





# Mental Health Act 2007

## CHAPTER 12

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# Mental Health Act 2007

## 2007 CHAPTER 12

An Act to amend the Mental Health Act 1983, the Domestic Violence, Crime and Victims Act 2004 and the Mental Capacity Act 2005 in relation to mentally disordered persons; to amend section 40 of the Mental Capacity Act 2005; and for connected purposes. [19th July 2007]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART 1

#### AMENDMENTS TO M

- (a) those of “severe mental impairment” and “severely mentally impaired”,
  - (b) those of “mental impairment” and “mentally impaired”, and
  - (c) that of “psychopathic disorder”.
- (4) Schedule 1 (which contains further amendments to the 1983 Act and amendments to other Acts) has effect.

## **2 Learning disability**

- (3) In that section, after subsection (3) insert—
  - “(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) In section 20 (renewal of authority to detain), in subsection (4)—
  - (a) omit paragraph (b) (and the word “and” at the end of that paragraph),
  - (b) after paragraph (c) insert “and
    - (d) appropriate medical treatment is available for him.”,
    - and
  - (c) omit the words from “but, in the case of mental illness” to the end.
- (5) In section 37(2) (conditions for exercise of powers of court to order hospital admission or guardianship), in paragraph (a)(i), for the words from “, in the case of psychopathic disorder” to the end substitute “appropriate medical treatment is available for him; or”.
- (6) In section 45A(2) (conditions for exercise of powers of court to direct hospital admission), for paragraph (c) substitute—
  - “(c) that appropriate medical treatment is available for him.”
- (7) In section 47(1) (conditions for exercise of Secretary of State’s powers to direct removal to hospital), in paragraph (b), for the words from “and, in the case of psychopathic disorder” to the end substitute “; and
  - (c) that appropriate medical treatment is available for him;”.
- (8) In section 72—
  - (a) in subsection (1)(b) (powers of tribunal to direct discharge of patient



- (4) In section 51(6)(a) (further power to make hospital order) after sub-paragraph (i) (inserted by Schedule 1 to this Act) insert “and
- (ii) appropriate medical treatment is available for him; and”.

*Medical treatment*

**6 Appropriate treatment test in Part 4 of 1983 Act**

- (1) Part 4 of the 1983 Act (consent to treatment) is amended as follows.
- (2) In the following provisions, for the words from “, having regard to” to the end substitute “it is appropriate for the treatment to be given.”—
- (a) section 57(2)(b) (certification of second opinion where treatment requires consent and a second opinion), and
- (b) section 58(3)(b) (certification of second opinion where treatment requires consent or a second opinion).
- (3) In section 64 (supplementary provisions for Part 4), after subsection (2) insert—
- “(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.”

**7 Change in definition of “medical treatment”**

- (1) Section 145 of the 1983 Act is amended as follows.
- (2) In subsection (1), in the definition of “medical treatment”, for the words from “and also” to the end substitute “psychological intervention and specialist mental health habilitation, rehabilitation and care (but see also subsection (4) below);”.
- (3) After subsection (3) insert—
- “(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.”

*Fundamental principles*

**8 The fundamental principles**

After section 118(2) of the 1983 Act (code of practice) insert—

- “(2A) The code shall include a statement of the principles which the Secretary of State thinks should inform decisions under this Act.
- (2B) 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,
  - (h) patient wellbeing and safety, and
  - (i) public safety.
- (2C) The Secretary of State 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) shall have regard to the code.”

## CHAPTER 2

### PROFESSIONAL ROLES

#### *Approved clinicians and responsible clinicians*

#### 9 Amendments to Part 2 of 1983 Act

- (1) Part 2 of the 1983 Act (compulsory admission to hospital and guardianship) is amended as follows.
- (2) In section 5 (application in respect of patient already in hospital)—
  - (a) in subsection (2), after “registered medical practitioner” insert “or approved clinician”,
  - (b) for subsection (3) substitute—
    - “(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.”, and
  - (c) in subsection (4), after “a practitioner”, in each place, insert “or clinician”.
- (3) In section 17 (leave of absence)—
  - (a) in subsection (1)—

- (i) for “responsible medical officer” substitute “responsible clinician”, and
    - (ii) for “that officer” substitute “that clinician”,
  - (b) in subsection (3), for “responsible medical officer” substitute “responsible clinician”, and
  - (c) in subsection (4)—
    - (i) for “responsible medical officer” substitute “responsible clinician”, and
    - (ii) for “that officer” substitute “that clinician”.
- (4) In section 20 (duration of authority)—
  - (a) in subsections (3) and (5), for “responsible medical officer” substitute “responsible clinician”,
  - (b) after subsection (5) insert—
    - “(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.”,
  - (c) in subsection (6), for “appropriate medical officer” substitute “appropriate practitioner”, and
  - (d) omit subsection (10).
- (5) In section 21B (patients who are taken into custody or return after more than 28 days)—

substitute—

“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 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;”.

## 10 Amendments to Part 3 of 1983 Act

- (1) Part 3 of the 1983 Act (patients concerned in criminal proceedings) is amended as follows.
- (2) In section 35 (remand to hospital for report)—
  - (a) in subsections (4) and (5), for “registered medical practitioner” substitute “approved clinician”, and
  - (b) in subsection (8), after “registered medical practitioner” insert “or approved clinician”.
- (3) In section 36 (remand to hospital for treatment)—
  - (a) in subsection (3), for “registered medical practitioner who would be in charge of his treatment” substitute “approved clinician who would have overall responsibility for his case”,
  - (b) in subsection (4), for “responsible medical officer” substitute “responsible clinician”, and
  - (c) in subsection (7), after “registered medical practitioner” insert “or approved clinician”.
- (4) In section 37 (hospital and guardianship orders), in subsection (4), for “registered medical practitioner who would be in charge of his treatment” substitute “approved clinician who would have overall responsibility for his case”.
- (5) In section 38 (interim hospital orders)—
  - (a) in subsection (4), for “registered medical practitioner who would be in charge of his treatment” substitute “approved clinician who would have overall responsibility for his case”, and
  - (b) in subsection (5), for “responsible medical officer”, in each place, substitute “responsible clinician”.
- (6) In section 41 (power of courts to restrict discharge from hospital), in subsections (3)(c) and (6), for “responsible medical officer” substitute “responsible clinician”.
- (7) In section 44(2) (person who is to give evidence in connection with committal to hospital), for “registered medical practitioner who would be in charge of the offender’s treatment” substitute “approved clinician who would have overall responsibility for the offender’s case”.
- (8) In section 45A(5) (person who is to give evidence in connection with hospital or limitation direction), for “registered medical practitioner who would be in



means the approved clinician with overall responsibility for the patient's case."

- (8) In Part 2 of Schedule 1 (modifications in relation to patients subject to special restrictions), in paragraph 3—
- (a) in paragraph (b), for "the responsible medical officer" and after the words "that officer" substitute "the responsible clinician" and after the words "that clinician", and
  - (b) in paragraph (c), for "by the responsible medical officer" substitute "by the responsible clinician".

## **12 Amendments to Part 4 of 1983 Act**

- (1) Part 4 of the 1983 Act (consent to treatment) is amended as follows.
- (2) In section 57 (requirements as to certification for treatment requiring consent and a second opinion)—
- (a) in subsection (2)(a), for "responsible medical officer" substitute "responsible clinician (if there is one) or the person in charge of the treatment in question", and
  - (b) in subsection (3), for the words from "and of those persons" to the end substitute "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."
- (3) In section 58 (requirements as to certification for treatment requiring consent or a second opinion)—
- (a) in subsection (3)—
    - (i) in paragraph (a), for "responsible medical officer" substitute "approved clinician in charge of it", and
    - (ii) in paragraph (b), for "responsible medical officer" substitute "responsible clinician or the approved clinician in charge of the treatment in question", and
  - (b) in subsection (4), for the words from "and of those persons" to the end substitute "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."
- (4) In section 61 (review of treatment)—
- (a) in subsection (1)—
    - (i) for "by the responsible medical officer" substitute "by the approved clinician in charge of the treatment", and
    - (ii) in paragraph (a), for "responsible medical officer" substitute "responsible clinician",
  - (b) in subsection (2)(b), for "responsible medical officer" substitute "responsible clinician",
  - (c) in subsection (3), omit the words "to the responsible medical officer", and

- (d) after that subsection insert—
- “(3A) The notice under subsection (3) above shall be given to the approved clinician in charge of the treatment.”
- (5) In section 62(2) (exception to discontinuance of treatment), for “responsible medical officer” substitute “approved clinician in charge of the treatment”.

- (5) In section 145 (general interpretation), in subsection (1), insert the following definition at the appropriate place—
- “approved clinician” means a person approved by the Secretary of State (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;”.

## **15 Amendments to other Acts**



**16 Certain registered medical practitioners to be treated as approved under section 12 of 1983 Act**

In section 12 of the 1983 Act (general provisions as to medical recommendations), after subsection (2) insert—

“(2A) A registered medical practitioner who is an approved clinician shall be

- (c) the conditions subject to which such approvals are to be given; and
  - (d) the factors to be taken into account in determining whether persons have appropriate competence as mentioned in subsection (3) above.
- (6) Provision made by virtue of subsection (5)(b) above may relate to courses approved or provided by such person as may be specified in the regulations (as well as to courses approved under section 114A below).
- (7) An approval by virtue of subsection (6) above may be in respect of a course in general or in respect of a course in relation to a particular person.
- (8) The power to make regulations under subsection (4) above includes power to make different provision for different cases or areas.
- (9) In this section “the appropriate national authority” means—
  - (a) in relation to persons who are or wish to become approved to act as approved mental health professionals by a local social services authority whose area is in England, the Secretary of State;
  - (b) in relation to persons who are or wish to become approved to act as approved mental health professionals by a local social

services authority whose area is in England, the General Social Care Council;

- (5) After that section insert—

**“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;





*Consent to treatment*

**27 Electro-convulsive therapy, etc.**

After section 58 of the 1983 Act insert—

**“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 62 below, a patient shall be not be given any form of treatment to which this section applies unless he falls within subsection (3), (4) or (5) below.

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) in subsection (3)—
  - (i) for “or 58(3)(b)” substitute “, 58(3)(b) or 58A(4) or (5)”, and



provided by a person who is independent of any person who is professionally concerned with the patient's medical treatment.

- (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—
  - (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.



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) Where a patient who is a qualifying 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.
- (5) References to the appropriate national authority are—
  - (a) in relation to a qualifying patient in England, to the Secretary of State;
  - (b) in relation to a qualifying patient in Wales, to the Welsh Ministers.
- (6) For the purposes of subsection (5) above—
  - (a) a qualifying patient falling within subsection (2)(a) above is to

- (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;
  - (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



- (2) A detained patient is a patient who is liable to be detained in a hospital



- (a) ensuring that the patient receives medical treatment;
  - (b) preventing risk of harm to the patient's health or safety;
  - (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 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.
- (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.

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

**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 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.
- (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.

- (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

- (4) Within the period of two months ending on the day on which the order



- (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

- (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.”

### 35 Authority to treat

- (1) After Part 4 of the 1983 Act, insert the following Part—

#### “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 mental disorder from which the patient is suffering;
- and
- (b) is not a form of treatment to which section 57 above applies.

#### 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
  - (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.





- (9) Subsection (3) of section 62 above applies for the purposes of this section as it applies for the purposes of that section.

#### **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
  - (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



- (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—
  - (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









- (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



- (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 Ministers.”
- (4) In section 71 (references by Secretary of State concerning restricted patients), after subsection (3) insert—
- “(3A) An order under subsection (3) above may include such transitional, consequential, incidental or supplemental provision as the Secretary of State thinks fit.”
- (5) In section 143 (general provisions as to regulations, orders and rules)—
- (a) in subsection (2)—
    - (i) after “order made” insert “by the Secretary of State”, and
    - (ii) after “54A” insert “or 68A(7)”, and
  - (b) in subsection (3)—
    - (i) after “made” insert “by the Secretary of State”, and
    - (ii) for “68(4)” substitute “68A(1)”.
- (6) In Part 1 of Schedule 1 to that Act (application of certain provisions to patients subject to hospital and guardianship orders: patients not subject to special restrictions)—
- (a) in paragraph 2—
    - (i) for “and 66” substitute “, 66 and 68”, and
    - (ii) for “to 9” substitute “to 10”, and
  - (b) after paragraph 9 insert—
 

“10 In section 68—

    - (a) in subsection (1) paragraph (a) shall be omitted; and
    - (b) subsections (2) to (5) shall apply if the patient falls within paragraph (e) of subsection (1), but not otherwise.”

### 38 Organisation

- (1) The 1983 Act is amended as follows.
- (2) In section 65 (Mental Health Review Tribunals), for subsections (1) to (1C) substitute—
- “(1) There shall be—
- (a) a Mental Health Review Tribunal for England; and
  - (b) a Mental Health Review Tribunal for Wales.
- (1A) The purpose of the Mental Health Review Tribunals is to deal with applications and references by and in respect of patients under the provisions of this Act.”
- (3) In section 78 (procedure of tribunals)—
- (a) in subsections (2)(a) and (k) and (6), for “chairman” substitute “President”,



of safety in, England and Wales by a person authorised in that behalf by the direction or condition.”

- (2) Schedule 5 (which contains amendments to Part 6 of the 1983 Act and related amendments) has effect.

## CHAPTER 7

### RESTRICTED PATIENTS

#### 40 Restriction orders

- (1) In section 41(1) of the 1983 Act (restriction orders) omit the words “, either without limit of time or during such period as may be specified in the order”.
- (2) In section 42(4)(b) of the 1983 Act (powers in respect of patients subject to restriction orders) omit the words from “, and, if the restriction order was made for a specified period,” to the end.
- (3) In the following provisions omit the words “, made without limitation of time”—
  - (a) section 44(3) of the 1983 Act (committal to hospital),
  - (b) section 84(2) of the 1983 Act (removal from Islands), and
  - (c) section 10(3)(a) of the Colonial Prisoners Removal Act 1884 (c. 31) (criminal lunatics).
- (4) In section 81(7) of the 1983 Act (removal to Northern Ireland: expiry of restriction order or direction) omit (in each place) “restriction order or”.
- (5) In section 81A(3) of the 1983 Act (transfer of responsibility for patient to Northern Ireland: expiry of restriction order or direction)—
  - (a) omit (in each place) “restriction order or”, and
  - (b) omit “order or”.
- (6) In section 91(2) of the 1983 Act (patients removed from England and Wales: revival of order on return) omit the words “at any time before the end of the period for which those orders would have continued in force”.
- (7) But subsections (3) to (6) shall have no effect in respect of—
  - (a) a restriction order for a specified period made before subsection (1) comes into force, or
  - (b) an order made outside England and Wales which is treated under the 1983 Act as if it were a restriction order for a specified period.

#### 41 Conditionally discharged patients subject to limitation directions

In section 75(3) of the 1983 Act (power of Mental Health Review Tribunal to direct that restriction order, etc. is to cease to have effect)—

- (a) in paragraph (b), after “restriction order”, insert “, limitation direction”, and
- (b) after “hospital order”, insert “, hospital direction”.

## CHAPTER 8

### MISCELLANEOUS

**42 Offence of ill-treatment: increase in maximum penalty on conviction on indictment**

In section 127 of the 1983 Act (ill-treatment or wilful neglect of patients), in subsection (3)(b), for “two years” substitute “five years”.

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 period of 72 hours mentioned in that subsection.”

#### **45 Delegation of powers of managers of NHS foundation trusts**

- (1) In section 23(6) of the 1983 Act (delegation of NHS foundation trust’s power to discharge patients), for the words from “non-executive directors” to the end substitute “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.”
- (2) In section 32(3) of the 1983 Act (power to make provision about how hospital managers’ functions under Part 2 of that Act are to be exercised), after “23(4)” insert “and (6)”.
- (3) After section 142A of the 1983 Act (inserted by section 17 of this Act), insert—
- “142B Delegation of powers of managers of NHS foundation trusts**
- (1) The constitution of an NHS foundation trust may not provide for a function under this Act to be delegated otherwise than in accordance with provision made by or under this Act.

(3) After subsection (3) insert—

- “(3A) Subsections (3B) to (3D) 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.
- (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.



- (a) a welfare order includes provision which authorises a person to be deprived of his liberty, and
  - (b) that person becomes ineligible to be deprived of liberty by this Act,

the provision ceases to have effect for as long as the person remains ineligible.
- (3) Nothing in subsection (2) affects the power of the court under section 16(7) to vary or discharge the welfare order.
- (4) For the purposes of this section—
  - (a) Schedule 1A applies for determining whether or not P is ineligible to be deprived of liberty by this Act;
  - (b) “welfare order” means an order under section 16(2)(a).”
- (4) Omit the following provisions (which make specific provision about deprivation of liberty)—
  - (a) section 6(5);
  - (b) section 11(6);
  - (c) section 20(13).
- (5) Schedule 7 (which inserts the new Schedule A1 into the Mental Capacity Act 2005 (c. 9)) has effect.
- (6) Schedule 8 (which inserts the new Schedule 1A into the Mental Capacity Act 2005) has effect.
- (7) Schedule 9 (which makes other amendments to the Mental Capacity Act 2005 and to other Acts) has effect.
- (8) In subsection (9)—



- (12) Subject to that, a relevant statutory instrument is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (13) In subsections (11) and (12) “relevant statutory instrument” means a statutory instrument containing subordinate legislation made in exercise of a function transferred as mentioned in subsection (10).

**51 Amendment to section 20(11) of Mental Capacity Act 2005**

In section 20 of the Mental Capacity Act 2005 (c. 9) (restrictions on deputies), in subsection (11)(a), for “or” substitute “and”.

**PART 3**

GENERAL

**52 Meaning of “1983 Act”**

In this Act “the 1983 Act” means the Mental Health Act 1983 (c. 20).

**53 Transitional provisions and savings**

Schedule 10 (which contains transitional provisions and savings) has effect.

**54 Consequential provisions**

- (1) The Secretary of State may by order made by statutory instrument make supplementary, incidental or consequential provision for the purposes of, in consequence of, or for giving full effect to a provision of this Act.
- (2) An order under subsection (1) may, in particular—
  - (a) amend or repeal any provision of an Act passed before, or in the same Session as, this Act;
  - (b) amend or revoke any provision of subordinate legislation made before the passing of this Act;
  - (c) include transitional or saving provision in connection with the coming into force of provision made by the order.
- (3) In relation to provision which deals with matters with respect to which

- (6) A statutory instrument containing any other order under subsection (1) made by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) A statutory instrument containing an order under subsection (1) made by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (8) In subsection (2), “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30).

- (a) a Primary Care Trust or Local Health Board to secure that the patient is examined by a registered medical practitioner of a description specified in the order;
  - (b) the registered medical practitioner to examine the patient with a view to making a decision about his case by reference to criteria specified in the order.
- (3) The order may require the registered medical practitioner, having complied with provision made by virtue of subsection (2)(b)—
  - (a) to discharge the patient,

- (9) A reference in this section to section 36 includes the amendments and repeals in Schedules 3 and 11 consequential on that section.
- (10) An expression used in this section and in the 1983 Act has the same meaning in this section as it has in that Act.

**58 Extent**

- (1) The provisions of this Act which amend other enactments have the same extent as the enactments which they amend.
- (2) But subsection (1) is subject to—
  - (a) paragraph 35 of Schedule 3,
  - (b) paragraphs 3, 4 and 20 of Schedule 5, and
  - (c) paragraph 12 of Schedule 9.
- (3) Section 54 extends to the United Kingdom.

**59 Short title**

This Act may be cited as the Mental Health Act 2007.

## SCHEDULES

### SCHEDULE 1

Section 1

#### CATEGORIES OF MENTAL DISORDER: FURTHER AMENDMENTS ETC

#### PART 1

- 8        In section 38(1) (conditions for exercise of power to make interim hospital order), in paragraph (a), for “mental illness, psychopathic disorder, severe

- (a) after “House of Commons is authorised to be detained” insert “under a relevant enactment”, and
  - (b) for “mental illness” substitute “mental disorder”.
- (3) In subsection (4)—
- (a) for “mental illness” substitute “mental di—







- 5 (1) Section 13 (the title to which becomes “Duty of approved mental health professionals to make applications for admission or guardianship”) is amended as follows.
- (2) For subsection (1) substitute—
- “(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 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.”
- (3) In subsection (2), for “approved social worker” substitute “approved mental health professional”.
- (4) For subsection (3) substitute—
- “(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.”
- (5) In subsection (4)—
- (a) for the words from “direct” to “above” substitute “make arrangements under subsection (1) above for an approved mental health professional to consider the patient’s case”, and
- (b) for “that approved social worker” substitute “that professional”.
- (6) In subsection (5)—
- (a) for “approved social worker”, in each place, substitute “approved mental health professional”, and

- (b) after “the power of” insert “a local social services authority to make arrangements with an approved mental health professional to consider a patient’s case or of”.
- 6 In section 14 (social reports), for “a social worker” substitute “an approved mental health professional”.
- 7 In the following provisions, for “approved social worker” substitute “approved mental health professional”—
- (a) section 18(1) (return of patients absent without leave),
  - (b) section 21B(3)(b) (consultation before furnishing report),
  - (c) section 29(2)(c) (application for appointment of acting nearest relative),
  - (d) section 30(2) (application for variation of orders under section 29),
  - (e) section 40(1)(a) (power to convey patient),
  - (f) section 87(1) (power to take Northern Ireland patient into custody),
  - (g) section 88(3) (power to take England and Wales patient into custody), in the first place it occurs, and
  - (h) section 89(1) (power to take Channel Islands or Isle of Man patient into custody).
- 8 For section 115 substitute—
- “115 Powers of entry and inspection**
- (1) An approved mental health professional may at all reasonable times enter and inspect any premises (other than a hospital) in which a mentally disordered patient is living, if he has reasonable cause to believe that the patient is not under proper care.
  - (2) The power under subsection (1) above shall be exercisable only after the professional has produced, if asked to do so, some duly authenticated document showing that he is an approved mental health professional.”
- 9 In section 118(1)(a) (application of code of practice), for “approved social workers” substitute “approved mental health professionals”.
- 10 In the following provisions, for “approved social worker” substitute “approved mental health professional”—
- (a) section 135(1) and (4) (warrant to search for and remove patient),
  - (b) section 136(2) (detention of person removed to a place of safety), and
  - (c) section 138(1)(a) (retaking of patients escaping from custody).
- 11 (1) Section 145 (interpretation) is amended as follows.
- (2) In subsection (1), for the definition of “approved social worker” substitute—

## SCHEDULE 3

Section 32

## SUPERVISED COMMUNITY TREATMENT: FURTHER AMENDMENTS TO 1983 ACT

- 1 The 1983 Act is amended as follows.

*Application in respect of patient already in hospital*

- 2 In section 5 (application in respect of patient already in hospital), in subsection (6) after “this Act”, in each place, insert “or a community patient”.

*Return of patients absent without leave*

- 3 (1) Section 18 (return and readmission of patients absent without leave) is amended as follows.

- (2) After subsection (2) insert—

“(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.”

- (3) In subsection (4)—

- (a) in paragraph (b), after “guardianship” insert “or, in the case of a community patient, the community treatment order is in force”, and  
(b) omit the words from “and, in determining” to the end.

- (4) After subsection (4) insert—

“(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) After subsection (6) insert—

“(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.”

*Assignment of responsibility for community patients*

4 After section 19 insert—

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

*Renewal of authority to detain patients*

5 In section 20 (duration of authority)—

- (a) in subsection (2), after “discharged” insert “under section 23 below”, and
- (b) in subsections (3) and (6), after “discharge the patient” insert “under section 23 below”.

*Special provisions as to patients absent without leave*

6 (1) Section 21 (special provisions as to patients absent without leave) is amended as follows.

(2) In subsection (1)—

- (a) in paragraph (a), after “Act” insert “or, in the case of a community patient, the community treatment order would cease to be in force”, and
- (b) after “liable or subject” insert “, or the order shall not cease to be in force,”.

(3) After subsection (3) (inserted by section 37 of this Act) insert—

- “(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.”

7 In section 21A (patients who are taken into custody or return within 28 days), after subsection (3) insert—

“(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.”



- (a) a qualifying patient is detained in custody in pursuance of



(b) sections 21 and 21A above shall apply as if he had absented



*Regulations for purposes of Part 2*

- (a) after paragraph (c) insert—
    - “(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;”,
    - and
  - (b) after paragraph (f) insert—
    - “(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;”.
- (4) After subsection (2) insert—





*Duty to give information*

29 In section 132 (duty of managers of hospitals to give information to detained patients), in subsection (2) for “nursing home” substitute “establishment”.

30 After section 132 insert—

**“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 Mental Health Review Tribunal are available to him in that capacity;

and those steps shall be taken as soon as practicable after the patient becomes a community 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 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.”

31 In section 133 (duty of managers of hospitals to inform nearest relatives of discharge), after subsection (1) insert—

“(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 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.”

*Retaking of patients escaping from custody*

32 In section 138 (retaking of patients escaping from custody), in subsection (1)(b) after “under this Act,” insert “or a community patient who was recalled to hospital under section 17E above,”.

*Members of Parliament suffering from mental disorder*

33 In section 141 (Members of Parliament suffering from mental disorder), after subsection (6B) (inserted by Schedule 1 to this Act) insert—

“(6C) References in this section to a member who is authorised to be detained shall not include a member who is a community patient (whether or not he is recalled to hospital under section 17E above).”

*Interpretation*

- 34 (1) Section 145 (interpretation) is amended as follows.
- (2) In subsection (1), in the definition of “absent without leave”, after “related expressions” insert “(including expressions relating to a patient’s liability to be returned to a hospital or other place)”.
- (3) In that subsection, at the appropriate places insert—
- ““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;”
  - ““the responsible hospital” has the meaning given in section 17A above;”.
- (4) In subsection (3), after “guardianship” insert “or a community patient”.



- (5) After paragraph 5 insert—
- “5A In section 19A(2), paragraph (b) shall be omitted.”
- (6) After paragraph 6 insert—
- “6A In section 20B(1), for the reference to the application for admission for treatment there shall be substituted a reference to the order or direction under Part 3 of this Act by virtue of which the patient is liable to be detained.”
- (7) In paragraph 8(b), for “and (b)” substitute “to (c)”.
- 37 (1) Part 2 of that Schedule (patients subject to special restrictions) is amended as follows.
- (2) In paragraph 2, for “17 to 19” substitute “17, 18, 19”.
- (3) For paragraph 6 substitute—
- “6 In section 22, subsections (1) and (5) shall not apply.”

#### SCHEDULE 4

Section 32

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

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

- 1 After section 5 of the Administration of Justice Act 1960 (c. 65) insert—
- “5A Power to order continuation of community treatment order**
- (1) Where the defendant in any proceedings from which an appeal lies under section 1 of this Act would, but for the decision of the court below, be liable to recall, and immediately after that decision the prosecutor is granted, or gives notice that he intends to apply for, leave to appeal, the court may make an order under this section.
- (2) For the purposes of this section, a person is liable to recall if he is subject to a community treatment order (within the meaning of the Mental Health Act 1983) and, when that order was made, he was liable to be detained in pursuance of an order or direction under Part 3 of that Act.
- (3) An order under this section is an order providing for the continuation of the community treatment order and the order or direction under Part 3 of that Act so long as any appeal under section 1 of this Act is pending.
- (4) Where the court makes an order under this section, the provisions of the Mental Health Act 1983 with respect to persons liable to recall

for which the defendant would, but for the decision of the court below, have been—

- (a) liable to recall; or
  - (b) where the community treatment order is revoked, liable to be detained in pursuance of the order or direction under Part 3 of the Mental Health Act 1983.
- (6) Where the court below has power to make an order under this section, and either no such order is made or the defendant is discharged by virtue of subsection (4) or (5) of this section before the appeal is disposed of, the defendant shall not be liable to be again detained as the result of the decision of the Supreme Court on the appeal.”

*Criminal Appeal Act 1968*

- 2 (1) The Criminal Appeal Act 1968 (c. 19) is amended as follows.
- (2) In section 8 (supplementary provisions as to retrial), after subsection (3A) insert—
- “(3B) If the person ordered to be retried—
- (a) was liable to be detained in pursuance of an order or direction under Part 3 of the Mental Health Act 1983;
  - (b) was then made subject to a community treatment order (within the meaning of that Act); and
  - (c) was subject to that community treatment order immediately before the determination of his appeal,
- the order or direction under Part 3 of that Act and the community treatment order shall continue in force pending the retrial as if the appeal had not been allowed, and any order made by the Court of Appeal under this section for his release on bail shall have effect subject to the community treatment order.”
- (3) After section 37 insert—

- (5) Where an order is made under this section the provisions of the Mental Health Act 1983 with respect to persons liable to recall (including provisions as to the extension of the community treatment period, the removal or discharge of community patients, the

- (b) immediately after that decision, the Director of Service Prosecutions is granted leave to appeal or gives notice that he intends to apply for leave to appeal.
- (2) For the purposes of this section, a person is liable to recall if he is subject to a community treatment order (within the meaning of the Mental Health Act 1983) and, when that order was made, he was liable to be detained in pursuance of an order or direction under Part 3 of that Act.
- (3) An order under this section is an order providing for the continuation of the community treatment order and the order or direction under Part 3 of that Act so long as any appeal to the Supreme Court is pending.
- (4) Where the Appeal Court makes an order under this section, the relevant provisions of the Mental Health Act 1983 with respect to persons liable to recall (including provisions as to the extension of the community treatment period, the removal or discharge of community patients, the revocation of community treatment orders and the re-detention of patients following revocation) shall apply accordingly.

SCHEDULE 5

Section 39

CROSS-BORDER ARRANGEMENTS

PART 1

AMENDMENTS TO PART 6 OF 1983 ACT

*Introduction*

- 1 Part 6 of the 1983 Act is amended as set out in this Part of this Schedule.

*Transfer of patients: Scotland*

- 2 In section 80 (removal of patients to Scotland) (the cross-heading immediately above which becomes “Removal to and from Scotland”), in subsection (1), omit the words “or subject to guardianship” and the words “or, as the case may be, for receiving him into guardianship”.

- 3 (1) After that section insert—

**“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.
- (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.”

- (2) This paragraph does not extend to Scotland.

- 4 (1) After section 80A (the title to which becomes “Transfer of responsibility for conditionally discharged patients to Scotland”) insert—

**“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”);



- (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 an approved mental health professional agrees should be specified.

#### **80D Transfer of conditionally discharged patients from Scotland**

- (1) This section applies to a patient who is subject to—
- (a) a restriction order under section 59 of the Criminal Procedure (Scotland) Act 1995; and
  - (b) a conditional discharge under section 193(7) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”).
- (2) A transfer of the patient to England and Wales under regulations made under section 290 of the 2003 Act shall have effect only if the Secretary of State has consented to the transfer.
- (3) If a transfer under those regulations has effect, the patient shall be treated as if—
- (a) on the date of the transfer he had been conditionally discharged under section 42 or 73 above; and
  - (b) he were subject to a hospital order under section 37 above and a restriction order under section 41 above.

- (4) If the restriction order to which the patient was subject immediately before the transfer was of limited duration, the restriction order to which he is subject by virtue of subsection (3) above shall expire on the date on which the first-mentioned order would have expired if the transfer had not been made.”

- (2) This paragraph does not extend to Scotland.

*Transfer of patients: Northern Ireland*

- 5 In section 81 (removal of patients to Northern Ireland), in subsection (2), for the words from “where he is” to “the corresponding enactment” substitute “where he is subject to a hospital order and a restriction order or a transfer direction and a restriction direction under any enactment in this Act, as if he were subject to a hospital order and a restriction order or a transfer direction and a restriction direction under the corresponding enactment”.

- 6 After that section insert—

**“81ZA Removal of community patients to Northern Ireland**

- (1) Section 81 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) Any reference in that section to the application, order or direction by virtue of which a patient is liable to be detained under this Act shall be construed, for these purposes, as a reference to the application, order or direction under this Act in respect of the patient.”
- 7 (1) Section 81A (transfer of responsibility for patients to Northern Ireland) is amended as follows.
- (2) For subsection (1)(a) substitute—
- “(a) is subject to a hospital order under section 37 above and a restriction order under section 41 above or to a transfer direction under section 47 above and a restriction direction under section 49 above;”
- (3) In subsection (2)(b), for “a restriction order or restriction direction” substitute “a hospital order and a restriction order, or to a transfer direction and a restriction direction,”.
- 8 In section 82 (removal to England and Wales of patients from Northern



*Transfer of patients: Channel Islands and Isle of Man*

- 10 Before section 83A (the title to which becomes “Transfer of responsibility for conditionally discharged patients to Channel Islands or Isle of Man”) insert—

**“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
  - (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.”

- 11 In section 85 (patients removed from Channel Islands or Isle of Man), in subsection (2), for “to a restriction order or restriction direction” substitute “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”.

- 12 Before section 85A (the title to which becomes “Responsibility for conditionally discharged patients transferred from Channel Islands or Isle of Man”) insert—

**“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

*Regulations for purposes of Part 6*

- 15 In section 90 (regulations for purposes of Part 6), for the words from “and to regulations” to the end substitute “, 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.”

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

(4) After that subsection insert—

- “(5A) Section 75 above shall, subject to the modifications in subsection (5C) below, have effect in relation to a qualifying patient as it has effect in relation to a restricted patient who is conditionally discharged under section 42(2), 73 or 74 above.
- (5B) A patient is a qualifying patient if he is treated by virtue of section 80D(3), 82A(2) or 85A(2) below as if he had been conditionally discharged and 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.
- (5C) The modifications mentioned in subsection (5A) above are—
  - (a) references to the relevant hospital order, hospital direction or transfer direction, or to the restriction order, limitation direction or restriction direction to which the patient is subject, shall be construed as references to the hospital order, hospital direction or transfer direction, or restriction order, limitation direction or restricti

## SCHEDULE 6

Section 48

## VICTIMS' RIGHTS

*Introduction*

- 1 Chapter 2 of Part 3 of the Domestic Violence, Crime and Victims Act 2004 (c. 28) (provision of information to victims of restricted patients under the 1983 Act, etc.) is amended as set out in this Schedule.

*Hospital orders (with or without restriction orders)*

- 2 (1) Section 36 (victims' rights: preliminary) is amended as follows.
  - (2) In subsection (3), for "with a restriction order" substitute ", whether with or without a restriction order,".
  - (3) In subsection (5)—
    - (a) in paragraph (a), after "discharge from hospital" insert "while a restriction order is in force in respect of him", and
    - (b) after paragraph (b) insert "
      - (c) what conditions he should be subject to in the event of";

- (b) if the board ascertains that the hospital order does continue in force—
    - (i) to notify the managers of the relevant hospital of that person's wish, and
    - (ii) to notify that person of the name and address of the hospital.
- (6) The relevant hospital is—
  - (a) the hospital in which the patient is detained, or
  - (b) if a community treatment order is in force in respect of the patient, the responsible hospital."

4 In section 37 (the title to which becomes "Representations where restriction order made"), in subsection (1), for "if section 36 applies" substitute "if, in a case where section 36 applies, the hospital order in respect of the patient was made with a restriction order".

5 After section 37 insert—

**"37A Representations where restriction order not made**

- (1) This section applies if, in a case where section 36 applies, the hospital order in respect of the patient was made without a restriction order.

(b) a person who appears to the managers to be the victim of the

- (b) the patient's case is referred to a Mental Health Review Tribunal under section 67 of that Act, or
  - (c) the managers of the relevant hospital refer the patient's case to a Mental Health Review Tribunal under section 68 of that Act.
- (5) The tribunal must inform the managers of the relevant hospital if it directs that the patient is to be discharged.
- (6) Subsection (7) applies if a person who appears to the managers of the relevant hospital to be the victim of the offence or to act for the victim of the offence—
  - (a) when his wishes were ascertained under section 36(4), expressed a wish to receive the information specified in section 36(6), or
  - (b) has subsequently informed the managers of the relevant hospital that he wishes to receive that information.
- (7) The managers of the relevant hospital order must take all reasonable steps—
  - (a) to inform that person whether the patient is to be discharged under section 23 or 72 of the Mental Health Act 1983;
  - (b) to inform that person whether a community treatment order is to be made in respect of the patient;
  - (c) if a community treatment order is to be made in respect of the patient and is to specify conditions which relate to contact with the victim or his family, to provide that person with details6()).Q5(60).ils)17( t)awith



- (2) Subsection (3) applies if a person who appears to the relevant local probation board to be the victim of the offence or to act for the victim of the offence—
- (a) when his wishes were ascertained under section 36(4), expressed a wish to make representations about a matter specified in section 36(5) or to receive the information specified in section 36(6), or
  - (b) has subsequently informed the relevant local probation board that he wishes to make representations about such a

- (3) The relevant local probation board must take all reasonable steps—
  - (a) to notify the managers of the relevant hospital of an address at which that person may be contacted;
  - (b) to notify that person of the address of the hospital.
- (4) The offender is to be regarded as a patient in respect of whom a hospital order was made without a restriction order; and sections 37A and 38A are to apply in relation to him accordingly.
- (5) The relevant hospital has the meaning given in section 36A(6).
- (6) The relevant local probation board has the meaning given in section 40(8)."

*Transfer directions (with or without restriction directions)*

- 10 (1) Section 42 (victims' rights: preliminary) is amended as follows.
- (2) In subsection (1)(c), for "and a restriction direction in respect of him" substitute "in respect of the offender (whether or not he also gives a restriction direction in respect of the offender)".
- (3) In subsection (3)—
  - (a) in paragraph (a), after "discharge from hospital" insert "at a time when a restriction direction is in force in respect of him", and
  - (b) after paragraph (b) insert "
    - (c) what conditions he should be subject to in the event of his discharge from hospital under a community treatment order".

- (5) The local probation board mentioned in section 42(2) must take all reasonable steps—

- (7) Subsection (8) applies if—
  - (a) the managers of the relevant hospital receive information under subsection (4), (5) or (6), and
  - (b) a person who appears to the managers to be the victim of the offence or to act for the victim of the offence—
    - (i) when his wishes were ascertained under section 42(2), expressed a wish to make representations about a matter specified in section 42(3), or



- (b) the restriction direction ceases to be in force while the transfer direction continues in force.
- (2) Subsection (3) applies if a person who appears to the relevant local probation board to be the victim of the offence or to act for the victim of the offence—
  - (a) when his wishes were ascertained under section 42(2), expressed a wish to make representations about a matter specified in section 42(3) or to receive the information specified in section 42(4), or
  - (b) has subsequently informed the relevant local probation



*No protection for negligent acts etc*



## PART 3

## THE QUALIFYING REQUIREMENTS

*The qualifying requirements*

- 12 (1) These are the qualifying requirements referred to in this Schedule—
- (a) the age requirement;
  - (b) the mental health requirement;
  - (c) the mental capacity requirement;
  - (d) the best interests requirement;
  - (e) the eligibility requirement;
  - (f) the no refusals requirement.
- (2) Any question of whether a person who is, or is to be, a detained resident meets the qualifying requirements is to be determined in accordance with this Part.
- (3) In a case where—
- (a) the question of whether a person meets a particular qualifying requirement arises in relation to the giving of a standard authorisation, and
  - (b) any circumstances relevant to determining that question are expected to change between the time when the determination is made and the time when the authorisation is expected to come into force,
- those circumstances are to be taken into account as they are expected to be at the later time.

*The age requirement*

- 13 The relevant person meets the age requirement if he has reached 18.

*The mental health requirement*

- 14 (1) The relevant person meets the mental health requirement if he is

*The best interests requirement*

- 16 (1) The relevant person meets the best interests requirement if all of the following conditions are met.
- (2) The first condition is that the relevant person is, or is to be, a detained resident.
- (3) The second condition is that it is in the best interests of the relevant person for him to be a detained resident.
- (4) The third condition is that, in order to prevent harm to the relevant person, it is necessary for him to be a detained resident.
- (5) The fourth condition is that it is a proportionate response to—
- (a) the likelihood of the relevant person suffering harm, and
  - (b) the seriousness of that harm,
- for him to be a detained resident.

*The eligibility requirement*

- 17 (1) The relevant person meets the eligibility requirement unless he is ineligible to be deprived of liberty by this Act.
- (2) Schedule 1A applies for the purpose of determining whether or not P is ineligible to be deprived of liberty by this Act.

*The no refusals requirement*

- 18 The relevant person meets the no refusals requirement unless there is a refusal within the meaning of paragraph 19 or 20.
- 19 (1) There is a refusal if these conditions are met—
- (a) the relevant person has made an advance decision;
  - (b) the advance decision is valid;
  - (c) the advance decision is applicable to some or all of the relevant treatment.
- (2) Expressions used in this paragraph and any of sections 24, 25 or 26 have the same meaning in this paragraph as in that section.
- 20 (1) There is a refusal if it would be in conflict with a valid decision of a donee or deputy for the relevant person to be accommodated in the relevant hospital or care home for the purpose of receiving some or all of the relevant care or treatment—
- (a) in circumstances which amount to deprivation of the person's liberty, or
  - (b) at all.
- (2) A donee is a donee of a lasting power of attorney granted by the relevant person.
- (3) A decision of a donee or deputy is valid if it is made—
- (a) within the scope of his authority as donee or deputy, and
  - (b) in accordance with Part 1 of this Act.



- (a) is a detained resident in the relevant hospital or care home, and
  - (b) meets all of the qualifying requirements, or is likely to do so at some time within the next 28 days.
- (5) This paragraph is subject to paragraphs 27 to 29.

*Duty to request authorisation: change in place of detention*

- 25 (1) The relevant managing authority must request a standard authorisation if it appears to them that these conditions are met.
- (2) The first condition is that a standard authorisation—
    - (a) has been given, and
    - (b) has not ceased to be in force.
  - (3) The second condition is that there is, or is to be, a change in the place of detention.
  - (4) This paragraph is subject to paragraph 28.
- 26 (1) This paragraph applies for the purposes of paragraph 25.
- (2) There is a change in the place of detention if the relevant person—
    - (a) ceases to be a detained resident in the stated hospital or care home, and
    - (b) becomes a detained resident in a different hospital or care home (“the new hospital or care home”).
  - (3) The stated hospital or care home is the hospital or care home to which the standard authorisation relates.
  - (4) The relevant managing authority are the managing authority of the new hospital or care home.

*Other authority for detention: request for authorisation*

- 27 (1) This paragraph applies if, by virtue of section 4A(3), a decision of the court authorises the relevant person to be a detained resident.
- (2) Paragraph 24 does not require a request for a standard authorisation to be made in relation to that detention unless these conditions are met.
  - (3) The first condition is that the standard authorisation would be in force at a time immediately after the expiry of the other authority.
  - (4) The second condition is that the standard authorisation would not be in force at any time on or before the expiry of the other authority.
  - (5) The third condition is that it would, in the managing authority’s view, be unreasonable to delay making the request until a time nearer the expiry of the other authority.
  - (6) In this paragraph—
    - (a) the other authority is—
      - (i) the decision mentioned in sub-paragraph (1), or

- (ii) any further decision of the court which, by virtue of section 4A(3), authorises, or is expected to authorise, the relevant person to be a detained resident;
- (b) the expiry of the other authority is the time when the other authority is expected to cease to authorise the relevant person to be a detained resident.

*Request refused: no further request unless change of circumstances*

- 28 (1) This paragraph applies if—
- (a) a managing authority request a standard authorisation under paragraph 24 or 25, and
  - (b) the supervisory body are prohibited by paragraph 50(2) from giving the authorisation.
- (2) Paragraph 24 or 25 does not require that managing authority to make a new request for a standard authorisation unless it appears to the managing authority that—
- (a) there has been a change in the relevant person's case, and
  - (b) because of that change, the supervisory body are likely to give a standard authorisation if requested.

*Authorisation given: request for further authorisation*

- 29 (1) This paragraph applies if a standard authorisation—
- (a) has been given in relation to the detention of the relevant person, and
  - (b) that authorisation (“the existing authorisation”) has not ceased to be in force.
- (2) Paragraph 24 does not require a new request for a standard authorisation (“the new authorisation”) to be made unless these conditions are met.
- (3) The first condition is that the new authorisation would be in force at a time immediately after the expiry of the existing authorisation.
- (4) The second condition is that the new authorisation would not be in force at any time on or before the expiry of the existing authorisation.
- (5) The third condition is that it would, in the managing authority's view, be unreasonable to delay making the request until a time nearer the expiry of the existing authorisation.
- (6) The expiry of the existing authorisation is the time when it is expected to cease to be in force.

*Power to request authorisation*

- 30 (1) This paragraph applies if—
- (a) a standard authorisation has been given in relation to the detention of the relevant person,
  - (b) that authorisation (“the existing authorisation”) has not ceased to be in force,

- (c) the requirement under paragraph 24 to make a request for a new standard authorisation does not apply, because of paragraph 29, and
  - (d) a review of the existing authorisation has been requested, or is being carried out, in accordance with Part 8.
- (2) The managing authority may request a new standard authorisation which would be in force on or before the expiry of the existing authorisation; but only if it would also be in force immediately after that expiry.
- (3) The expiry of the existing authorisation is the time when it is expected to cease to be in force.
- (4) Further provision relating to cases where a request is made under this paragraph can be found in—
  - (a) paragraph 62 (effect of decision about request), and
  - (b) paragraph 124 (effect of request on Part 8 review).

*Information included in request*

- 31 A request for a standard authorisation must include the information (if any) required by regulations.

*Records of requests*

- 32 (1) The managing authority of a hospital or care home must keep a written record of—
  - (a) each request that they make for a standard authorisation, and
  - (b) the reasons for making each request.
- (2) A supervisory body must keep a written record of each request for a standard authorisation that is made to them.

*Relevant person must be assessed*

- 33 (1) This paragraph applies if the supervisory body are requested to give a standard authorisation.
- (2) The supervisory body must secure that all of these assessments are carried out in relation to the relevant person—
  - (a) an age assessment;
  - (b) a mental health assessment;
  - (c) a mental capacity assessment;
  - (d) a best interests assessment;
  - (e) an eligibility assessment;
  - (f) a no refusals assessment.
- (3) The person who carries out any such assessment is referred to as the assessor.
- (4) Regulations may be made about the period (or periods) within which assessors must carry out assessments.
- (5) This paragraph is subject to paragraphs 49 and 133.

*Age assessment*

- 34 An age assessment is an assessment of whether the relevant person meets the age requirement.

*Mental health assessment*

- 35 A mental health assessment is an assessment of whether the relevant person meets the mental health requirement.
- 36 When carrying out a mental health assessment, the assessor must also—
- (a) consider how (if at all) the relevant person's mental health is likely to be affected by his being a detained resident, and
  - (b) notify the best interests assessor of his conclusions.

*Mental capacity assessment*

- 37 A mental capacity assessment is an assessment of whether the relevant person meets the mental capacity requirement.

*Best interests assessment*

- 38 A best interests assessment is an assessment of whether the relevant person meets the best interests requirement.
- 39 (1) In carrying out a best interests assessment, the assessor must comply with the duties in sub-paragraphs (2) and (3).
- (2) The assessor must consult the managing authority of the relevant

- (i) the managing authority of the relevant hospital or care home, or
  - (ii) the supervisory body.
- (6) The managing authority must give the assessor a copy of—
  - (a) any relevant needs assessment carried out by them or on their behalf, or
  - (b) any relevant care plan drawn up by them or on their behalf.
- (7) The supervisory body must give the assessor a copy of—
  - (a) any relevant needs assessment carried out by them or on their behalf, or
  - (b) any relevant care plan drawn up by them or on their behalf.
- (8) The duties in sub-paragraphs (2) and (3) do not affect any other duty to consult or to take the views of others into account.
- 40 (1) This paragraph applies whatever conclusion the best interests assessment comes to.
- (2) The assessor must state in the best interests assessment the name and address of every interested person whom he has consulted in carrying out the assessment.
- 41 Paragraphs 42 and 43 apply if the best interests assessment comes to the conclusion that the relevant person meets the best interests requirement.
- 42 (1) The assessor must state in the assessment the maximum authorisation period.
- (2) The maximum authorisation period is the shorter of these periods—
  - (a) the period which, in the assessor's opinion, would be the appropriate maximum period for the relevant person to be a detained resident under the standard authorisation that has been requested;
  - (b) 1 year, or such shorter period as may be prescribed in regulations.
- (3) Regulations under sub-paragraph (2)(b)—
  - (a) need not provide for a shorter period to apply in relation to all standard authorisations;
  - (b) may provide for different periods to apply in relation to different kinds of standard authorisations.
- (4) Before making regulations under sub-paragraph (2)(b) the Secretary of State must consult all of the following—
  - (a) each body required by regulations under paragraph 162 to monitor and report on the operation of this Schedule in relation to England;
  - (b) such other persons as the Secretary of State considers it appropriate to consult.



- (5) Before making regulations under sub-paragraph (2)(b) the National Assembly for Wales must consult all of the following—
- (a) each person or body directed under paragraph 163(2) to carry out any function of the Assembly of monitoring and reporting on the operation of this Schedule in relation to Wales;
  - (b) such other persons as the Assembly considers it appropriate to consult.
- 43 The assessor may include in the assessment recommendations about conditions to which the standard authorisation is, or is not,







- (5) Any written information given to the relevant person must also be given by the managing authority to the relevant person's representative.
- (6) They must give the information to the representative as soon as is practicable after it is given to the relevant person.
- (7) Sub-paragraph (8) applies if the managing authority is notified that a section 39D IMCA has been appointed.
- (8) As soon as is practicable after being notified, the managing authority must give the section 39D IMCA a copy of the written information given in accordance with sub-paragraph (4).

*Records of authorisations*

- 60 A supervisory body must keep a written record of all of the following information—
  - (a) the standard authorisations that they have given;
  - (b) the requests for standard authorisations in response to which they have not given an authorisation;



- (3) The second condition is that the eligible person has asked the managing authority to request a standard authorisation in relation to the detention of the relevant person.
  - (4) The third condition is that the managing authority has not requested a standard authorisation within a reasonable period after the eligible person asks it to do so.
  - (5) In this paragraph “eligible person” means any person other than the managing authority of the relevant hospital or care home.
- 69
- (1) This paragraph applies if an eligible person requests the supervisory body to decide whether or not there is an unauthorised deprivation of liberty.
  - (2) The supervisory body must select and appoint a person to carry out an assessment of whether or not the relevant person is a detained resident.
  - (3) But the supervisory body need not select and appoint a person to carry out such an assessment in either of these cases.
  - (4) The first case is where it appears to the supervisory body that the request by the eligible person is frivolous or vexatious.
  - (5) The second case is where it appears to the supervisory body that—
    - (a) the question of whether or not there is an unauthorised deprivation of liberty has already been decided, and
    - (b) since that decision, there has been no change of circumstances which would merit the question being decided again.
  - (6) The supervisory body must not select and appoint a person to carry out an assessment under this paragraph unless it appears to the supervisory body that the person would be—
    - (a) suitable to carry out a best interests assessment (if one were obtained in connection with a request for a standard authorisation relating to the relevant person), and
    - (b) eligible to carry out such a best interests assessment.
  - (7) The supervisory body must notify the persons specified in sub-paragraph (8)—
    - (a) that the supervisory body have been requested to decide whether or not there is an unauthorised deprivation of liberty;
    - (b) of their decision whether or not to select and appoint a person to carry out an assessment under this paragraph;
    - (c) if their decision is to select and appoint a person, of the person appointed.
  - (8) The persons referred to in sub-paragraph (7) are—
    - (a) the eligible person who made the request under paragraph 68;
    - (b) the person to whom the request relates;
    - (c) the managing authority of the relevant hospital or care home;
    - (d) any section 39A IMCA.

- 70 (1) Regulations may be made about the period within which an assessment under paragraph 69 must be carried out.
- (2) Regulations made under paragraph 129(3) apply in relation to the selection and appointment of a person under paragraph 69 as they apply to the selection of a person under paragraph 129 to carry out a best interests assessment.
- (3) The following provisions apply to an assessment under paragraph 69 as they apply to an assessment carried out in connection with a request for a standard authorisation—
- (a) paragraph 131 (examination and copying of records);
  - (b) paragraph 132 (representations);
  - (c) paragraphs 134 and 135(1) and (2) (duty to keep records and give copies).
- (4) The copies of the assessment which the supervisory body are required to give under paragraph 135(2) must be given as soon as practicable after the supervisory body are themselves given a copy of the assessment.
- 71 (1) This paragraph applies if—
- (a) the supervisory body obtain an assessment under paragraph 69,
  - (b) the assessment comes to the conclusion that the relevant person is a detained resident, and
  - (c) it appears to the supervisory body that the detention of the person is not authorised as mentioned in section 4A.



- (a) the supervisory body obtain an assessment under paragraph 69,
  - (b) the assessment comes to the conclusion that the relevant person is a detained resident, and
  - (c) it appears to the supervisory body that the detention of the person is authorised as mentioned in section 4A.
- (2) The supervisory body must notify the persons specified in paragraph 69(8)—
- (a) of the outcome of the assessment, and
  - (b) that it appears to the supervisory body that the detention is authorised.

## PART 5

## URGENT AUTHORISATIONS

*Managing authority to give authorisation*

- 74 Only the managing authority of the relevant hospital or care home may give an urgent authorisation.
- 75 The managing authority may give an urgent authorisation only if they are required to do so by paragraph 76 (as read with paragraph 77).

*Duty to give authorisation*

- 76 (1) The managing authority must give an urgent authorisation in either of the following cases.
- (2) The first case is where—
- (a) the managing authority are required to make a request under paragraph 24 or 25 for a standard authorisation, and
  - (b) they believe that the need for the relevant person to be a detained resident is so urgent that it is appropriate for the detention to begin before they make the request.
- (3) The second case is where—
- (a) the managing authority have made a request under paragraph 24 or 25 for a standard authorisation, and
  - (b) they believe that the need for the relevant person to be a detained resident is so urgent that it is appropriate for the detention to begin before the request is disposed of.
- (4) References in this paragraph to the detention of the relevant person are references to the detention to which paragraph 24 or 25 relates.
- (5) This paragraph is subject to paragraph 77.
- 77 (1) This paragraph applies where the managing authority have given an urgent authorisation (“the original authorisation”) in connection with a case where a person is, or is to be, a detained resident (“the existing detention”).





- (6) Paragraphs 82(3) and 83 apply (with the necessary modifications) to the variation of the original authorisation as they apply to the giving of an urgent authorisation.
- (7) The supervisory body must keep a written record of—
  - (a) the outcome of the request, and
  - (b) the period of the extension.

“requested authorisation” means the standard authorisation to which the required request relates.

- (6) This paragraph does not affect the powers of the Court of Protection or of any other court.
- 90 (1) This paragraph applies if an urgent authorisation ceases to be in force.



- (b) a different body (“the new supervisory body”) have become supervisory body in relation to the standard authorisation.

*Effect of change in supervisory responsibility*

- 100 (1) The new supervisory body becomes the supervisory body in relation to the authorisation.
- (2) Anything done by or in relation to the old supervisory body in connection with the authorisation has effect, so far as is necessary for continuing its effect after the change, as if done by or in relation to the new supervisory body.
  - (3) Anything which relates to the authorisation and which is in the process of being done by or in relation to the old supervisory body at the time of the change may be continued by or in relation to the new supervisory body.
  - (4) But—

*Request for review*

- 103 (1) An eligible person may, at any time, request the supervisory body to carry out a review of the standard authorisation in accordance with this Part.
- (2) The managing authority of the relevant hospital or care home must make such a request if one or more of the qualifying requirements appear to them to be reviewable.

*Grounds for review*



- (2) This ground is referred to as the variation of conditions ground.
- (3) A reference to varying the conditions to which the standard authorisation is subject is a reference to—
  - (a) amendment of an existing condition,
  - (b) omission of an existing condition, or
  - (c) inclusion of a new condition (whether or not there are already any existing conditions).

*Notice that review to be carried out*

- 108 (1) If the supervisory body are to carry out a review of the standard authorisation, they must give notice of the review to the following

- (a) the requirement is reviewable only on the variation of conditions ground, and
  - (b) the change in the relevant person's case is not significant.
- (5) In making any decision whether the change in the relevant person's case is significant, regard must be had to—
- (a) the nature of the change, and
  - (b) the period that the change is likely to last for.

*Review assessments*

- 112 (1) A review assessment is an assessment of whether the relevant person meets a qualifying requirement.

- (b) in accordance with paragraph 111(3), the supervisory body are not required to secure that a best interests review assessment is carried out.
- (2) The supervisory body may vary the conditions to which the standard authorisation is subject in such ways (if any) as the supervisory body think are appropriate in the circumstances.

*Best interests review assessment positive*

- 115 (1) This paragraph applies in a case where—
- (a) a best interests review assessment is carried out, and
  - (b) the assessment comes to a positive conclusion.
- (2) The supervisory body must decide the following questions—
- (a) whether or not the best interests requirement is reviewable on the change of reason ground;
  - (b) whether or not the best interests requirement is reviewable on the variation of conditions ground;
  - (c) if so, whether or not the change in the person's case is significant.
- (3) If the supervisory body decide that the best interests requirement is reviewable on the change of reason ground, they must vary the standard authorisation so that it states the reason why the relevant person now meets that requirement.
- (4) If the supervisory body decide that—
- (a) the best interests requirement is reviewable on the variation of conditions ground, and
  - (b) the change in the relevant person's case is not significant,
- they may vary the conditions to which the standard authorisation is subject in such ways (if any) as they think are appropriate in the circumstances.
- (5) If the supervisory body decide that—
- (a) the best interests requirement is reviewable on the variation of conditions ground, and
  - (b) the change in the relevant person's case is significant,
- they must vary the conditions to which the standard authorisation is subject in such ways as they think are appropriate in the circumstances.
- (6) If the supervisory body decide that the best interests requirement is not reviewable on—
- (a) the change of reason ground, or
  - (b) the variation of conditions ground,
- this Part does not require the supervisory body to take any action in respect of the standard authorisation so far as the best interests requirement relates to it.

*Mental health, mental capacity, eligibility or no refusals review assessment positive*

- 116 (1) This paragraph applies if the following conditions are met.

- (2) The first condition is that one or more of the following are carried out—
  - (a) a mental health review assessment;
  - (b) a mental capacity review assessment;
  - (c) an eligibility review assessment;
  - (d) a no refusals review assessment.
- (3) The second condition is that each assessment carried out comes to a positive conclusion.
- (4) The supervisory body must decide whether or not each of the assessed qualifying requirements is reviewable on the change of reason ground.
- (5) If the supervisory body decide that any of the assessed qualifying requirements is reviewable on the change of reason ground, they must vary the standard authorisation so that it states the reason why the relevant person now meets the requirement or requirements in question.
- (6) If the supervisory body decide that none of the assessed qualifying requirements are reviewable on the change of reason ground, this Part does not require the supervisory body to take any action in respect of the standard authorisation so far as those requirements relate to it.
- (7) An assessed qualifying requirement is a qualifying requirement in relation to which a review assessment is carried out.

*One or more review assessments negative*

- 117 (1) This paragraph applies if one or more of the review assessments carried out comes to a negative conclusion.
- (2) The supervisory body must terminate the standard authorisation with immediate effect.

*Completion of a review*

- (c) the supervisory body comply with all of the provisions of paragraphs 114 to 116 (so far as they are applicable to the review).

#### *Variations under this Part*

- 119 Any variation of the standard authorisation made under this Part must be in writing.

#### *Notice of outcome of review*

- 120 (1) When the review of the standard authorisation is complete, the supervisory body must give notice to all of the following—
- (a) the managing authority of the relevant hospital or care home;
  - (b) the relevant person;
  - (c) the relevant person's representative;
  - (d) any section 39D IMCA.
- (2) That notice must state—
- (a) the outcome of the review, and
  - (b) what variation (if any) has been made to the authorisation under this Part.

#### *Records*

- 121 A supervisory body must keep a written record of the following information—
- (a) each request for a review that is made to them;
  - (b) the outcome of each request;
  - (c) each review which they carry out;
  - (d) the outcome of each review which they carry out;
  - (e) any variation of an authorisation made in consequence of a review.

#### *Relationship between review and suspension under Part 6*

- 122 (1) This paragraph applies if a standard authorisation is suspended in accordance with Part 6.
- (2) No review may be requested under this Part whilst the standard authorisation is suspended.
- (3) If a review has already been requested, or is being carried out, when the standard authorisation is suspended, no steps are to be taken in connection with that review whilst the authorisation is suspended.

#### *Relationship between review and request for new authorisation*

- 123 (1) This paragraph applies if, in accordance with paragraph 24 (as

authorisation which would be in force after the expiry of the existing authorisation.

- (2) No review may be requested under this Part until the request for the new standard authorisation has been disposed of.
- (3) If a review has already been requested, or is being carried out,

- (2) The supervisory body must not select a person to carry out an assessment unless the person—
  - (a) appears to the supervisory body to be suitable to carry out the assessment (having regard, in particular, to the type of assessment and the person to be assessed), and





- (2) The supervisory body must give copies of the assessment to all of the following—
- (a) the managing authority of the relevant hospital or care home;
  - (b) the relevant person;
  - (c) any section 39A IMCA;
  - (d) the relevant person’s representative.
- (3) If—
- (a) the assessment is obtained in relation to a request for a standard authorisation, and
  - (b) the supervisory body are required by paragraph 50(1) to give the standard authorisation,
- the supervisory body must give the copies of the assessment when

PART 10

RELEVANT PERSON'S REPRESENTATIVE

*The representative*

- 137 In this Schedule the relevant person's representative is the person appointed as such in accordance with this Part.
- 138 (1) Regulations may make provision about the selection and appointment of representatives.
- (2) In this Part such regulations are referred to as "appointment regulations".

*Supervisory body to appoint representative*

- 139 (1) The supervisory body must appoint a person to be the relevant person's representative as soon as practicable after a standard authorisation is given.
- (2) The supervisory body must appoint a person to be the relevant person's representative if a vacancy arises whilst a standard authorisation is in force.
- (3) Where a vacancy arises, the appointment under sub-paragraph (2) is to be made as soon as practicable after the supervisory body becomes aware of the vacancy.
- 140 (1) The selection of a person for appointment under paragraph 139 must not be made unless it appears to the person making the selection that the prospective representative would, if appointed—
- (a) maintain contact with the relevant person,
  - (b) represent the relevant person in matters relating to or connected with this Schedule, and
  - (c) support the relevant person in matters relating to or connected with this Schedule.
- 141 (1) Any appointment of a representative for a relevant person is in addition to, and does not affect, any appointment of a donee or deputy.
- (2) The functions of any representative are in addition to, and do not affect—
- (a) the authority of any donee,
  - (b) the powers of any deputy, or
  - (c) any powers of the court.

*Appointment regulations*

- 142 Appointment regulations may provide that the procedure for appointing a representative may begin at any time after a request for a standard authorisation is made (including a time before the request has been disposed of).





PART 11

IMCAs

*Application of Part*

154 This Part applies for the purposes of this Schedule.

*The IMCAs*



*Disclosure of information*

- 164 (1) Regulations may require either or both of the following to disclose prescribed information to prescribed bodies—
- (a) supervisory bodies;
  - (b) managing authorities of hospitals or care homes.
- (2) “Prescribed” means prescribed in regulations under this paragraph.
- (3) Regulations under this paragraph may only prescrib

*Notices*

169 Any notice under this Schedule must be in writing.

*Regulations*

170 (1) This paragraph applies to all regulations under this Schedule, except regulations under paragraph 162, 163, 167 or 183.

(2) It is for the Secretary of State to make such regulations in relation to authorisations under this Schedule which relate to hospitals and care homes situated in England.

(3) It is for the National Assembly for Wales to make such regulations in relation to authorisations under this Schedule which relate to hospitals and care homes situated in Wales.

171 It is for the Secretary of State to make regulations under paragraph 162.

172 It is for the National Assembly for Wales to make regulations under paragraph 163 or 167.

173 (1) This paragraph applies to regulations under paragraph 183.

(2) It is for the Secretary of State to make such regulations in relation to cases where a question as to the ordinary residence of a person is to be determined by the Secretary of State.

(3) It is for the National Assembly for Wales to make such regulations in relation to cases where a question as to the ordinary residence of a person is to be determined by the National Assembly.

PART 13

INTERPRETATION



- (a) if the hospital—
- (i) is vested in the appropriate national authority for the purposes of its functions under the National Health Service Act 2006 or of the National Health Service (Wales) Act 2006, or
  - (ii) consists of any accommodation provided by a local authority and used as a hospital by or on behalf of the appropriate national authority under either of those Acts,
- the Primary Care Trust, Strategic Health Authority, Local Health Board or Special Health Authority responsible for the administration of the hospital;
- (b) if the hospital is vested in a Primary Care Trust, National Health Service trust or NHS foundation trust, that trust;
  - (c) if the hospital is vested in a Local Health Board, that Board.
- (2) For this purpose the appropriate national authority is—
- (a) in relation to England: the Secretary of State;
  - (b) in relation to Wales: the National Assembly for Wales;
  - (c) in relation to England and Wales: the Secretary of State and the National Assembly acting jointly.
- 177 “Managing authority”, in relation to an independent hospital, means the person registered, or required to be registered, under Part 2 of the Care Standards Act 2000 in respect of the hospital.

*Care homes and their managing authorities*

- 178 “Care home” has the meaning given by section 3 of the Care Standards Act 2000.
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- (5) Those arrangements may include provision for the Secretary of State and the National Assembly to agree, in relation to any question that has arisen, which of them is to deal with the case.
- (6) Regulations may make provision about arrangements that are to have effect before, upon, or after the determination of any

- 186 (1) An interested person consulted by the best interests assessor is any person whose name is stated in the relevant best interests assessment in accordance with paragraph 40 (interested persons whom the assessor consulted in carrying out the assessment).
- (2) The relevant best interests assessment is the most recent best interests assessment carried out in connection with the standard authorisation in question (whether the assessment was carried out under Part 4 or Part 8).
- 187 Where this Schedule imposes on a person a duty towards an interested person, the duty does not apply if the person on whom the duty is imposed—

deputy	section 16(2)(b)
detained resident	paragraph 6
disposed of (in relation to a request for a standard authorisation)	paragraph 66
eligibility assessment	paragraph 46
eligibility requirement	paragraph 17
eligibility review assessment	paragraph 112(7)
eligible person (in relation to paragraphs 68 to 73)	paragraph 68
eligible person (in relation to Part 8)	paragraph 102(3)
expiry (in relation to an existing authorisation)	paragraph 125(b)
existing authorisation (in Part 8)	paragraph 125(a)(b)



supervisory body (except in Part 8)	paragraph 180, 181 or 182
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supervisory body (in Part 8)	paragraph 128 and paragraph 180, 181 or 182
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unauthorised deprivation of liberty	paragraph 128 and paragraph 180, 181 or 182
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## SCHEDULE 8

Section 50

## MENTAL CAPACITY ACT 2005: NEW SCHEDULE 1A

After Schedule 1 to the Mental Capacity Act 2005 (c. 9) insert—

## “SCHEDULE 1A

## PERSONS INELIGIBLE TO BE DEPRIVED OF LIBERTY BY THIS ACT

## PART 1

## INELIGIBLE PERSONS

*Application*

- 1 This Schedule applies for the purposes of—
  - (a) section 16A, and
  - (b) paragraph 17 of Schedule A1.

*Determining ineligibility*

- 2 A person (“P”) is ineligible to be deprived of liberty by this Act (“ineligible”) if—
  - (a) P falls within one of the cases set out in the second column of the following table, and
  - (b) the corresponding entry in the third column of the table — or the provision, or one of the provisions, referred to in that entry — provides that he is ineligible.

*Authorised course of action not in accordance with regime*

- 3 (1) This paragraph applies in cases B, C and D in the table in paragraph 2.
- (2) P is ineligible if the authorised course of action is not in accordance with a requirement which the relevant regime imposes.
- (3) That includes any requirement as to where P is, or is not, to reside.
- (4) The relevant regime is the mental health regime to which P is subject.

*Treatment for mental disorder in a hospital*

- 4 (1) This paragraph applies in cases B and C in the table in paragraph 2.
- (2) P is ineligible if the relevant care or treatment consists in whole or in part of medical treatment for mental disorder in a hospital.

*P objects to being a mental health patient etc*

- 5 (1) This paragraph applies in cases D and E in the table in paragraph 2.
- (2) P is ineligible if the following conditions are met.
- (3) The first condition is that the relevant instrument authorises P to be a mental health patient.



- (4) The second condition is that P objects—
  - (a) to being a mental health patient, or
  - (b) to being given some or all of the mental health treatment.
- (5) The third condition is that a donee or deputy has not made a valid decision to consent to each matter to which P objects.
- (6) In determining whether or not P objects to something, regard must be had to all the circumstances (so far as they are reasonably ascertainable), including the following—
  - (a) P's behaviour;
  - (b) P's wishes and feelings;
  - (c) P's views, beliefs and values.
- (7) But regard is to be had to circumstances from the past only so far as it is still appropriate to have regard to them.

## PART 2

## INTERPRETATION

*Application*

- 6 This Part applies for the purposes of this Schedule.

*Mental health regimes*

- 7 The mental health regimes are—
- (a) the hospital treatment regime,
  - (b) the community treatment regime, and
  - (c) the guardianship regime.

*Hospital treatment regime*

- 8 (1) P is subject to the hospital treatment regime if he is subject to—
- (a) a hospital treatment obligation under the relevant enactment, or
  - (b) an obligation under another England and Wales enactment which has the same effect as a hospital treatment obligation.
- (2) But where P is subject to any such obligation, he is to be regarded as not subject to the hospital treatment regime during any period when he is subject to the community treatment regime.
- (3) A hospital treatment obligation is an application, order or direction of a kind listed in the first column of the following table.
- (4) In relation to a hospital treatment obligation, the relevant enactment is the enactment in the Mental Health Act which is referred to in the corresponding entry in the second column of the following table.





- (b) whether or not to give a standard authorisation under Schedule A1.
- (2) A reference in this Schedule to the authorised course of action or the relevant care or treatment is to be read as a reference to that thing as it would be if—
- (a) the proposed provision were included in the order, or
  - (b) the standard authorisation were given.
- (3) A reference in this Schedule to the relevant instrument is to be read as follows—
- (a) where the relevant instrument is an order under section 16(2)(a): as a reference to the order as it would be if the proposed provision were included in it;
  - (b) where the relevant instrument is a standard authorisation: as a reference to the standard authorisation as it would be if it were given.

*Expressions used in paragraph 5*

- 16 (1) These expressions have the meanings given—
- “donee” means a donee of a lasting power of attorney granted by P;
  - “mental health patient” means a person accommodated in a hospital for the purpose of being given medical treatment for mental disorder;
  - “mental health treatment” means the medical treatment for mental disorder referred to in the definition of “mental health patient”.
- (2) A decision of a donee or deputy is valid if it is made—
- (a) within the scope of his authority as donee or deputy, and
  - (b) in accordance with Part 1 of this Act.

*Expressions with same meaning as in Mental Health Act*

- 17 (1) “Hospital” has the same meaning as in Part 2 of the Mental Health Act.
- (2) “Medical treatment” has the same meaning as in the Mental Health Act.
- (3) “Mental disorder” has the same meaning as in Schedule A1 (see paragraph 14).”.



*Mental Health Act 2007 (c. 12)*

*Schedule 9 — Amendments relating to new section 4A of, & Schedule A1 to, Mental Capacity Act 2005*

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- (9) The third case is where, under paragraph 69 of Schedule A1, the supervisory body select a person to carry out an assessment of whether or not the relevant person is a detained resident.

**39C Person unrepresented whilst subject to Schedule A1**

- (1) This section applies if—
- (a) an authorisation under Schedule A1 is in force in relation to a person (“P”),
  - (b) the appointment of a person as P’s representative ends in accordance with regulations made under Part 10 of Schedule A1, and
  - (c) the managing authority of the relevant hospital or care home are satisfied that there is no person, other than one engaged in providing care or treatment for P in a professional capacity or for remuneration, whom it would be appropriate to consult in determining what would be in P’s best interests.
- (2) The managing authority must notify the supervisory body that this section applies.



- (a) that, without the help of an advocate, P and R would be unable to exercise one or both of the relevant rights;
- (b) that P and R have each failed to exercise a relevant right when it would have been reasonable to exercise it;

- (a) because of a request by R, or
  - (b) because the supervisory body had reason to believe one or more of the things in section 39D(5).
- (4) The second condition is that the other advocate would be instructed because of a request by P.”

*Section 40: Exceptions to duty to appoint IMCAs*

- 7 (1) Section 40 (as substituted by section 49 of this Act) is amended as follows.
- (2) The provision of section 40 becomes subsection (1) of section 40.
- (3) In subsection (1) for “or 39(4) or (5)” substitute “, 39(4) or (5), 39A(3), 39C(3) or 39D(2)”.
- (4) After subsection (1) insert—
- “(2) A person appointed under Part 10 of Schedule A1 to be P’s representative is not, by virtue of that appointment, a person nominated by P as a person to be consulted in matters to which a duty mentioned in subsection (1) relates.”

*Section 42: Codes of practice*

- 8 (1) Section 42 is amended as follows.
- (2) In subsection (1), after paragraph (f) insert—
- (fa) for the guidance of persons exercising functions under Schedule A1,
  - (fb) for the guidance of representatives appointed under Part 10 of Schedule A1,”.
- (3) In subsection (4), after paragraph (d) insert—
- (da) in the exercise of functions under Schedule A1,
  - (db) as a representative appointed under Part 10 of Schedule A1,”.

*Section 50: Application to the Court of Protection*

- 9 In section 50, after subsection (1) insert—
- “(1A) Nor is permission required for an application to the court under section 21A by the relevant person’s representative.”

*Section 64: Interpretation*

- 10 (1) Section 64 is amended as follows.
- (2) In subsection (1), insert at the appropriate place—
- ““authorisation under Schedule A1” means either—
- (a) a standard authorisation under that Schedule, or
  - (b) an urgent authorisation under that Schedule.”
- (3) In subsection (1), in the definition of “local authority” after ““local authority”” insert “, except in Schedule A1,”.



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

13 (1) Schedule 1 to the Local Authority Social Services Act 1970 (Social Services

- (b) the 1983 Act in relation to any application, order or direction for admission or removal to a hospital, or any guardianship application or order, made under that Act before that date or the exercise, before that date, of any power to remand,
  - (c) the power to make on or after that date an application for the admission of a person to a hospital, or a guardianship application, where all the recommendations on which the application is to be founded are signed before that date, or
  - (d) the authority for the detention or guardianship of a person in pursuance of such an application.
- (2) But those provisions do apply to the following events occurring on or after that date—
- (a) any renewal of the authority for the person’s detention or guardianship,
  - (b) any consideration of his case by a Mental Health Review Tribunal, and
  - (c) any decision about the exercise of any power to discharge him from detention or guardianship.
- (3) Sub-paragraph (2)(b) is subject to paragraph 4.
- (4) The provisions are—
- (a) section 1 and Schedule 1 (removal of categories of mental disorder),
  - (b) section 2 (special provision for persons with learning disability),
  - (c) section 3 (exclusions),
  - (d) section 4 (replacement of “treatability” and “care” tests with appropriate treatment test),
  - (e) section 5 (addition of appropriate treatment test),
  - (f) section 7 (definition of “medical treatment”), and
  - (g) the repeals in Schedule 11 which are consequential on any of those sections or that Schedule.

#### *Consent to treatment*

- 3 (1) The amendments made by section 6 (appropriate treatment test in Part 4 of the 1983 Act) do not affect the application of a certificate under section 57(2)(b) or 58(3)(b) of the 1983 Act given before the date on which the









PART 2

PART 3

APPROVED CLINICIANS AND



PART 6

ORGANISATION OF TRIBUNALS

*Reference*

*Extent of repeal or revocation*

PART 7

CROSS-BORDER ARRANGEMENTS

PART 8

RESTRICTED PATIENTS

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Mental Health Act 1983 (c. 20)— <i>cont.</i>	In section 81A(3)— (a) the words “restriction order or” in each place, and (b) the words “order or”. In section 84(2), the words “, made without limitation of time”. In section 91(2), the words “at any time before the end of the period for which those orders would have continued in force”.

PART 9

MISCELLANEOUS

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Children Act 1989 (c. 41)	In Schedule 13, paragraph 48(5).

PART 10

DEPRIVATION OF LIBERTY

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Mental Capacity Act 2005 (c. 9)	Section 6(5). Section 11(6). Section 20(13).