's case or by some other person representing the managers of the hospital in question.

(3) The power to give directions under section 37(4) above, section 37(5) above and section 40(1) above shall apply in relation to an order under this section as they apply in relation to a hospital order, but as if references to the period of 28 days mentioned in section 40(1) above were omitted; and subject as aforesaid an order under this section shall, until the offender's case is disposed of by the Crown Court, have the same effect as a hospital order together with a restriction order.

#### **45. Appeals from magistrates' courts.**

(1) Where on the trial of an information charging a person with an offence a magistrates' court makes a hospital order or guardianship order in respect of him without convicting him, he shall have the same right of appeal against the order as if it had been made on his conviction; and on any such appeal the Crown Court shall have the same powers as if the appeal had been against both conviction and sentence.

(2) An appeal by a child or young person with respect to whom any such order has been made, whether the appeal is against the order or against the finding upon which the order was made, may be brought by him or by his parent or guardian on his behalf

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*Hospital and limitation directions*

**45A. Power of higher courts to direct hospital admission.**

(1) This section applies where, in the case of a person convicted before the Crown Court of an offence the sentence for which is not fixed by law—

- (a) the conditions mentioned in subsection (2) below are fulfilled; and
- (b) the court considers making a hospital order in respect of him before deciding to impose a sentence of imprisonment (“the relevant sentence”) in respect of the offence.

(2) The conditions referred to in subsection (1) above are that the court is satisfied, on the written or oral evidence of two registered medical practitioners—

- (a) that the offender is suffering from **relevant mental** disorder;
- (b) that the **relevant mental** disorder from which the offender is suffering is of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment; and
- (c) that appropriate medical treatment is available for him.

(3) The court may give both of the following directions, namely—

- (a) a direction that, instead of being removed to and detained in a prison, the offender be removed to and detained in such hospital as may be specified in the direction (in this Act referred to as a “hospital direction”); and
- (b) a direction that the offender be subject to the special restrictions set out in section 41 above (in this Act referred to as a “limitation direction”).

(4) A hospital direction and a limitation direction shall not be given in relation to an offender unless at least one of the medical practitioners whose evidence is taken into account by the court under subsection (2) above has given evidence orally before the court.

(5) A hospital direction and a limitation direction shall not be given in relation to an offender unless the court is satisfied on the written or oral evidence of the approved clinician who would **be nominated by the managers of the hospital to** have overall responsibility for his case, or of some other person representing the managers of the hospital that arrangements have been made—

- (a) for his admission to that hospital; and

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(b) for his admission to it within the period of 28 days beginning with the day of the giving of such directions;

and the court may, pending his admission within that period, give such directions as it thinks fit for his conveyance to and detention in a place of safety.

(6) If within the said period of 28 days 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 hospital direction, he may give instructions for the admission of the patient to such other hospital as appears to be appropriate instead of the hospital so specified.

(7) Where such instructions are given—

(a) the Secretary of State shall cause the person having the custody of the patient to be informed, and

(b) the hospital direction shall have effect as if the hospital specified in the instructions were substituted for the hospital specified in the hospital direction.

(8) Section 38(1) and (5) and section 39 above shall have effect as if any reference to the making of a hospital order included a reference to the giving of a hospital direction and a limitation direction.

(9) A hospital direction and a limitation direction given in relation to an offender shall have effect not only as regards the relevant sentence but also (so far as applicable) as regards any other sentence of imprisonment imposed on the same or a previous occasion.

#### **45B. Effect of hospital and limitation directions.**

(1) A hospital direction and a limitation direction shall be sufficient authority—

(a) for a constable or any other person directed to do so by the court to convey the patient to the hospital specified in the hospital direction within a period of 28 days; and

(b) for the managers of the hospital to admit him at any time within that period and thereafter detain him in accordance with the provisions of this Act.

(2) With respect to any person—

(a) a hospital direction shall have effect as a transfer direction; and

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(b) a limitation direction shall have effect as a restriction direction.

(3) While a person is subject to a hospital direction and a limitation direction the responsible clinician 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.

*[Section 46 has been repealed by the Armed Forces Act 1996]*

*Transfer to hospital of prisoners, etc.*

#### **47. Removal to hospital of persons serving sentences of imprisonment, etc.**

(1) If in the case of a person serving a sentence of imprisonment the Secretary of State is satisfied, by reports from at least two registered medical practitioners—

(a) that the said person is suffering from **relevant mental** disorder; and

(b) that the **relevant mental** disorder from which that person is suffering is of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment ; and

**(c) that appropriate medical treatment can be given for the relevant disorder from which the person is suffering;**

~~(c) that appropriate medical treatment is available for him;~~

the Secretary of State may, if he is of the opinion having regard to the public interest and all the circumstances that it is expedient so to do, by warrant direct that that person be removed to and detained in such hospital as may be specified in the direction; and a direction under this section shall be known as “a transfer direction” .

(2) A transfer direction shall cease to have effect at the expiration of the period of 14 days beginning with the date on which it is given unless within that period the person with respect to whom it was given has been received into the hospital specified in the direction.

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(3) A transfer direction with respect to any person shall have the same effect as a hospital order made in his case.

*[Subsection (4) was repealed by the Mental Health Act 2007]*

(5) References in this Part of this Act 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 in criminal proceedings or service disciplinary proceedings (other than an order made in consequence of a finding of insanity or unfitness to stand trial or a sentence of service detention within the meaning of the Armed Forces Act 2006;

(b) to a person committed to custody under section 115(3) of the Magistrates' Courts Act 1980 (which relates to persons who fail to comply with an order to enter into recognisances to keep the peace or be of good behaviour); and

(c) to a person committed by a court to a prison or other institution to which the Prison Act 1952 applies in default of payment of any sum adjudged to be paid on his conviction.

(6) In subsection (5)(a) “service disciplinary proceedings” means proceedings in respect of a service offence within the meaning of the Armed Forces Act 2006.

#### **47A. Hospital treatment for prisoners: 28 day transfer period**

(1) As soon as practicable after a relevant referring body makes an initial request for a medical report in relation to a person serving a sentence of imprisonment (“P”), the body must give a referral notice to the persons specified in subsection (3).

(2) For the purposes of this section—

(a) a request is an “initial request” for a medical report if it is the first request for a report by a registered medical practitioner on whether the conditions in section 47(1) are satisfied in relation to P at a particular time;

(b) “referral notice” means a notice—

(i) stating that an initial request has been made in relation to P, and

(ii) specifying the date on which the initial request was made;



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(c) “relevant referring body” means—

(i) in relation to a person serving a sentence of imprisonment in England, a person who is a “service provider” within the meaning given by section 12ZA(9) of the National Health Service Act 2006 or provides “NHS medical services” within the meaning given by section 14Z31(5) of that Act;

(ii) in relation to a person serving a sentence of imprisonment in Wales, a Local Health Board.

(3) The persons to whom the referral notice must be given (“the notified authorities”) are—

(a) the Secretary of State;

(b) the relevant detention authority (see section 48B);

(c) as many of the following (other than the relevant referring body) as the relevant referring body considers likely to have functions in relation to P in the event that the Secretary of State gives a direction under section 47—

(i) NHS England;

(ii) integrated care boards;

(iii) National Health Service trusts established under section 18 of the National Health Service (Wales) Act 2006;

(iv) Local Health Boards;

(v) service providers within the meaning given by section 12ZA(9) of the National Health Service Act 2006.

(4) When exercising functions in relation to P, the relevant referring body and the notified authorities must seek to ensure that, absent exceptional circumstances, the following all happen within the period of 28 days beginning with the date of the initial request -

(a) a decision is taken as to whether to make a direction under section 47 in respect of P;

(b) if a decision is taken to make such a direction, the direction is made, and

(c) where the direction is made, P is removed to and detained in a hospital in pursuance of the direction.

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(5) For the purposes of subsection (4) the following are not (together or separately) “exceptional circumstances”—

(a) a shortage of hospital accommodation;

(b) a shortage of hospital staff;

unless occurring as a result of other exceptional circumstances.

#### 48. Removal to hospital of other prisoners.

(1) If in the case of a person to whom this section applies the Secretary of State is satisfied by the same reports as are required for the purposes of section 47 above that-

(a) that person is suffering from ~~relevant mental~~ disorder of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment; and

(b) he is in urgent need of such treatment; and

(c) appropriate medical treatment can be given for the relevant disorder from which the person is suffering;

~~(c) appropriate medical treatment is available for him;~~

the Secretary of State shall have the same power of giving a transfer direction in respect of him under that section as if he were serving a sentence of imprisonment.

(2) This section applies to the following persons, that is to say—

(a) persons detained in a prison or ~~remanded to youth detention accommodation under section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 remand centre~~; not being persons serving a sentence of imprisonment or persons falling within the following paragraphs of this subsection;

(b) persons remanded in custody by a magistrates' court;

(c) civil prisoners, that is to say, persons committed by a court to prison for a limited term, who are not persons falling to be dealt with under section 47 above;

(d) persons detained under—

(i) the Immigration Act 1971,

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- (ii) section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State),
- (iii) section 36 of the UK Borders Act 2007 (detention of offenders for deportation), or
- (iv) regulation 32 of the Immigration (European Economic Area) Regulations 2016 (S.I. 2016/1052) (which are saved by the Citizens' Rights (Restrictions of Rights of Entry and Residence)(EU Exit) Regulations 2020 (S.I. 2020/1210)).

~~persons detained under the Immigration Act 1971 or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State).~~

(3) ~~Subsections (2) and (3)~~ **(1A) to (3)** of section 47 above 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 direction under that section.

#### **48A Hospital treatment for other prisoners: 28 day transfer period**

(1) As soon as practicable after a relevant referring body makes an initial request for a medical report in relation to a person ("P") to whom section 48 applies, the body must give a referral notice to the persons specified in subsection (3).

(2) For the purposes of this section—

(a) a request is an "initial request" for a medical report if it is the first request for a report by a registered medical practitioner on whether the conditions in section 48 are satisfied in relation to P at a particular time;

(b) "referral notice" means a notice—

- (i) stating that an initial request has been made in relation to P, and
- (ii) specifying the date on which the initial request was made;

(c) "relevant referring body" means—

- (i) in relation to a person to whom section 48 applies and who is detained or remanded at a place in England, a person who is a "service provider" within the meaning given by section 12ZA(9) of the National Health Service Act or provides "NHS medical services" within the meaning given by section 14Z31(5) of that Act;

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(ii) in relation to a person to whom section 48 applies and who is detained or remanded at a place in Wales, a Local Health Board.

(3) The persons to whom the referral notice must be given (“the notified authorities”) are—

(a) the Secretary of State;

(b) the relevant detention authority (see section 48B);

(c) as many of the following (other than the relevant referring body) as the relevant referring body considers likely to have functions in relation to P in the event that the Secretary of State gives a direction under section 48—

(i) NHS England;

(ii) integrated care boards;

(iii) National Health Service trusts established under section 18 of the National Health Service (Wales) Act 2006;

(iv) Local Health Boards;

(v) service providers within the meaning given by section 12ZA(9) of the National Health Service Act 2006.

(4) When exercising functions in relation to P, the relevant referring body and the notified authorities must seek to ensure that, absent exceptional circumstances, the following all happen within the period of 28 days beginning with the date of the initial request—

(a) a decision is taken as to whether to make a direction under section 48 in respect of P;

(b) if a decision is taken to make such a direction, the direction is made, and

(c) where the direction is made, P is removed to and detained in a hospital in pursuance of the direction.

(5) For the purposes of subsection (4) the following are not (together or separately) “exceptional circumstances”—

(a) a shortage of hospital accommodation;

(b) a shortage of hospital staff;

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unless occurring as a result of other exceptional circumstances.”

#### **48B Sections 47A and 48A: supplementary**

(1) For the purposes of sections 47A and 48A, “the relevant detention authority”, in relation to a referral notice (within the meaning of the section in question), has the meaning given by the table.

<i>Where, on the day the referral notice is sent, P is detained or remanded in</i>	<i>The relevant detention authority is</i>
a prison	the governor or director of the prison
a young offender institution	the governor or director of the institution
a secure training centre	the governor or director of the centre
a secure children’s home	the registered manager of the home
a removal centre	the manager of the centre
a short-term holding facility	the manager of the facility
pre-departure accommodation	the manager of the accommodation

(2) In this section—

“pre-departure accommodation” has the meaning given by section 147 of the Immigration and Asylum Act 1999;

“registered manager”, in relation to a secure children’s home, means a person who is registered under Part 2 of the Care Standards Act 2000 as the manager of the home;

“removal centre” has the meaning given by section 147 of the Immigration and Asylum Act 1999;

“secure children’s home” has the meaning given by section 102(11) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

“secure training centre” has the meaning given by section 43(1)(d) of the Prison Act 1952;

“short-term holding facility” has the meaning given by section 147 of the Immigration and Asylum Act 1999;

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“young offender institution” has the meaning given by section 43(1)(aa) of the Prison Act 1952.

(3) The Secretary of State may by regulations—

(a) amend this section or section 47A or 48A so as to change the persons—

(i) who are subject to the duty to give a referral notice under section 47A(1) or 48A(1), or

(ii) to whom a referral notice must be given under subsection 47A(3) or 48A(3);

(b) amend the period in 47A(4) or 48A(4).”

#### **49. 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 further direct that that person shall be subject to the special restrictions set out in section 41 above; and where the Secretary of State gives a transfer direction in respect of any such person as is described in paragraph (a) or (b) of section 48(2) above, he shall also give a direction under this section applying those restrictions to him.

(2) A direction under this section shall have the same effect as a restriction order made under section 41 above and shall be known as “a restriction direction”.

(3) While a person is subject to a restriction direction the responsible clinician 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.

#### **50. Further provisions as to prisoners under sentence.**

(1) Where a transfer direction and a restriction direction have been given in respect of a person serving a sentence of imprisonment and before his release date the Secretary of State is notified by the responsible clinician, any other approved clinician or the appropriate tribunal that that person no longer requires treatment in hospital for **relevant mental** disorder or that no **appropriate medical** effective treatment for his disorder can be given in the hospital to which he has been removed, the Secretary of State may—

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(a) by warrant direct that he 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; or

(b) exercise any power of releasing him on licence or discharging him under supervision which would have been exercisable if he had been remitted to such a prison or institution as aforesaid,

and on his arrival in the prison or other institution or, as the case may be, his release or discharge as aforesaid, the transfer direction and the restriction direction shall cease to have effect.

(2) A restriction direction in the case of a person serving a sentence of imprisonment shall cease to have effect, if it has not previously done so, on his release date.

(3) In this section, references to a person's release date are to the day (if any) on which he would be entitled to be released (whether unconditionally or on licence) from any prison or other institution in which he might have been detained if the transfer direction had not been given; and in determining that day there shall be disregarded—

(a) any powers that would be exercisable by the Parole Board if he were detained in such a prison or other institution, and

(b) any practice of the Secretary of State in relation to the early release under discretionary powers of persons detained in such a prison or other institution.

(4) For the purposes of section 49(2) of the Prison Act 1952 (which provides for discounting from the sentences of certain prisoners periods while they are unlawfully at large) a patient who, having been transferred in pursuance of a transfer direction from any such institution as is referred to in that section, 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 that institution.

(5) The preceding provisions of this section shall have effect as if-

(a) the reference in subsection (1) to a transfer direction and a restriction direction having been given in respect of a person serving a sentence of imprisonment included a reference to a hospital direction and a limitation direction having been given in respect of a person sentenced to imprisonment;

(b) the reference in subsection (2) to a restriction direction included a reference to a limitation direction; and

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(c) references in subsections (3) and (4) to a transfer direction included references to a hospital direction.

## 51. Further provisions as to detained persons.

(1) This section has effect where a transfer direction has been given in respect of any such person as is described in paragraph (a) of section 48(2) above and that person is in this section referred to as “the detainee” .

(2) The transfer direction shall cease to have effect when the detainee's case is disposed of by the court having jurisdiction to try or otherwise deal with him, but without prejudice to any power of that court to make a hospital order or other order under this Part of this Act in his case.

(3) If the Secretary of State is notified by the responsible clinician, any other approved clinician or the appropriate tribunal at any time before the detainee's case is disposed of by that court—

(a) that the detainee no longer requires treatment in hospital for **relevant mental** disorder; or

(b) that no **appropriate medical** effective treatment for his disorder can be given at the hospital to which he has been removed,

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 direction shall cease to have effect.

(4) If (no direction having been given under subsection (3) above) the court having jurisdiction to try or otherwise deal with the detainee is satisfied on the written or oral evidence of the responsible clinician—

(a) that the detainee no longer requires treatment in hospital for **relevant mental** disorder; or

(b) that no **appropriate medical** effective treatment for his disorder can be given at the hospital to which he has been removed,

the court may order him to be remitted to any such place as is mentioned in subsection (3) above or , subject to section 25 of the Criminal Justice and Public Order Act 1994, released



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on bail and on his arrival at that place or, as the case may be, his release on bail the transfer direction shall cease to have effect.

(5) If (no direction or order having been given or made under subsection (3) or (4) above) it appears to the court having jurisdiction to try or otherwise deal with the detainee—

- (a) that it is impracticable or inappropriate to bring the detainee before the court; and
- (b) that the conditions set out in subsection (6) below are satisfied,

the court may make a hospital order (with or without a restriction order) in his case in his absence and, in the case of a person awaiting trial, without convicting him.

(6) A hospital order may be made in respect of a person under subsection (5) above if the court—

- (a) is satisfied, on the written or oral evidence of at least two registered medical practitioners, that
  - (i) the detainee is suffering from **relevant** ~~mental~~ disorder of a nature or degree which makes it appropriate for the patient to be detained in a hospital for medical treatment; and
  - (ii) appropriate medical treatment is available for him; and
- (b) is of the opinion, after considering any depositions or other documents required to be sent to the proper officer of the court, that it is proper to make such an order.

(7) Where a person committed to the Crown Court to be dealt with under section 43 above is admitted to a hospital in pursuance of an order under section 44 above, subsections (5) and (6) above shall apply as if he were a person subject to a transfer direction.

## **52. Further provisions as to persons remanded by magistrates' courts.**

(1) This section has effect where a transfer direction has been given in respect of any such person as is described in paragraph (b) of section 48(2) above; and that person is in this section referred to as “the accused”.

(2) Subject to subsection (5) below, the transfer direction shall cease to have effect on the expiration of the period of remand unless the accused is sent in custody to the Crown Court for trial or to be otherwise dealt with.

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(3) Subject to subsection (4) below, the power of further remanding the accused under section 128 of the Magistrates' Courts Act 1980 may be exercised by the court without his being brought before the court; and if the court further remands the accused in custody (whether or not he is brought before the court) the period of remand shall, for the purposes of this section, be deemed not to have expired.

(4) The court shall not under subsection (3) above further remand the accused in his absence unless he has appeared before the court within the previous six months.

(5) If the magistrates' court is satisfied, on the written or oral evidence of the responsible clinician —

(a) that the accused no longer requires treatment in hospital for **relevant** ~~mental~~ disorder; or

(b) that no **appropriate medical** ~~effective~~ for his disorder can be given in the hospital to which he has been removed,

the court may direct that the transfer direction shall cease to have effect notwithstanding that the period of remand has not expired or that the accused is sent to the Crown Court as mentioned in subsection (2) above.

(6) If the accused is sent to the Crown Court as mentioned in subsection (2) above and the transfer direction has not ceased to have effect under subsection (5) above, section 51 above shall apply as if the transfer direction given in his case were a direction given in respect of a person falling within that section.

(7) The magistrates' court may, in the absence of the accused, send him to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998 if—

(a) the court is satisfied, on the written or oral evidence of the responsible clinician, that the accused is unfit to take part in the proceedings; and

(b) the accused is represented by an authorised person.

### **53. Further provisions as to civil prisoners and persons detained under the Immigration Act 1971.**

(1) Subject to subsection (2) below, a transfer direction given in respect of any such person as is described in paragraph (c) or (d) of section 48(2) above shall cease to have effect on

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the expiration of the period during which he would, but for his removal to hospital, be liable to be detained in the place from which he was removed.

(2) Where a transfer direction and a restriction direction have been given in respect of any such person as is mentioned in subsection (1) above, then, if the Secretary of State is notified by the responsible clinician, any other approved clinician or the appropriate tribunal at any time before the expiration of the period there mentioned—

(a) that that person no longer requires treatment in hospital for **relevant mental** disorder; or

(b) that no **appropriate medical** effective treatment for his disorder can be given in the hospital to which he has been removed,

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, and on his arrival at the place to which he is so remitted the transfer direction and the restriction direction shall cease to have effect.

### *Supplemental*

*[Sections 54 and 54A are not affected by the amendments to be made to the draft Mental Health Bill and are not included in this Schedule]*

## **55. Interpretation of Part III.**

(1) In this Part of this Act—

“authorised person” means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience (within the meaning of that Act);

“child” and “young person” have the same meaning as in the Children and Young Persons Act 1933;

“civil prisoner” has the meaning given to it by section 48(2)(c) above;

“guardian”, in relation to a child or young person, has the same meaning as in the Children and Young Persons Act 1933;

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“place of safety”—

(a) in relation to a person who is not a child or young person, means any hospital the managers of which are willing temporarily to receive that person;

(b) in relation to a child or young person, has the same meaning as in the Children and Young Persons Act 1933 except that it does not include a police station;

~~“place of safety”, in relation to a person who is not a child or young person, means any police station, prison or remand, or any hospital the managers of which are willing temporarily to receive him, and in relation to a child or young person has the same meaning as in the Children and Young Persons Act 1933;~~

“relevant disorder” has the meaning given by section 34A;

“responsible clinician” , in relation to a person liable to be detained in a hospital within the meaning of Part 2 of this Act, means the approved clinician **nominated by the managers of the hospital to have** with overall responsibility for the patient's case.

(2) Any reference in this Part of this Act to an offence punishable on summary conviction with imprisonment shall be construed without regard to any prohibition or restriction imposed by or under any enactment relating to the imprisonment of young offenders.

(3) *[repealed by the Mental Health Act 2007]*

(4) Any reference to a hospital order, a guardianship order or a restriction order in section 40(2), (4) or (5), section 41(3) to (5), or section 42 above or **section 61(1B) or section 69(1) or 72(1ZA)** below shall be construed as including a reference to any order or direction under this Part of this Act having the same effect as the first-mentioned order; and the exceptions and modifications set out in Schedule 1 to this Act in respect of the provisions of this Act described in that Schedule accordingly include those which are consequential on the provisions of this subsection.

(5) Section 34(2) above shall apply for the purposes of this Part of this Act as it applies for the purposes of Part II of this Act.

(6) References in this Part of this Act to persons serving a sentence of imprisonment shall be construed in accordance with section 47(5) above.

(7) Section 99 of the Children and Young Persons Act 1933 (which relates to the presumption and determination of age) shall apply for the purposes of this Part of this Act as it applies for the purposes of that Act.

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## Part IV

### CONSENT TO TREATMENT

#### 56 **Application of Part 4: patients and disorders** ~~Patients to whom Part 4 applies~~

- (1) Section 57 and, so far as relevant to that section, sections 59 to 62 below apply to any patient.
- (2) Subject to that and to subsection (5) below, this Part of this Act applies to a patient only if he falls within subsection (3) or (4) below.
- (3) A patient falls within this subsection if he is liable to be detained under this Act but not if—
  - (a) he is so liable by virtue of an emergency application and the second medical recommendation referred to in section 4(4)(a) above has not been given and received;
  - (b) he is so liable by virtue of section 5(2) or (4) or 35 above or section 135 or 136 below or by virtue of a direction for his detention in a place of safety under section 37(4) or 45A(5) above; or
  - (c) he has been conditionally discharged under section 42(2) above or section 73 or 74 below and he is not recalled to hospital.
- (4) A patient falls within this subsection if—
  - (a) he is a community patient; and
  - (b) he is recalled to hospital under section 17E above.
- (5) Section 58A and, so far as relevant to that section, sections 59 to 62 below also apply to any patient who—
  - (a) does not fall within subsection (3) above;
  - (b) is not a community patient; and
  - (c) has not attained the age of 18 years.
- (6) In this Part “relevant disorder”—

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(a) in relation to—

(i) a patient falling within subsection (3) where the patient is liable to be detained by virtue of section 3,

(ii) a patient falling within subsection (3) where the patient is liable to be detained by virtue of section 20(4) otherwise than under Part 1 of Schedule 1, or

(iii) a patient falling within subsection (4),

means psychiatric disorder;

(b) in relation to any other patient, means mental disorder.

#### **56A. Making treatment decisions**

(1) In deciding whether to give medical treatment to a patient by virtue of this Part, the approved clinician in charge of the treatment must—

(a) identify and evaluate any alternative forms of medical treatment available for the patient;

(b) take such steps as are reasonably practicable to assist and encourage the patient to participate, as fully as possible, in the decision-making process;

(c) not rely merely on—

(i) the patient's age or appearance, or

(ii) a condition of the patient's, or an aspect of the patient's behaviour, which might lead others to make unjustified assumptions about what medical treatment might be appropriate for the patient;

(d) consider the patient's past and present wishes, feelings, beliefs and values, so far as it is reasonable to regard them as relevant and so far as they are reasonably ascertainable;

(e) consider the relevant views of the following, so far as they are reasonably ascertainable—

(i) anyone named by the patient as someone to be consulted on the decision in question, or decisions of that kind;

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(ii) the patient’s nominated person and any independent mental health advocate from whom the patient is receiving help by virtue of section 130A or 130E;

(iii) any donee or deputy for the patient;

(iv) any other person who cares for the patient or is interested in the patient’s welfare and whom the approved clinician considers it appropriate to consult;

(f) consider all other circumstances of which the approved clinician is aware and which it would be reasonable to regard as relevant.

(2) Where the patient lacks capacity in relation to matters that, in the opinion of the approved clinician, are relevant to the decision, the approved clinician must also consider any wishes, feelings, views and beliefs that the clinician thinks the patient would have in relation to those matters but for the lack of capacity (including any relevant written statement made by the patient when they had capacity).

(3) In subsection (1)(e), “relevant views” means—

(a) views about the nature of the patient’s past and present wishes, feelings, beliefs and values,

(b) where the patient lacks capacity in relation to matters that, in the opinion of the approved clinician, are relevant to the decision, views about the nature of the wishes, feelings, views and beliefs the patient would have in relation to those matters but for the lack of capacity, and

(c) views about whether the medical treatment should be given to the patient.

## **56B. Appointment of doctors to provide second opinions**

(1) Where, in relation to a patient, a function under this Part is to be performed by a “second opinion appointed doctor” (whether because this Part requires it to be so performed or because a decision has been made under this Part that it will be so performed)—

(a) the relevant person must request that the regulatory authority appoint a person to perform the function in relation to the patient, and

(b) on receiving the request, the regulatory authority must, as soon as reasonably practicable (subject to section 62ZA(8)), appoint a person to perform the function in relation to the patient.

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(2) The person appointed by the regulatory authority—

(a) must be a registered medical practitioner, and

(b) must not be the patient’s responsible clinician or the person in charge of the treatment that is to be given to the patient.

(3) In this section “the relevant person” means—

(a) if there is a responsible clinician for the patient, the responsible clinician;

(b) otherwise, the person in charge of the treatment that is to be given to the patient.

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

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

(a) any surgical operation for destroying brain tissue or for destroying the functioning of brain tissue; and

(b) such other forms of treatment as may be specified for the purposes of this section by regulations made by the Secretary of State.

(2) Subject to section 62 below, a patient shall not be given any form of treatment to which this section applies unless he has consented to it and—

(a) **a second opinion appointed doctor** ~~a registered medical practitioner appointed for the purposes of this Part of this Act by the regulatory authority (not being the responsible clinician (if there is one) or the person in charge of the treatment in question)~~ and two other persons appointed for the purposes of this paragraph by the regulatory authority (not being registered medical practitioners) have certified in writing that the patient **has capacity to consent to** ~~is capable of understanding the nature, purpose and likely effects of~~ the treatment in question and has consented to it; and

(b) **the second opinion appointed doctor** ~~the registered medical practitioner referred to in paragraph (a) above~~ has certified in writing that **the treatment constitutes appropriate medical treatment and that the decision to give the treatment was made by the person in charge of the treatment in accordance with section 56A** ~~it is appropriate for the treatment to be given.~~



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(3) Before giving a certificate under subsection (2)(b) above a **second opinion appointed doctor** ~~the registered medical practitioner concerned~~ shall consult two other persons who have been professionally concerned with the patient's medical treatment but, of those persons—

(a) one shall be a nurse and the other shall be neither a nurse nor a registered medical practitioner; and

(b) neither shall be the responsible clinician (if there is one) or the person in charge of the treatment in question.

(4) Before making any regulations for the purpose of this section the Secretary of State shall consult such bodies as appear to him to be concerned.

#### **57A. Treatment without consent requiring a second opinion and a compelling reason**

(1) This section applies to the forms of medical treatment for relevant disorder mentioned in subsection (2) where—

(a) the patient has capacity to consent to the treatment but has not consented to it, or

(b) the patient lacks capacity to consent to the treatment, and the giving of the treatment would conflict with—

(i) a valid and applicable advance decision, or

(ii) a decision of a donee or deputy or the Court of Protection.

(2) The forms of medical treatment referred to in subsection (1) are—

(a) such forms of treatment as may be specified in regulations made under section 58(1)(a);

(b) the administration of medicine to a patient by any means (not being a form of treatment specified under section 57, section 58(1)(a) or section 58A(1)(b)) at any time during a period for which the patient is liable to be detained as a patient to whom this Part of this Act applies.

(3) Where this section applies, and subject to section 62, a patient may not be given any of those forms of medical treatment unless there is a compelling reason to give treatment of that form and a second opinion appointed doctor has certified in writing—

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(a) that the treatment constitutes appropriate medical treatment,

(b) that the decision to give the treatment was made by the approved clinician in charge of the treatment in accordance with section 56A, and

(c) that, in relation to the form of treatment and any alternative forms of appropriate medical treatment that are available for the patient's relevant disorder (taking each form of treatment separately)—

(i) the patient has capacity to consent but has not consented, or

(ii) the patient lacks capacity to consent and it appears to the second opinion appointed doctor that there is a decision mentioned in subsection (1)(b)(i) or (ii) which, if valid, would conflict with the giving of the treatment.

(4) For the purposes of this section there is a "compelling reason" to give a form of medical treatment to a patient if—

(a) alternative forms of appropriate medical treatment are available for the patient's relevant disorder but, in relation to each of those forms—

(i) the patient has not consented, or

(ii) the patient lacks capacity to consent and the giving of the treatment would conflict with a decision mentioned in subsection (1)(b)(i) or (ii), or

(b) no alternative forms of appropriate medical treatment are available for the patient's relevant disorder.

(5) Before giving a certificate under subsection (3) the second opinion appointed doctor must consult two other persons who have been professionally concerned with the patient's medical treatment but, of those persons—

(a) one must be a nurse and the other must be neither a nurse nor a registered medical practitioner, and

(b) neither may be the responsible clinician or the approved clinician in charge of the treatment in question.

## 58. Treatment requiring consent or a second opinion.

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(A1) This section applies to the forms of medical treatment for relevant disorder mentioned in subsection (1) where—

- (a) the patient has capacity to consent to the treatment and has consented to it, or
- (b) the patient lacks capacity to consent to the treatment and the giving of the treatment would not conflict with—
  - (i) any valid and applicable advance decision, or
  - (ii) any decision of a donee or deputy or the Court of Protection.

(1) The forms of medical treatment referred to in subsection (A1) are—

~~This section applies to the following forms of medical treatment for mental disorder—~~

- (a) such forms of treatment as may be specified for the purposes of this section by regulations made by the Secretary of State;
  - (b) the administration of medicine to a patient by any means (not being a form of treatment specified under paragraph (a) above or section 57 above or section 58A(1)(b) below) 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 ~~two~~ three months or more have elapsed since the first occasion in that period when medicine was administered to him by any means for his ~~relevant~~ mental disorder.
- (2) The Secretary of State may by order vary the length of the period mentioned in subsection (1)(b) above.
- (3) Subject to section 62 below, a patient shall not be given any form of treatment to which this section applies unless—

- (a) he has consented to that treatment and either the approved clinician in charge of it or a ~~second opinion appointed doctor~~ a registered medical practitioner appointed for the purposes of this Part of this Act by the regulatory authority has certified in writing that the patient ~~has capacity to consent to it~~ is capable of understanding its nature, purpose and likely effects and has consented to it, ~~that the treatment constitutes appropriate medical treatment and that the decision to give the treatment was made by the approved clinician in charge of the treatment in accordance with section 56A or~~
- (b) a ~~second opinion appointed doctor~~ a registered medical practitioner appointed as aforesaid (not being the responsible clinician or the approved clinician in charge of the treatment in question) has certified in writing that the patient ~~lacks capacity to consent~~

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~~to is not capable of understanding the nature, purpose and likely effects of that treatment or being so capable has not consented to it but that~~ **the treatment constitutes appropriate medical treatment** ~~it is appropriate for the treatment to be given, and that the decision to give the treatment was made by the approved clinician in charge of the treatment in accordance with section 56A.~~

(4) Before giving a certificate under subsection **(3) the person giving the certificate** ~~(3)(b) above the registered medical practitioner concerned~~ shall consult two other persons who have been professionally concerned with the patient's medical treatment but, of those persons—

- (a) one shall be a nurse and the other shall be neither a nurse nor a registered medical practitioner; and
- (b) neither shall be the responsible clinician or the approved clinician in charge of the treatment in question.

(5) Before making any regulations for the purposes of this section the Secretary of State shall consult such bodies as appear to him to be concerned.

#### **58A. Electro-convulsive therapy, etc.**

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

- (a) electro-convulsive therapy; and
- (b) such other forms of treatment as may be specified for the purposes of this section by regulations made by the appropriate national authority.

(2) Subject to **section 62ZA** ~~section 62~~ below, a patient shall not be given any form of treatment to which this section applies unless he falls within subsection (3), (4) or (5) below.

(3) A patient falls within this subsection if—

- (a) he has attained the age of 18 years;
- (b) he has consented to the treatment in question; and
- (c) either the approved clinician in charge of it or **a second opinion appointed doctor** ~~a registered medical practitioner appointed as mentioned in section 58(3) above~~ has certified in writing that the patient **has capacity to consent to** ~~is capable of~~

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~~understanding the nature, purpose and likely effects of the treatment and has consented to it,~~ and that the decision to give the treatment was made by the approved clinician in charge of the treatment, in accordance with section 56A.

(4) A patient falls within this subsection if—

(a) he has not attained the age of 18 years; but

(b) he has consented to the treatment in question; and

(c) a second opinion appointed doctor ~~a registered medical practitioner appointed as aforesaid (not being the approved clinician in charge of the treatment)~~ has certified in writing—

(i) ~~that the patient has capacity to consent to the treatment and has consented to it, that the patient is capable of understanding the nature, purpose and likely effects of the treatment and has consented to it;~~ and

(ii) that the treatment constitutes appropriate medical treatment ~~that it is appropriate for the treatment to be given,~~ and

(iii) that the decision to give the treatment was made by the approved clinician in charge of the treatment, in accordance with section 56A.

(5) A patient falls within this subsection if—

(a) the patient lacks capacity to consent to the treatment and the giving of the treatment would not conflict with—

(i) any valid and applicable advance decision, or

(ii) any decision of a donee or deputy or the Court of Protection, and

(b) a second opinion appointed doctor has certified in writing—

(i) that the patient lacks capacity to consent to the treatment,

(ii) that the treatment constitutes appropriate medical treatment, and

(iii) that the decision to give the treatment was made by the approved clinician in charge of the treatment in accordance with section 56A.

~~(5) A patient falls within this subsection if a registered medical practitioner appointed as aforesaid (not being the responsible clinician (if there is one) or the approved clinician in charge of the treatment in question) has certified in writing—~~

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- ~~(a) that the patient is not capable of understanding the nature, purpose and likely effects of the treatment; but~~
- ~~(b) that it is appropriate for the treatment to be given; and~~
- ~~(c) that giving him the treatment would not conflict with—~~
- ~~(i) an advance decision which the registered medical practitioner concerned is satisfied is valid and applicable; or~~
  - ~~(ii) a decision made by a donee or deputy or by the Court of Protection.~~
- (6) Before giving a certificate under subsection (5) above **the second opinion appointed doctor** the registered medical practitioner concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment but, of those persons—
- (a) one shall be a nurse and the other shall be neither a nurse nor a registered medical practitioner; and
  - (b) neither shall be the responsible clinician (if there is one) or the approved clinician in charge of the treatment in question.
- (7) This section shall not by itself confer sufficient authority for a patient who falls within section 56(5) above to be given a form of treatment to which this section applies if he **lacks capacity to consent to the treatment** ~~is not capable of understanding the nature, purpose and likely effects of the treatment (and cannot therefore consent to it).~~
- (8) Before making any regulations for the purposes of this section, the appropriate national authority shall consult such bodies as appear to it to be concerned.
- (9) In this section—
- ~~(a) a reference to an advance decision is to an advance decision (within the meaning of the Mental Capacity Act 2005) made by the patient;~~
  - ~~(b) “*valid and applicable*”, in relation to such a decision, means valid and applicable to the treatment in question in accordance with section 25 of that Act;~~
  - ~~(c) a reference to a donee is to a donee of a lasting power of attorney (within the meaning of section 9 of that Act) created by the patient, where the donee is acting within the scope of his authority and in accordance with that Act; and~~

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~~(d) a reference to a deputy is to a deputy appointed for the patient by the Court of Protection under section 16 of that Act, where the deputy is acting within the scope of his authority and in accordance with that Act.~~

~~(10) In this section, “the appropriate national authority” means—~~

~~(a) in a case where the treatment in question would, if given, be given in England, the Secretary of State;~~

~~(b) in a case where the treatment in question would, if given, be given in Wales, the Welsh Ministers.~~

## **59. Plans of treatment.**

Any consent or certificate under section 57, **57A**, 58 or 58A above may relate to a plan of treatment under which the patient is to be given (whether within a specified period or otherwise) one or more of the forms of treatment to which that section applies.

## **60. Withdrawal of consent.**

(1) Where the consent of a patient to any treatment has been given for the purposes of section 57, 58 or 58A above, the patient may, subject to section 62 below, at any time before the completion of the treatment withdraw his consent, and those sections shall then apply as if the remainder of the treatment were a separate form of treatment.

(1A) Subsection (1B) below applies where—

(a) the consent of a patient to any treatment has been given for the purposes of section 57, 58 or 58A above; but

(b) before the completion of the treatment, the patient ceases to **have capacity to consent to the treatment** ~~be capable of understanding its nature, purpose and likely effects.~~

(1B) The patient shall, subject to section 62 below, be treated as having withdrawn his consent, and those sections shall then apply as if the remainder of the treatment were a separate form of treatment.

(1C) Subsection (1D) below applies where—

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(a) a certificate has been given under section 57A, 58 or 58A above that a patient **lacks capacity to consent to** ~~is not capable of understanding the nature, purpose and likely effects of~~ the treatment to which the certificate applies; but

(b) before the completion of the treatment, the patient **gains capacity to consent to that treatment** ~~becomes capable of understanding its nature, purpose and likely effects~~.

(1D) The certificate shall, subject to section 62 below, cease to apply to the treatment 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 subsections (1) to (1D) above to any treatment given under the plan of treatment to which a patient has consented, a patient who has consented to such a plan may, subject to section 62 below, at any time withdraw his consent to further treatment, or to further treatment of any description, under the plan.

## **61. Review of treatment.**

(1) Where a patient is given treatment in accordance with section 57(2), **57A(3) or 58(3)(b) or 58A(5)** ~~58(3)(b) or 58A(4) or (5)~~ above, or by virtue of section 62A below in accordance with a Part 4A certificate (within the meaning of that section) that falls within section 64C(4) below, a report on the treatment and the patient's condition shall be given by the approved clinician in charge of the treatment to the regulatory authority—

(a) on the next occasion on which the responsible clinician furnishes a report under section ~~20(3)~~, 20A(4) or 21B(2) above in respect of the patient, **except that, in the case of a patient who is liable to be detained in pursuance of an application for admission for treatment, no report is required under this subsection on the first occasion on which the responsible clinician furnishes a report under section 20(3) in respect of them**; and

(b) at any other time if so required by the regulatory authority .

**(1A) Where a patient is given treatment in accordance with section 58(3)(a) or 58A(3) or (4), a report on the treatment and the patient's condition must be given by the approved clinician in charge of the treatment to the regulatory authority at any time, if so required by the regulatory authority.**

**(1B) In relation to a patient to whom paragraph 5B or 5D or Part 1 of Schedule 1 applies, subsection (1) has effect as if, in paragraph (a), for the words “application for admission for treatment” there were substituted “order under Part 3 of this Act”.**



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(1C) In relation to a patient to whom paragraph 5C or 6 of Part 1 of Schedule 1 applies, subsection (1) has the effect as if, in paragraph (a), the words from “, except that” to the end of that paragraph were omitted.

(2) In relation to a patient who is subject to a restriction order, limitation direction or restriction direction subsection (1) above shall have effect as if paragraph (a) required the report to be made—

(a) in the case of treatment in the period of six months beginning with the date of the order or direction, at the end of that period;

(b) in the case of treatment at any subsequent time, on the next occasion on which the responsible clinician makes a report in respect of the patient under section 41(6), 45B(3) or 49(3) above.

(3) The regulatory authority may at any time give notice directing that, subject to section 62 below, a certificate given in respect of a patient under section 57(2), 57A(3), 58(3) 58(3)(b) or 58A(3), (4) 58A(4); or (5) above shall not apply to treatment given to him (whether in England or Wales) after a date specified in the notice and sections 57, 57A, sections 57 58 and 58A above shall then apply to any such treatment as if that certificate had not been given.

(3A) The notice under subsection (3) above shall be given to the approved clinician in charge of the treatment.

## 62. Urgent treatment.

(1) Section 57 Sections 57 and 58 above shall not apply to any treatment—

(a) which is immediately necessary to save the 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.

(1ZA) Sections 57A and 58 do not apply to—

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(a) any treatment which falls within paragraphs (a), (b) or (d) of subsection (1), or

(b) any treatment which falls within paragraph (c) of subsection (1) and is given to a patient who lacks capacity to consent to the treatment.

~~(1A) Section 58A above, in so far as it relates to electro-convulsive therapy by virtue of subsection (1)(a) of that section, shall not apply to any treatment which falls within paragraph (a) or (b) of subsection (1) above.~~

~~(1B) Section 58A above, in so far as it relates to a form of treatment specified by virtue of subsection (1)(b) of that section, shall not apply to any treatment which falls within such of paragraphs (a) to (d) of subsection (1) above as may be specified in regulations under that section.~~

~~(1C) For the purposes of subsection (1B) above, the regulations—~~

~~(a) may make different provision for different cases (and may, in particular, make different provision for different forms of treatment);~~

~~(b) may make provision which applies subject to specified exceptions; and~~

~~(c) may include transitional, consequential, incidental or supplemental provision.~~

(2) Sections 60 and 61(3) above shall not preclude the continuation of any treatment or of treatment under any plan pending compliance with section 57, **57A**, 58 or 58A above if the approved clinician in charge of the treatment 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 unfavorable irreversible physical or psychological consequences and hazardous if it entails significant physical hazard.

## **62ZA. Urgent treatment: electro-convulsive therapy, etc.**

(1) This section applies instead of section 58A—

(a) to any treatment with electro-convulsive therapy where—

(i) the treatment is immediately necessary to save the patient's life, or

(ii) the treatment is not irreversible and is immediately necessary to prevent a serious deterioration of the patient's condition;

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(b) to any treatment of a form specified under section 58A(1)(b), where the treatment falls within such of paragraphs (a) to (d) of section 62(1) as may be specified in regulations under section 58A(1)(b).

(2) The treatment may be given to a patient who has capacity to consent to the treatment, but has not consented to it, only if a certificate has been given by a second opinion appointed doctor under subsection (4).

(3) The treatment may be given to a patient who lacks capacity to consent to the treatment, where the giving of the treatment would conflict with—

(a) any valid and applicable advance decision, or

(b) any decision of a donee or deputy or the Court of Protection,

only if a certificate has been given by a second opinion appointed doctor under subsection (5).

(4) A certificate under this subsection is a certificate stating—

(a) that the patient has capacity to consent to the treatment but has not consented to it,

(b) that the decision to give the treatment was made by the approved clinician in charge of the treatment in accordance with section 56A,

(c) where the treatment is electro-convulsive therapy, that the treatment—

(i) is immediately necessary to save the patient's life, or

(ii) is not irreversible and is immediately necessary to prevent a serious deterioration of the patient's condition, and

(d) where the treatment is of a form specified under section 58A(1)(b), which of the paragraphs of section 62(1) it falls within (see subsection (1)(b)).

(5) A certificate under this subsection is a certificate stating —

(a) that the patient lacks capacity to consent to the treatment and it appears to the second opinion appointed doctor that there is a decision mentioned in subsection (3)(a) or (b) which, if valid, would conflict with the giving of the treatment,

(b) that the decision to give the treatment was made by the approved clinician in charge of the treatment in accordance with section 56A,

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(c) where the treatment is electro-convulsive therapy, that the treatment—

(i) is immediately necessary to save the patient's life, or

(ii) is not irreversible and is immediately necessary to prevent a serious deterioration of the patient's condition, and

(d) where the treatment is of a form specified under section 58A(1)(b), which of the paragraphs of section 62(1) it falls within (see subsection (1)(b)).

(6) Before giving a certificate under this section, the second opinion appointed doctor must, if it is practicable to do so within any period specified under section 62ZB(2), consult—

(a) a nurse who has been professionally concerned with the patient's medical treatment and is neither the responsible clinician nor the approved clinician in charge of the treatment in question, and

(b) the patient's nominated person.

(7) Any request under section 56B for the appointment of a second opinion doctor in relation to the function of giving a certificate under this section must be made by the relevant person (within the meaning of section 56B) as soon as reasonably practicable.

(8) The regulatory authority must, on receiving such a request, make the appointment under section 56B as soon as practicable.

(9) Subsection (3) of section 62 applies for the purposes of this section as it applies for the purposes of that section.

### **62ZB. Section 62ZA(1) treatment: powers of appropriate national authority**

(1) The appropriate national authority may by regulations amend this Act to provide for circumstances in which functions of a second opinion appointed doctor in relation to treatment falling within section 62ZA(1) may or must be carried out instead by the approved clinician in charge of the treatment in question.

(2) The appropriate national authority may by regulations impose duties on—

(a) the managers of hospitals or registered establishments,

(b) approved clinicians, or

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(c) the regulatory authority,

for the purpose of ensuring that a certificate given under section 62ZA or by virtue of regulations under subsection (1) is given within a period specified in the regulations.

(3) Regulations under this section may make—

(a) provision subject to specified exceptions;

(b) different provision for different cases;

(c) transitional, consequential, incidental or supplemental provision.

#### **62A . Treatment on recall of community patient or revocation of order**

(1) This section applies where—

(a) a community patient is recalled to hospital under section 17E above; or

(b) a patient is liable to be detained under this Act following the revocation of a community treatment order under section 17F above in respect of him.

(2) For the purposes of section 58(1)(b) above, the patient is to be treated as if he had remained liable to be detained since the making of the community treatment order.

(3) But section 58 above does not apply to treatment given to the patient if—

(a) the certificate requirement is met for the purposes of section 64C or 64E below; or

(b) as a result of section 64B(4) or 64E(4) below, the certificate requirement would not apply (were the patient a community patient not recalled to hospital under section 17E above).

(4) Section 58A above does not apply to treatment given to the patient if there is authority to give the treatment, and the certificate requirement is met, for the purposes of section 64C or 64E below.

(5) In a case where this section applies and the Part 4A certificate falls within section 64C(4) below, the certificate requirement is met only in so far as—

(a) the Part 4A certificate expressly provides that ~~it is appropriate for~~ one or more specified forms of treatment **constitute appropriate medical treatment** ~~to be given to the patient~~ in that case (subject to such conditions as may be specified); or

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(b) a notice having been given under subsection (5) of section 64H below, treatment is authorised by virtue of subsection (8) of that section.

(6) Subsection (5)(a) above shall not preclude the continuation of any treatment, or of treatment under any plan, pending compliance with section 58 or 58A or 64B or 64E below above if the approved clinician in charge of the treatment considers that the discontinuance of the treatment, or of the treatment under the plan, would cause serious suffering to the patient.

(6A) In a case where this section applies and the certificate requirement is no longer met for the purposes of section 64C(4A) below, the continuation of any treatment, or of treatment under any plan, pending compliance with section 58 or 58A above or 64B or 64E below shall not be precluded if the approved clinician in charge of the treatment considers that the discontinuance of the treatment, or of treatment under the plan, would cause serious suffering to the patient.

(7) In a case where subsection (1)(b) above applies, subsection (3) above only applies pending compliance with section 58 above.

(8) In subsection (5) above—

“Part 4A certificate” has the meaning given in section 64H below; and

“specified” , in relation to a Part 4A certificate, means specified in the certificate.

### **63. Treatment not requiring consent.**

(1) The consent of a patient **who is liable to be detained in pursuance of an application for admission for assessment**; shall not be required for any medical treatment given to him for the **relevant mental disorder** from which he is suffering, **where none of sections 57 to 58A apply**, ~~not being a form of treatment to which section 57, 58 or 58A above applies~~, if the treatment is given by or under the direction of the approved clinician in charge of the treatment.

(2) The consent of any other patient is not required for any medical treatment given to the patient for such disorder, **not being a form of treatment to which section 57, 58 or 58A above applies**, if—

(a) the treatment is given by or under the direction of the approved clinician in charge of the treatment, and

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(b) the approved clinician in charge of the treatment considers that the treatment constitutes appropriate medical treatment.

#### 64. Supplementary provisions for Part IV.

(1) In this Part-

“hospital” includes a registered establishment;

“responsible clinician” means the responsible clinician within the meaning of Part 2 (see section 34(1)).

“the appropriate national authority” has the meaning given by section 58A(10);

“second opinion appointed doctor” is to be read in accordance with section 56B.

~~(1) In this Part-~~

~~of this Act “the responsible clinician” means the approved clinician with overall responsibility for the case of the patient in question and “hospital” includes a registered establishment.~~

(1A) References in this Part of this Act to the approved clinician in charge of a patient's treatment shall, where the treatment in question is a form of treatment to which section 57 above applies, be construed as references to the person in charge of the treatment.

(1B) References in this Part of this Act to the approved clinician in charge of a patient's treatment shall, where the treatment in question is a form of treatment to which section 58A above applies and the patient falls within section 56(5) above, be construed as references to the person in charge of the treatment.

(1BA) In relation to a patient who is aged under 16, references in this Part to capacity are to be read as references to competence.

(1BB) In relation to a patient who is aged 16 or over—

(a) references in this Part to lacking capacity are to lacking capacity within the meaning of the Mental Capacity Act 2005, and

(b) references in this Part to having, ceasing to have or gaining capacity are to be read accordingly.

(1BC) References in this Part—

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(a) to an advance decision are to an advance decision (within the meaning of the Mental Capacity Act 2005) made by the patient;

(b) to a donee are to a donee of a lasting power of attorney (within the meaning of section 9 of the Mental Capacity Act 2005) created by the patient, where the donee is acting within the scope of their authority and in accordance with that Act;

(c) to a deputy are to a deputy appointed for the patient by the Court of Protection under section 16 of the Mental Capacity Act 2005, where the deputy is acting within the scope of their authority and in accordance with that Act.

(1BD) In this Part “valid and applicable”, in relation to an advance decision, means valid and applicable to the treatment in question in accordance with section 25 of the Mental Capacity Act 2005.”

(1C) Regulations made by virtue of section 32(2)(d) above apply for the purposes of this Part as they apply for the purposes of Part 2 of this Act.

(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.

~~(3) For the purposes of this Part of this Act, it is appropriate for treatment to be given to a patient if the treatment is appropriate in his case, taking into account the nature and degree of the mental disorder from which he is suffering and all other circumstances of his case.~~

## Part 4A

### TREATMENT OF COMMUNITY PATIENTS NOT RECALLED TO HOSPITAL

#### **64A. Meaning of “relevant treatment”**

In this Part of this Act “relevant treatment”, in relation to a patient, means medical treatment which—

(a) is for the ~~psychiatric~~ mental disorder from which the patient is suffering; and

(b) is not a form of treatment to which section 57 above applies.



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#### **64A Meaning of “relevant treatment”**

(1) In this Part of this Act “relevant treatment” -

(a) in relation to a Part 3 community patient, means medical treatment which -

(i) is for the relevant disorder from which the patient is suffering, and

(ii) is not a form of treatment to which section 57 applies, and

(b) in relation to any other community patient, means medical treatment which -

(i) is for the psychiatric disorder from which the patient is suffering, and

(ii) is not a form of treatment to which section 57 applies.

(2) In subsection (1)(a) -

“Part 3 community patient” means a person who is a community patient by virtue of a community treatment order under section 17A as applied by Part 1 of Schedule 1;

“relevant disorder” has the meaning given by section 34A

#### **64B. Adult community patients**

(1) This section applies to the giving of relevant treatment to a community patient who—

(a) is not recalled to hospital under section 17E above; and

(b) has attained the age of 16 years.

(2) The treatment may not be given to the patient unless—

(a) there is authority to give it to him; and

(b) if it is section 58 type treatment or section 58A type treatment, the certificate requirement is met.

(3) But the certificate requirement does not apply if—

(a) giving the treatment to the patient is authorised in accordance with section 64G below; or

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(b) the treatment is immediately necessary and—

(i) the patient has capacity to consent to it and does consent to it; or

(ii) a donee or deputy or the Court of Protection consents to the treatment on the patient's behalf.

(4) Nor does the certificate requirement apply in so far as the administration of medicine to the patient at any time during the period of one month beginning with the day on which the community treatment order is made is section 58 type treatment.

(5) The reference in subsection (4) above to the administration of medicine does not include any form of treatment specified under section 58(1)(a) above.

#### **64C. Section 64B: supplemental**

(1) This section has effect for the purposes of section 64B above.

(2) There is authority to give treatment to a patient if—

(a) he has capacity to consent to it and does consent to it;

(b) a donee or deputy or the Court of Protection consents to it on his behalf; or

(c) giving it to him is authorised in accordance with section 64D or 64G below.

(3) Relevant treatment is—

(a) section 58 type treatment if it is—

(i) treatment of a form which, at the time when it is given to the patient, is specified under section 58(1)(a), or

(ii) the administration of medicine to the patient by any means (not being a form of treatment specified under section 57, section 58(1)(a) or section 58A(1)(b)) if a period equal to or longer than the section 58 period has elapsed since the first occasion, during the relevant period, when medicine was administered to the patient by any means for relevant disorder;

(b) section 58A type treatment if it is—

(i) electro-convulsive therapy, or

(ii) treatment of a form which, at the time when it is given to the patient, is specified under section 58A(1)(b).

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~~(3) Relevant treatment is section 58 type treatment or section 58A type treatment if, at the time when it is given to the patient, section 58 or 58A above (respectively) would have applied to it, had the patient remained liable to be detained at that time (rather than being a community patient).~~

(3A) For the purposes of subsection (3)—

(a) the “section 58 period” is the period which, at the time when the treatment is given to the patient, is specified under section 58(1)(b);

(b) the “relevant period” is the period during which the patient has continuously been a patient to whom this Part applies.

(4) The certificate requirement is met in respect of treatment to be given to a patient if—

(a) ~~a registered medical practitioner appointed for the purposes of Part 4 of this Act (not being the responsible clinician or the person in charge of the treatment)~~ **a second opinion appointed doctor** has certified in writing that **the treatment constitutes appropriate medical treatment or constitutes appropriate medical treatment if it is appropriate for the treatment to be given or for the treatment to be given subject to such conditions as may be specified in the certificate;** and

(b) if conditions are so specified, the conditions are satisfied.

(4A) Where there is authority to give treatment by virtue of subsection (2)(a), the certificate requirement is also met in respect of the treatment if the approved clinician in charge of the treatment has certified in writing that the patient has capacity to consent to the treatment and has consented to it.

(4B) But, if the patient has not attained the age of 18, subsection (4A) does not apply to section 58A type treatment.

(5) In a case where the treatment is section 58 type treatment, treatment is immediately necessary if—

(a) it is immediately necessary to save the patient's life; or

(b) it is immediately necessary to prevent a serious deterioration of the patient's condition and is not irreversible; or

(c) it is immediately necessary to alleviate serious suffering by the patient and is not irreversible or hazardous; or

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(d) it is immediately necessary, represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or others and is not irreversible or hazardous.

(6) In a case where the treatment is section 58A type treatment by virtue of **subsection 3(b)(i) of this section** ~~subsection (1)(a) of that section~~, treatment is immediately necessary if it falls within paragraph (a) or (b) of subsection (5) above.

(7) In a case where the treatment is section 58A type treatment by virtue of **subsection 3(b)(ii) of this section** ~~subsection (1)(b) of that section~~, treatment is immediately necessary if it falls within such of paragraphs (a) to (d) of subsection (5) above as may be specified in regulations under **section 58A (1)(b)** ~~that section~~.

(8) For the purposes of subsection (7) above, the regulations—

(a) may make different provision for different cases (and may, in particular, make different provision for different forms of treatment);

(b) may make provision which applies subject to specified exceptions; and

(c) may include transitional, consequential, incidental or supplemental provision.

(9) Subsection (3) of section 62 above applies for the purposes of this section as it applies for the purposes of that section.

**(10) In this section “second opinion appointed doctor” has the same meaning as in Part 4 (see section 64).**

#### **64D. Adult community patients lacking capacity**

(1) A person is authorised to give relevant treatment to a patient as mentioned in section 64C(2)(c) above if the conditions in subsections (2) to (6) below are met.

(2) The first condition is that, before giving the treatment, the person takes reasonable steps to establish whether the patient lacks capacity to consent to the treatment.

(3) The second condition is that, when giving the treatment, he reasonably believes that the patient lacks capacity to consent to it.

(4) The third condition is that—

(a) he has no reason to believe that the patient objects to being given the treatment; or

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(b) he does have reason to believe that the patient so objects, but it is not necessary to use force against the patient in order to give the treatment.

(5) The fourth condition is that—

(a) he is the person in charge of the treatment and an approved clinician; or

(b) the treatment is given under the direction of that clinician.

(6) The fifth condition is that giving the treatment does not conflict with—

(a) an advance decision which he is satisfied is valid and applicable; or

(b) a decision made by a donee or deputy or the Court of Protection.

(7) In this section—

(a) reference to an advance decision is to an advance decision (within the meaning of the Mental Capacity Act 2005) made by the patient; and

(b) “ valid and applicable ”, in relation to such a decision, means valid and applicable to the treatment in question in accordance with section 25 of that Act.

#### **64E. Child community patients**

(1) This section applies to the giving of relevant treatment to a community patient who—

(a) is not recalled to hospital under section 17E above; and

(b) has not attained the age of 16 years.

(2) The treatment may not be given to the patient unless—

(a) there is authority to give it to him; and

(b) if it is section 58 type treatment or section 58A type treatment, the certificate requirement is met.

(3) But the certificate requirement does not apply if—

(a) giving the treatment to the patient is authorised in accordance with section 64G below; or

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(b) in a case where the patient is competent to consent to the treatment and does consent to it, the treatment is immediately necessary.

(4) Nor does the certificate requirement apply in so far as the administration of medicine to the patient at any time during the period of one month beginning with the day on which the community treatment order is made is section 58 type treatment.

(5) The reference in subsection (4) above to the administration of medicine does not include any form of treatment specified under section 58(1)(a) above.

(6) For the purposes of subsection (2)(a) above, there is authority to give treatment to a patient if—

(a) he is competent to consent to it and he does consent to it; or

(b) giving it to him is authorised in accordance with section 64F or 64G below.

(7) Subsections 2(3) to (4A) and (5) to (9) of section 64C above have effect for the purposes of this section as they have effect for the purposes of section 64B above; and for the purpose of this subsection, subsection (4A) of section 64C above has effect as if—

(a) the references to treatment were references only to section 58 type treatment,

(b) the reference to subsection (2)(a) of section 64C were a reference to subsection (6)(a) of this section, and

(c) the reference to capacity to consent were a reference to competence to consent.

(8) Regulations made by virtue of section 32(2)(d) above apply for the purposes of this section as they apply for the purposes of Part 2 of this Act.

#### **64F. Child community patients lacking competence**

(1) A person is authorised to give relevant treatment to a patient as mentioned in section 64E(6)(b) above if the conditions in subsections (2) to (5) below are met.

(2) The first condition is that, before giving the treatment, the person takes reasonable steps to establish whether the patient is competent to consent to the treatment.

(3) The second condition is that, when giving the treatment, he reasonably believes that the patient is not competent to consent to it.

(4) The third condition is that—

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- (a) he has no reason to believe that the patient objects to being given the treatment; or
- (b) he does have reason to believe that the patient so objects, but it is not necessary to use force against the patient in order to give the treatment.

(5) The fourth condition is that—

- (a) he is the person in charge of the treatment and an approved clinician; or
- (b) the treatment is given under the direction of that clinician.

#### **64FA. Withdrawal of consent**

(1) Where the consent of a patient to any treatment has been given as mentioned in section 64C(2)(a) above for the purposes of section 64B or 64E above, the patient may at any time before the completion of the treatment withdraw his consent, and those sections shall then apply as if the remainder of the treatment were a separate form of treatment.

(2) Subsection (3) below applies where—

- (a) the consent of a patient to any treatment has been given as mentioned in section 64C(2)(a) above for the purposes of section 64B or 64E above; but
- (b) before the completion of the treatment, the patient loses capacity or (as the case may be) competence to consent to the treatment.

(3) The patient shall be treated as having withdrawn his consent and section 64B or (as the case may be) section 64E above shall then apply as if the remainder of the treatment were a separate form of treatment.

(4) Without prejudice to the application of subsections (1) to (3) above to any treatment given under the plan of treatment to which a patient has consented, a patient who has consented to such a plan may at any time withdraw his consent to further treatment, or to further treatment of any description, under the plan.

(5) This section shall not preclude the continuation of any treatment, or of treatment under any plan, pending compliance with section 58, 58A, 64B or 64E above if the approved clinician in charge of the treatment considers that the discontinuance of the treatment, or of treatment under the plan, would cause serious suffering to the patient.

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## **64G Emergency treatment for patients lacking capacity or competence**

(1) A person is also authorised to give relevant treatment to a patient as mentioned in section 64C(2)(c) or 64E(6)(b) above if the conditions in subsections (2) to (4) below are met.

(2) The first condition is that, when giving the treatment, the person reasonably believes that the patient lacks capacity to consent to it or, as the case may be, is not competent to consent to it.

(3) The second condition is that the treatment is immediately necessary.

(4) The third condition is that if it is necessary to use force against the patient in order to give the treatment—

(a) the treatment needs to be given in order to prevent harm to the patient; and

(b) the use of such force is a proportionate response to the likelihood of the patient's suffering harm, and to the seriousness of that harm.

(5) Subject to subsections (6) to (8) below, treatment is immediately necessary if—

(a) it is immediately necessary to save the patient's life; or

(b) it is immediately necessary to prevent a serious deterioration of the patient's condition and is not irreversible; or

(c) it is immediately necessary to alleviate serious suffering by the patient and is not irreversible or hazardous; or

(d) it is immediately necessary, represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or others and is not irreversible or hazardous.

(6) Where the treatment is section 58A type treatment by virtue of subsection (1)(a) of that section, treatment is immediately necessary if it falls within paragraph (a) or (b) of subsection (5) above.

(7) Where the treatment is section 58A type treatment by virtue of subsection (1)(b) of that section, treatment is immediately necessary if it falls within such of paragraphs (a) to (d) of subsection (5) above as may be specified in regulations under section 58A above.

(8) For the purposes of subsection (7) above, the regulations—



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(a) may make different provision for different cases (and may, in particular, make different provision for different forms of treatment);

(b) may make provision which applies subject to specified exceptions; and

(c) may include transitional, consequential, incidental or supplemental provision.

(9) Subsection (3) of section 62 above applies for the purposes of this section as it applies for the purposes of that section.

#### **64H Certificates: supplementary provisions**

(1) A certificate under section 64B(2)(b) or 64E(2)(b) above (a “Part 4A certificate”) 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 forms of section 58 type treatment or section 58A type treatment.

(2) A Part 4A certificate shall be in such form as may be prescribed by regulations made by the appropriate national authority; and the regulations may make different provision for the different descriptions of Part 4A certificate.

(3) Before giving a Part 4A certificate that falls within section 64C(4) above, the registered medical practitioner concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment but, of those persons—

(a) at least one shall be a person who is not a registered medical practitioner; and

(b) neither shall be the patient's responsible clinician or the person in charge of the treatment in question.

(4) Where a patient is given treatment in accordance with a Part 4A certificate that falls within section 64C(4) above, a report on the treatment and the patient's condition shall be given by the person in charge of the treatment to the appropriate national authority if required by that authority.

(5) The appropriate national authority may at any time give notice directing that a Part 4A certificate that falls within section 64C(4) above shall not apply to treatment given to a patient after a date specified in the notice, and the relevant section shall then apply to any such treatment as if that certificate had not been given.

(6) The relevant section is—

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(a) if the patient is not recalled to hospital in accordance with section 17E above, section 64B or 64E above;

(b) if the patient is so recalled or is liable to be detained under this Act following revocation of the community treatment order under section 17F above—

(i) section 58 above, in the case of section 58 type treatment;

(ii) section 58A above, in the case of section 58A type treatment;

(subject to section 62A(2) above).

(7) The notice under subsection (5) above shall be given to the person in charge of the treatment in question.

(8) Subsection (5) above shall not preclude the continuation of any treatment or of treatment under any plan pending compliance with the relevant section if the person in charge of the treatment considers that the discontinuance of the treatment or of treatment under the plan would cause serious suffering to the patient.

(9) In this section, “ the appropriate national authority ” means—

(a) in relation to community patients in respect of whom the responsible hospital is in England, the Secretary of State;

(b) in relation to community patients in respect of whom the responsible hospital is in Wales, the Welsh Ministers.

#### **64I. Liability for negligence**

Nothing in section 64D, 64F or 64G above excludes a person's civil liability for loss or damage, or his criminal liability, resulting from his negligence in doing anything authorised to be done by that section.

#### **64J. Factors to be considered in determining whether patient objects to treatment**

(1) In assessing for the purposes of this Part whether he has reason to believe that a patient objects to treatment, a person shall consider all the circumstances so far as they are reasonably ascertainable, including the patient's behaviour, wishes, feelings, views, beliefs and values.

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(2) But circumstances from the past shall be considered only so far as it is still appropriate to consider them.

#### **64K. Interpretation of Part 4A**

(1) This Part of this Act is to be construed as follows.

(2) References to a patient who lacks capacity are to a patient who lacks capacity within the meaning of the Mental Capacity Act 2005.

(3) References to a patient who has capacity are to be read accordingly.

(4) References to a donee are to a donee of a lasting power of attorney (within the meaning of section 9 of the Mental Capacity Act 2005) created by the patient, where the donee is acting within the scope of his authority and in accordance with that Act.

(5) References to a deputy are to a deputy appointed for the patient by the Court of Protection under section 16 of the Mental Capacity Act 2005, where the deputy is acting within the scope of his authority and in accordance with that Act.

(6) Reference to the responsible clinician shall be construed as a reference to the responsible clinician within the meaning of Part 2 of this Act.

(7) References to a hospital include a registered establishment.

~~(8) Section 64(3) above applies for the purposes of this Part of this Act as it applies for the purposes of Part 4 of this Act.~~

## **Part V**

### **MENTAL HEALTH TRIBUNALS**

*[Section 65 is not affected by the amendments to be made by the draft Mental Health Bill so is not included in the Schedule]*

*Applications and references concerning Part II patients*

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## **66. Applications to tribunals.**

(1) Where—

(a) a patient is admitted to a hospital in pursuance of an application for admission for assessment; or

(b) a patient is admitted to a hospital in pursuance of an application for admission for treatment; or

(c) a patient is received into guardianship in pursuance of a guardianship application; or

(ca) a community treatment order is made in respect of a patient; or

(cb) a community treatment order is revoked under section 17F above in respect of a patient; or

(e) a patient is transferred from guardianship to a hospital in pursuance of regulations made under section 19 above; or

(f) a report is furnished under section 20 above in respect of a patient and the patient is not discharged under section 23 above; or

(fza) a report is furnished under section 20A above in respect of a patient and the patient is not discharged under section 23 above; or

(fa) a report is furnished under subsection (2) of section 21B above in respect of a patient and subsection (5) of that section applies (or subsections (5) and (6)(b) of that section apply) in the case of the report; or

(faa) a report is furnished under subsection (2) of section 21B above in respect of a community patient and subsection (6A) of that section applies (or subsections (6A) and (6B)(b) of that section apply) in the case of the report; or

(fb) *[repealed by the Mental Health Act 2007]*

(g) a report is furnished under section 25 above in respect of a patient who is detained in pursuance of an application for admission for treatment or a community patient; or

*[(ga - gc) repealed by the Mental Health Act 2007]*

(h) an order is made under section 29 above on the ground specified in paragraph (c) or (d) of subsection (3) of that section in respect of a patient who is or subsequently

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becomes liable to be detained or subject to guardianship under Part II of this Act or who is a community patient,

an application may be made to the appropriate tribunal within the relevant period—

(i) by the patient (except in the cases mentioned in paragraphs (g) and (h) above, and

(ia) in the cases mentioned in paragraphs (b) and (c) where the application was made despite an objection under section 11(4B), by the patient's nominated person;

(ib) in the case mentioned in paragraph (ca) where the application was made despite an objection under section 17AA(3), by the patient's nominated person;

(ii) in the cases mentioned in paragraphs (g) and (h) above, by the patient's nominated person ~~his nearest relative~~.

(2) In subsection (1) above "the relevant period" means —

(a) in the case mentioned in paragraph (a) of that subsection, ~~14 days~~ 21 days beginning with the day on which the patient is admitted as so mentioned;

(b) in the case mentioned in paragraph (b) of that subsection, ~~six months~~ three months beginning with the day on which the patient is admitted as so mentioned;

(c) in the case mentioned in paragraph (c) of that subsection, six months beginning with the day on which the application is accepted;

(ca) in the case mentioned in paragraph (ca) of that subsection, six months beginning with the day on which the community treatment order is made;

(cb) in the case mentioned in paragraph (cb) of that subsection, six months beginning with the day on which the community treatment order is revoked;

(d) in the case mentioned in paragraph (g) of that subsection, 28 days beginning with the day on which the applicant is informed that the report has been furnished;

(e) in the case mentioned in paragraph (e) of that subsection, six months beginning with the day on which the patient is transferred;

(f) in the case mentioned in paragraph (f) or (fa) of that subsection, the period or periods for which authority for the patient's detention or guardianship is renewed by virtue of the report;

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(fza) in the cases mentioned in paragraphs (fza) and (faa) of that subsection, the period or periods for which the community treatment period is extended by virtue of the report;

(fa) *[repealed by the Mental Health Act 2007]*

(g) in the case mentioned in paragraph (h) of that subsection, 12 months beginning with the date of the order, and in any subsequent period of 12 months during which the order continues in force.

(2A) Nothing in subsection (1)(b) above entitles a community patient to make an application by virtue of that provision even if he is admitted to a hospital on being recalled there under section 17E above.

#### **67. References to tribunals by Secretary of State concerning Part II patients.**

(1) The Secretary of State may, if he thinks fit, at any time refer to F1the appropriate tribunal the case of any patient who is liable to be detained or subject to guardianship. . . under Part II of this Act or of any community patient.

(2) For the purpose of furnishing information for the purposes of a reference under subsection (1) above any registered medical practitioner or approved clinician authorised by or on behalf of the patient may, at any reasonable time, visit the patient and examine him in private and require the production of and inspect any records relating to the detention or treatment of the patient in any hospital F5or to any after-care services provided for the patient under section 117 below.

(3) Section 32 above shall apply for the purposes of this section as it applies for the purposes of Part II of this Act.

#### **68. Duty of managers of hospitals to refer cases to tribunal**

(1) This section applies in respect of the following patients–

(a) a patient who is admitted to a hospital in pursuance of an application for admission for assessment;

(b) a patient who is admitted to a hospital in pursuance of an application for admission for treatment;

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(c) a community patient;

~~(d) a patient whose community treatment order is revoked under section 17F above;~~

~~(e) a patient who is transferred from guardianship to a hospital in pursuance of regulations made under section 19 above.~~

(2) On expiry of a **relevant period** ~~the period of six months beginning with the applicable day,~~ the managers of the hospital shall refer the patient's case to the appropriate tribunal .

(3) But they shall not do so if during ~~that~~ **the relevant period**—

(a) any right has been exercised by or in respect of the patient by virtue of any of paragraphs (b), (ca), (cb), (e), ~~(f), (fza), (fa), (faa),~~ (g) and (h) of section 66(1) above;

(b) a reference has been made in respect of the patient under section 67(1) above, not being a reference made while the patient is or was liable to be detained in pursuance of an application for admission for assessment; ~~or~~

(c) a reference has been made in respect of the patient under subsection ~~(6)~~ **(7)** below.

(4) A person who applies to a tribunal but subsequently withdraws his application shall be treated for these purposes as not having exercised his right to apply, and if he withdraws his application on a date after expiry of the **relevant period** ~~period mentioned in subsection (2) above,~~ the managers shall refer the patient's case as soon as possible after that

**(4A) In this section “relevant period” means—**

**(a) in the case of a patient who is admitted to a hospital in pursuance of an application for admission for assessment, the period of three months beginning with the applicable day;**

**(b) in the case of a patient who is admitted to hospital in pursuance of an application for admission for treatment—**

**(i) the period of three months beginning with the applicable day;**

**(ii) the period between the expiry of three months and the expiry of 12 months beginning with the applicable day;**

**(iii) each subsequent period of 12 months;**

**(c) in the case of a community patient—**

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- (i) the period of six months beginning with the applicable day;
- (ii) the period between the expiry of six months and the expiry of 12 months beginning with the applicable day;
- (iii) each subsequent period of 12 months.

(5) In subsection 4A (2) ~~above~~, “the applicable day” means—

(a) in the case of a patient who is admitted to a hospital in pursuance of an application for admission for assessment, the day on which the patient was so admitted;

(b) in the case of a patient who is admitted to a hospital in pursuance of an application for admission for treatment—

(i) the day on which the patient was so admitted; or

(ii) if, when he was so admitted, he was already liable to be detained in pursuance of an application for admission for assessment, the day on which he was originally admitted in pursuance of the application for admission for assessment;

(c) in the case of a community patient, ~~the day on which the community treatment order was made. or a patient whose community treatment order is revoked under section 17F above, the day mentioned in sub-paragraph (i) or (ii), as the case may be, of paragraph (b) above;~~

~~(d) in the case of a patient who is transferred from guardianship to a hospital, the day on which he was so transferred.~~

(6) ~~The managers of the hospital must also refer the patient’s case to the appropriate tribunal if—~~

~~(a) the patient’s case has not been considered by such a tribunal within the last 12 months, whether on the patient’s own application or otherwise, and~~

~~(b) there is no pending application or reference to the appropriate tribunal in relation to the patient’s case.~~

~~(6) The managers of the hospital shall also refer the patient's case to the appropriate tribunal if a period of more than three years (or, if the patient has not attained the age of 18 years, one year) has elapsed since his case was last considered by such a tribunal, whether on his own application or otherwise.~~



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~~(7) If, in the case of a community patient, the community treatment order is revoked under section 17F above, the managers of the hospital shall also refer the patient's case to the appropriate tribunal as soon as possible after the order is revoked.~~

(8) For the purposes of furnishing information for the purposes of a reference under this section, a registered medical practitioner or approved clinician authorised by or on behalf of the patient may at any reasonable time—

(a) visit and examine the patient in private; and

(b) require the production of and inspect any records relating to the detention or treatment of the patient in any hospital or any after-care services provided for him under section 117 below.

(9) Reference in this section to the managers of the hospital—

(a) in relation to a community patient, is to the managers of the responsible hospital;

(b) in relation to any other patient, is to the managers of the hospital in which he is liable to be detained.

### **68A Power to reduce periods under section 68**

~~(1) The appropriate national authority may from time to time by order amend subsection (2) or (6) of section 68 above so as to substitute for a period mentioned there such shorter period as is specified in the order.~~

~~(2) The order may include such transitional, consequential, incidental or supplemental provision as the appropriate national authority thinks fit.~~

~~(3) The order may, in particular, make provision for a case where—~~

~~(a) a patient in respect of whom subsection (1) of section 68 above applies is, or is about to be, transferred from England to Wales or from Wales to England; and~~

~~(b) the period by reference to which subsection (2) or (6) of that section operates for the purposes of the patient's case is not the same in one territory as it is in the other.~~

~~(4) A patient is transferred from one territory to the other if—~~

~~(a) he is transferred from a hospital, or from guardianship, in one territory to a hospital in the other in pursuance of regulations made under section 19 above;~~

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~~(b) he is removed under subsection (3) of that section from a hospital or accommodation in one territory to a hospital or accommodation in the other;~~

~~(c) he is a community patient responsibility for whom is assigned from a hospital in one territory to a hospital in the other in pursuance of regulations made under section 19A above; or~~

~~(d) on the revocation of a community treatment order in respect of him under section 17F above he is detained in a hospital in the territory other than the one in which the responsible hospital was situated.~~

~~[...]~~

~~(5) Provision made by virtue of subsection (3) above may require or authorise the managers of a hospital determined in accordance with the order to refer the patient's case to the appropriate tribunal.~~

~~(6) In so far as making provision by virtue of subsection (3) above, the order—~~

~~(a) may make different provision for different cases;~~

~~(b) may make provision which applies subject to specified exceptions.~~

~~(7) Where the appropriate national authority for one territory makes an order under subsection (1) above, the appropriate national authority for the other territory may by order make such provision in consequence of the order as it thinks fit.~~

~~(8) An order made under subsection (7) above may, in particular, make provision for a case within subsection (3) above (and subsections (4) to (6) above shall apply accordingly).~~

~~(9) In this section, “the appropriate national authority” means—~~

~~(a) in relation to a hospital in England, the Secretary of State;~~

~~(b) in relation to a hospital in Wales, the Welsh Minister~~

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**69. Applications to tribunals concerning patients subject to hospital and guardianship orders.**

(1) Without prejudice to any provision of section 66(1) above as applied by section 40(4) above, an application to the appropriate tribunal may also be made—

(a) in respect of a patient liable to be detained in pursuance of a hospital order or a community patient who was so liable immediately before he became a community patient, by **the patient's nominated person** ~~the nearest relative of the patient~~, in any period in which an application may be made by the patient under any such provision as so applied;

(b) in respect of a patient placed under guardianship by a guardianship order—

(i) by the patient, within the period of six months beginning with the date of the order;

(ii) by **the patient's nominated person** ~~the nearest relative of the patient~~, within the period of 12 months beginning with the date of the order and in any subsequent period of 12 months.

(2) Where a person detained in a hospital—

(a) is treated as subject to a hospital order, hospital direction or transfer direction by virtue of section 41(5) above or section 80B(2), 82(2) or 85(2) below; or

(b) is subject to a direction having the same effect as a hospital order by virtue of section 47(3) or 48(3) above,

then, without prejudice to any provision of Part II of this Act as applied by section 40 above, that person may make an application to the appropriate tribunal in the period of six months beginning with the date of the order or direction mentioned in paragraph (a) above or, as the case may be, the date of the direction mentioned in paragraph (b) above.

(3) The provisions of section 66 above as applied by section 40(4) above are subject to subsection (4) below.

(4) If the initial detention period has not elapsed when the relevant application period begins, the right of a hospital order patient to make an application by virtue of paragraph (ca) or (cb) of section 66(1) above shall be exercisable only during whatever remains of the relevant application period after the initial detention period has elapsed.

(5) In subsection (4) above—

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(a) “hospital order patient” means a patient who is subject to a hospital order, excluding a patient of a kind mentioned in paragraph (a) or (b) of subsection (2) above;

(b) “the initial detention period” , in relation to a hospital order patient, means the period of six months beginning with the date of the hospital order; and

(c) “the relevant application period” means the relevant period mentioned in paragraph (ca) or (cb), as the case may be, of section 66(2) above.

#### **70. Applications to tribunals concerning restricted patients.**

A patient who is a restricted patient within the meaning of section 79 below and is detained in a hospital may apply to the appropriate tribunal—

(a) in the period between the expiration of six months and the expiration of 12 months beginning with the date of the relevant hospital order, hospital direction or transfer direction; and

(b) in any subsequent period of 12 months.

#### **71.— References by Secretary of State concerning restricted patients.**

(1) The Secretary of State may at any time refer the case of a restricted patient to the appropriate tribunal.

**(2) The Secretary of State must refer to the appropriate tribunal the case of any restricted patient detained in a hospital if—**

**(a) the patient’s case has not been considered by the appropriate tribunal within the last 12 months, whether on the patient’s own application or otherwise, and**

**(b) there is no pending application or reference to the appropriate tribunal in relation to the patient’s case.**

~~(2) The Secretary of State shall refer to the appropriate tribunal the case of any restricted patient detained in a hospital whose case has not been considered by such a tribunal, whether on his own application or otherwise, within the last three years.~~

(3) The Secretary of State may by order vary the length of the period mentioned in subsection (2) above.

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(3A) An order under subsection (3) above may ~~make—~~

- ~~(a) provision subject to specified exceptions,~~
- ~~(b) different provision for different cases or areas, and~~
- ~~(c) transitional, consequential, incidental or supplemental provision.~~

~~include such transitional, consequential, incidental or supplemental provision as the Secretary of State thinks fit.~~

(4) Any reference under subsection (1) above in respect of a patient who has been conditionally discharged and not recalled to hospital shall be made to the tribunal for the area in which the patient resides.

~~(4A) Sections 73 and 74 do not apply to a reference under subsection (1) in respect of a patient who has been conditionally discharged and not recalled to hospital but on any such reference the tribunal may—~~

- ~~(a) vary any condition to which the patient is subject in connection with the patient's discharge or impose any condition which might have been imposed in connection with their discharge, or~~
- ~~(b) direct that the restriction order, limitation direction or restriction direction to which the patient is subject ceases to have effect;~~

~~and if the tribunal gives a direction under paragraph (b) the patient ceases to be liable to be detained by virtue of the relevant hospital order, hospital direction or transfer direction.~~

~~(4B) Conditions amounting to a deprivation of liberty may be imposed under subsection (4A)(a) only if the tribunal is satisfied—~~

- ~~(a) that conditions amounting to a deprivation of the patient's liberty are necessary for the protection of another person from serious harm while the patient remains discharged from hospital, and~~
- ~~(b) that for the patient to remain discharged subject to those conditions would be no less beneficial to their mental health than for them to be recalled to hospital.~~

*Discharge of patients*

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## 72. Powers of tribunals.

(1) Where application is made to the appropriate tribunal by or in respect of a patient who is liable to be detained under this Act or is a community patient, the tribunal may in any case direct that the patient be discharged, and—

(a) the tribunal shall direct the discharge of a patient liable to be detained under section 2 above if it is not satisfied **that the grounds in section 2(2) are made out;**

~~(i) that he is then suffering from mental disorder or from mental disorder of a nature or degree which warrants his detention in a hospital for assessment (or for assessment followed by medical treatment) for at least a limited period; or~~

~~(ii) that his detention as aforesaid is justified in the interests of his own health or safety or with a view to the protection of other persons;~~

(b) the tribunal shall direct the discharge of a patient liable to be detained otherwise than under section 2 above if it is not satisfied—

**(i) that the conditions in section 20(4) are met; or**

~~(i) that he is then suffering from [mental disorder or from mental disorder]<sup>5</sup> 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 necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment; or~~

~~(iia) that appropriate medical treatment is available for him;~~

**(ii) in the case of an application by virtue of paragraph (g) of section 66(1) above, that the patient, if released, would be likely to act in a manner dangerous to other persons or to himself.**

(c) the tribunal shall direct the discharge of a community patient if it is not satisfied—

**(i) that the criteria in section 17A(5) are met; or**

~~(i) that he is then suffering from mental disorder or mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment; or~~

~~(ii) that it is necessary for his health or safety or for the protection of other persons that he should receive such treatment; or~~

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~~(iii) that it is necessary that the responsible clinician should be able to exercise the power under section 17E(1) above to recall the patient to hospital; or~~

~~(iv) that appropriate medical treatment is available for him; or~~

(ii) in the case of an application by virtue of paragraph (g) of section 66(1) above, that the patient, if discharged, would be likely to act in a manner dangerous to other persons or to himself.

(1ZA) In relation to a patient admitted to hospital in pursuance of a hospital order (see section 55(4)) section 20(4) is to be read, for the purposes of subsection (1)(b), as if the reference to psychiatric disorder were a reference to relevant disorder (within the meaning given by section 34A).

(1A) In determining for the purposes of subsection (1)(c)(i) whether the criterion in section 17A(5)(e) ~~whether the criterion in subsection (1)(c)(iii) above is met~~ the tribunal shall, in particular, consider, having regard to the patient's history of psychiatric ~~mental~~ disorder and any other relevant factors, what risk there would be of a deterioration of the patient's condition if he were to continue not to be detained in a hospital (as a result, for example, of his refusing or neglecting to receive the medical treatment he requires for his psychiatric ~~mental~~ disorder).

(1B) In relation to a person who is a community patient by virtue of a community treatment order under section 17A as applied by Part 1 of Schedule 1 -

(a) for the purposes of subsection (1)(c), section 17A(5) is to be read as if the reference to psychiatric disorder were a reference to relevant disorder (within the meaning given by section 34A), and

(b) subsection (1A) is to be read as if the references to psychiatric disorder were references to relevant disorder (within the meaning by section 34A).

(2) *[repealed by the Mental Health Act 2007]*

(3) A tribunal may under subsection (1) above direct the discharge of a patient on a future date specified in the direction; and where a tribunal does not direct the discharge of a patient under that subsection the tribunal may—

(a) with a view to facilitating his discharge on a future date, recommend that he be granted leave of absence or transferred to another hospital or into guardianship;

(i) the patient be granted leave of absence;

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(ii) the patient be transferred to another hospital or into guardianship; or

(iii) the responsible after-care bodies make plans for the provision of after-care services for the patient; and

(b) further consider his case in the event of any such recommendation not being complied with.

(3A) Subsection (1) above does not require a tribunal to direct the discharge of a patient just because it thinks it might be appropriate for the patient to be discharged (subject to the possibility of recall) under a community treatment order; and a tribunal—

(a) may recommend that the responsible clinician consider whether to make a community treatment order; and

(b) may (but need not) further consider the patient's case if the responsible clinician does not make an order.

(3B) Where a tribunal does not direct the discharge of a community patient, the tribunal may recommend that the responsible clinician reconsider whether a condition specified in the community treatment order is necessary.

(4) Where application is made to the appropriate tribunal by or in respect of a patient who is subject to guardianship under this Act, the tribunal may in any case direct that the patient be discharged, and shall so direct if it is **not** satisfied—

(a) that he is ~~not~~ then suffering from

(i) psychiatric disorder,

(ii) autism, or

(iii) learning disability which has serious behavioural consequences

mental disorder ; or

(b) that it is ~~not~~ necessary in the interests of the welfare of the patient, or for the protection of other persons, that the patient should remain under such guardianship.

(6) Subsections (1) to (4) above apply in relation to references to the appropriate tribunal as they apply in relation to applications made to the appropriate tribunal by or in respect of a patient.



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(6A) In relation to a patient admitted to hospital in pursuance of a hospital order (see section 55(4)), subsection (4) of section 20 is to be read, for the purposes of this section, as if the reference to psychiatric disorder in paragraph (a) of that subsection were a reference to relevant disorder within the meaning given by section 34A.

(7) Subsection (1) above shall not apply in the case of a restricted patient except as provided in sections 73 and 74 below.

(8) In this section—

“after-care services” means after-care services provided under section 117;

“the responsible after-care bodies”, in relation to a patient, means the bodies which will have the duty under section 117 to provide after-care services for the patient.

### **73. Power to discharge restricted patients.**

(1) Where an application to the appropriate tribunal is made by a restricted patient who is subject to a restriction order, or where the case of such a patient is referred to the appropriate tribunal, the tribunal shall direct the absolute discharge of the patient if—

(a) the tribunal is not satisfied **that the conditions in section 20(4) are met** ~~as to the matters mentioned in paragraph (b)(i), (ii) or (iii) of section 72(1) above~~; and

(b) the tribunal is satisfied 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) above—

(a) paragraph (a) of that subsection applies; ~~but~~

(b) paragraph (b) of that subsection does not apply; **and**

**(c) the tribunal—**

**(i) is not satisfied that conditions amounting to a deprivation of the patient’s liberty would be necessary for the protection of another person from serious harm, if the patient were discharged from hospital; or**

**(ii) is satisfied that conditions amounting to a deprivation of the patient’s liberty would be necessary for the protection of another person from serious harm if the patient were discharged from hospital, and is also satisfied that for the patient to**

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be discharged subject to those conditions would be no less beneficial to their mental health than for them to remain in hospital

the tribunal shall direct the conditional discharge of the patient.

(3) Where a patient is absolutely discharged under this section 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.

(4) Where a patient is conditionally discharged under this section—

(a) he may be recalled by the Secretary of State under subsection (3) of section 42 above as if he had been conditionally discharged under subsection (2) of that section; and

(b) the patient shall comply with such conditions (if any) as may be imposed at the time of discharge by the tribunal or at any subsequent time by the Secretary of State.

(5) The Secretary of State may from time to time vary any condition imposed (whether by the tribunal or by him) under subsection (4) above.

(5A) Conditions amounting to a deprivation of a patient's liberty may be imposed by the tribunal under subsection (4)(b) only where the tribunal is satisfied as to the matters mentioned in subsection (2)(c)(ii).

(5B) Conditions amounting to a deprivation of a patient's liberty may be imposed by the Secretary of State under subsection (4)(b) or (5) only where the Secretary of State is satisfied that those conditions are necessary for the protection of the public from serious harm.

(6) Where a restriction order in respect of a patient ceases to have effect after he has been conditionally discharged under 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) A tribunal may defer a direction for the conditional discharge of a patient until such arrangements as appear to the tribunal to be necessary for that purpose have been made to its satisfaction; and where by virtue of any such deferment no direction has been given on an application or reference before the time when the patient's case comes before the tribunal on a subsequent application or reference, the previous application or reference shall be treated as one on which no direction under this section can be given.

(8) This section is without prejudice to section 42 above.

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(9) Subsection (4) of section 20 is to be read, for the purposes of this section, as if the reference to psychiatric disorder in paragraph (a) of that subsection were a reference to relevant disorder (within the meaning given by section 34A).

#### **74. Restricted patients subject to restriction directions.**

(1) Where an application to the appropriate tribunal is made by a restricted patient who is subject to a limitation direction or a restriction direction, or where the case of such a patient is referred to the appropriate tribunal, the tribunal—

(a) shall notify the Secretary of State whether, in its opinion, the patient would, if subject to a restriction order, be entitled to be absolutely or conditionally discharged under section 73 above; and

(b) if the tribunal notifies him that the patient would be entitled to be conditionally discharged, may recommend that in the event of his not being discharged under this section he should continue to be detained in hospital.

(2) If in the case of a patient not falling within subsection (4) below—

(a) the tribunal notifies the Secretary of State that the patient would be entitled to be absolutely or conditionally discharged; and

(b) within the period of 90 days beginning with the date of that notification the Secretary of State gives notice to the tribunal that the patient may be so discharged,

the tribunal shall direct the absolute or, as the case may be, the conditional discharge of the patient.

(3) Where a patient continues to be liable to be detained in a hospital at the end of the period referred to in subsection (2)(b) above because the Secretary of State has not given the notice there mentioned, the managers of the hospital shall, unless the tribunal has made a recommendation under subsection (1)(b) above, transfer the patient to a 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.

(4) If, in the case of a patient who is subject to a transfer direction under section 48 above, the tribunal notifies the Secretary of State that the patient would be entitled to be absolutely or conditionally discharged, the Secretary of State shall, unless the tribunal has made a recommendation under subsection (1)(b) above, by warrant direct that the patient

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be remitted to a 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.

(5) Where a patient is transferred or remitted under subsection (3) or (4) above the relevant hospital direction and the limitation direction or, as the case may be, the relevant transfer direction and the restriction direction shall cease to have effect on his arrival in the prison or other institution.

(5A) Where the tribunal has made a recommendation under subsection (1)(b) above in the case of a patient who is subject to a restriction direction or a limitation direction—

(a) the fact that the restriction direction or limitation direction remains in force does not prevent the making of any application or reference to the Parole Board by or in respect of him or the exercise by him of any power to require the Secretary of State to refer his case to the Parole Board, and

(b) if the Parole Board make a direction or recommendation by virtue of which the patient would become entitled to be released (whether unconditionally or on licence) from any prison or other institution in which he might have been detained if he had not been removed to hospital, the restriction direction or limitation direction shall cease to have effect at the time when he would become entitled to be so released.

(6) Subsections (3) to (9) ~~(8)~~ of section 73 above shall have effect in relation to this section as they have effect in relation to that section, taking references to the relevant hospital order and the restriction order as references to the relevant hospital direction and the limitation direction or, as the case may be, the transfer direction and the restriction direction.

(7) This section is without prejudice to sections 50 to 53 above in their application to patients who are not discharged under this section.

## **75. Applications and references concerning conditionally discharged restricted patients.**

(1) Where a restricted patient has been conditionally discharged under section 42(2), 73 or 74 above (“**conditionally discharged**”) and is subsequently recalled to hospital—

(a) the Secretary of State shall, within one month of the day on which the patient returns or is returned to hospital, refer his case to the appropriate tribunal ; and

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(b) section 70 above shall apply to the patient as if the relevant hospital order, hospital direction or transfer direction had been made on that day.

(2) Where a restricted patient has been conditionally discharged ~~as aforesaid but~~, **is not subject to conditions amounting to a deprivation of liberty and** has not been recalled to hospital he may apply to the appropriate tribunal —

(a) in the period between the expiration of 12 months and the expiration of two years **beginning — beginning with the date on which he was conditionally discharged;**

(i) in the case of a patient who has previously been subject to conditions amounting to a deprivation of liberty, with the date on which the patient most recently ceased to be subject to such conditions, and

(ii) in any other case, with the date on which the patient was conditionally discharged; and

(b) in any subsequent period of two years.

**(2A) Where a restricted patient has been conditionally discharged, is subject to conditions amounting to a deprivation of liberty and has been recalled to hospital, the patient may apply to the appropriate tribunal—**

**(a) in the period between the expiration of six months and the expiration of 12 months beginning with the date on which the patient most recently became subject to conditions amounting to a deprivation of liberty (whether or not that was the date on which the patient was conditionally discharged), and**

**(b) in any subsequent period of two years.**

**(2B) Where a restricted patient has been conditionally discharged, is not subject to conditions amounting to a deprivation of liberty and has not been recalled to hospital, the Secretary of State must refer the patient's case to the appropriate tribunal on the expiry of—**

**(a) the period of two years beginning—**

**(i) in the case of a patient who has previously been subject to conditions amounting to a deprivation of liberty, with the date on which the patient most recently ceased to be subject to such conditions, and**

**(ii) in any other case, with the date on which the patient was conditionally discharged, and**

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(b) each subsequent period of four years.

(2C) Where a restricted patient has been conditionally discharged, is subject to conditions amounting to a deprivation of liberty and has not been recalled to hospital, the Secretary of State must refer the patient's case to the appropriate tribunal on the expiry of—

(a) the period of 12 months beginning with the date on which the patient most recently became subject to conditions amounting to a deprivation of liberty (whether or not that was the date on which the patient was conditionally discharged), and

(b) each subsequent period of two years.

(2D) The Secretary of State is not required to make a reference under subsection (2B) or (2C) if the patient's case was considered by the appropriate tribunal during the period in question.

(2E) The Secretary of State must refer to the appropriate tribunal the case of any restricted patient who has been conditionally discharged and has not been recalled to hospital if—

(a) the patient's case has not been considered by the appropriate tribunal within the last four years, and

(b) there is no pending application or reference to the appropriate tribunal in relation to the patient's case.

(2F) The Secretary of State may by order vary the length of a period mentioned in subsection (2B), (2C) or (2E).

(2G) An order under subsection (2F) may make—

(a) provision subject to specified exceptions;

(b) different provision for different cases or areas;

(c) transitional, consequential, incidental or supplemental provision.

(2H) Any reference under subsection (2B), (2C) or (2E) must be made to the tribunal for the area in which the patient resides.

(2I) References in this section to the patient's case being considered by the appropriate tribunal are to the patient's case being considered by the appropriate tribunal on the patient's own application or otherwise.

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(3) Sections 73 and 74 above shall not apply to an application under subsection (2) above, or any reference under subsection (2B) , (2C) or (2E) but on any such application or reference the tribunal may—

(a) 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; or

(b) direct that the restriction order, limitation direction or restriction direction to which he is subject shall cease to have effect;

and if the tribunal gives a direction under paragraph (b) above the patient shall cease to be liable to be detained by virtue of the relevant hospital order, hospital direction or transfer direction.

(4) Conditions amounting to a deprivation of liberty may be imposed under subsection (3)(a) only if the tribunal is satisfied—

(a) that conditions amounting to a deprivation of the patient's liberty are necessary for the protection of another person from serious harm while the patient remains discharged from hospital, and

(b) that for the patient to remain discharged subject to those conditions would be no less beneficial to their mental health than for them to be recalled to hospital.

*[Sections 76 to 79 are not affected by the amendments to be made to the draft Mental Health Bill and are not included in this Schedule]*

## **Part VI**

### **REMOVAL AND RETURN OF PATIENTS WITHIN UNITED KINGDOM, etc.**

#### *Removal to and from Scotland*

#### **80. Removal of patients to Scotland.**

(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. . . under this Act (otherwise than by virtue of section 35, 36 or 38 above), that it is in the interests of the patient to remove him to Scotland, and that

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arrangements have been made for admitting him to a hospital. . . there, or, where he is not to be admitted to a hospital, for his detention in hospital to be authorised by virtue of the Mental Health (Care and Treatment)(Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995 the Secretary of State may authorise his removal to Scotland and may give any necessary directions for his conveyance to his destination.

(2)...

(3)...

(4)...

(5)...

(6) Where a person removed under this section was immediately before his removal subject to a restriction order or restriction direction of limited duration, the restriction order or restriction direction. . . shall expire on the date on which the first-mentioned order or direction would have expired if he had not been so removed.

(7) In this section “hospital” has the same meaning as in the Mental Health (Care and Treatment)(Scotland) Act 2003.

(8) Reference in this section to a patient's detention in hospital being authorised by virtue of the Mental Health (Care and Treatment)(Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995 shall be read as including references to a patient in respect of whom a certificate under one of the provisions listed in section 290(7)(a) of the Act of 2003 is in operation.

#### **80ZA. Transfer of responsibility for community patients to Scotland**

(1) If it appears to the appropriate national authority, in the case of a community patient, that the conditions mentioned in subsection (2) below are met, the authority may authorise the transfer of responsibility for him to Scotland.

(2) The conditions are—

(a) a transfer under this section is in the patient's interests; and

(b) arrangements have been made for dealing with him under enactments in force in Scotland corresponding or similar to those relating to community patients in this Act.



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(3) The appropriate national authority may not act under subsection (1) above while the patient is recalled to hospital under section 17E above.

(4) In this section, “the appropriate national authority” means—

(a) in relation to a community patient in respect of whom the responsible hospital is in England, the Secretary of State;

(b) in relation to a community patient in respect of whom the responsible hospital is in Wales, the Welsh Ministers.

#### **80A. Transfer of responsibility for conditionally discharged patients to Scotland**

(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 41 above; and

(b) has been conditionally discharged under section 42 or 73 above,

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 Scotland, transfer responsibility for the patient to that Minister.

(2)...

(3)...

#### **80B. Removal of detained patients from Scotland**

(1) This section applies to a patient if—

(a) he is removed to England and Wales under regulations made under section 290(1)(a) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”);

(b) immediately before his removal, his detention in hospital was authorised by virtue of that Act or the Criminal Procedure (Scotland) Act 1995; and

(c) on his removal, he is admitted to a hospital in England or Wales.

(2) He shall be treated as if, on the date of his admission to the hospital, he had been so admitted in pursuance of an application made, or an order or direction made or given, on

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that date under the enactment in force in England and Wales which most closely corresponds to the enactment by virtue of which his detention in hospital was authorised immediately before his removal.

(3) If, immediately before his removal, he was subject to a measure under any enactment in force in Scotland restricting his discharge, he shall be treated as if he were subject to an order or direction under the enactment in force in England and Wales which most closely corresponds to that enactment.

(4) If, immediately before his removal, the patient was liable to be detained under the 2003 Act by virtue of a transfer for treatment direction, given while he was serving a sentence of imprisonment (within the meaning of section 136(9) of that 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) If, immediately before his removal, the patient was subject to a hospital direction or transfer for treatment direction, the restriction direction to which he is subject by virtue of subsection (3) above shall expire on the date on which that hospital direction or transfer for treatment direction (as the case may be) would have expired if he had not been so removed.

(6) If, immediately before his removal, the patient was liable to be detained under the 2003 Act by virtue of a hospital direction, he shall be treated as if any sentence of imprisonment passed at the time when that hospital direction was made had been imposed by a court in England and Wales.

(7) Any directions given by the Scottish Ministers under regulations made under section 290 of the 2003 Act as to the removal of a patient to which this section applies shall have effect as if they were given under this Act.

(8) Subsection (8) of section 80 above applies to a reference in this section as it applies to one in that section.

(9) In this section—

“hospital direction” means a direction made under section 59A of the Criminal Procedure (Scotland) Act 1995; and

“transfer for treatment direction” has the meaning given by section 136 of the 2003 Act.

## **80C. Removal of patients subject to compulsion in the community from Scotland**

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(1) This section applies to a patient if–

(a) he is subject to an enactment in force in Scotland by virtue of which regulations under section 289(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 apply to him; and

(b) he is removed to England and Wales under those regulations.

(2) He shall be treated as if on the date of his arrival at the place where he is to reside in England or Wales–

(a) he had been admitted to a hospital in England or Wales in pursuance of an application or order made on that date under the corresponding enactment; and

(b) a community treatment order had then been made discharging him from the hospital.

(3) For these purposes–

(a) if the enactment to which the patient was subject in Scotland was an enactment contained in the Mental Health (Care and Treatment) (Scotland) Act 2003, the corresponding enactment is section 3 of this Act;

(b) if the enactment to which he was subject in Scotland was an enactment contained in the Criminal Procedure (Scotland) Act 1995, the corresponding enactment is section 37 of this Act.

(4) “The responsible hospital” , in the case of a patient in respect of whom a community treatment order is in force by virtue of subsection (2) above, means the hospital to which he is treated as having been admitted by virtue of that subsection, subject to section 19A above.

(5) As soon as practicable after the patient's arrival at the place where he is to reside in England or Wales, the responsible clinician shall specify the conditions to which he is to be subject for the purposes of section 17B(1) above, and the conditions shall be deemed to be specified in the community treatment order.

(6) But the responsible clinician may only specify conditions under subsection (5) above which **the relevant professionals agree** ~~an approved mental health professional agrees~~ should be specified.

**(7) In this section “the relevant professionals” means—**

**(a) an approved mental health professional, and**

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(b) where the responsible clinician is not the community clinician, the community clinician.

*[Sections 80D to 82A are not affected by the amendments to be made by the draft Mental Health Bill and are not included in the Schedule]*

#### *Removal to and from Channel Islands and Isle of Man*

### **83. Removal of patients to Channel Islands or Isle of Man.**

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 (~~otherwise than by virtue of section 35, 36 or 38 above~~), that it is in the interests of the patient to remove him to any of the Channel Islands or to the Isle of Man, 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 the island in question and may give any necessary directions for his conveyance to his destination.

### **83ZA. Removal or transfer of community patients to Channel Islands or Isle of Man**

(1) Section 83 above shall apply in the case of a community patient as it applies in the case of a patient who is for the time being liable to be detained under this Act, as if the community patient were so liable.

(2) But if there are in force in any of the Channel Islands or the Isle of Man enactments (“relevant enactments”) corresponding or similar to those relating to community patients in this Act—

(a) subsection (1) above shall not apply as regards that island; and

(b) subsections (3) to (6) below shall apply instead.

(3) If it appears to the appropriate national authority, in the case of a community patient, that the conditions mentioned in subsection (4) below are met, the authority may authorise the transfer of responsibility for him to the island in question.

(4) The conditions are—

(a) a transfer under subsection (3) above is in the patient's interests; and

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(b) arrangements have been made for dealing with him under the relevant enactments.

(5) But the authority may not act under subsection (3) above while the patient is recalled to hospital under section 17E above.

(6) In this section, “the appropriate national authority” means—

(a) in relation to a community patient in respect of whom the responsible hospital is in England, the Secretary of State;

(b) in relation to a community patient in respect of whom the responsible hospital is in Wales, the Welsh Ministers.

### **83A. Transfer of responsibility for conditionally discharged 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 or restriction direction under section 41 or 49 above; and

(b) has been conditionally discharged under section 42 or 73 above,

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.

### **84. Removal to England and Wales of offenders found insane in Channel Islands and Isle of Man.**

(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 subsection (1) above shall, on his reception into the hospital in England and Wales, be treated as if he were subject to a hospital order together with a restriction order.

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(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.

#### **85. Patients removed from Channel Islands or Isle of Man.**

(1) This section applies to any patient who is removed to England and Wales from any of the Channel Islands or the Isle of Man under a provision corresponding to section 83 above and who immediately before his removal was liable to be detained or subject to guardianship in the island in question under a provision corresponding to an enactment contained in this Act (~~other than section 35, 36 or 38 above~~).

(2) Where the patient is admitted to a hospital in England and Wales he shall (**subject to subsection (2A)**) 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 contained in this Act and, where he is subject to an order or direction restricting his discharge, as if he were subject to a hospital order and a restriction order or to a hospital direction and a limitation direction or to a transfer direction and a restriction direction .

**(2A) In relation to a patient treated by virtue of subsection (2) as liable to be detained under section 35, 36 or 38, this Act is to be read with the modifications set out in Schedule A2.**

(3) Where the patient is 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, order or direction under the corresponding enactment contained in this Act and as if the application had been accepted or, as the case may be, the order or direction had been made or given on that date.

(4) Where the patient was immediately before his removal liable to be detained by virtue of a transfer direction given while he was serving a sentence of imprisonment imposed by a court in the island in question, he shall be treated as if the sentence had been imposed by a court in England and Wales.

(5) Where the patient was immediately before his removal subject to an order or direction restricting his discharge, being an order or direction of limited duration, the restriction order or restriction direction to which he is subject by virtue of subsection (2) above shall

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expire on the date on which the first-mentioned order or direction would have expired if he had not been removed.

(6) While being conveyed to the hospital referred to in subsection (2) or, as the case may be, the place referred to in subsection (3) above, the patient shall be deemed to be in legal custody, and section 138 below shall apply to him as if he were in legal custody by virtue of section 137 below.

(7) In the case of a patient removed from the Isle of Man the reference in subsection (4) above to a person serving a sentence of imprisonment includes a reference to a person detained as mentioned in section 60(6)(a) of the Mental Health Act 1974 (an Act of Tynwald).

#### **85ZA. Responsibility for community patients transferred from Channel Islands or Isle of Man**

(1) This section shall have effect if there are in force in any of the Channel Islands or the Isle of Man enactments (“relevant enactments”) corresponding or similar to those relating to community patients in this Act.

(2) If responsibility for a patient is transferred to England and Wales under a provision corresponding to section 83ZA(3) above, he shall be treated as if on the date of his arrival at the place where he is to reside in England or Wales–

(a) he had been admitted to the hospital in pursuance of an application made, or an order or direction made or given, on that date under the enactment in force in England and Wales which most closely corresponds to the relevant enactments; and

(b) a community treatment order had then been made discharging him from the hospital.

(3) “The responsible hospital”, in his case, means the hospital to which he is treated as having been admitted by virtue of subsection (2) above, subject to section 19A above.

(4) As soon as practicable after the patient's arrival at the place where he is to reside in England or Wales, the responsible clinician shall specify the conditions to which he is to be subject for the purposes of section 17B(1) above, and the conditions shall be deemed to be specified in the community treatment order.

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(5) But the responsible clinician may only specify conditions under subsection (4) above which ~~the relevant professionals agree~~ ~~an approved mental health professional agrees~~ should be specified.

(6) In this section “the relevant professionals” means—

(a) an approved mental health professional, and

(b) where the responsible clinician is not the community clinician, the community clinician.

#### **85A. Responsibility for conditionally discharged patients transferred from Channel Islands or Isle of Man**

(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 83A above.

(2) The patient shall be treated—

(a) as if on the date of the transfer he had been conditionally discharged under section 42 or 73 above; and

(b) as if he were subject to a hospital order under section 37 above and a restriction order under section 41 above, or to a hospital direction and a limitation direction under section 45A above, or to a transfer direction under section 47 above and a restriction direction under section 49 above.

(3) Where the patient was immediately before the transfer subject to an order or direction restricting his discharge, being an order or direction of limited duration, the restriction order, limitation direction or restriction direction to which he is subject by virtue of subsection (2) above shall expire on the date on which the first-mentioned order or direction would have expired if the transfer had not been made.

*[Sections 86 to 89 are not affected by the amendments to be made by the draft Mental Health Bill and are not included in the Schedule]*



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## **90. Regulations for purposes of Part VI.**

Section 32 above shall have effect as if references in that section to Part II of this Act included references to this Part of this Act, so far as this Part of this Act applies to patients removed to England and Wales or for whom responsibility is transferred to England and Wales.

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

(1) Subject to subsection (2) below, where a patient liable to be detained or subject to guardianship by virtue of an application, order or direction under Part II or III of this Act (~~other than section 35, 36 or 38 above~~) 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 or, where he is not received into a hospital but his detention in hospital is authorised by virtue of the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995, in pursuance of those arrangements.

(2) Where the Secretary of State exercises his powers under section 86(2) above in respect of a patient who is detained pursuant to a hospital order under section 37 above and in respect of whom a restriction order is in force, those orders shall continue in force so as to apply to the patient if he returns to England and Wales.

(2A) Where responsibility for a community patient is transferred to a jurisdiction outside England and Wales (or such a patient is removed outside England and Wales) in pursuance of arrangements under this Part of this Act, the application, order or direction mentioned in subsection (1) above in force in respect of him shall cease to have effect on the date on which responsibility is so transferred (or he is so removed) in pursuance of those arrangements.

(3) Reference in this section to a patient's detention in hospital being authorised by virtue of the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995 shall be read as including references to a patient in respect of whom a certificate under one of the provisions listed in section 290(7)(a) of the Act of 2003 is in operation.

## **92. Interpretation of Part VI.**

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(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 II of this Act.

(1A) References in this Part of this Act to the responsible clinician shall be construed as references to the responsible clinician within the meaning of Part 2 of this Act.

**(1B) References in this Part to the community clinician are to be construed as references to the community clinician within the meaning of Part 2.**

(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 III of this Act, that direction shall be deemed to have been given on the date of his reception into the hospital.

(3) *[Repealed by the Mental Health Act 2007].*

(4) Sections 80 to 85A above shall have effect as if—

(a) any hospital direction under section 45A above were a transfer direction under section 47 above; and

(b) any limitation direction under section 45A above were a restriction direction under section 49 above.

(5) Sections 80(5), 81(6) and 85(4) above shall have effect as if any reference to a transfer direction given while a patient was serving a sentence of imprisonment imposed by a court included a reference to a hospital direction given by a court after imposing a sentence of imprisonment on a patient.

*[Sections 93 to 113 were repealed by the Mental Capacity Act 2005]*

## **Part VIII**

### **MISCELLANEOUS FUNCTIONS OF LOCAL AUTHORITIES AND THE SECRETARY OF STATE**

*[Sections 114 to 115 are not affected by amendments to be made by the draft Mental Health Bill and are not included in the Schedule]*

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### *Visiting patients*

#### **116. Welfare of certain hospital patients.**

(1) Where a patient to whom this section applies is admitted to a hospital or nursing home in England and Wales (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 shall arrange for visits to be made to him on behalf of the authority, and shall take such other steps in relation to the patient while in the hospital, independent hospital or care home as would be expected to be taken by his parents.

(2) This section applies to—

(a) a child or young person—

(i) who is in the care of a local authority by virtue of a care order within the meaning of the Children Act 1989, or

(ii) in respect of whom the rights and powers of a parent are vested in a local authority by virtue of section 16 of the Social Work (Scotland) Act 1968;

(b) a person who is subject to the guardianship of a local social services authority under the provisions of this Act; ~~or~~

~~(c) a person the functions of whose nearest relative under this Act [...] are for the time being transferred to a local social services authority.~~

### *Aftercare*

#### **117. After-care**

(1) This section applies to persons who are detained under section 3 above, or admitted to a hospital in pursuance of a hospital order made under section 37 above, or transferred to a hospital in pursuance of a hospital direction made under section 45A above or a transfer

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direction made under section 47 or 48 above, and then cease to be detained and (whether or not immediately after so ceasing) leave hospital.

(2) It shall be the duty of the integrated care board or Local Health Board and of the local social services authority to provide or arrange for the provision of, in co-operation with relevant voluntary agencies, after-care services for any person to whom this section applies until such time as the integrated care board or Local Health Board and the local social services authority **jointly give notice in writing to the person stating that they** are satisfied that the person concerned is no longer in need of such services ; but they shall not be so satisfied in the case of a community patient while he remains such a patient.

(2B) Section 32 above shall apply for the purposes of this section as it applies for the purposes of Part II of this Act.

(2C) References in this Act to after-care services provided for a patient under this section include references to services provided for the patient—

(a) in respect of which direct payments are made under regulations under —

(i) sections 31 to 33 of the Care Act 2014 (as applied by Schedule 4 to that Act), or

(iii) regulations under section 12A(4) of the National Health Service Act 2006, and

(b) which would be provided under this section apart from those sections (as so applied) or the regulations.

(2D) Subsection (2), in its application to the integrated care board, has effect as if the words “provide or” were omitted.

(2E) The Secretary of State may by regulations provide that the duty imposed on the integrated care board by subsection (2) is, in the circumstances or to the extent prescribed by the regulations, to be imposed instead on another integrated care board or the National Health Service Commissioning Board.

(2F) Where regulations under subsection (2E) provide that the duty imposed by subsection (2) is to be imposed on the National Health Service Commissioning Board, subsection (2D) has effect as if the reference to the integrated care board were a reference to the National Health Service Commissioning Board.

(2G) Section 272(7) and (8) of the National Health Service Act 2006 applies to the power to make regulations under subsection (2E) as it applies to a power to make regulations under that Act.

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(3) In this section “the integrated care board or Local Health Board” means integrated care board or Local Health Board and “the local social services authority” means the local social services authority —

- (a) if, immediately before being detained, the person concerned was ordinarily resident in England, for the area in England in which he was ordinarily resident;
- (b) if, immediately before being detained, the person concerned was ordinarily resident in Wales, for the area in Wales in which he was ordinarily resident; or
- (c) in any other case for the area in which the person concerned is resident or to which he is sent on discharge by the hospital in which he was detained.

(3A) In applying subsection (3) for the purpose of determining the local social services authority in relation to a person—

(a) section 105(6) of the Children Act 1989—

(i) applies for the purpose of determining the person’s ordinary residence at any time when they were aged under 18, and

(ii) in its application for that purpose, is to be read as if there were inserted, after paragraph (c)—

“(d) while the child is being provided with accommodation under section 117 of the Mental Health Act 1983;

(e) while the child is being provided with accommodation under any of the following—

the National Health Service Act 2006;

the National Health Service (Wales) Act 2006;

the National Health Service (Scotland) Act 1978;

the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14));

the Health and Social Care (Reform) Act (Northern Ireland) 2009; or

(f) which is referred to in section 194(6) of the Social Services and Well-being (Wales) Act 2014 (anaw 4).

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(b) the following provisions apply for the purposes of determining the person's ordinary residence at any time when they were aged 18 or over—

(i) section 39(1) to (6) of, and paragraphs 1(1), 2(1) and (2) and 8 of Schedule 1 to, the Care Act 2014;

(ii) section 194(1) to (3) of the Social Services and Well-being (Wales) Act 2014 (anaw 4).

(4) Where there is a dispute about where a person was ordinarily resident for the purposes of subsection (3) above—

(a) if the dispute is between local social services authorities in England, section 40 of the Care Act 2014 applies to the dispute as it applies to a dispute about where a person was ordinarily resident for the purposes of Part 1 of that Act;

(b) if the dispute is between local social services authorities in Wales, section 195 of the Social Services and Well-being (Wales) Act 2014 applies to the dispute as it applies to a dispute about where a person was ordinarily resident for the purposes of that Act;

(c) if the dispute is between a local social services authority in England and a local social services authority in Wales, it is to be determined by the Secretary of State or the Welsh Ministers.

(5) The Secretary of State and the Welsh Ministers shall make and publish arrangements for determining which of them is to determine a dispute under subsection (4)(c); and the arrangements may, in particular, provide for the dispute to be determined by whichever of them they agree is to do so.

(6) In this section, “after-care services”, in relation to a person, means services which have both of the following purposes—

(a) meeting a need arising from or related to the person's mental disorder; and

(b) reducing the risk of a deterioration of the person's mental condition (and, accordingly, reducing the risk of the person requiring admission to a hospital again for treatment for mental disorder).

#### **117A. After-care: preference for particular accommodation**

(1) The Secretary of State may by regulations provide that where—

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- (a) the local social services authority under section 117 is, in discharging its duty under subsection (2) of that section, providing or arranging for the provision of accommodation for the person concerned;
- (b) the person concerned expresses a preference for particular accommodation; and
- (c) any prescribed conditions are met,

the local social services authority must provide or arrange for the provision of the person's preferred accommodation.

(2) Regulations under this section may provide for the person concerned, or a person of a prescribed description, to pay for some or all of the additional cost in prescribed cases.

(3) In subsection (2), “ additional cost ” means the cost of providing or arranging for the provision of the person's preferred accommodation less the amount that the local social services authority would expect to be the usual cost of providing or arranging for the provision of accommodation of that kind.

(4) The power to make regulations under this section—

- (a) is exercisable only in relation to local social services authorities in England;
- (b) includes power to make different provision for different cases or areas.

#### **117B. After-care: exception for provision of nursing care**

(1) Section 117 does not authorise or require a local social services authority, in or in connection with the provision of services under that section, to provide or arrange for the provision of nursing care by a registered nurse.

(2) In this section “nursing care by a registered nurse” means a service provided by a registered nurse involving—

- (a) the provision of care, or
- (b) the planning, supervision or delegation of the provision of care,

other than a service which, having regard to its nature and the circumstances in which it is provided, does not need to be provided by a registered nurse.

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*Functions of the Secretary of State*

**118. Code of practice.**

(1) The Secretary of State ~~appropriate national authority~~ shall prepare, and from time to time revise, a code of practice—

(a) for the guidance of registered medical practitioners, approved clinicians, managers and staff of hospitals, independent hospitals and care homes and approved mental health professionals in relation to the admission of patients to hospitals and registered establishments under this Act and to guardianship and community patients under this Act; ~~and~~

(b) for the guidance of registered medical practitioners and members of other professions in relation to the medical treatment of patients suffering from mental disorder; ~~and~~

(c) for the guidance of nominated persons in relation to their functions under this Act and for the guidance of health or care professionals within the meaning of paragraph 17 of Schedule 3 in respect of their functions under that Schedule;

(d) for the guidance of independent mental health advocates appointed under arrangements made under section 130A or 130E;

(e) for the guidance of the regulatory authority in relation to its functions under or by virtue of Part 4, and

(f) for the guidance of NHS England, integrated care boards and Local Health Boards in relation to functions under section 130M or 130N.

~~(1A) The Code which must be prepared, and from time to time revised, in relation to Wales shall also be for the guidance of independent mental health advocates appointed under arrangements made under section 130E below.~~

(2) ~~The code~~ A code prepared under this section shall, in particular, specify forms of medical treatment in addition to any specified by regulations made for the purposes of section 57 above which in the opinion of the Secretary of State ~~appropriate national authority~~ give rise to special concern and which should accordingly not be given by a registered medical practitioner unless the patient has consented to the treatment (or to a plan of treatment including that treatment) and a certificate in writing as to the matters mentioned in subsection (2)(a) and (b) of that section has been given by another registered medical practitioner, being a practitioner appointed for the purposes of this section by the regulatory authority.



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(2A) ~~The code~~ **A code prepared under this section** shall include a statement of the principles which the ~~Secretary of State~~ **appropriate national authority** thinks should inform decisions under this Act.

~~(2B)~~

**“(2B) The statement of principles must, in particular, include the principles, and address the matters, specified in the table.**

<b>Principle</b>	<b>Matters to be addressed</b>
Choice and autonomy	involvement of patients in decision-making, and consideration of the views of carers and other interested parties
Least restriction	minimising restrictions on liberty so far as consistent with patient wellbeing and safety and public safety
Therapeutic benefit	effectiveness and appropriateness of treatment
The person as an individual	treating patients with dignity and respect and considering their attributes and past experiences

~~In preparing the statement of principles the Secretary of State shall, in particular, ensure that each of the following matters is addressed—~~

- ~~(a) respect for patients' past and present wishes and feelings;~~
- ~~(b) respect for diversity generally including, in particular, diversity of religion, culture and sexual orientation (within the meaning of section 35 of the Equality Act 2006);~~
- ~~(c) minimising restrictions on liberty;~~
- ~~(d) involvement of patients in planning, developing and delivering care and treatment appropriate to them;~~
- ~~(e) avoidance of unlawful discrimination;~~
- ~~(f) effectiveness of treatment;~~
- ~~(g) views of carers and other interested parties;~~

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~~(h) patient wellbeing and safety, and~~

~~(i) public safety.~~

(2C) The Secretary of State **appropriate national authority** shall also have regard to the desirability of ensuring—

(a) the efficient use of resources, and

(b) the equitable distribution of services.

~~(2D) In performing functions under this Act persons mentioned in subsection (1)(a) or (b) and subsection (1A) shall have regard to the code~~ **Any person for whose guidance a code of practice under this section is prepared or revised must have regard to the code.**

~~(3) Before preparing the code or making any alteration in it the Secretary of State shall consult such bodies as appear to him to be concerned.~~ **Before preparing a code under this section or making any alteration in it the appropriate national authority must consult such bodies as appear to the appropriate national authority to be concerned.**

(4) The Secretary of State shall lay copies of ~~the code and of any alteration in the code~~ **any code prepared by the Secretary of State under this section and any alteration in such a code** before Parliament; and if either House of Parliament passes a resolution requiring the code or any alteration in it to be withdrawn the Secretary of State shall withdraw the code or alteration and, where he withdraws the code, shall prepare a code in substitution for the one which is withdrawn.

(5) No resolution shall be passed by either House of Parliament under subsection (4) above 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 that House; but for the purposes of this subsection no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

**(5A) The Welsh Ministers must lay copies of any code prepared by them under this section or any alteration in such a code before Senedd Cymru; and if the Senedd passes a resolution requiring the code or any alteration in it to be withdrawn, the Welsh Ministers must withdraw the code or alteration, and where they withdraw the code, must prepare a code in substitution for the one which is withdrawn.**

**(5B) No resolution may be passed by Senedd Cymru under subsection (5A) in respect of a code or revised code after the expiration of the period of 40 days beginning with the day on which a copy of the code was laid before the Assembly.**

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(5C) For the purposes of subsection (5B) no account is to be taken of any time during which the Senedd Cymru is dissolved or is in recess for more than four days.

(6) The Secretary of State **appropriate national authority** shall publish the code as for the time being in force.

(7) The Care Quality Commission may at any time make proposals to the Secretary of State as to the content of the code of practice which the Secretary of State must prepare, and from time to time revise, under this section in relation to England.

(8) In this section “the appropriate national authority”—

(a) in relation to England, means the Secretary of State;

(b) in relation to Wales, means the Welsh Ministers.

#### **119. Practitioners approved for Part IV and s. 118.**

(1) The regulatory authority may make such provision as it may with the approval of the Treasury determine for the payment of remuneration, allowances, pensions or gratuities to or in respect of registered medical practitioners appointed by the authority for the purposes of Part IV of this Act (see section 56B) and section 118 above and to or in respect of other persons appointed for the purposes of section 57 (2)(a) above.

(2) A registered medical practitioner or other person appointed for the purposes of the provisions mentioned in subsection (1) above may, for the purpose of exercising his functions under those provisions or under Part 4A of this Act, at any reasonable time—

(a) visit and interview and, in the case of a registered medical practitioner, examine in private any patient detained in a hospital or registered establishment or any community patient in a hospital or regulated establishment (other than a hospital) or (if access is granted) other place; and

(b) require the production of and inspect any records relating to the treatment of the patient there .

(2A) An interview or examination by a registered medical practitioner under subsection (2) for the purposes of section 62ZA may be carried out, to the extent that the registered medical practitioner considers appropriate—

(a) by live video link, or

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(b) by live audio link.”

(3) In this section

“live audio link” means a live telephone link or other arrangement which—

(a) enables a patient to hear a registered medical practitioner, and

(b) enables a registered medical practitioner to hear the patient;

“live video link” means a live television link or other arrangement which—

(a) enables a patient to see and hear a registered medical practitioner, and

(b) enables the registered medical practitioner to see and hear the patient.

“regulated establishment” means—

(a) an establishment in respect of which a person is registered under Part 2 of the Care Standards Act 2000;

(b) premises used for the carrying on of a regulated activity, within the meaning of Part 1 of the Health and Social Care Act 2008, in respect of which a person is registered under Chapter 2 of that Part ; or

(c) premises at which—

(i) a care home service,

(ii) a secure accommodation service, or

(iii) a residential family centre service,

within the meaning of the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2) is provided by a person registered under Part 1 of that Act.

*[Sections 120 to 120D and 122 are not affected by the amendments to be made by the draft Mental Health Bill so are not included in the Schedule; section 121 was repealed by the Health and Social Care Act 2008; section 123 was repealed by the Health and Social Care Act 2012; section 124 was repealed by the National Health Service and Community Care Act 1990; and section 125 was repealed by the Inquiries Act 2003]*

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## Part 8A

### PEOPLE IN ENGLAND WITH AUTISM OR LEARNING DISABILITY

#### 125A Children and young people with autism or learning disability: reviews

- (1) The responsible commissioner must make arrangements for ensuring that care, education and treatment review meetings take place in relation to a patient if—
  - (a) the patient is liable to be detained under this Act in a hospital or registered establishment in England otherwise than—
    - (i) by virtue of an emergency application where the second medical recommendation referred to in section 4(4)(a) has not been given and received, or
    - (ii) by virtue of section 5(2) or (4), 135 or 136 or directions for detention in a place of safety under section 35(4), 36(3), 37(4), 38(4) or 45A(5),
  - (b) the patient is considered by the responsible commissioner to have autism or a learning disability, and
  - (c) the patient—
    - (i) is aged under 18, or
    - (ii) is aged 18 or over and is a person for whom a plan is maintained under section 37 of the Children and Families Act 2014 (education, health and care plans), and
  - (d) either—
    - (i) the patient consents to meetings taking place and to the disclosure of information in accordance with the arrangements, and to the use of the information in accordance with this Act, or
    - (ii) the patient lacks capacity or competence to give that consent but the responsible commissioner considers that it is nonetheless in the patient's best interests for the meetings to

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take place, and information to be disclosed and used, as mentioned in sub-paragraph (i).

- (2) In this section “care, education and treatment review meeting” means a meeting, convened by the responsible commissioner, for the purpose of reviewing a patient’s case in order to—
- (a) identify any needs of the patient for—
    - (i) social care provision,
    - (ii) special educational provision, or
    - (iii) medical treatment, and
  - (b) make recommendations about—
    - (i) whether and how any such needs can be met,
    - (ii) how the patient’s safety can be ensured while they are liable to be detained,
    - (iii) the discharge of the patient from the hospital or registered establishment under section 23 (where that section applies in relation to the patient), and
    - (iv) how to reduce any risk of the patient being re-admitted to a hospital or registered establishment following discharge.
- (3) The arrangements under subsection (1) must include—
- (a) arrangements for the preparation of a report (whether by the responsible commissioner or another person) setting out the needs identified, and recommendations made, at each meeting,
  - (b) arrangements for the provision of a copy of the report, within the period of 14 days beginning with the day on which a meeting takes place, to each of the following persons (other than any who prepared the report)—
    - (i) the responsible commissioner,
    - (ii) the patient’s responsible clinician,

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- (iii) the integrated care board that will have the duty under section 117 to provide after-care services for the patient, and
    - (iv) the local authority in whose area the patient is ordinarily resident.
- (4) The arrangements under subsection (1) must include arrangements for ensuring that—
  - (a) the first meeting in relation to the patient takes place within the period of 14 days beginning with the applicable day, and
  - (b) a further meeting takes place at least once in each successive period of 12 months for which the patient remains liable to be detained under this Act, beginning with the day on which the first meeting takes place.
- (5) In subsection (4) “the applicable day” means—
  - (a) in relation to a patient who is liable to be detained by virtue of an emergency application—
    - (i) if, when the second medical recommendation referred to in section 4(4)(a) is received, the patient is considered by the relevant commissioner to have autism or a learning disability, the day on which that recommendation is received;
    - (ii) otherwise, the day on which the responsible commissioner forms the view that the patient has autism or a learning disability;
  - (b) in relation to any other patient—
    - (i) if, when the patient becomes liable to be detained as mentioned in subsection (1)(a), the patient is considered by the relevant commissioner to have autism or a learning disability, the day on which the patient becomes so liable;
    - (ii) otherwise, the day on which the responsible commissioner forms the view that the patient has autism or a learning disability.

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- (6) A patient may withdraw consent to the taking place of meetings and to the disclosure of information in accordance with arrangements under subsection (1).
- (7) The arrangements under subsection (1) must include provision about—
  - (a) how consent to the taking place of meetings or the disclosure of information may be withdrawn;
  - (b) what is to happen when consent is withdrawn (which may include provision about who is to be informed).

### **125B Other people with autism or learning disability: reviews**

- (1) The responsible commissioner must make arrangements for ensuring that care and treatment review meetings take place in relation to a patient if—
  - a. the patient is liable to be detained under this Act in a hospital or registered establishment in England otherwise than—
    - (i) by virtue of an emergency application where the second medical recommendation referred to in section 4(4)(a) has not been given and received, or
    - (ii) by virtue of section 5(2) or (4), 135 or 136 or directions for detention in a place of safety under section 35(4), 36(3), 37(4), 38(4) or 45A(5),
  - b. the patient is considered by the responsible commissioner to have autism or a learning disability,
  - (c) the patient is aged 18 or over and is not a person for whom a plan is maintained under section 37 of the Children and Families Act 2014 (education, health and care plans), and
  - (d) either—
    - (i) the patient consents to meetings taking place and to the disclosure of information in accordance with the arrangements, and to the use of the information in accordance with this Act, or
    - (ii) the patient lacks capacity to give that consent but the responsible commissioner considers that it is nonetheless in



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the patient’s best interests for the meetings to take place, and information to be disclosed and used, as mentioned in subparagraph (i).

- (2) In this section “care and treatment review meeting” means a meeting, convened by the responsible commissioner, for the purpose of reviewing a patient’s case in order to—
- a. identify any needs of the patient for—
    - (i) social care provision, or
    - (ii) medical treatment, and
  - b. make recommendations about—
    - (i) whether and how any such needs can be met,
    - (ii) how the patient’s safety can be ensured while they are liable to be detained,
    - (iii) the discharge of the patient from the hospital or registered establishment under section 23, (where that section applies in relation to the patient), and
    - (iv) how to reduce any risk of the patient being re-admitted to a hospital or registered establishment following discharge.
- (3) The arrangements under subsection (1) must include arrangements for -
- (a) the preparation of a report (whether by the responsible commissioner or another person) setting out the needs identified, and recommendations made, at each meeting, and
  - (b) the provision of a copy of the report, within the period of 14 days beginning with the day on which a meeting takes place, to each of the following persons (other than any who prepared the report)—
    - (i) the responsible commissioner,
    - (ii) the patient’s responsible clinician, and
    - (iii) the integrated care board that will have the duty under section 117 to provide after-care services for the patient, and

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(iv) the local authority in whose area the patient is ordinarily resident.

(4) The arrangements under subsection (1) must include arrangements for ensuring that -

(a) the first meeting in relation to the patient takes place within the period of 28 days beginning with the applicable day, and

(b) a further meeting takes place at least once in each successive period of 12 months for which the patient remains liable to be detained under this Act, beginning with the day on which the first meeting takes place

(5) In subsection (4) “the applicable day” has the meaning given by section 125A(5)

(6) A patient may withdraw consent to the taking place of meetings and to the disclosure of information in accordance with arrangements under subsection (1)

(7) The arrangements under subsection (1) must include provision about -

(a) how consent to the taking place of meetings or the disclosure of information may be withdrawn;

(b) what is to happen when consent is withdrawn (which may include provision about who is to be informed).

### **125C. Reviews: supplementary**

In exercising functions in relation to a patient in respect of whom a review meeting has taken place under section 125A or 125B, the following must have regard to the recommendations set out in a report prepared in accordance with that section—

(a) the patient’s responsible clinician;

(b) the responsible commissioner;

(c) the integrated care board to which the report is provided;

(d) the local authority to which the report is provided.

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### **125D . Registers of people at risk of detention**

- (1) Each integrated care board must, in accordance with this section, establish and maintain a register and include a person in that register if—
  - (a) the person is someone for whom the board has responsibility for the purposes of this section,
  - (b) the person is someone the integrated care board considers—
    - (i) to have autism or a learning disability, and
    - (ii) to have specified risk factors for detention under Part 2 of this Act, and
  - (c) either—
    - (i) the person consents to their inclusion in the register and the use, in accordance with this section, of information about them, or
    - (ii) the person lacks capacity or competence to give that consent but the board considers that it nonetheless in their best interests to be included in the register and for the use, in accordance with this section, of information about them.
- (2) The register must specify the local authority in whose area each person included in it is ordinarily resident.
- (3) The Secretary of State may by regulations make provision about—
  - (a) the establishment and maintenance of a register under subsection (1);
  - (b) the information about a person that is to be included in a register;
  - (c) the obtaining by an integrated care board of—
    - i. information for the purpose of determining whether subsection (1)(b) or (c) applies in relation to a person, or
    - ii. information for inclusion in the register;
  - (d) the disclosure by or to any person of information included in a register or obtained by virtue of paragraph (c).
  - (e) the withdrawal of consent by a person to their inclusion in the register
- (4) The Secretary of State must by regulations specify the description of people for which each integrated care board is “responsible” for the purpose of this section, who must be people in relation to which the board has commissioning functions.

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(5) In this section “specified risk factors for detention under Part 2 of this Act” means factors which are specified in regulations made by the Secretary of State as factors that the Secretary of State considers increase the probability of a person being detained under Part 2 of this Act.

### **125E. Registers: duties relating to commissioning of services etc**

(1) An integrated care board must, in exercising its commissioning functions—

(a) have regard to the information included in its register under section 125D and any other information obtained by it by virtue of section 125D(3)(c), and

(b) seek to ensure that the needs of people with autism or a learning disability can be met without detaining them under Part 2 of this Act.

(2) A local authority must, in exercising its market function—

(a) have regard to any information disclosed to it by virtue of section 125D(3)(d), and

(b) seek to ensure that the needs of people with autism or a learning disability can be met without detaining them under Part 2 of this Act.

(3) In this section “market function”, in relation to a local authority, means its function under section 5(1) of the Care Act 2014 (promoting diversity and quality in provision of services);

### **125F. Guidance**

(1) The Secretary of State must publish guidance for the following about the exercise of their functions under this Part—

(a) responsible clinicians;

(b) responsible commissioners;

(c) integrated care boards;

(d) local authorities.

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(2) The persons referred to in subsection (1)(a) to (d) must have regard to guidance published under this section.

## **125G Interpretation of Part 8A**

(1) In this Part—

“commissioning functions”, in relation to an NHS commissioning body, means function of the body in arranging for the provision of services as part of the health service continued under section 1(1) of the National Health Service Act 2006;

“local authority” means—

- (a) a county council in England,
- (b) a district council for an area in England for which there is no county council,
- (c) a London borough council,
- (d) the Common Council of the City of London, or
- (e) the Council of the Isles of Scilly;

“NHS commissioning body” means NHS England or an integrated care board;

“responsible clinician” has the same meaning as it has in Part 2 (see section 34(1));

“responsible commissioner”, in relation to a patient liable to be detained in a hospital or registered establishment, means the NHS commissioning body in pursuance of whose commissioning functions arrangements are required to be made for the patient’s admission to the hospital or registered establishment;

“social care provision” has the same meaning as it has in Part 3 of the Children and Families Act 2014 (see section 21 of that Act);

“special educational provision” has the same meaning as it has in Part 3 of the Children and Families Act 2014 (see section 21 of that Act).

(2) Reference in this Part to a patient who lacks capacity are to a patient who lacks capacity within the meaning of the Mental Capacity Act 2005.

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(3) In determining the ordinary residence of a person who is aged under 18 for the purposes of section 125A(3)(b)(iv) or 125D(2), section 105(6) of the Children Act 1989 applies as if there were inserted after paragraph (c) -

“(d) while the child is being provided with accommodation under section 117 of the Mental Health Act 1983; or

(e) while the child is being provided with accommodation under the National Health Service Act 2006.”

(4) A person aged under 18 who -

(a) does not have an ordinary residence, and

(b) is living in a place listed in section 105(6) of the Children Act 1989, as modified by subsection (3) of this section,

is to be treated for the purposes of section 125A(3)(b)(iv) or 125D(2) as ordinarily resident in the area in which they were present immediately before living in such a place.

(5) In determining the ordinary residence of a person who is aged 18 or over for the purposes of section 125A(3)(b)(iv), 125B(3)(b)(iv) or 125D(2), section 39(1) to (6) of, and paragraphs 1(1), 2(1) and (2) and 8 of Schedule 1 to, the Care Act 2014 apply.

*[Sections 126 to 130 are not affected by the amendments to be made by the draft Mental Health Bill and are not included in this Schedule]*

## Part X

### MISCELLANEOUS AND SUPPLEMENTARY

#### **130ZA Care and treatment plans for patients in England**

(1) The appropriate practitioner must prepare a care and treatment plan for a patient to whom this section applies.

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(2) This section applies to a patient who—

(a) is liable to be detained under this Act in a hospital or registered establishment in England, otherwise than—

(i) by virtue of an emergency application where the second medical recommendation referred to in section 4(4)(a) has not been given and received, or

(ii) by virtue of section 5(2) or (4), 135 or 136 or directions for detention in a place of safety under section 35(4), 36(3), 37(4), 38(4) or 45A(5),

(b) is subject to guardianship under this Act, if the area of the responsible local social services authority is in England, or

(c) is a community patient, if the responsible hospital is in England.

(3) A “care and treatment plan” is a document —

(a) containing a plan, made in accordance with regulations made by the Secretary of State, for meeting the patient’s needs arising from or related to mental disorder, and

(b) containing, or to which is attached, any other information authorised or required by the regulations.

(4) The information authorised or required to be included in, or attached to, a care and treatment plan by virtue of regulations under subsection (3) may include —

(a) information about people with whom a patient has a relationship or other connection, or to whom a care and treatment plan is relevant for purposes related to —

(i) the meeting of the patient’s needs mentioned in subsection (3)(a), or

(ii) the review or revision of the care and treatment plan;

(b) any information contained in a report prepared in accordance with section 125A or 125B.

(5) The appropriate practitioner must review a care and treatment plan—

(a) following any meeting relating to the patient under section 125A or 125B;

(b) following any change in the relevant patient’s condition or circumstances which the appropriate practitioner considers significant;

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(c) if the appropriate practitioner is considering whether the relevant patient should—

- (i) become liable to be detained by virtue of a different provision of this Act,
- (ii) become subject to guardianship under this Act,
- (iii) become a community patient, or
- (iv) be discharged under section 23;

(d) if the appropriate practitioner is notified that the patient's case is to be considered by a tribunal under this Act;

(e) if requested to do so by virtue of section 130ZB(3);

(f) if reasonably requested to do so by—

- (i) the relevant patient;
- (ii) anyone named by the relevant patient as someone to be consulted about their care and treatment plan;
- (iii) the relevant patient's nominated person;
- (iv) any independent mental health advocate from whom the relevant patient is receiving help by virtue of section 130A;
- (v) any donee or deputy for the relevant patient;
- (vi) any other person who cares for the relevant patient or is interested in the relevant patient's welfare.

(6) When preparing or reviewing a care and treatment plan, the appropriate practitioner must, if it is practicable and appropriate to do so, consult the persons mentioned in subsection (5)(f).

(7) The Secretary of State may by regulations make provision—

- (a) requiring a care and treatment plan to be revised in specified circumstances;
- (b) specifying, in relation to cases in which a care and treatment plan must be prepared, reviewed or revised, when that must be done.

(8) The Secretary of State may by regulations make provision about—

- (a) disclosure of information contained in a care and treatment plan;



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(b) disclosure of other information for the purposes of functions under this section.

(9) Regulations under this section may make—

(a) provision subject to specified exceptions;

(b) different provision for different cases;

(c) transitional, consequential, incidental or supplemental provision.

(10) References in this section—

(a) to a donee for a patient are to a donee of a lasting power of attorney (within the meaning of section 9 of the Mental Capacity Act 2005) created by the patient;

(b) to a deputy for a patient are to a deputy appointed for the patient by the Court of Protection under section 16 of the Mental Capacity Act 2005;

(c) to the responsible local social services authority—

(i) in relation to a patient who is subject to guardianship in pursuance of a guardianship application, are to be read in accordance with section 34(3);

(ii) in relation to a patient who is subject to guardianship in pursuance of a guardianship order under section 37, are to the local social services authority specified in the order.

(11) In this section “the appropriate practitioner” has the same meaning as in Part 2 (see section 34(1)).

### **130ZB Care and treatment plans: monitoring**

(1) The managers of a hospital or registered establishment in England must make arrangements for the monitoring of compliance with the duties imposed by section 130ZA in relation to relevant patients for whom the managers are responsible.

(2) A local social services authority whose area is in England must make arrangements for the monitoring of compliance with the duties imposed by section 130ZA in relation to relevant patients for whom the authority is the responsible local social services authority.

(3) Arrangements under subsection (1) or (2) must include arrangements for the appropriate practitioner, in relation to a relevant patient, to be requested to review the

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patient's care and treatment plan where the managers or local social services authority (as the case may be) consider that the care and treatment plan should be reviewed.

(4) For the purposes of subsection (1) the managers of a hospital or registered establishment are “responsible” for a relevant patient if the patient—

(a) is liable to be detained under this Act in the hospital or registered establishment, or

(b) is a community patient for whom the hospital or registered establishment is the responsible hospital.

(5) The reference in subsection (2) to the responsible local social services authority is to be read in accordance with section 130ZA(10)(c).

(6) In this section—

“the appropriate practitioner” has the same meaning as in Part 2 (see section 34(1));

“care and treatment plan” has the meaning given by section 130ZA(3);

“relevant patient” means a patient to whom section 130ZA applies.

### **130A. Independent mental health advocates England**

(1) A local social services authority whose area is in England shall make such arrangements as it considers reasonable to enable persons (“independent mental health advocates”) to be available to help **English qualifying patients** ~~qualifying patients~~ for whom the authority is responsible for the purposes of this section.

(1A) In this Part “English qualifying patient” means—

(a) an English qualifying compulsory patient (see section 130C), or

(b) an English qualifying informal patient (see section 130CA).

### **130B. Arrangements under section 130A**

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(1) The help available to **an English qualifying compulsory patient** ~~a qualifying patient~~ under arrangements under section 130A above shall include help in obtaining information about and understanding—

- (a) the provisions of this Act by virtue of which he is **an English qualifying compulsory patient** ~~qualifying patient~~;
- (b) any conditions or restrictions to which he is subject by virtue of this Act;
- (c) what (if any) medical treatment is given to him or is proposed or discussed in his case;
- (d) why it is given, proposed or discussed;
- (e) the authority under which it is, or would be, given; and
- (f) the requirements of this Act which apply, or would apply, in connection with the giving of the treatment to him.

(2) The help available under the arrangements to **an English qualifying compulsory patient** ~~a qualifying patient~~; shall also include—

- (a) help in obtaining information about and understanding any rights which may be exercised under this Act by or in relation to him; ~~and~~
- (b) help (by way of representation or otherwise) in exercising those rights.

**(c) help (by way of representation or otherwise)—**

- (i) for patients who wish to become involved, or more involved, in decisions made about their care or treatment, or care or treatment generally; and**
- (ii) for patients who wish to complain about their care or treatment; and**

**(d) the provision of information about other services which are or may be available to the patient.**

**(2A) The help available to an English qualifying informal patient under arrangements under section 130A must include help in obtaining information about and understanding—**

- (a) what (if any) medical treatment is given to the patient or is proposed or discussed in the patient's case,**
- (b) why it is given, proposed or discussed, and**
- (c) the authority under which it is, or would be, given.**

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(2B) The help available under the arrangements to an English qualifying informal patient must also include—

(a) help (by way of representation or otherwise)—

(i) for patients who wish to become involved, or more involved, in decisions made about their care or treatment, or care or treatment generally, and

(ii) for patients who wish to complain about their care or treatment, and

(b) the provision of information about other services which are or may be available to the patient.

(2C) Arrangements under section 130A must require a provider of advocacy services, on becoming aware of an English qualifying compulsory patient for whom they are responsible, to arrange for an independent mental health advocate to visit and interview the patient (if possible) with a view to determining—

(a) whether the patient has the capacity or is competent to take a decision about whether to receive help from an independent mental health advocate,

(b) if the patient does have that capacity or competence, whether the patient wishes to receive such help, and

(c) if the patient does not have that capacity or competence, whether it is nonetheless in the patient's best interests to receive such help (which, if so, is to be provided under the arrangements).

(2D) For the purposes of subsection (2C)—

(a) “provider of advocacy services” means a person required by arrangements under section 130A to make available the services of independent mental health advocates, and

(b) a provider of advocacy services is “responsible” for an English qualifying compulsory patient if the arrangements require the provider to make available the services of an independent mental health advocate to help that patient.

(3) For the purpose of providing help to a patient in accordance with **arrangements under section 130A** ~~the arrangements~~, an independent mental health advocate may—

(a) visit and interview the patient in private;

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(b) visit and interview any person who is professionally concerned with his medical treatment;

(c) require the production of and inspect any records relating to his detention or treatment in any hospital or registered establishment or to any after-care services provided for him under section 117 above;

(d) require the production of and inspect any records of, or held by, a local social services authority which relate to him.

(4) But an independent mental health advocate is not entitled to the production of, or to inspect, records in reliance on subsection (3)(c) or (d) above unless–

(a) in a case where the patient has capacity or is competent to consent, he does consent; or

(b) in any other case, the production or inspection would not conflict with a decision made by a donee or deputy or the Court of Protection and the person holding the records, having regard to such matters as may be prescribed in regulations under section 130A above, considers that–

(i) the records may be relevant to the help to be provided by the advocate; and

(ii) the production or inspection is appropriate.

(5) For the purpose of providing help to a patient in accordance with the arrangements, an independent mental health advocate shall comply with any reasonable request made to him by any of the following for him to visit and interview the patient–

(a) the person (if any) appearing to the advocate to be the patient's **nominated person** ~~nearest relative~~;

(b) the responsible clinician for the purposes of this Act;

(c) an approved mental health professional.

(6) But nothing in this Act prevents the patient from **refusing consent to the provision of** ~~declining to be provided with~~ help under the arrangements.

**(6A) A reference in this section to a patient who has capacity is to be read in accordance with the Mental Capacity Act 2005.**

(7) In subsection (4) above–

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(a) ~~the reference to a patient who has capacity is to be read in accordance with the Mental Capacity Act 2005;~~

(b) the reference to a donee is to a donee of a lasting power of attorney (within the meaning of section 9 of that Act) created by the patient, where the donee is acting within the scope of his authority and in accordance with that Act;

(c) the reference to a deputy is to a deputy appointed for the patient by the Court of Protection under section 16 of that Act, where the deputy is acting within the scope of his authority and in accordance with that Act.

### **130C. English qualifying compulsory patients** ~~Section 130A:supplemental~~

~~(1) This section applies for the purposes of section 130A above.~~

(2) **For the purposes of this Part a patient is an English qualifying compulsory patient** ~~A patient is a qualifying patient~~ if he is –

(a) liable to be detained under this Act (otherwise than by virtue of section 4 or 5(2) or (4) above or section 135 or 136 below) and the hospital or registered establishment in which he is liable to be detained is situated in England;

(b) subject to guardianship under this Act and the area of the responsible local social services authority within the meaning of section 34(3) above is situated in England;

(c) a community patient and the responsible hospital is situated in England.

(3) **For the purposes of this Part a patient is also an English qualifying compulsory patient** ~~A patient is also a qualifying patient~~ if the patient is to be regarded as being in England for the purposes of this subsection and –

(a) not being **an English qualifying compulsory patient** ~~a qualifying patient~~ falling within subsection (2) above, he discusses with a registered medical practitioner or approved clinician the possibility of being given a form of treatment to which section 57 above applies; or

(b) not having attained the age of 18 years and not being **an English qualifying compulsory patient** ~~a qualifying patient~~ falling within subsection (2) above, he discusses with a registered medical practitioner or approved clinician the possibility of being given a form of treatment to which section 58A above applies.

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(3A) For the purposes of subsection (3), a patient is to be regarded as being in England if that has been determined in accordance with arrangements made for the purposes of that subsection and section 130I(4), and published, by the Secretary of State and the Welsh Ministers.

(4) Where a patient who is **an English qualifying compulsory patient** ~~a qualifying patient~~ falling within subsection (3) above is informed that the treatment concerned is proposed in his case, he remains **an English qualifying compulsory patient** ~~a qualifying patient~~ falling within that subsection until—

- (a) the proposal is withdrawn; or
- (b) the treatment is completed or discontinued.

~~(4A) A local social services authority is responsible for a qualifying patient if—~~

~~(a) in the case of a qualifying patient falling within subsection (2)(a) above, the hospital or registered establishment in which he is liable to be detained is situated in that authority's area;~~

~~(b) in the case of a qualifying patient falling within subsection (2)(b) above, that authority is the responsible local social services authority within the meaning of section 34(3) above;~~

~~(c) in the case of a qualifying patient falling within subsection (2)(c), the responsible hospital is situated in that authority's area;~~

~~(d) in the case of a qualifying patient falling within subsection (3)—~~

~~(i) in a case where the patient has capacity or is competent to do so, he nominates that authority as responsible for him for the purposes of section 130A above, or~~

~~(ii) in any other case, a donee or deputy or the Court of Protection, or a person engaged in caring for the patient or interested in his welfare, nominates that authority on his behalf as responsible for him for the purposes of that section.~~

~~(4B) In subsection (4A)(d) above—~~

~~(a) the reference to a patient who has capacity is to be read in accordance with the Mental Capacity Act 2005;~~

~~(b) the reference to a donee is to a donee of a lasting power of attorney (within the meaning of section 9 of that Act) created by the patient, where the donee is acting within the scope of his authority and in accordance with that Act;~~

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~~(c) the reference to a deputy is to a deputy appointed for the patient by the Court of Protection under section 16 of that Act, where the deputy is acting within the scope of his authority and in accordance with that Act.~~

### **130CA. English qualifying informal patients”**

For the purposes of this Part a patient is an “English qualifying informal patient” if—

- (a) the patient is an in-patient at a hospital or registered establishment situated in England;
- (b) the patient is receiving treatment for, or assessment in relation to, mental disorder at the hospital or registered establishment, and
- (c) no application, order, direction or report renders the patient liable to be detained under this Act.

### **130CB Local social services authority responsible for making arrangements under section 130A(1)**

(1) For the purposes of section 130A(1) a local social services authority is responsible for an English qualifying patient if—

- (a) in the case of an English qualifying compulsory patient falling within section 130C(2)(a), the hospital or registered establishment in which the patient is liable to be detained is situated in that authority’s area;
- (b) in the case of an English qualifying compulsory patient falling within section 130C(2)(b), that authority is the responsible local social services authority within the meaning of section 34(3);
- (c) in the case of an English qualifying compulsory patient falling within section 130C(2)(c), the responsible hospital is situated in that authority’s area;
- (d) in the case of an English qualifying compulsory patient falling within section 130C(3)—
  - (i) in a case where the patient has capacity or is competent to do so, the patient nominates that authority as responsible for the purposes of section 130A, or



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(ii) in any other case, a donee or deputy or the Court of Protection, or a person engaged in caring for the patient or interested in the patient's welfare, nominates that authority on the patient's behalf as responsible for the purposes of that section;

(e) in the case of an English qualifying informal patient, the hospital or registered establishment to which the patient is admitted as an in-patient is situated in that authority's area.

(2) In subsection (1)(d)—

(a) the reference to a patient who has capacity is to be read in accordance with the Mental Capacity Act 2005;

(b) the reference to a donee is to a donee of a lasting power of attorney (within the meaning of section 9 of that Act) created by the patient, where the donee is acting within the scope of their authority and in accordance with that Act;

(c) the reference to a deputy is to a deputy appointed for the patient by the Court of Protection under section 16 of that Act, where the deputy is acting within the scope of their authority and in accordance with that Act.

### **130CC Duty to notify providers of person's eligibility for advocacy services**

(1) The responsible person in relation to an English qualifying patient must take such steps as are practicable to give the appropriate provider of advocacy services the required information about the patient.

(2) In this section "the responsible person" means—

(a) in relation to an English qualifying compulsory patient falling within section 130C(2)(a), the managers of the hospital or registered establishment in which the patient is liable to be detained;

(b) in relation to an English qualifying compulsory patient falling within section 130C(2)(b), the responsible local services authority within the meaning of section 34(3);

(c) in relation to an English qualifying compulsory patient falling within section 130C(2)(c), the managers of the responsible hospital;

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(d) in relation to an English qualifying compulsory patient falling within section 130C(3), the managers of the hospital or registered establishment in which the treatment would be given;

(e) in relation to an English qualifying informal patient, the managers of the hospital or registered establishment to which the patient is admitted as an in-patient.

(3) In this section “appropriate provider of advocacy services”, in relation to a patient, means the person required by arrangements under section 130A to make available the services of an independent mental health advocate to help that patient.

(4) In this section “the required information”, in relation to a patient, means such information relating to the patient as may be prescribed in regulations made by the Secretary of State.

### **130DA Duty to give information to English qualifying informal patients**

(1) The responsible person in relation to an English qualifying informal patient must take such steps as are practicable to ensure that the patient understands—

(a) that help is available to the patient from an independent mental health advocate, and

(b) how the patient can obtain that help.

(2) In this section “the responsible person”, in relation to an English qualifying informal patient, means the managers of the hospital or registered establishment to which the patient is admitted as an in-patient.

(3) The steps to be taken under subsection (1) must be taken as soon as practicable after the patient becomes an English qualifying informal patient.

(4) The steps that must be taken under subsection (1) include giving the requisite information both orally and in writing.

(5) The responsible person in relation to an English qualifying informal patient must, except where the patient otherwise requests, take such steps as are practicable to give the person (if any) appearing to the responsible person to be the patient’s nominated person a copy of any information given to the patient in writing under subsection (1).

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(6) The steps to be taken under subsection (5) must be taken when the information concerned is given to the patient or within a reasonable time thereafter.

### **130D Duty to give information about independent mental health advocates**

~~(1) The responsible person in relation to a qualifying patient (within the meaning given by section 130C above shall take such steps as are practicable to ensure that the patient understands—~~

- ~~(a) that help is available to him from an independent mental health advocate; and~~
- ~~(b) how he can obtain that help.~~

~~(2) In subsection (1) above, “the responsible person” means—~~

- ~~(a) in relation to a qualifying patient falling within section 130C(2)(a) above (other than one also falling within paragraph (b) below), the managers of the hospital or registered establishment in which he is liable to be detained;~~
- ~~(b) in relation to a qualifying patient falling within section 130C(2)(a) above and conditionally discharged by virtue of section 42(2), 73 or 74 above, the responsible clinician;~~
- ~~(c) in relation to a qualifying patient falling within section 130C(2)(b) above, the responsible local social services authority within the meaning of section 34(3) above;~~
- ~~(d) in relation to a qualifying patient falling within section 130C(2)(c) above, the managers of the responsible hospital;~~
- ~~(e) in relation to a qualifying patient falling within section 130C(3) above, the registered medical practitioner or approved clinician with whom the patient first discusses the possibility of being given the treatment concerned.~~

~~(3) The steps to be taken under subsection (1) above shall be taken—~~

- ~~(a) where the responsible person falls within subsection (2)(a) above, as soon as practicable after the patient becomes liable to be detained;~~
- ~~(b) where the responsible person falls within subsection (2)(b) above, as soon as practicable after the conditional discharge;~~

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~~(c) where the responsible person falls within subsection (2)(c) above, as soon as practicable after the patient becomes subject to guardianship;~~

~~(d) where the responsible person falls within subsection (2)(d) above, as soon as practicable after the patient becomes a community patient;~~

~~(e) where the responsible person falls within subsection (2)(e) above, while the discussion with the patient is taking place or as soon as practicable thereafter.~~

~~(4) The steps to be taken under subsection (1) above shall include giving the requisite information both orally and in writing.~~

~~(5) The responsible person in relation to a qualifying patient falling within section 130C(2) above (other than a patient liable to be detained by virtue of Part 3 of this Act) shall, except where the patient otherwise requests, take such steps as are practicable to furnish the person (if any) appearing to the responsible person to be the patient's nearest relative **nominated person** with a copy of any information given to the patient in writing under subsection (1) above.~~

~~(6) The steps to be taken under subsection (5) above shall be taken when the information concerned is given to the patient or within a reasonable time thereafter.~~

### **130E Independent mental health advocates: Wales**

(1) The Welsh Ministers shall make such arrangements as they consider reasonable to enable persons (“independent mental health advocates”) to be available to help–

(a) Welsh qualifying compulsory patients; and

(b) Welsh qualifying informal patients.

(2) The Welsh Ministers may by regulations make provision as to the appointment of persons as independent mental health advocates.

(3) The regulations may, in particular, provide–

(a) that a person may act as an independent mental health advocate only in such circumstances, or only subject to such conditions, as may be specified in the regulations;

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(b) for the appointment of a person as an independent mental health advocate to be subject to approval in accordance with the regulations.

(4) In making arrangements under this section, the Welsh Ministers shall have regard to the principle that any help available to a patient under the arrangements should, so far as practicable, be provided by a person who is independent of any person who—

(a) is professionally concerned with the patient's medical treatment; or

(b) falls within a description specified in regulations made by the Welsh Ministers.

(5) For the purposes of subsection (4) above, a person is not to be regarded as professionally concerned with a patient's medical treatment merely because he is representing him in accordance with arrangements—

(a) under section 35 of the Mental Capacity Act 2005; or

(b) of a description specified in regulations under this section.

(6) Arrangements under this section may include provision for payments to be made to, or in relation to, persons carrying out functions in accordance with the arrangements.

(7) Regulations under this section and sections 130F to 130H—

(a) may make different provision for different cases;

(b) may make provision which applies subject to specified exceptions;

(c) may include transitional, consequential, incidental or supplemental provision.

### **130F. Arrangements under section 130E for Welsh qualifying compulsory patients**

(1) The help available to a Welsh qualifying compulsory patient under arrangements under section 130E shall include help in obtaining information about and understanding—

(a) the provisions of this Act by virtue of which he is a qualifying compulsory patient;

(b) any conditions or restrictions to which he is subject by virtue of this Act;

(c) what (if any) medical treatment is given to him or is proposed or discussed in his case;

(d) why it is given, proposed or discussed;

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(e) the authority under which it is, or would be, given; and

(f) the requirements of this Act which apply, or would apply, in connection with the giving of the treatment to him.

(2) The help available under the arrangements to a Welsh qualifying compulsory patient shall also include–

(a) help in obtaining information about and understanding any rights which may be exercised under this Act by or in relation to him;

(b) help (by way of representation or otherwise)–

(i) in exercising the rights referred to in paragraph (a);

(ii) for patients who wish to become involved, or more involved, in decisions made about their care or treatment, or care or treatment generally;

(iii) for patients who wish to complain about their care or treatment;

(c) the provision of information about other services which are or may be available to the patient;

(d) other help specified in regulations made by the Welsh Ministers

### **130G. Arrangements under section 130E for Welsh qualifying informal patients**

(1) The help available to a Welsh qualifying informal patient under arrangements under section 130E shall include help in obtaining information about and understanding–

(a) what (if any) medical treatment is given to him or is proposed or discussed in his case;

(b) why it is given, proposed or discussed;

(c) the authority under which it is, or would be, given.

(2) The help available under the arrangements to a Welsh qualifying informal patient shall also include–

(a) help (by way of representation or otherwise)–

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(i) for patients who wish to become involved, or more involved, in decisions made about their care or treatment, or care or treatment generally;

(ii) for patients who wish to complain about their care or treatment;

(b) the provision of information about other services which are or may be available to the patient;

(c) other help specified in regulations made by the Welsh Ministers.

### **130H. Independent mental health advocates for Wales: supplementary powers and duties**

(1) For the purpose of providing help to a patient in accordance with arrangements made under section 130E, an independent mental health advocate may–

(a) visit and interview the patient in private;

(b) visit and interview–

(i) any person who is professionally concerned with his medical treatment;

(ii) any other person who falls within a description specified in regulations made by the Welsh Ministers;

(c) require the production of and inspect any records relating to his detention, treatment or assessment in any hospital or registered establishment or to any after-care services provided for him under section 117 above;

(d) require the production of and inspect any records of, or held by, a local social services authority which relate to him.

(2) But an independent mental health advocate is not entitled to the production of, or to inspect, records in reliance on subsection (1)(c) or (d) above unless–

(a) in a case where the patient has capacity or is competent to consent, he does consent; or

(b) in any other case, the production or inspection would not conflict with a decision made by a donee or deputy or the Court of Protection and the person holding the records, having regard to such matters as may be prescribed in regulations under section 130E above, considers that–

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- (i) the records may be relevant to the help to be provided by the advocate;
- (ii) the production or inspection is appropriate.

(3) For the purpose of providing help to a Welsh qualifying compulsory patient in accordance with the arrangements, an independent mental health advocate shall comply with any reasonable request made to him by any of the following for him to visit and interview the patient–

- (a) the patient;
- (b) the person (if any) appearing to the advocate to be the patient's **nominated person** nearest relative;
- (c) the responsible clinician for the purposes of this Act;
- (d) an approved mental health professional;
- (e) a registered social worker who is professionally concerned with the patient's care, treatment or assessment;
- (f) where the patient is liable to be detained in a hospital or registered establishment, the managers of the hospital or establishment or a person duly authorised on their behalf;
- (g) the patient's donee or deputy.

(4) For the purpose of providing help to a Welsh qualifying informal patient in accordance with the arrangements, an independent mental health advocate shall comply with any reasonable request made to him by any of the following for him to visit and interview the patient–

- (a) the patient;
- (b) the managers of the hospital or establishment in which the patient is an in-patient or a person duly authorised on their behalf;
- (c) any person appearing to the advocate to whom the request is made to be the patient's carer;
- (d) the patient's donee or deputy;
- (e) a registered social worker who is professionally concerned with the patient's care, treatment or assessment.



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(5) But nothing in this Act prevents the patient from declining to be provided with help under the arrangements.

(6) In subsection (2) above the reference to a patient who has capacity is to be read in accordance with the Mental Capacity Act 2005.

(7) In subsection (4) above–

(a) “carer” , in relation to a Welsh qualifying informal patient, means an individual who provides or intends to provide a substantial amount of care on a regular basis for the patient, but does not include any individual who provides, or intends to provide care by virtue of a contract of employment or other contract with any person or as a volunteer for a body (whether or not incorporated);

(b) “registered social worker” means a person included in the social worker part of the register kept under section 80(1) of the Regulation and Inspection of Social Care (Wales) Act 2016.

(8) In subsections (2) to (4) above–

(a) the reference to a donee is to a donee of a lasting power of attorney (within the meaning of section 9 of the Mental Capacity Act 2005) created by the patient, where the donee, in making the decision referred to in subsection (2) or the request referred to in subsection (3) or (4), is acting within the scope of his authority and in accordance with that Act;

(b) the reference to a deputy is to a deputy appointed for the patient by the Court of Protection under section 16 of that Act, where the deputy, in making the decision referred to in subsection (2) or the request referred to in subsection (3) or (4), is acting within the scope of his authority and in accordance with that Act.

### **130I. Welsh qualifying compulsory patients**

(1) This section applies for the purposes of section 130E above.

(2) A patient is a Welsh qualifying compulsory patient if he is–

(a) liable to be detained under this Act (other than under section 135 or 136 below) and the hospital or registered establishment in which he is liable to be detained is situated in Wales;

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(b) subject to guardianship under this Act and the area of the responsible local social services authority within the meaning of section 34(3) above is situated in Wales; or

(c) a community patient and the responsible hospital is situated in Wales.

(3) A patient is also a Welsh qualifying compulsory patient if the patient is to be regarded as being in Wales for the purposes of this subsection and—

(a) not being a qualifying patient falling within subsection (2) above, he discusses with a registered medical practitioner or approved clinician the possibility of being given a form of treatment to which section 57 above applies; or

(b) not having attained the age of 18 years and not being a qualifying patient falling within subsection (2) above, he discusses with a registered medical practitioner or approved clinician the possibility of being given a form of treatment to which section 58A above applies.

(4) For the purposes of subsection (3), a patient is to be regarded as being in Wales if that has been determined in accordance with arrangements made for the purposes of that subsection and section 130C(3), and published, by the Secretary of State and the Welsh Ministers.

(5) Where a patient who is a Welsh qualifying compulsory patient falling within subsection (3) above is informed that the treatment concerned is proposed in his case, he remains a qualifying patient falling within that subsection until—

(a) the proposal is withdrawn; or

(b) the treatment is completed or discontinued.

### **130J. Welsh qualifying informal patients**

(1) This section applies for the purposes of section 130E above.

(2) A patient is a Welsh qualifying informal patient if—

(a) the patient is an in-patient at a hospital or registered establishment situated in Wales;

(b) the patient is receiving treatment for, or assessment in relation to, mental disorder at the hospital or registered establishment; and

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(c) no application, order, direction or report renders the patient liable to be detained under this Act.

### **130K. Duty to give information about independent mental health advocates to Welsh qualifying compulsory patients**

(1) The responsible person in relation to a Welsh qualifying compulsory patient (within the meaning given by section 130I above) shall take such steps as are practicable to ensure that the patient understands–

- (a) that help is available to him from an independent mental health advocate; and
- (b) how he can obtain that help.

(2) In subsection (1) above, the “responsible person” means–

(a) in relation to a Welsh qualifying compulsory patient falling within section 130I(2)(a) above (other than one also falling within paragraph (b) below), the managers of the hospital or registered establishment in which he is liable to be detained; or

(b) in relation to a Welsh qualifying compulsory patient falling within section 130I(2)(a) above and conditionally discharged by virtue of section 42(2), 73 or 74 above, the responsible clinician;

(c) in relation to a Welsh qualifying compulsory patient falling within section 130I(2)(b) above, the responsible local social services authority within the meaning of section 34(3) above;

(d) in relation to a Welsh qualifying compulsory patient falling within section 130I(2)(c) above, the managers of the responsible hospital;

(e) in relation to a Welsh qualifying compulsory patient falling within section 130I(3) above, the registered medical practitioner or approved clinician with whom the patient first discusses the possibility of being given the treatment concerned.

(3) The steps to be taken under subsection (1) above shall be taken–

(a) where the responsible person falls within subsection (2)(a) above, as soon as practicable after the patient becomes liable to be detained;

(b) where the responsible person falls within subsection (2)(b) above, as soon as practicable after the conditional discharge;

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(c) where the responsible person falls within subsection (2)(c) above, as soon as practicable after the patient becomes subject to guardianship;

(d) where the responsible person falls within subsection (2)(d) above, as soon as practicable after the patient becomes a community patient;

(e) where the responsible person falls within subsection (2)(e) above, while the discussion with the patient is taking place or as soon as practicable thereafter.

(4) The steps to be taken under subsection (1) above shall include giving the requisite information both orally and in writing.

(5) The responsible person in relation to a Welsh qualifying compulsory patient falling within section 130I(2) above (other than a patient liable to be detained by virtue of Part 3 of this Act) shall, except where the patient otherwise requests, take such steps as are practicable to furnish any person falling within subsection (6) with a copy of any information given to the patient in writing under subsection (1) above.

(6) A person falls within this subsection if–

(a) the person appears to the responsible person to be the patient's **nominated person** nearest relative;

(b) the person is a donee of a lasting power of attorney (within the meaning of section 9 of the Mental Capacity Act 2005) created by the patient and the scope of the donee's authority includes matters related to the care and treatment of the patient;

(c) the person is a deputy appointed for the patient by the Court of Protection under section 16 of that Act and the scope of the deputy's authority includes matters related to the care and treatment of the patient.

(7) The steps to be taken under subsection (5) above shall be taken when the information concerned is given to the patient or within a reasonable time thereafter.

### **130L. Duty to give information about independent mental health advocates to Welsh qualifying informal patients**

(1) The responsible person in relation to a Welsh qualifying informal patient (within the meaning given by section 130J above) shall take such steps as are practicable to ensure that the patient understands–

(a) that help is available to him from an independent mental health advocate; and

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- (b) how he can obtain that help.
- (2) In subsection (1) above, the “ responsible person ” means the managers of the hospital or registered establishment to which the patient is admitted as an in-patient.
- (3) The steps to be taken under subsection (1) above shall be taken as soon as practicable after the patient becomes an in-patient.
- (4) The steps to be taken under subsection (1) above shall include giving the requisite information both orally and in writing.
- (5) The responsible person in relation to a Welsh qualifying informal patient shall, except where the patient otherwise requests, take such steps as are practicable to furnish any person falling within subsection (6) with a copy of any information given to the patient in writing under subsection (1) above.
- (6) A person falls within this subsection if—
- (a) the person appears to the responsible person to be a carer of the patient;
  - (b) the person is a donee of a lasting power of attorney (within the meaning of section 9 of the Mental Capacity Act 2005) created by the patient and the scope of the donee's authority includes matters related to the care and treatment of the patient;
  - (c) the person is a deputy appointed for the patient by the Court of Protection under section 16 of that Act and the scope of the deputy's authority includes matters related to the care and treatment of the patient.
- (7) In subsection (6), “ carer ”, in relation to a Welsh qualifying informal patient, means an individual who provides or intends to provide a substantial amount of care on a regular basis for the patient, but does not include any individual who provides, or intends to provide care by virtue of a contract of employment or other contract with any person or as a volunteer for a body (whether or not incorporated);
- (8) The steps to be taken under subsection (5) above shall be taken when the information concerned is given to the patient or within a reasonable time thereafter.

### **130M Advance choice documents: England**

(1) NHS England and each integrated care board must make such arrangements as it considers appropriate for—

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(a) making information about advance choice documents available to people for whom it is responsible for the purposes of this section, and

(b) helping such of those people as it considers appropriate to create advance choice documents.

(2) For the purposes of this section—

(a) NHS England is “responsible” for any people for whom it is required to arrange the provision of services or facilities by virtue of section 3B(1)(c) of the National Health Service Act 2006 (prisoners etc);

(b) an integrated care board is “responsible” for anyone not within paragraph (a) who falls within the group of people for whom the board has core responsibility (as to which, see section 14Z31 of the National Health Service Act 2006).

(3) An “advance choice document” is a written statement made by a qualifying person specifying their decisions, wishes or feelings about any relevant matter that may arise in the event that—

(a) at some future time—

(i) consideration is given to the person’s admission to hospital or a registered establishment as an in-patient either for medical treatment for mental disorder or for assessment in relation to mental disorder, or

(ii) the person is detained under this Act, or given medical treatment for mental disorder as an in-patient in hospital, and

(b) at that time, the person lacks capacity or competence in relation to that matter.

(4) For the purposes of subsection (3)—

(a) “qualifying person” means a person who has capacity or competence to make the statement,

(b) “relevant matter”, in relation to a qualifying person, means a matter relating to, or arising as a consequence of—

(i) consideration of an application for the person’s admission for assessment or treatment, or

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(ii) the person’s detention under this Act, or their medical treatment for a mental disorder as an in-patient in hospital, and

(c) a reference to lacking capacity is to lacking capacity within the meaning of the Mental Capacity Act 2005; and a reference to having capacity is to be read accordingly.

### **130N Advance choice documents: Wales**

(1) Each Local Health Board must make such arrangements in relation to its area as it considers appropriate for—

(a) making available information about advance choice documents, and

(b) helping such of those people as it considers appropriate to create advance choice documents.

(2) In this section “advance choice document” has the meaning given by section 130M(3).

### **131. Informal admission of patients.**

(1) Nothing in this Act shall be construed as preventing a patient who requires treatment for mental disorder from being admitted to any hospital or registered establishment in pursuance of arrangements made in that behalf and without any application, order or direction rendering him liable to be detained under this Act, or from remaining in any hospital or registered establishment in pursuance of such arrangements after he has ceased to be so liable to be detained.

(2) Subsections (3) and (4) below apply in the case of a patient aged 16 or 17 years who has capacity to consent to the making of such arrangements as are mentioned in subsection (1) above.

(3) If the patient consents to the making of the arrangements, they may be made, carried out and determined on the basis of that consent even though there are one or more persons who have parental responsibility for him.

(4) If the patient does not consent to the making of the arrangements, they may not be made, carried out or determined on the basis of the consent of a person who has parental responsibility for him.

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(5) In this section—

(a) the reference to a patient who has capacity is to be read in accordance with the Mental Capacity Act 2005; and

(b) “parental responsibility” has the same meaning as in the Children Act 1989.

### **131A. Accommodation, etc. for children**

(1) This section applies in respect of any patient who has not attained the age of 18 years and who—

(a) is liable to be detained in a hospital under this Act; or

(b) is admitted to, or remains in, a hospital in pursuance of such arrangements as are mentioned in section 131(1) above.

(2) The managers of the hospital shall ensure that the patient's environment in the hospital is suitable having regard to his age (subject to his needs).

(3) For the purpose of deciding how to fulfil the duty under subsection (2) above, the managers shall consult a person who appears to them to have knowledge or experience of cases involving patients who have not attained the age of 18 years which makes him suitable to be consulted.

(4) In this section, “hospital” includes a registered establishment.

### **132. Duty of managers of hospitals to give information to detained patients.**

(1) The managers of a hospital or registered establishment in which a patient is detained under this Act shall take such steps as are practicable to ensure that the patient understands—

(a) under which of the provisions of this Act he is for the time being detained and the effect of that provision; and

(b) what rights of applying to a tribunal are available to him in respect of his detention under that provision;

and those steps shall be taken as soon as practicable after the commencement of the patient's detention under the provision in question.



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(2) The managers of a hospital or registered establishment 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 sections 23, 25, 56 to 64, 66(1)(g), 118 and 120 above and section 134 below; ~~and those steps shall be taken as soon as practicable after the commencement of the patient's detention in the hospital or establishment.~~

(2A) The managers of a hospital or registered establishment in which a patient is detained under this Act must also take such steps as are practicable to ensure that the patient understands how to exercise any right the patient has to make complaints about—

- (a) the carrying out of functions under this Act;
- (b) any medical treatment for mental disorder received during the patient's detention;
- (c) the outcome of any complaint referred to in paragraph (b).

(2B) Where a patient is detained under any provision of this Act, the steps under subsections (2) and (2A) must be taken —

- (a) as soon as practicable after the commencement of the patient's detention under the provision in question, and
- (b) again—
  - (i) if the patient is a restricted patient within the meaning given by subsection (1) of section 79, or is treated as mentioned in paragraph (a) or (c) of that subsection, as soon as practicable after the end of each successive period of twelve months beginning with the day on which the patient became a restricted patient or was first so treated (as the case may be);
  - (ii) otherwise, as soon as practicable after any report is furnished under section 20 in respect of the patient.

(3) The steps to be taken under subsections (1), (2) and (2A) ~~and (2)~~ above shall include giving the requisite information both orally and in writing.

(4) The managers of a hospital or registered establishment in which a patient is detained 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 **nominated person** ~~nearest relative~~ with a copy of any information given to him in writing under subsections (1), (2) and (2A) ~~and (2)~~ above; and those steps shall be taken when the information is given to the patient or within a reasonable time thereafter.

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### **132A. Duty of managers of hospitals to give information to community patients**

(1) The managers of the responsible hospital shall take such steps as are practicable to ensure that a community patient understands—

- (a) the effect of the provisions of this Act applying to community patients; and
- (b) what rights of applying to a tribunal are available to him in that capacity;
- (c) how to exercise any right the patient has to make complaints about—
  - (i) the carrying out of functions under this Act;
  - (ii) any medical treatment for mental disorder received while the patient is a community patient;
  - (iii) the outcome of any complaint referred to in sub-paragraph (ii);

and those steps shall be taken as soon as practicable after the patient becomes a community patient and again as soon as practicable after any report is furnished under section 20A in respect of the patient.

(2) The steps to be taken under subsection (1) above shall include giving the requisite information both orally and in writing.

(3) The managers of the responsible hospital shall, except where the community patient otherwise requests, take such steps as are practicable to furnish the person (if any) appearing to them to be his ~~nearest relative~~ **nearest relative** with a copy of any information given to him in writing under subsection (1) above; and those steps shall be taken when the information is given to the patient or within a reasonable time thereafter.

### **132B. Duty of managers of hospitals to give information to conditionally discharged patients**

(1) Where a patient is discharged from a hospital or registered establishment under section 42(2), 73 or 74 and the discharge is a conditional discharge, the managers of the hospital or registered establishment must take such steps as are practicable to ensure that the patient understands—

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(a) under which provision the patient is conditionally discharged and the effect of that provision;

(b) the effect of the provisions of this Act applying to patients who are conditionally discharged under that provision;

(c) what rights of applying to a tribunal are available to the patient while the patient is conditionally discharged;

(d) how to exercise any right the patient has to make complaints about—

(i) the carrying out of functions under this Act;

(ii) any medical treatment for mental disorder received while the patient is conditionally discharged;

(iii) the outcome of any complaint referred to in sub-paragraph (ii).

(2) Those steps must be taken as soon as practicable.

(3) The steps to be taken under subsection (1) must include giving the requisite information both orally and in writing.

(4) The managers of the hospital or registered establishment must, except where the patient otherwise requests, take such steps as are practicable to furnish the patient's nominated person with a copy of any information given to the patient in writing under subsection (1).

(5) Those steps must be taken when the information is given to the patient or within a reasonable time thereafter.

### **133. Duty of managers of hospitals to inform **nominated persons** nearest relatives of discharge.**

(1) Where a patient liable to be detained under this Act in a hospital or registered establishment is to be discharged otherwise than by virtue of an order for discharge made by his **nominated person** nearest relative the managers of the hospital or registered establishment shall, subject to subsection (2) below, take such steps as are practicable to inform the person (if any) appearing to them to be the **patient's nominated person** nearest relative of the patient; and that information shall, if practicable, be given at least seven days before the date of discharge.

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(1A) The reference in subsection (1) above to a patient who is to be discharged includes a patient who is to be discharged from hospital under section 17A above.

(1B) Subsection (1) above shall also apply in a case where a community patient is discharged under section 23 or 72 above (otherwise than by virtue of an order for discharge made by his **nominated person** ~~nearest relative~~), but with the reference in that subsection to the managers of the hospital or registered establishment being read as a reference to the managers of the responsible hospital.

(2) Subsection (1) above shall not apply if the patient or his **nominated person** ~~nearest relative~~ as requested that information about the patient's discharge should not be given under this section.

#### **134. Correspondence of patients.**

(1) A postal packet addressed to any person by a patient detained in a hospital under this Act and delivered by the patient for dispatch may be withheld from the postal operator concerned—

(a) if that person has requested that communications addressed to him by the patient should be withheld; or

(b) subject to subsection (3) below, if the hospital is one at which high security psychiatric services are provided 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) above shall be made by a notice in writing given to the managers of the hospital, or the approved clinician **nominated by the managers of the hospital to have** ~~with~~ overall responsibility for the patient's case.

(2) Subject to subsection (3) below, a postal packet addressed to a patient detained under this Act in a hospital at which high security psychiatric services are provided 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.

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(3) Subsections (1)(b) and (2) above 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 or the Scottish Ministers or Member of either House of Parliament or member of the Scottish Parliament of the Northern Ireland Assembly;

(aa) any of the Welsh Ministers, the Counsel General to the Welsh Assembly Government or a member of the National Assembly for Wales;

(b) any judge or officer of the Court of Protection, any of the Court of Protection Visitors or any person asked by that Court for a report under section 49 of the Mental Capacity Act 2005 concerning the patient;

(c) the Parliamentary Commissioner for Administration, the Scottish Public Services Ombudsman, the Public Services Ombudsman for Wales the Health Service Commissioner for England, or a Local Commissioner within the meaning of Part III of the Local Government Act 1974;

(ca) the Care Quality Commission;

(d) the First-tier Tribunal or the Mental Health Review Tribunal for Wales;

(e) the National Health Service Commissioning Board, an integrated care board, a Local Health Board or Special Health Authority, a local social services authority, a Community Health Council local probation board established under section 4 of the Criminal Justice and Court Services Act 2000) or a provider of probation services;

(ea) a provider of a patient advocacy and liaison service for the assistance of patients at the hospital and their families and carers;

(eb) a provider of independent advocacy services for the patient

(f) the managers of the hospital in which the patient is detained;

(g) any legally qualified person instructed by the patient to act as his legal adviser; or

(h) the European Commission of Human Rights or the European Court of Human Rights.

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and for the purposes of paragraph (d) above the reference to the First-tier Tribunal is a reference to that tribunal so far as it is acting for the purposes of any proceedings under this Act or paragraph 5(2) of the Schedule to the Repatriation of Prisoners Act 1984.

(3A) In subsection (3) above—

(a) “ patient advocacy and liaison service ” means a service of a description prescribed by regulations made by the Secretary of State, and

“ independent advocacy services ” means services provided under arrangements under section 248 of the National Health Service Act 2006 or section 187 of the National Health Service (Wales) Act 2006.

(b) “ independent advocacy services ” means services provided under—

(i) arrangements under section 130A or section 130E above;

(ii) arrangements under section 223A of the Local Government and Public Involvement in Health Act 2007 or section 187 of the National Health Service (Wales) Act 2006; or

(iii) arrangements of a description prescribed as mentioned in paragraph (a) above.

(4) The managers of a hospital may inspect and open any postal packet for the purposes of determining—

(a) whether it is one to which subsection (1) or (2) applies, and

(b) in the case of a postal packet to which subsection (1) or (2) above applies, whether or not it should be withheld under that subsection;

and the power to 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) above the managers of the hospital shall record that fact in writing.

(6) Where a postal packet or anything contained in it is withheld under subsection (1)(b) or (2) above the managers of the hospital shall within seven days give notice of that fact to

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the patient and, in the case of a packet withheld under subsection (2) above, to the person (if known) by whom the postal packet was sent; and any such notice shall be given in writing and shall contain a statement of the effect of section 134A(1) to (4).

(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 section 134A “hospital” has the same meaning as in Part II of this Act and “postal operator” and, “ postal packet ” have the same meaning as in Part 3 of the Postal Services Act 2011 (see section 27).

*[Section 134A is not affected by the amendments to be made by the draft Mental Health Bill so is not included in the Schedule]*

### **135 Warrant to search for and remove patients.**

(1) If it appears to a justice of the peace, on information on oath laid by an approved mental health professional, that there is reasonable cause to suspect that a person believed to be suffering from mental disorder—

(a) has been, or is being, ill-treated, neglected or kept otherwise than under proper control, in any place within the jurisdiction of the justice, or

(b) being unable to care for himself, is living alone in any such place,

the justice may issue a warrant authorising any constable to enter, if need be by force, any premises specified in the warrant in which that person is believed to be, and, if thought fit, to remove him to a place of safety with a view to the making of an application in respect of him under Part II of this Act, or of other arrangements for his treatment or care.

(1A) If the premises specified in the warrant are a place of safety, the constable executing the warrant may, instead of removing the person to another place of safety, keep the person at those premises for the purpose mentioned in subsection (1).

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(2) If it appears to a justice of the peace, on information on oath laid by any constable or other person who is authorised by or under this Act or under article 8 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 to take a patient to any place, or to take into custody or retake a patient who is liable under this Act or under the said article 8 to be so taken or retaken—

(a) that there is reasonable cause to believe that the patient is to be found on premises within the jurisdiction of the justice; 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 to enter the premises, if need be by force, and remove the patient.

(3) A patient who is removed to a place of safety in the execution of a warrant issued under subsection (1), or kept at the premises specified in the warrant under subsection (1A), may be detained there for a period not exceeding the permitted period of detention.

(3ZA) In subsection (3), “the permitted period of detention” means—

(a) the period of 24 hours beginning with—

(i) in a case where the person is removed to a place of safety, the time when the person arrives at that place;

(ii) in a case where the person is kept at the premises specified in the warrant, the time when the constable first entered the premises to execute the warrant; or

(b) where an authorisation is given in relation to the person under section 136B, that period of 24 hours and such further period as is specified in the authorisation.

(3A) A constable, an approved mental health professional or a person authorised by either of them for the purposes of this subsection may, before the end of the permitted period of detention mentioned in subsection (3) above, take a person detained in a place of safety under that subsection to one or more other places of safety.

(3B) A person taken to a place of safety under subsection (3A) above may be detained there for a period ending no later than the end of the permitted period of detention mentioned in subsection (3) above.

(4) In the execution of a warrant issued under subsection (1) above, a constable shall be accompanied by an approved mental health professional and by a registered medical



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practitioner, and in the execution of a warrant issued under subsection (2) above a constable may be accompanied—

(a) by a registered medical practitioner;

(b) by any person authorised by or under this Act or under article 8 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 to take or retake the patient.

(5) It shall not be necessary in any information or warrant under subsection (1) above to name the patient concerned.

(6) In this section “place of safety” means residential accommodation provided by a local social services authority under Part 1 of the Care Act 2014 or Part 4 of the Social Services and Well-being (Wales) Act 2014, a hospital as defined by this Act, ~~a police station~~, an independent hospital or care home for mentally disordered persons or any other suitable place.

(7) For the purpose of subsection (6)—

**(za) a police station may not be regarded as a suitable place;**

(a) a house, flat or room where a person is living may not be regarded as a suitable place unless—

(i) if the person believed to be suffering from a mental disorder is the sole occupier of the place, that person agrees to the use of the place as a place of safety;

(ii) if the person believed to be suffering from a mental disorder is an occupier of the place but not the sole occupier, both that person and one of the other occupiers agree to the use of the place as a place of safety;

(iii) if the person believed to be suffering from a mental disorder is not an occupier of the place, both that person and the occupier (or, if more than one, one of the occupiers) agree to the use of the place as a place of safety;

(b) a place other than one mentioned in paragraph (a) may not be regarded as a suitable place unless a person who appears to the constable exercising powers under this section to be responsible for the management of the place agrees to its use as a place of safety.

~~(8) This section is subject to section 136A which makes provision about the removal and taking of persons to a police station under this section.~~

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**136. Removal etc of mentally disordered persons without a warrant.**

(1) If a person appears to a constable 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—

(a) remove the person to a place of safety within the meaning of section 135, or

(b) if the person is already at a place of safety within the meaning of that section, keep the person at that place or remove the person to another place of safety.

(1A) The power of a constable under subsection (1) may be exercised where the mentally disordered person is at any place, other than—

(a) any house, flat or room where that person, or any other person, is living, or

(b) any yard, garden, garage or outhouse that is used in connection with the house, flat or room, other than one that is also used in connection with one or more other houses, flats or rooms.

(1B) For the purpose of exercising the power under subsection (1), a constable may enter any place where the power may be exercised, if need be by force.

(1C) Before deciding to remove a person to, or to keep a person at, a place of safety under subsection (1), the constable must, if it is practicable to do so, consult—

(a) a registered medical practitioner,

(b) a registered nurse,

(c) an approved mental health professional, or

(d) a person of a description specified in regulations made by the Secretary of State.

(2) A person removed to, or kept at, a place of safety under this section may be detained there for a period not exceeding the permitted period of detention for the purpose of enabling him to be examined by a registered medical practitioner and to be interviewed by an approved mental health professional and of making any necessary arrangements for his treatment or care.

(2A) In subsection (2), “the permitted period of detention” means—

(a) the period of 24 hours beginning with—

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(i) in a case where the person is removed to a place of safety, the time when the person arrives at that place;

(ii) in a case where the person is kept at a place of safety, the time when the constable decides to keep the person at that place; or

(b) where an authorisation is given in relation to the person under section 136B, that period of 24 hours and such further period as is specified in the authorisation.

(3) A constable, an approved mental health professional or a person authorised by either of them for the purposes of this subsection may, before the end of the permitted period of detention mentioned in subsection (2) above, take a person detained in a place of safety under that subsection to one or more other places of safety.

(4) A person taken to a place of a safety under subsection (3) above may be detained there for a purpose mentioned in subsection (2) above for a period ending no later than the end of the permitted period of detention mentioned in that subsection.

~~(5) This section is subject to section 136A which makes provision about the removal and taking of persons to a police station, and the keeping of persons at a police station, under this section.~~

### **136A Use of police stations as places of safety**

~~(1) A child may not, in the exercise of a power to which this section applies, be removed to, kept at or taken to a place of safety that is a police station.~~

~~(2) The Secretary of State may by regulations—~~

~~(a) provide that an adult may be removed to, kept at or taken to a place of safety that is a police station, in the exercise of a power to which this section applies, only in circumstances specified in the regulations;~~

~~(b) make provision about how adults removed to, kept at or taken to a police station, in the exercise of a power to which this section applies, are to be treated while at the police station, including provision for review of their detention.~~

~~(3) Regulations under this section—~~

~~(a) may make different provision for different cases;~~

~~(b) may make provision that applies subject to specified exceptions;~~

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~~(c) may include incidental, supplementary or consequential provision or transitional, transitory or saving provision.~~

~~(4) The powers to which this section applies are—~~

~~(a) the power to remove a person to a place of safety under a warrant issued under section 135(1);~~

~~(b) the power to take a person to a place of safety under section 135(3A);~~

~~(c) the power to remove a person to, or to keep a person at, a place of safety under section 136(1);~~

~~(d) the power to take a person to a place of safety under section 136(3).~~

~~(5) In this section—~~

~~(a) "child" means a person aged under 18;~~

~~(b) "adult" means a person aged 18 or over.~~

### **136B. Extension of detention**

(1) The registered medical practitioner who is responsible for the examination of a person detained under section 135 or 136 may, at any time before the expiry of the period of 24 hours mentioned in section 135(3ZA) or (as the case may be) 136(2A), authorise the detention of the person for a further period not exceeding 12 hours (beginning immediately at the end of the period of 24 hours).

(2) An authorisation under subsection (1) may be given only if the registered medical practitioner considers that the extension is necessary because the condition of the person detained is such that it would not be practicable for the assessment of the person for the purpose of section 135 or (as the case may be) section 136 to be carried out before the end of the period of 24 hours (or, if the assessment began within that period, for it to be completed before the end).

~~(3) If the person is detained at a police station, and the assessment would be carried out or completed at the station, the registered medical practitioner may give an authorisation under subsection (1) only if an officer of the rank of superintendent or above approves it.~~

*[Sections 136C to 142B are not affected by the amendments to be made by the Mental Health Bill and are not included in the Schedule]*

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### **142C Data protection**

- (1) This section applies to a duty or power to process information that is imposed or conferred by or under any provision of this Act.
- (2) A duty or power to which this section applies does not require or authorise the processing of information which would contravene the data protection legislation (but the duty or power is to be taken into account in determining whether the processing would contravene that legislation).
- (3) In this section “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).

### *Supplemental*

#### **143. General provisions as to regulations, orders and rules.**

(1) Any power of the Secretary of State or the Lord Chancellor to make regulations, orders or rules under this Act shall be exercisable by statutory instrument.

(2) The following are subject to annulment in pursuance of a resolution of either House of Parliament—

- (a) any Order in Council under this Act;
- (b) any order made by the Secretary of State under section 54A or 68A(7);
- (c) any statutory instrument containing regulations made by the Secretary of State under this Act, other than regulations made under section 48B(3) or 62ZB(1);
- (d) any statutory instrument containing rules made under this Act.

~~(2) Any Order in Council under this Act and any statutory instrument containing regulations made by the Secretary of State, or rules made, under this Act or any order made by the Secretary of State under section 54A or 68A(7) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.~~

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(3) No order shall be made by the Secretary of State under section 45A(10) , **71(3) or 75(2F)**, ~~68A(1) or 71(3)~~ above unless a draft of it has been approved by a resolution of each House of Parliament.

**(3ZA) A statutory instrument containing regulations under section 48B(3) or 62ZB(1) (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.**

(3A) Subsections (3B) to (3DB) apply where power to make regulations or an order under this Act is conferred on the Welsh Ministers (other than by or by virtue of the Government of Wales Act 2006).

(3B) Any power of the Welsh Ministers to make regulations or an order shall be exercisable by statutory instrument.

**(3BA) A statutory instrument containing regulations under section 62ZB(1) (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before and approved by a resolution of Senedd Cymru.**

(3C) Any statutory instrument containing regulations, ~~or an order under section 68A(7) above~~, made by the Welsh Ministers shall be subject to annulment in pursuance of a resolution of the National Assembly for Wales.

~~(3D) No order shall be made under section 68A(1) above by the Welsh Ministers unless a draft of it has been approved by a resolution of the National Assembly for Wales.~~

(3DA) Subsection (3C) does not apply to regulations to which subsection (3DB) applies.

(3DB) A statutory instrument which contains (alone or with other provisions) the first regulations to be made under any of the following provisions–

- (a) section 130E(2),
- (b) section 130E(4)(b),
- (c) section 130E(5)(b),
- (d) section 130F(2)(d),
- (e) section 130G(2)(c), or
- (f) section 130H(1)(b)(ii),

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must not be made unless a draft of the instrument containing the regulations has been laid before, and approved by resolution of, the National Assembly for Wales.

(3E) In this section—

(a) references to the Secretary of State include the Secretary of State and the Welsh Ministers acting jointly; and

(b) references to the Welsh Ministers include the Welsh Ministers and the Secretary of State acting jointly.

(4) This section does not apply to rules which are, by virtue of section 108 of this Act, to be made in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005.

#### **144. Power to amend local Acts.**

Her Majesty may by Order in Council repeal or amend any local enactment so far as appears to Her Majesty to be necessary in consequence of this Act.

#### **145. Interpretation.**

(1) In this Act, unless the context otherwise requires—

“absent without leave” has the meaning given to it by section 18 above and related expressions (including expressions relating to a patient's liability to be returned to a hospital or other place) shall be construed accordingly;

“application for admission for assessment” has the meaning given in section 2 above;

“appropriate medical treatment” is to be read in accordance with section 1A(a);

“the appropriate tribunal” has the meaning given by section 66(4) above;

“application for admission for treatment” has the meaning given in section 3 above;

“approved clinician” means a person approved by the Secretary of State or another person by virtue of section 12ZA or 12ZB above (in relation to England) or by the Welsh Ministers (in relation to Wales) to act as an approved clinician for the purposes of this Act ;

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“approved mental health professional” has the meaning given in section 114 above;

“autism” has the meaning given in section 1;

“care home” —

(a) has the same meaning as in the Care Standards Act 2000 in respect of a care home in England; and

(b) means a place in Wales at which a care home service within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 is provided wholly or mainly to persons aged 18 or over;

“community patient” has the meaning given in section 17A above;

“community treatment order” and “the community treatment order” have the meanings given in section 17A above;

“the community treatment period” has the meaning given in section 20A above;

“deprivation of liberty” and related expressions are to be construed in accordance with section 64(5) and (6) of the Mental Capacity Act 2005;

“high security psychiatric services” has the same meaning as in section 4 of the National Health Service Act 2006 or section 4 of the National Health Service (Wales) Act 2006;

“hospital” means—

(a) any health service hospital within the meaning of the National Health Service Act 2006 or the National Health Service (Wales) Act 2006; and

(b) any accommodation provided by a local authority and used as a hospital by or on behalf of the Secretary of State under that Act; and

(c) any hospital as defined by section 206 of the National Health Service (Wales) Act 2006 which is vested in a Local Health Board;

“hospital direction” has the meaning given in section 45A(3)(a) above;

“hospital within the meaning of Part II of this Act” has the meaning given in section 34 above;

“hospital order” and “guardianship order” have the meanings respectively given in section 37 above;



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“independent hospital” —

(a) in relation to England, means a hospital as defined by section 275 of the National Health Service Act 2006 that is not a health service hospital as defined by that section, and

(b) in relation to Wales, has the same meaning as in the Care Standards Act 2000;

“interim hospital order” has the meaning given in section 38 above;

“learning disability” has the meaning given in section 1;

“limitation direction” has the meaning given in section 45A(3)(b) above;

“Local Health Board” means a Local Health Board established under section 11 of the National Health Services (Wales) Act 2006;

“local social services authority” means—

(a) an authority in England which is a local authority for the purposes of Part 1 of the Care Act 2014, or

(b) a council in Wales which is a local authority for the purposes of the Local Authority Social Services Act 1970.

“the managers” means—

(a) in relation to a hospital vested in the Secretary of State for the purposes of his functions under the National Health Service Act 2006, or in the Welsh Ministers for the purposes of their functions under the National Health Service (Wales) Act 2006, and in relation to any accommodation provided by a local authority and used as a hospital by or on behalf of the Secretary of State under the National Health Service Act 2006, or of the Welsh Ministers under the National Health Service (Wales) Act 2006, the Secretary of State where the Secretary is responsible for the administration of the hospital or the Local Health Board or Special Health Authority responsible for the administration of the hospital;

(bb) in relation to a hospital vested in a National Health Service trust the trust

(bc) in relation to a hospital vested in an NHS foundation trust, the trust;

(bd) in relation to a hospital vested in a Local Health Board, the Board;

(c) in relation to a registered establishment—

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(i) if the establishment is in England, the person or persons registered as a service provider under Chapter 2 of Part 1 of the Health and Social Care Act 2008 in respect of the regulated activity (within the meaning of that Part) relating to the assessment or medical treatment of mental disorder that is carried out in the establishment, and

(ii) if the establishment is in Wales, the person or persons registered in respect of the establishment under Part 2 of the Care Standards Act 2000;

and in this definition “hospital” means a hospital within the meaning of Part II of this Act;

“medical treatment” includes nursing, psychological intervention and specialist mental health habilitation, rehabilitation and care **and references to medical treatment are to be read in accordance with section 1A(b)** ~~(but see also subsection (4) below);~~

“mental disorder” has the meaning given in section 1 above (subject to section 86(4));

~~“nearest relative”, in relation to a patient, has the meaning given in Part II of this Act;~~

**“nominated person”, in relation to a patient, means a person for the time being appointed by or for the patient under Schedule A1;**

“patient” means a person suffering or appearing to be suffering from mental disorder;

**“psychiatric disorder” has the meaning given in section 1;**

“registered establishment” has the meaning given in section 34 above;

“the regulatory authority” means–

(a) in relation to England, the Care Quality Commission;

(b) in relation to Wales, the Welsh Ministers;

“the responsible hospital” has the meaning given in section 17A above;

“restriction direction” has the meaning given to it by section 49 above;

“restriction order” has the meaning given to it by section 41 above;

**“serious behavioural consequences”, in relation to a person’s learning disability, is to be read in accordance with section 1(2A);**

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“Special Health Authority” means a Special Health Authority established under section 28 of the National Health Service Act 2006, or section 22 of the National Health Service (Wales) Act 2006;

“transfer direction” has the meaning given to it by section 47 above.

(1AA) Where high security psychiatric services and other services are provided at a hospital, the part of the hospital at which high security psychiatric services are provided and the other part shall be treated as separate hospitals for the purposes of this Act.

~~(1AB) References in this Act to appropriate medical treatment shall be construed in accordance with section 3(4) above.~~

(1AC) References in this Act to an approved mental health professional shall be construed as references to an approved mental health professional acting on behalf of a local social services authority, unless the context otherwise requires.

(3) In relation to a person who is liable to be detained or subject to guardianship or a community patient by virtue of an order or direction under Part III of this Act (other than under section 35, 36 or 38), any reference in this Act to any enactment contained in Part II of this Act or in section 66 or 67 above shall be construed as a reference to that enactment as it applies to that person by virtue of Part III of this Act.

~~(4) Any reference in this Act to medical treatment, in relation to mental disorder, shall be construed as a reference to medical treatment the purpose of which is to alleviate, or prevent a worsening of, the disorder or one or more of its symptoms or manifestations.~~

#### **146. Application to Scotland.**

Sections 42(6), 80, 116, 137, 139(1), 142, 143 (so far as applicable to any Order in Council extending to Scotland) and 144 above shall extend to Scotland together with any amendment or repeal by this Act of or any provision of Schedule 5 to this Act relating to any enactment which so extends; 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 Scotland.

#### **147. Application to Northern Ireland.**

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Sections 81, 82, 86, 87, 88 (and so far as applied by that section sections 18, 22 and 138), section 128 (except so far as it relates to patients subject to guardianship), 137, 139, 142, 143 (so far as applicable to any Order in Council extending to Northern Ireland) and 144 above shall extend to Northern Ireland together with any amendment or repeal by this Act of or any provision of Schedule 5 to this Act relating to any enactment which so extends; 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.

*[Sections 148 to 149 are not affected by the amendments to be made by the draft Mental Health Bill and are not included in the Schedule]*

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## SCHEDULE A1

### NOMINATED PERSON

#### PART 1

##### APPOINTMENT OF NOMINATED PERSON BY A PATIENT

###### *Right of patients etc to appoint nominated person*

- 1 A person (the “patient”) may appoint another person to act as their nominated person for the purposes of this Act.

###### *Who can be appointed by a patient as a nominated person?*

- 2 (1) A person is eligible to be appointed as a nominated person under this Part of this Schedule only if the person—
  - (a) is an individual who meets the age requirement (see sub-paragraph (2)), and
  - (b) is not disqualified by section 30B(6) (disqualification as a result of court order terminating previous appointment as a nominated person).

- (2) The table sets out the age requirement for a nominated person who is an individual.

Where the patient is:	The nominated person must be:
16 or over	16 or over
Under 16	18 or over

###### *Appointment formalities*

- 3 (1) The appointment of a nominated person under this Part of this Schedule is valid only if—
  - (a) the person is eligible to be appointed as a nominated person,

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(b) the appointment is made by an instrument in writing, and

(c) the requirements of sub-paragraph (2) are complied with in relation to the instrument.

(2) The instrument appointing the nominated person must—

(a) be signed by the patient in the presence of a health or care professional or independent mental health advocate (“the witness”),

(b) contain a statement, signed by the nominated person in the presence of the witness, that the nominated person—

(i) meets the age requirement (see paragraph 2(2)), and

(ii) agrees to act as the nominated person, and

(c) contain a statement, signed by the witness, that—

(i) the instrument was signed by the patient and the nominated person in the presence of the witness (whether or not at the same time),

(ii) the witness has no reason to think that the patient lacks capacity or competence to make the appointment,

(iii) the witness has no reason to think that the nominated person lacks capacity or competence to act as a nominated person,

(iv) the witness has no reason to think that any fraud or undue pressure has been used to induce the patient to make the appointment, and

(v) the witness has no reason to think that the nominated person is unsuitable to act as a nominated person.

#### *Duration of appointment*

4 The appointment of a nominated person under this Part of this Schedule ceases to have effect if—

(a) the nominated person dies;

(b) the patient appoints a different nominated person;

(c) the patient terminates the appointment under paragraph 5;

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(d) the nominated person resigns under paragraph 6;

(e) the county court terminates the appointment under section 30B;

#### *Termination of appointment by patient*

5 (1) The appointment of a nominated person under this Part of this Schedule may be terminated by the patient giving the nominated person written notice.

(2) The notice must be—

(a) signed by the patient in the presence of a health or care professional or independent mental health advocate (“the witness”), and

(b) contain a statement, signed by the witness, that—

(i) the notice was signed by the patient in the presence of the witness,

(ii) the witness has no reason to think that the patient lacks capacity or competence to terminate the appointment, and

(iii) the witness has no reason to think that any fraud or undue pressure has been used to induce the patient to terminate the appointment.

#### *Resignation of nominated person*

6 (1) A nominated person appointed under this Part of this Schedule may resign by giving written notice to the patient and at least one of the persons mentioned in sub-paragraph (2).

(2) The persons are—

(a) an approved mental health professional;

(b) the patient’s responsible clinician (if any);

(c) in relation to a patient who is—

(i) liable to be detained in pursuance of an application for admission for assessment or treatment,

(ii) the subject of an application for admission for assessment or treatment,  
or

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(iii) a community patient,

the relevant managers;

(d) in relation to a patient who is—

(i) subject to guardianship in pursuance of a guardianship application, or

(ii) the subject of a guardianship application,

the relevant local social services authority.

(3) The notice must be signed by the nominated person.

## PART 2

### APPOINTMENT OF NOMINATED PERSON BY AN APPROVED MENTAL HEALTH PROFESSIONAL

#### *Power of approved mental health professional to appoint nominated person*

7 (1) Where an approved mental health professional reasonably believes that a relevant patient—

(a) lacks capacity or is not competent to appoint a nominated person, and

(b) has not appointed a person under Part 1 of this Schedule to act as their nominated person,

the professional may appoint a person to act as the patient's nominated person for the purposes of this Act.

(2) In this Schedule "relevant patient" means a person—

(a) who is liable to be detained in pursuance of an application for admission for assessment or treatment,

(b) who is the subject of an application for admission for assessment or treatment,

(c) in relation to whom an approved mental health professional is considering making an application for admission for assessment or treatment,



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- (d) who is a community patient,
- (e) who is subject to guardianship in pursuance of a guardianship application,
- (f) who is the subject of a guardianship application, or
- (g) in relation to whom an approved mental health professional is considering making a guardianship application.

*Who can be appointed by an approved mental health professional as a nominated person?*

- 8 A person is eligible to be appointed as a nominated person under this Part of this Schedule only if the person—
- (a) is an individual who meets the age requirement (see paragraph 2(2)) or is a local authority, and
  - (b) is not disqualified by 30B(6) (disqualification as a result of court order terminating previous appointment as a nominated person).

*Selection of nominated person*

- 9 (1) This paragraph applies where an approved mental health professional is deciding who to appoint as a nominated person for a relevant patient who is aged 16 or over.
- (2) If the relevant patient has a competent donee or deputy who is willing to act as the nominated person, the approved mental health professional must appoint the donee or deputy.
- (3) In any other case, the approved mental health professional must, in deciding who to appoint, take into account the relevant patient's past and present wishes and feelings so far as reasonably ascertainable.
- (4) In this paragraph—
- (a) “donee” means a donee of a lasting power of attorney (within the meaning of section 9 of Mental Capacity Act 2005) created by the patient;
  - (b) “deputy” means a deputy appointed for the patient by the Court of Protection under section 16 of that Act;

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(c) a donee or deputy is “competent” if the scope of the authority conferred on them as donee or deputy would extend to taking decisions of the kind taken by a nominated person.

- 10 (1) This paragraph applies where an approved mental health professional is deciding who to appoint as a nominated person for a relevant patient who is aged under 16.
- (2) If a person within the following list is willing to act as the nominated person, the approved mental health professional must appoint such a person (giving preference to those mentioned in paragraph (a))—
- (a) a local authority with parental responsibility for the relevant patient;
  - (b) any other person who has parental responsibility for the relevant patient.
- (3) In any other case, the approved mental health professional must, in deciding who to appoint, take into account the relevant patient’s past and present wishes and feelings so far as reasonably ascertainable.
- (4) In this paragraph—
- (a) “deputy” means a deputy appointed for the patient by the Court of Protection under section 16 of that Act;
  - (b) a deputy is “competent” if the scope of the authority conferred on them as donee or deputy would extend to taking decisions of the kind taken by a nominated person.

#### *Appointment formalities*

- 11 The appointment of a nominated person by an approved mental health professional is valid only if—
- (a) the person is eligible to be appointed as a nominated person (see paragraph 8),
  - (b) the person agrees to act as the nominated person,
  - (c) the appointment is made by an instrument in writing and signed by the professional.

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### *Notification of appointment*

- 12 (1) Where an approved mental health professional appoints a nominated person under this Part of this Schedule, the professional must—
- (a) if the appointment relates to a relevant patient falling within paragraph 7(2)(a) to (d), notify the relevant managers;
  - (b) if the appointment relates to a relevant patient falling within paragraph 7(2)(e) to (g), notify the relevant local social services authority.
- (2) A person who is notified under sub-paragraph (1) of the appointment of a nominated person must take such steps as the person considers appropriate to inform the relevant patient of the appointment.

### *Duration of appointment*

- 13 The appointment of a nominated person under this Part of this Schedule ceases to have effect if—
- (a) the nominated person dies;
  - (b) an approved mental health professional appoints a different nominated person for the relevant patient;
  - (c) an approved mental health professional terminates the appointment under paragraph 14;
  - (d) the relevant patient terminates the appointment under paragraph 15;
  - (e) the nominated person resigns under paragraph 16;
  - (f) the county court terminates the appointment under section 30B;
  - (g) the relevant patient appoints a different nominated person under Part 1 of this Schedule;
  - (h) the person for whom the nominated person was appointed ceases to be a relevant patient.

### *Termination of appointment by approved mental health professional*

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- 14 (1) Where an approved mental health professional has appointed a nominated person for a relevant patient, an approved mental health professional may terminate the appointment by giving written notice to the nominated person and the patient.
- (2) The appointment may only be terminated on the grounds that—
- (a) the person lacks capacity to exercise the functions of a nominated person,
  - (b) the person is otherwise not a suitable person to act as the nominated person, or
  - (c) the relevant patient has regained capacity or competence to appoint a nominated person under Part 1 of this Schedule.
- (3) Where an approved mental health professional terminates the appointment of a nominated person under this Part of this Schedule, the professional must—
- (a) if the appointment relates to a relevant patient falling within paragraph 7(2)(a) to (d), notify the relevant managers;
  - (b) if the appointment relates to a relevant patient falling within paragraph 7(2)(e) to (g), notify the relevant local social services authority.

*Termination of appointment by relevant patient*

- 15 (1) The appointment of a nominated person under this Part of this Schedule may be terminated by the relevant patient giving the nominated person written notice.
- (2) The notice must be—
- (a) signed by the relevant patient in the presence of a health or care professional or independent mental health advocate (“the witness”), and
  - (b) contain a statement, signed by the witness, that—
    - (i) the notice was signed by the patient in the presence of the witness,
    - (ii) the witness has no reason to think that the patient lacks capacity or competence to terminate the appointment, and
    - (iii) the witness has no reason to think that any fraud or undue pressure has been used to induce the patient to terminate the appointment.

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### *Resignation of nominated person*

- 16 (1) A nominated person appointed by an approved mental health professional may resign by giving written notice to the patient and at least one of the persons mentioned in sub-paragraph (2).
- (2) The persons are—
- (a) an approved mental health professional;
  - (b) the relevant patient’s responsible clinician (if any);
  - (c) in relation to a relevant patient falling within paragraph 7(2)(a), (b) or (d), the relevant managers;
  - (d) in relation to a relevant patient falling within paragraph 7(2)(e) or (f), the relevant local social services authority.
- (3) The notice must be signed by the nominated person.

## **PART 3**

### **DEFINITIONS**

#### *“Health or care professional”*

- 17 In this Schedule “health or care professional” means—
- (a) a registered medical practitioner;
  - (b) a registered nurse or midwife;
  - (c) a person registered as a member of a profession to which the Health and Social Work Professions Order 2001 (S.I. 2002/254) for the time being extends;

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(d) a person registered as a social worker in the register maintained by Social Work England under section 39(1) of the Children and Social Work Act 2017;

(e) a person registered as a social worker in the register maintained by Social Care Wales under section 80 of the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2).

*“Independent mental health advocate”*

18 In this Schedule “independent mental health advocate”, in relation to a person appointing a nominated person, means an independent mental health advocate appointed under arrangements made under section 130A or 130E.

*“Capacity”*

19 In relation to a person who has attained the age of 16 years—

(a) references in this Schedule to lacking capacity are to lacking capacity within the meaning of the Mental Capacity Act 2005, and

(b) references in this Schedule to having, ceasing to have or gaining capacity are to be read accordingly.

*“Relevant managers”*

20 References in this Schedule to “the relevant managers” are—

(a) in relation to a patient who is liable to be detained under this Act in a hospital or registered establishment, the managers of the hospital or registered establishment;

(b) in relation to a patient who is the subject of an application for admission for assessment or treatment, the managers of the hospital or registered establishment to which admission is sought;

(c) in relation to a patient in relation to whom an approved mental health professional is considering making an application for admission for assessment or treatment, the managers of the hospital or registered establishment to which admission would be sought;

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(d) in relation to a community patient, the managers of the responsible hospital.

*“Relevant local social services authority”*

21 References in this Schedule to “the relevant local social services authority” are—

(a) in relation to a person who is subject to guardianship—

(i) where the patient is subject to the guardianship of a local social services authority, to that authority;

(ii) where the patient is subject to the guardianship of a person other than a local social services authority, to the local social services authority for the area in which that person resides;

(b) in relation to a person who is the subject of a guardianship application, or in relation to whom an approved mental health professional is considering making a guardianship application—

(i) where the application names or would name a local social services authority as guardian, to that authority;

(ii) where the application names or would name a person other than a local social services authority as guardian, to the local social services authority for the area in which the person named as guardian resides.

*“Relevant patient”*

22 In this Schedule “relevant patient” has the meaning given by paragraph 7(2).

## **SCHEDULE A2**

### **INTERIM REMAND PATIENTS FROM CHANNEL ISLANDS OR ISLE OF MAN: MODIFICATIONS OF THIS ACT**

*Modifications of section 35*

**KEELING SCHEDULE SHOWING AMENDMENTS TO BE MADE TO THE MENTAL HEALTH ACT 1983 BY THE MENTAL HEALTH BILL INTRODUCED INTO PARLIAMENT ON 6 NOVEMBER 2024. THIS SCHEDULE HAS BEEN PREPARED BY THE DEPARTMENT OF HEALTH AND SOCIAL CARE TO ASSIST THE READER IN REVIEWING THE CHANGES TO THE ACT THAT THE BILL WOULD EFFECT, AND HAS BEEN PRODUCED FOR ILLUSTRATIVE PURPOSES ONLY. WHILST EVERY EFFORT HAS BEEN MADE TO ENSURE ITS ACCURACY, IT HAS NOT BEEN SUBJECT TO LEGAL REVIEW AND SHOULD NOT BE RELIED ON AS SUCH. THE DEPARTMENT OF HEALTH AND SOCIAL CARE WOULD BE GRATEFUL IF READERS NOTIFY IT OF ANY ERRORS AND OMISSIONS.**

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- 1 (1) In relation to a patient who is treated by virtue of section 85(2) as admitted to hospital by virtue of an order made under section 35(1) (remand to hospital for report on accused's mental condition), section 35 applies with the modifications set out in this paragraph.
- (2) Subsection (2) is to be omitted.
- (3) References to an "accused person" are to be read as references to the patient referred to in sub-paragraph (1).
- (4) References to "the court" are to be read as references to whichever of—
- (i) the Crown Court, and
  - (ii) a magistrates' court,
- has functions most closely corresponding to those of the court under whose order or direction the patient was liable to be detained immediately before the patient's removal to England and Wales.
- (5) In subsection (5) for the words from the beginning to "him" there is to be substituted "The court may further remand an accused person".
- (6) After subsection (5) there is to be inserted—
- "(5A) The court may also further remand an accused person if it has been notified by the Secretary of State that—
- (a) the person is the subject of criminal proceedings in the Channel Islands or the Isle of Man, and
  - (b) the Secretary of State is considering exercising the power in section 83 in relation to the accused person."
- (7) For subsection (7) there is to be substituted—
- "(7) A remand under this section has effect for 28 days.
- (7A) Further periods of remand by the court may not be for more than 28 days at a time and an accused person may not be remanded for more than 12 weeks in all.
- (7B) Where the court further remands an accused person it must notify the Secretary of State of the period for which the person is further remanded.



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(7C) The court may at any time recommend to the Secretary of State that the accused person be returned to the island from which the person was removed.”

(8) In subsection (8), for “his remand to be terminated under subsection (7)” there is to be substituted “a recommendation to be made under subsection (7C)”.

(9) In subsection (10), the words from “that remanded him” to the end are to be omitted.

#### *Modifications of section 36*

2 (1) Section 36 (remand of accused person to hospital for treatment) applies -

(a) in relation to a patient who is treated by virtue of section 85(2) as admitted to hospital in pursuance of an order made under section 35(1) (remand to hospital for report on accused’s mental condition), with the modifications set out in sub-paragraphs (2) to (8);

(b) in relation to a patient who -

(i) was treated by virtue of section 85(2) as admitted to hospital in pursuance of an order made under section 35(1), and

(ii) is subsequently remanded under section 36(1) as it applies by virtue of paragraph (a)

with the modifications set out in sub-paragraphs (3) to (8);

(c) in relation to a patient who is treated by virtue of section 85(2) as admitted to hospital in pursuance of an order made under section 36(1), with the modifications set out in sub-paragraphs (3) to (8).

(2) In subsection (1), in the words before paragraph (a), for “, instead of remanding an accused person in custody, remand him” there is to be substituted “remand an accused person”

(3) Subsection (2) is to be omitted.

(4) References to an “accused person” are to be read as references to the patient referred to in sub-paragraph (1)(a), (b) or (c).

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(5) In subsection (4), for “warranted” there is to be substituted “warranted—

(a) because the court has been notified by the Secretary of State that—

- (i) the person is the subject of criminal proceedings in the Channel Islands or the Isle of Man, and
- (ii) the Secretary of State is considering exercising the power in section 83 in relation to the accused person, or

(b) for other reasons”.

(6) For subsection (6) there is to be substituted—

“(6) A remand under this section has effect for 28 days.

(6A) Further periods of remand by the court may not be for more than 28 days at a time and an accused person may not be remanded for more than 12 weeks in all.

(6B) Where the court further remands an accused person it must notify the Secretary of State of the period for which the person is further remanded.

(6C) The court may at any time recommend to the Secretary of State that the accused person be returned to the island from which the person was removed.”

(7) In subsection (7) for “his remand to be terminated under subsection (6)” there is to be substituted “a recommendation to be made under subsection (6C)”;

(8) Subsection (8) is to be read as applying subsection (10) of section 35 as modified by paragraph 1(9) of this Schedule.

#### *Modifications of section 38*

3 (1) In relation to a patient who is treated by virtue of section 85(2) as admitted to hospital by virtue of an order made under section 38(1) (interim hospital orders), section 38 applies with the modifications set out in this paragraph.

(2) Subsection (2) is to be omitted.

(3) References to “the court” are to be read as references to whichever of—

- (i) the Crown Court, and
- (ii) a magistrates’ court,

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has functions most closely corresponding to those of the court under whose order or direction the patient was liable to be detained immediately before the patient's removal to England and Wales.

(4) In subsection (5)—

(a) in paragraph (b), for “warranted” there is to be substituted “warranted—

(i) because the court has been notified by the Secretary of State that—

(A) the offender is the subject of criminal proceedings in the Channel Islands or the Isle of Man, and

(B) the Secretary of State is considering exercising the power in section 83 in relation to the offender, or

(ii) for other reasons”;

(b) in the words after paragraph (b), the words from “and” to the end are to be omitted.

(5) After subsection (5) there is to be inserted—

“(5A) Where the court renews the interim hospital order it must notify the Secretary of State of the period for which it is renewed.

(5B) The court may at any time recommend to the Secretary of State that the offender be returned to the island from which the offender was removed.”

(6) In subsection (7), the words from “that made the order” to the end are to be omitted.

#### *Modification of section 83*

- 4 In relation to a patient referred to in paragraph 1(1), 2(1) or 3(1), in section 83 (removal of patients to Channel Islands or Isle of Man), for “in the interests of the patient” there is to be substituted “appropriate”.

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

### PART 1

#### *Patients Not Subject to Special Restrictions*

1. Sections 9, 10, 17, **17AA, 17B, 17C** ~~to 17C, 17E, 17F, 20A, 21 to 21B, 26 to 28, 30A, 31, 32, 34, 67 and 76~~ shall apply in relation to the patient without modification.
2. Sections **17A, 17D to 17G** ~~17D, 17G, 18 to 19~~, 20, 20B, 22, 23, **30B**, 66 and 68, **Schedule A1** shall apply in relation to the patient with the modifications specified in paragraphs **2ZA** ~~2A to 11~~ ~~to~~ below (subject to any qualifications expressed in those paragraphs).

**2ZA** In section 17A -

(a) in subsection (5)(a), for “psychiatric disorder there is to be substituted “relevant disorder (within the meaning given by section 34A)”;

(b) in subsection (6), for “psychiatric disorder”, in both places it occurs, there is to be substituted “relevant disorder (within the meaning given by section 34A)”.

**2ZB** In section 17E, in subsection (1)(a), for “psychiatric disorder”, in both places it occurs, there is to be substituted “relevant disorder (within the meaning given by section 34A)”.

**2A** In section 17D(2)(a) for the reference to section 6(2) above there shall be substituted a reference to section 40(1)(b) below.

**2AA** In section 17F, after subsection (4) there is to be inserted -

“(4A) Section 3(2) as it applies for the purposes of subsection (4)(a) is to be read as if the reference to psychiatric disorder were a reference to relevant disorder (within the meaning given by section 34A).”

**2B** In section 17G—

(a) in subsection (2) for the reference to section 6(2) above there shall be substituted a reference to section 40(1)(b) below;

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(b) in subsection (4) for paragraphs (a) and (b) there shall be substituted the words the order or direction under Part 3 of this Act in respect of him were an order or direction for his admission or removal to that other hospital; and

(c) subsection (5) is to be omitted.

~~(c) in subsection (5) for the words from “the patient” to the end there shall be substituted the words the date of the relevant order or direction under Part 3 of this Act were the date on which the community treatment order is revoked~~

3 *[Repealed by the Mental Health Act 2007]*

4 In section 18 subsection (5) shall be omitted.

5. In ~~section 19(2)~~ **section 19**—

(a) **in subsection (2)** for the words from “as follows” to the end of the subsection there shall be substituted the words “as if the order or direction under Part III of this Act by virtue of which he was liable to be detained or subject to guardianship before being transferred were an order or direction for his admission or removal to the hospital to which he is transferred, or placing him under the guardianship of the authority or person into whose guardianship he is transferred, as the case may be”.

(b) **subsection (2A) is to be omitted**

5A In section 19A(2), paragraph (b) shall be omitted.

**5B (1) The modifications of section 20 made by this paragraph apply in relation to a patient transferred from guardianship to a hospital in pursuance of regulations made under section 19.**

**(2) In section 20(1)(a)—**

**(a) for “in pursuance of an application for admission for treatment” there is to be substituted “as a result of being transferred in pursuance of regulations under section 19”;**

**(b) for “admitted”, in the second place it occurs, there is to be substituted “transferred”.**

**(3) In section 20(4)(a), for “psychiatric disorder” there is to be substituted “relevant disorder (within the meaning given by section 34A)”.**

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5C (1) The modifications of section 20 made by this paragraph apply in relation to a patient in respect of whom a community treatment order was revoked under section 17F within the period of six months beginning with the date of the relevant order or direction under Part 3

(2) In section 20(1)(a)—

(a) for “application for admission for treatment” there is to be substituted “order or direction under Part 3 of this Act”;

(b) for “three months” there is to be substituted “six months”;

(c) for “day on which the patient was so admitted” there is to be substituted “day on which the community treatment order in respect of the patient was revoked”.

(3) In section 20(2)—

(a) in paragraph (a), for “three months” there is to be substituted “six months”;

(b) in paragraph (b), for “six months” there is to be substituted “one year”.

(4) In section 20(4)(a), for “psychiatric disorder” there is to be substituted “relevant disorder (within the meaning given by section 34A)”.

5D (1) The modifications of section 20 made by this paragraph apply in relation to a patient in respect of whom a community treatment order was revoked under section 17F after the end of the period of six months beginning with the date of the relevant order or direction under Part 3.

(2) In section 20(1)(a)—

(a) for “application for admission for treatment” there is to be substituted “order or direction under Part 3 of this Act”;

(b) for “day on which the patient was so admitted” there is to be substituted “day on which the community treatment order in respect of the patient was revoked”.

(3) In section 20(4)(a), for “psychiatric disorder” there is to be substituted “relevant disorder (within the meaning given by section 34A)”.

6 (1) The modifications of section 20 made by this paragraph apply in relation to a patient where none of paragraphs 5B to 5D applies.

(2) In section 20(1)—

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(a) in paragraph (a)—

(i) for “application for admission for treatment” there is to be substituted “order or direction under Part 3 of this Act”;

(ii) for “three months” there is to be substituted “six months”;

(iii) for “day on which the patient was so admitted” there is to be substituted “date of the relevant order or direction under Part 3 of this Act”;

(b) in paragraph (b)—

(i) for “a guardianship application” there is to be substituted “an order under Part 3 of this Act”;

(ii) for “day on which the guardianship application was accepted” there is to be substituted “date of the relevant order under Part 3 of this Act”.

(3) In section 20(2)—

(a) in paragraph (a), for “three months” there is to be substituted “six months”;

(b) in paragraph (b) for “six months” there is to be substituted “one year”.

(4) In section 20(4)(a), for “psychiatric disorder” there is to be substituted “relevant disorder (within the meaning given by section 34A)”.

6ZA In section 20A, after subsection (10) there is to be inserted -

“(11) Section 17A(5) as it applies for the purposes of subsection (4)(b) is to be read as if the reference to psychiatric disorder were a reference to relevant disorder (within the meaning given by section 34A).”

6. In section 20—

~~(a) in subsection (1) for the words from “day on which he was” to “as the case may be” there shall be substituted the words “date of the relevant order or direction under Part III of this Act”[.]<sup>1</sup>~~

7. In section 22 for references to an application for admission or a guardianship application there shall be substituted references to the order or direction under Part III of this Act by virtue of which the patient is liable to be detained or subject to guardianship.

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8. In section 23(2)—

- (a) in paragraph (a) the words “for assessment or” shall be omitted; and
- (b) in paragraphs (a) to (c) the references to the **nominated person** nearest relative shall be omitted.

**8ZA** In section 30B—

- (a) in subsection (2)(b) the reference to an approved mental health professional is to be read as a reference to the responsible clinician;
- (b) in subsection (3), paragraphs (a) and (b) are to be omitted.

8A *[Repealed by the Mental Health Act 2007]*

9 In section 66—

- (a) in subsection (1), paragraphs (a), (b), (c), (g) and (h), the words in parenthesis in paragraph (i) and **paragraphs (ia), (ib) and (ii)** ~~paragraph (ii)~~ shall be omitted; and
- (b) in subsection (2), paragraphs (a), (b), (c) and ~~(g)~~, and in paragraph (d) "~~(g)~~", **(d) and (g)** shall be omitted.

10 **(1)** In section 68—

- (a) in subsection (1) paragraph (a) shall be omitted; and
- (b) subsections (2) to (5) are to apply if—**
  - (i) the patient falls within paragraph (b) of subsection (1) as a result of being—**
    - (A) a patient who was transferred from guardianship to hospital in pursuance of regulations made under section 19, or**
    - (B) a patient in respect of whom a community treatment order was revoked, where the revocation took place after the end of the period of six months beginning with the date of the relevant order or direction under Part 3 of this Act, or**
  - (ii) the patient falls within paragraph (c) of subsection (1),**



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but otherwise are not to apply.

(2) In the application of subsections (2) to (5) of section 68 by virtue of sub-paragraph 1(b), those subsections apply as if the patient had been admitted to hospital in pursuance of an application for admission for treatment on the day on which the patient was transferred or the community treatment order was revoked.

~~(b) subsections (2) to (5) shall apply if the patient falls within paragraph (e) of subsection (1), but not otherwise.~~

11 In Schedule A1, references to an approved mental health professional are to be read as references to the responsible clinician.

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## PART II

### PATIENTS SUBJECT TO SPECIAL RESTRICTIONS

1. Sections 30A, 32 and 76 shall apply in relation to the patient without modification.
2. Sections 17, 18, 19, 22, 23, 30B and 34 and Schedule A1 shall apply in relation to the patient with the modifications specified in paragraphs 3 to 9 & below.
3. In section 17—
  - (a) in subsection (1) after the word “may” there shall be inserted the words “with the consent of the Secretary of State”;
  - (aa) subsections (2A) and (2B) shall be omitted;
  - (b) in subsection (4) after the words “the responsible clinician” and after the words “that clinician” there shall be inserted the words “or the Secretary of State”; and
  - (c) in subsection (5) after the word “recalled” there shall be inserted the words, and for the words from “he has ceased” to the end of the subsection there shall be substituted the words “the expiration of the period of twelve months beginning with the first day of his absence on leave”.
4. In section 18 there shall be omitted—
  - (a) in subsection (1) the words “subject to the provisions of this section”; and
  - (b) subsections (3), (4) and (5).
5. In section 19—
  - (a) in subsection (1) after the word “may” in paragraph (a) there shall be inserted the words “with the consent of the Secretary of State”, and the words from “or into” to the end of the subsection shall be omitted;
  - (b) in subsection (2) for the words from “as follows” to the end of the subsection there shall be substituted the words “as if the order or direction under Part III of this Act by virtue of which he was liable to be detained before being transferred were an order or direction for his admission or removal to the hospital to which he is transferred” and;

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(ba) subsection (2A) is to be omitted;

(c) in subsection (3) after the words "may at any time" there shall be inserted the words, ", with the consent of the Secretary of State," and

(d) in subsection (3A), after paragraph (a) there is to be inserted—

“(za) is inappropriate.”.

6 In section 22, subsections (1) and (5) shall not apply.

7. In section 23—

(a) in subsection (1) references to guardianship shall be omitted and after the word “made” there shall be inserted the words “with the consent of the Secretary of State and” and

(b) in subsection (2)—

(i) in paragraph (a) the words “for assessment or” and “or by **the patient’s nominated person** ~~the nearest relative of the patient~~” shall be omitted; and

(ii) paragraph (b) shall be omitted.

7A. In section 30B—

(a) in subsection (2)(b) the reference to an approved mental health professional is to be read as a reference to the responsible clinician;

(b) in subsection (3), paragraphs (a) to (c) are to be omitted.

8. In section 34, in subsection (1) the definition of “the nominated medical attendant” and subsection (3) shall be omitted.

9 In Schedule A1, references to an approved mental health professional are to be read as references to the responsible clinician.

*[Schedules 2 to 4, and all bar 1 paragraph of Schedule 5 are not affected by the amendments to be made by the draft Mental Health Bill and are not included in the Schedule]*

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## Schedule 5

### TRANSITIONAL AND SAVING PROVISIONS

9. (1) .....

~~(2)Section 20(2) of this Act shall have effect in relation to any authority renewed before 1st October 1983 with the substitution for the words “six months” of the words “one year”.~~

(2)Section 20(2) of this Act shall have effect in relation to any authority renewed before 1st October 1983 with the substitution for the words “six months” of the words “ one year ” and for the words “one year” in both places they occur of the words “ two years ”.