



Draft Mental Health Bill

Department of Health 2004



Draft Mental Health Bill

Department of Health 2004

Presented to Parliament by
the Secretary of State for Health
by Command of Her Majesty
September 2004

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Mental Health Bill

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 - Part 9 – Cross-border transfers
 - Part 10 – After-care
 - Part 11 – Miscellaneous
 - Part 12 – Interpretation

A
B I L L

TO

Restate and amend the law relating to mentally disordered persons; and for connected purposes.

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

INTRODUCTORY

1 Code of practice: general principles and guidance

- (1) The appropriate authority must publish a code of practice.
- (2) The code must set out general principles to which a person must have regard whenever coming to a decision under or in pursuance of this Act in respect of a patient. 5
- (3) The general principles must be designed to secure that—
 - (a) patients are involved in the making of decisions,
 - (b) decisions are made fairly and openly, and 10
 - (c) the interference to patients in providing medical treatment to them and the restrictions imposed in respect of them during that treatment are kept to the minimum necessary to protect their health or safety or other persons.
- (4) The code may provide that one or more of the general principles is not to apply—
 - (a) in circumstances in which its application would be inappropriate or impracticable, 15
 - (b) in relation to the decisions or persons specified in the code.
- (5) The code must also give further guidance to any person discharging functions under or by virtue of this Act as to— 20

-
- (a) the discharge of such of those functions as the appropriate authority thinks fit, and
 - (b) such matters arising in connection with the discharge of those functions as the appropriate authority thinks fit,
- and that person must have regard to that guidance. 5
- (6) The code may provide that the further guidance is not to apply in relation to the persons specified in the code.
 - (7) The code may make different provision for different classes of case or for different purposes.
 - (8) Before publishing the code, the appropriate authority must consult such persons as it considers appropriate. 10
 - (9) The requirement imposed by subsection (8) may be satisfied by consultation before the passing of this Act.
 - (10) The requirement imposed by subsection (8) does not apply if –
 - (a) it appears to the appropriate authority that by reason of the urgency of the matter it is not expedient for consultation to be undertaken, or 15
 - (b) the persons in question have agreed that consultation should not be undertaken.
 - (11) Before publishing the code, the appropriate authority must –
 - (a) in the case of the Secretary of State, lay a draft of it before both Houses of Parliament, and 20
 - (b) bring it into operation by an order.
 - (12) The appropriate authority may from time to time revise the whole or any part of the code and publish the code as revised.
 - (13) Subsections (8) (and (10)) and (11) also apply to any revision, or proposed revision, of the code. 25
 - (14) Schedule 1, which excludes certain matters from the remit of the code of practice, has effect; and subsections (2) and (5) are subject to that Schedule.

2 Basic definitions etc for purposes of Act

- (1) This section and section 3 apply for the purposes of this Act. 30
- (2) “Appropriate authority” means –
 - (a) in relation to England, the Secretary of State,
 - (b) in relation to Wales, the National Assembly for Wales,
 and in relation to England and Wales means the Secretary of State and the National Assembly for Wales acting jointly. 35
- (3) “Hospital”, except in Parts 6, 10 and 12 and sections 161(2)(c), 172(2), 280(1) and 301(1), means –
 - (a) any health service hospital within the meaning of the National Health Service Act 1977 (c. 49),
 - (b) any accommodation provided by a local authority and used as a hospital by or on behalf of the appropriate authority under that Act, and 40
 - (c) any other establishment –

-
- (i) which is an independent hospital (within the meaning of the Care Standards Act 2000 (c. 14)) in respect of which a person is registered under Part 2 of that Act, and
- (ii) in which medical treatment is or may be provided to persons who are subject to the provisions of Part 2 or 3 of this Act. 5
- (4) “The managers” means –
- (a) in relation to a hospital vested in the appropriate authority for the purposes of its functions under the National Health Service Act 1977 (c. 49) or any accommodation provided by a local authority and used as a hospital by or on behalf of the appropriate authority under that Act, the Primary Care Trust, Strategic Health Authority, Local Health Board or Special Health Authority responsible for the administration of the hospital, 10
- (b) in relation to a hospital vested in a Primary Care Trust, National Health Service trust or NHS foundation trust, the trust, 15
- (c) in relation to a hospital vested in a Local Health Board, the Board, and
- (d) in relation to an establishment –
- (i) which is an independent hospital in respect of which a person is registered under Part 2 of the Care Standards Act 2000, and
- (ii) in which medical treatment is or may be provided to persons who are subject to the provisions of Part 2 or 3 of this Act, 20
- the person who is so registered (except in Parts 6 and 10 and sections 284 and 285).
- (5) “Mental disorder” means an impairment of or a disturbance in the functioning of the mind or brain resulting from any disability or disorder of the mind or brain; and “mentally disordered” is to be read accordingly. 25
- (6) “Patient” means a person suffering or appearing to be suffering from mental disorder.
- (7) References to medical treatment are references to treatment for mental disorder provided under the supervision of an approved clinician; and for this purpose “treatment” includes – 30
- (a) nursing,
- (b) care,
- (c) cognitive therapy, behaviour therapy, counselling or other psychological intervention, 35
- (d) habilitation (including education, and training in work, social and independent living skills), and
- (e) rehabilitation (read in accordance with paragraph (d)).
- 3 Approved clinicians and mental health professionals**
- (1) A person is an approved clinician if he is approved by the appropriate authority for the purposes of this subsection. 40
- (2) Before approving a person for the purposes of subsection (1), the appropriate authority must be satisfied that he has special experience in the diagnosis or treatment of mental disorder.
- (3) In determining whether persons have special experience as mentioned in subsection (2), the appropriate authority may apply different criteria for different purposes. 45

- (4) A person is an approved mental health professional –
- (a) in relation to the area of a local social services authority in England (“the relevant English authority”) –
 - (i) if he is approved by the relevant English authority for the purposes of this subsection, or 5
 - (ii) if he is approved by another local social services authority in England for those purposes and the relevant English authority gives to him an authorisation for the approval to be treated as having been given also in relation to its area,
 - (b) in relation to the area of a local social services authority in Wales (“the relevant Welsh authority”) – 10
 - (i) if he is approved by the relevant Welsh authority for the purposes of this subsection, or
 - (ii) if he is approved by another local social services authority in Wales for those purposes and the relevant Welsh authority gives to him an authorisation for the approval to be treated as having been given also in relation to its area. 15
- (5) Before approving a person for the purposes of subsection (4), the local social services authority must be satisfied that he has appropriate competence in dealing with persons who are suffering from mental disorder. 20
- (6) In approving a person for the purposes of subsection (4), a local social services authority must have regard to such matters as the appropriate authority may direct.
- (7) The matters in respect of which a direction under subsection (6) may be given include, in particular – 25
- (a) the period for which an approval for the purposes of subsection (4) has effect,
 - (b) the conditions subject to which such an approval is to be given, and
 - (c) the factors to be taken into account in determining whether a person has appropriate competence as mentioned in subsection (5). 30
- (8) In determining whether persons have appropriate competence as mentioned in subsection (5), the local social services authority may apply different criteria for different purposes (and directions given by virtue of subsection (7)(c) may be framed accordingly).
- (9) An authorisation given under paragraph (a)(ii) or (b)(ii) of subsection (4) may make provision as to the duration of the authorisation (except that provision may not be made so that the authorisation continues to have effect after the approval to which it relates ceases to have effect). 35

4 Mental Health Tribunals for England and Wales

- (1) There are to be tribunals, known as the Mental Health Tribunal for England and the Mental Health Tribunal for Wales (or, in Welsh, Tribiwnlys Iechyd Meddwl Cymru), for the purpose of dealing with applications by or in respect of patients under or by virtue of this Act. 40
- (2) Each Tribunal is to consist of –
- (a) a President, and
 - (b) a number of other members, 45
- appointed by the Lord Chancellor.

-
- (3) Each Tribunal is to be constituted in accordance with Schedule 2 (which also makes further provision in connection with it).
- (4) The Secretary of State may –
- (a) pay such remuneration or allowances to the President or other members of the Mental Health Tribunal for England as he thinks fit, and
 - (b) appoint such officers and staff, and make such accommodation available, as he thinks fit for the President and that Tribunal.
- (5) The National Assembly for Wales may –
- (a) pay such remuneration or allowances to the President or other members of the Mental Health Tribunal for Wales as it thinks fit, and
 - (b) appoint such officers and staff, and make such accommodation available, as it thinks fit for the President and that Tribunal.
- 5 Transfer of property etc to the Mental Health Tribunals for England and Wales**
- Schedule 3 (which makes provision for the transfer of property, rights and liabilities from the Mental Health Review Tribunals to the Mental Health Tribunal for England and Mental Health Tribunal for Wales) has effect.
- 6 Abolition of Mental Health Review Tribunals**
- The Mental Health Review Tribunals established under section 65 of the Mental Health Act 1983 (c. 20) are abolished.
- 7 Expert Panel**
- (1) The appropriate authority must appoint a panel of persons, referred to in this Act as the Expert Panel, for the purpose of discharging the functions conferred on them under or by virtue of this Act.
- (2) A person may be considered for appointment to the Expert Panel only if he falls within a description specified by the appropriate authority in regulations.
- (3) The appropriate authority may pay to members of the Expert Panel such fees, allowances, expenses for travel or subsistence, pensions or gratuities as it thinks fit.
- 8 Mental Health Appeal Tribunal**
- (1) There is to be a tribunal, known as the Mental Health Appeal Tribunal, for the purpose of dealing with appeals against determinations made by the Mental Health Tribunal for England or the Mental Health Tribunal for Wales under or by virtue of this Act.
- (2) The Appeal Tribunal is to consist of –
- (a) a President, and
 - (b) a number of other members, appointed by the Lord Chancellor.
- (3) The Appeal Tribunal is to be constituted in accordance with Schedule 4 (which also makes further provision in connection with the Appeal Tribunal).

- (4) The appropriate authority may –
- (a) pay such remuneration or allowances to the President or other members of the Appeal Tribunal as the appropriate authority thinks fit, and
 - (b) appoint such officers and staff, and make such accommodation available, as the appropriate authority thinks fit for the President and the Appeal Tribunal. 5

PART 2

EXAMINATION, ASSESSMENT AND TREATMENT

CHAPTER 1 10

INTERPRETATION ETC

9 The relevant conditions

- (1) In this Part, references to the relevant conditions are to the following conditions (subject to subsection (7)).
- (2) The first condition is that the patient is suffering from mental disorder. 15
- (3) The second condition is that that mental disorder is of such a nature or degree as to warrant the provision of medical treatment to him.
- (4) The third condition is that it is necessary –
 - (a) for the protection of the patient from –
 - (i) suicide or serious self-harm, or 20
 - (ii) serious neglect by him of his health or safety, or
 - (b) for the protection of other persons, that medical treatment be provided to the patient.
- (5) The fourth condition is that medical treatment cannot lawfully be provided to the patient without him being subject to the provisions of this Part. 25
- (6) The fifth condition is that medical treatment is available which is appropriate in the patient's case, taking into account the nature or degree of his mental disorder and all other circumstances of his case.
- (7) The fourth condition does not apply in the case of a patient aged 16 or over who is at substantial risk of causing serious harm to other persons. 30
- (8) For the purposes of this Part, a determination as to whether a patient is at substantial risk of causing serious harm to other persons is to be treated as part of the determination as to whether all of the relevant conditions appear to be or are met in his case.

10 Other basic definitions for purposes of Part 2 35

- (1) This section applies for the purposes of this Part.
- (2) References to the approved mental health professional, in relation to a patient, are to the approved mental health professional with whom arrangements in respect of him are made under section 14(3) or (6), as the case may require.

- (3) “Assessment period”, in relation to a patient, has the meaning given by section 25(6).

11 Persons with parental responsibility: consultation and notification requirements in Part 2

- (1) This section applies where a person is required by any provision of this Part to consult or notify each person with parental responsibility for a patient in his capacity as such a person. 5
- (2) The person in question need not consult or notify any particular person with parental responsibility for a patient if— 10
- (a) he thinks it would be inappropriate to do so, or
 - (b) it is impracticable to do so.

12 Carers: consultation requirements in Part 2

- (1) This section applies where a person is required by any provision of this Part to consult a person in his capacity as a carer of a patient.
- (2) The person may not consult the carer without first ascertaining the patient’s wishes and feelings about his consulting the carer in pursuance of the requirement in question (unless inappropriate or impracticable). 15
- (3) If more than one person is required by the provision in question to consult the carer, those persons may ascertain the patient’s wishes and feelings about consulting the carer jointly. 20
- (4) The person must—
- (a) make a determination about whether it would be appropriate to consult the carer, and
 - (b) in making that determination, have regard to the patient’s wishes and feelings and any other relevant circumstances. 25
- (5) If a person determines that it would not be appropriate to consult the carer, he must not do so and, accordingly, the requirement ceases to have effect.
- (6) If the person consults the carer about the medical treatment to be provided to the patient or any other matter, the matters about which he is consulted must include— 30
- (a) whether it appears to him that the patient’s wishes and feelings about that medical treatment or matter can be ascertained and, if so, what appear to him to be those wishes and feelings, and
 - (b) what effect that medical treatment or matter is likely to have, in general, on him and the patient. 35

13 Relationship between Parts 2 and 3 etc

Schedule 5 (which makes provision as to the relationship between Parts 2 and 3 and between Part 2 and criminal proceedings etc) has effect.

CHAPTER 2

EXAMINATION

Arrangements for examination

14 Duty to arrange examination etc

- | | |
|--|----|
| (1) The appropriate authority must, if requested to do so by any person, determine whether all of the relevant conditions appear to be met in a patient’s case. | 5 |
| (2) Before making a determination, the appropriate authority must consult – | |
| (a) in the case of a patient aged under 16, each person with parental responsibility for him, subject to section 11, and | |
| (b) any carer of the patient (unless he falls within paragraph (a)), subject to section 12 and if practicable, | 10 |
| unless the appropriate authority is minded to determine that not all of the relevant conditions appear to be met in the patient’s case. | |
| (3) If – | |
| (a) the appropriate authority determines that all of the relevant conditions appear to be so met, or | 15 |
| (b) it receives a request for it to arrange for a patient to be examined made in accordance with section 230 or Schedule 6, | |
| it must, as soon as practicable after making the determination or receiving the request, arrange for the patient to be examined by the persons specified in subsection (4) (subject to subsection (8)). | |
| (4) Those persons are – | |
| (a) two registered medical practitioners in respect of whom the conditions specified in subsection (5) are met, and | |
| (b) an approved mental health professional who does not fall within the description specified for the purposes of paragraph (b) of that subsection. | 25 |
| (5) Those conditions are that – | |
| (a) at least one of the practitioners falls within a description of persons specified by the appropriate authority in regulations, and | 30 |
| (b) neither of them falls within a description of persons specified by the appropriate authority in the regulations as being subject to a potential conflict of interest as regards acting in relation to a person of the patient’s description. | |
| (6) The appropriate authority may at any time arrange for a person who falls within the description specified in – | 35 |
| (a) paragraph (a) of subsection (4) (taking account of the other person of that description), or | |
| (b) paragraph (b) of that subsection, | |
| to succeed a person of that description with whom arrangements were made under subsection (3) or this subsection (whether in relation to examining the patient or acting subsequently). | |
| (7) If – | 40 |

- (a) a request is made as mentioned in subsection (1) by any carer of the patient, and
 - (b) the appropriate authority determines under that subsection that not all of the relevant conditions appear to be met in the patient’s case,
the authority must notify the carer of that determination as soon as practicable after making it. 5
- (8) The appropriate authority may not make arrangements under subsection (3) in respect of a patient who is a ward of court without the leave of the court on an application by the authority.
- (9) As soon as practicable after making a determination under subsection (1) or receiving a request as mentioned in subsection (3)(b), the appropriate authority must make a record of the determination and the reasons for it or of the request. 10
- (10) Schedule 6 makes provision for the detention of certain patients for the purposes of arranging and carrying out examinations of them. 15
- (11) In this Chapter –
 - (a) references to an examination of a patient are to an examination of him arranged under this section, and related expressions are to be read accordingly,
 - (b) references to the examiners, in relation to a patient, are to the persons with whom arrangements in respect of the patient are made under subsection (3) or (6), as the case may require, 20
 - (c) references to the registered medical practitioners, in relation to a patient, are to the registered medical practitioners with whom arrangements in respect of the patient are made under subsection (3) or (6), as the case may require. 25

Determinations

15 Determinations to be made on examination

- (1) Subject to section 16(2)(a), each of the examiners must examine the patient to determine whether all of the relevant conditions are met in his case. 30
- (2) If the patient falls within a description specified by the appropriate authority in regulations, each of the examiners must, in carrying out an examination, also determine whether it is appropriate for the patient to be detained in a hospital while an assessment of him is carried out.
- (3) If an examiner determines that it is not appropriate for the patient to be so detained, the determination must specify the conditions to be imposed on the patient to – 35
 - (a) secure that the assessment may be carried out, or
 - (b) protect his health or safety or other persons against the risk by reference to which the examiner determined whether the third of the relevant conditions is met in his case. 40
- (4) The conditions may include –
 - (a) a condition that the patient –
 - (i) attends at a specified place at specified times,
 - (ii) resides at a specified place, 45

- (iii) makes himself available for assessment during specified periods,
- (b) a condition that the patient does not engage in specified conduct.
- In this subsection, “specified” means specified in the condition in question.
- (5) Before – 5
- (a) making a determination under subsection (1) or (2), or
- (b) specifying any conditions in accordance with subsection (3),
- an examiner must consult the persons specified in subsection (6).
- (6) Those persons are – 10
- (a) the patient, unless inappropriate or impracticable,
- (b) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11, and
- (c) any carer of the patient (unless he falls within paragraph (b)), subject to section 12 and if practicable.
- (7) An examiner may consult the carer jointly with one or both of the other examiners. 15
- (8) Subsection (2) does not apply in relation to an examination of a patient under subsection (1) if section 17 applies to the patient.
- (9) In this Chapter and Chapter 3, references to an assessment of a patient are to an assessment of him carried out under section 25, and related expressions are to be read accordingly. 20

16 Consequences of determinations

- (1) Subsection (2) applies if, on examining the patient, one (or more) of the examiners determines that not all of the relevant conditions are met in the patient’s case. 25
- (2) In such a case –
- (a) none of the other examiners may carry out an examination of the patient (if any of them have yet to do so), and
- (b) the patient is not liable to assessment.
- (3) Subsections (4) and (5) apply if, on examining the patient, all of the examiners determine that all of the relevant conditions are met in the patient’s case. 30
- (4) In a case where the approved mental health professional and one or both of the registered medical practitioners determine, in accordance with section 15(2), that it is not appropriate for the patient to be detained in a hospital while the assessment is carried out, the patient is liable to assessment as a non-resident patient. 35
- (5) In any other case, the patient is liable to assessment as a resident patient.
- (6) A patient liable to assessment as a non-resident patient under subsection (4) or as a resident patient under subsection (5) is so liable from the time when all the determinations under section 15 are made. 40
- (7) This section is subject to section 17.

17 Emergency patients

- (1) This section applies to a patient if –
 - (a) an examination of him is carried out by the approved mental health professional and one (but not both) of the registered medical practitioners, 5
 - (b) the approved mental health professional and the practitioner in question (referred to in this section as the “first practitioner”) both determine that all of the relevant conditions are met in his case, and
 - (c) he is an emergency patient.
- (2) A patient is an emergency patient if the first practitioner determines that – 10
 - (a) it is of urgent necessity that an assessment of him be carried out, and
 - (b) compliance with the requirement under section 15(1) that he be examined by another registered medical practitioner (referred to in this section and section 18 as a “second practitioner”) would involve undesirable delay. 15
- (3) Such a patient is liable to assessment, and is so liable as a resident patient, from the time when all of the determinations mentioned in subsections (1)(b) and (2) are made.
- (4) Subsection (3) does not affect the requirement under section 15(1) that a patient be examined by a second practitioner (subject to his ceasing to be liable to assessment by virtue of section 18(4) or 23(2)). 20
- (5) If the second practitioner determines that all of the relevant conditions are met in the patient’s case, the patient continues to be liable to assessment as a resident patient from the time when that determination is made.
- (6) If the second practitioner determines that not all of the relevant conditions are met in the patient’s case, the patient ceases to be liable to assessment from the time when that determination is made. 25
- (7) References in this Chapter and Chapters 3 and 5 to an emergency patient are to be read in accordance with subsection (2).

18 Determinations: supplemental 30

- (1) Each examiner must carry out his examination of the patient and make his determinations within the applicable period.
- (2) Within the applicable period, each of the registered medical practitioners must – 35
 - (a) record each of his determinations and the reasons for it, and
 - (b) forward that record to the approved mental health professional, and the approved mental health professional must record each of his own determinations and the reasons for it.
- (3) The applicable period is the period – 40
 - (a) beginning with the time when the arrangements under section 14(3) were made, and
 - (b) ending –
 - (i) in relation to an examination and determinations by a second practitioner in accordance with section 17, at the end of the

- period of 72 hours beginning with the time at which the patient is admitted in pursuance of section 23(1),
- (ii) otherwise, at the end of the period of 120 hours beginning with the time at which the appropriate authority made the record required by section 14(9). 5
- (4) If any person fails to comply with subsection (1) or (2), the patient ceases to be liable to assessment at the end of the applicable period.
- (5) Subsection (1) is subject to section 16(2)(a).

Notification of determinations

19 Notification of determinations 10

- (1) This section applies where a patient is liable to assessment.
- (2) As soon as practicable after the time when the patient became so liable, the approved mental health professional must act as provided for by subsections (3) and (5).
- (3) He must notify – 15
- (a) the patient, and
- (b) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11,
- of the matters specified in subsection (4).
- (4) Those matters are – 20
- (a) the fact that he is liable to assessment as a resident patient or a non-resident patient,
- (b) all the determinations under this Chapter made in his case and the reasons for them, and
- (c) the help available from IMHA advocates under the arrangements 25
- under section 247.
- (5) He must –
- (a) appoint a nominated person for the patient in accordance with Chapter 1 of Part 8, and
- (b) notify that person of the matters specified in subsection (4). 30
- (6) This section is subject to section 234.

20 Supplementary notification: emergency patients

- (1) This section makes provision for notifications (in addition to those provided for by section 19) to be given in the case of an emergency patient who is liable to assessment. 35
- (2) If the patient continues to be liable to assessment by virtue of section 17(5), the approved mental health professional must notify –
- (a) the patient,
- (b) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11, 40
- (c) the patient's nominated person (unless he falls within paragraph (b)), and

- (d) the patient’s approved clinician,
of the matters mentioned in subsection (3).
- (3) Those matters are –
- (a) the fact that the patient continues to be liable to assessment as a resident patient by virtue of subsection (5) of section 17, and 5
 - (b) the reasons for the determination mentioned in that subsection.
- (4) The notification under subsection (2) –
- (a) if to be given to a nominated person or approved clinician who is appointed after the time when the patient continues to be liable to assessment, must be given as soon as practicable after the appointment, 10
 - (b) in any other case, must be given as soon as practicable after the time when the patient continues to be liable to assessment.
- (5) If the patient ceases to be liable to assessment by virtue of section 17(6) or 18(4), the approved mental health professional must notify the persons specified in paragraphs (a) to (d) of subsection (2) of the matters mentioned in subsection (6). 15
- (6) Those matters are –
- (a) the fact that the patient ceases to be liable to assessment by virtue of subsection (6) of section 17 and the reasons for the determination mentioned in that subsection, or 20
 - (b) the fact that he ceases to be liable to assessment by virtue of section 18(4),
(as the case may be).
- (7) The notification under subsection (5) must be given as soon as practicable after the time when the patient ceases to be liable to assessment. 25
- (8) References in this section to the approved clinician, in relation to a patient, are to the person appointed in respect of him under section 24(1).

Supplementary provision

21 Examinations: power to make supplementary provision

- (1) The appropriate authority may make regulations in connection with the carrying out of examinations. 30
- (2) The regulations may, in particular –
- (a) require examiners to notify specified persons of specified matters within a specified time,
 - (b) make provision as to the making of representations to examiners by specified persons within a specified time and provide for those representations to be taken into account, 35
 - (c) require examiners to consult specified persons about specified matters within a specified time,
 - (d) make provision as to the form in which any notification is to be given, or any record made, by virtue of this Chapter. 40
- (3) For the purposes of this section, any reference to examiners includes a reference to any examiner of a specified description.

- (4) In this section, “specified” means specified in the regulations.

CHAPTER 3

ASSESSMENT

Registration

- | | | |
|-----------|--|----|
| 22 | Registration | 5 |
| (1) | The approved mental health professional must register a patient who is liable to assessment with the hospital which is determined by the appropriate authority to be responsible for carrying out his assessment and his medical treatment in accordance with this Part. | |
| (2) | The approved mental health professional must effect that registration within the period of 24 hours beginning with the time when the patient became liable to assessment. | 10 |
| (3) | If the approved mental health professional fails to comply with subsection (2), the patient ceases to be liable to assessment at the end of the period mentioned in that subsection. | 15 |
| (4) | Subsection (1) does not apply in the case of an emergency patient who has, before the end of the period mentioned in subsection (2), ceased to be liable to assessment by virtue of section 17(6) or 18(4). | |
|
 | | |
| 23 | Effect of registration | |
| (1) | The registration under section 22(1) of a patient who is liable to assessment as a resident patient is sufficient authority – | 20 |
| | (a) for the approved mental health professional, or any person authorised by him, to take the patient and convey him to the hospital with which he is registered within the period specified in subsection (3), and | |
| | (b) for the managers of the hospital to admit the patient and detain him until – | 25 |
| | (i) he becomes liable to assessment as a non-resident patient, | |
| | (ii) he is registered under section 78(2) with another hospital, or | |
| | (iii) his assessment period ends. | |
| (2) | If – | 30 |
| | (a) the arrangements for the patient’s admission to and detention in hospital involve his being taken by the approved mental health professional, or a person authorised by the professional, and conveyed there, and | |
| | (b) the professional or person fails to take him and convey him there within the period specified in subsection (3), | 35 |
| | the patient ceases to be liable to assessment at the end of that period. | |
| (3) | The period mentioned in subsections (1)(a) and (2)(b) is – | |
| | (a) in the case of an emergency patient, the period of 24 hours beginning with the time when he was registered under section 22(1), | 40 |
| | (b) otherwise, the period of 7 days beginning with the day on which he was so registered. | |

- (4) The registration under section 22(1) of a patient who is liable to assessment as a non-resident patient is sufficient authority for –
 - (a) the approved mental health professional, and
 - (b) the clinical supervisor of the patient (when appointed under section 24),to require the patient to comply with the conditions notified to him by the approved mental health professional. 5
- (5) The conditions are those which are specified by all or the majority of the examiners by virtue of section 15(3).
- (6) If the approved mental health professional fails, before the end of the period of 7 days beginning with the day on which he was registered under section 22(1), to notify a patient who is liable to assessment as a non-resident patient of the conditions with which he is required to comply, he ceases to be liable to assessment at the end of that period. 10
- (7) The approved mental health professional or clinical supervisor may not require the patient to comply with any conditions imposed under subsection (4) after –
 - (a) he becomes liable to assessment as a resident patient, or
 - (b) his assessment period ends. 15

Clinical supervisor 20

24 Appointment of clinical supervisor

- (1) The managers of a hospital with which a patient is registered under section 22(1) must appoint an approved clinician to be in charge of the assessment of the patient and his medical treatment in accordance with this Part.
- (2) The appointment under subsection (1) must be made as soon as practicable after the registration. 25
- (3) The approved mental health professional must, as soon as practicable after his appointment under subsection (1), notify the approved clinician –
 - (a) that the patient is liable to assessment as a resident patient, or a non-resident patient, and
 - (b) of all the determinations under Chapter 2 made in the patient’s case and the reasons for them. 30
- (4) If a patient is subsequently registered with another hospital under section 78(2), the managers of that hospital must appoint an approved clinician to be in charge of the assessment of the patient or his medical treatment or assessment (as the case may be) in accordance with this Part. 35
- (5) The appointment under subsection (4) must be made as soon as practicable after the subsequent registration.
- (6) The managers of a hospital with which a patient is registered under section 22(1), or subsequently registered under section 78(2), may at any time appoint an approved clinician to succeed the approved clinician appointed under any of the appointment provisions. 40
- (7) When a new approved clinician is appointed under subsection (4) or (6), the appointment of the existing approved clinician ceases to have effect.

-
- (8) The managers of a hospital with which a patient is registered under section 22(1), or subsequently registered under section 78(2), must, as soon as practicable after appointing an approved clinician under any of the appointment provisions, notify the following persons of the appointment – 5
- (a) the patient,
 - (b) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11, and
 - (c) the patient’s nominated person (unless he falls within paragraph (b)).
- (9) For the purposes of this section, the appointment provisions are subsections (1), (4) and (6). 10
- (10) The approved clinician appointed in respect of the patient under any of the appointment provisions is referred to in this Part as the patient’s “clinical supervisor”.

Determinations etc

- 25 Determinations to be made on assessment etc** 15
- (1) The managers of a hospital with which a patient is registered under section 22(1) must secure that the patient is assessed, during his assessment period, by the clinical supervisor.
- (2) The assessment is for the purpose of determining – 20
- (a) whether all of the relevant conditions are met in the patient’s case, and
 - (b) if so – 25
 - (i) what medical treatment should be provided to him during his assessment period in accordance with section 31,
 - (ii) whether it is necessary to assess further what medical treatment should be provided to the patient before an order authorising his medical treatment is made under Chapter 6, and
 - (iii) what medical treatment should be provided to him in accordance with any order under that Chapter.
- (3) The assessment of the patient may commence as soon as the patient is admitted in pursuance of subsection (1) of section 23 or the imposition of conditions on him is authorised under subsection (4) of that section (as the case may be). 30
- (4) If the clinical supervisor determines under subsection (2)(a) that all of the relevant conditions are met in the patient’s case, he must keep under review the question of whether all of those conditions are met (and, accordingly, the reference in subsections (5) and (6)(b)(iii) to the clinical supervisor determining that not all of those conditions are met includes a reference to such a determination made on a review). 35
- (5) If the clinical supervisor determines for the purposes of subsection (2)(a) that not all of the relevant conditions are met in the patient’s case, he must notify the following persons of the determination as soon as practicable after making it – 40
- (a) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11, and
 - (b) any carer of the patient (unless he falls within paragraph (a)).
- (6) In this Part, “assessment period”, in relation to a patient, means the period – 45

- (a) beginning with the commencement of the assessment in accordance with subsection (3), and
 - (b) ending—
 - (i) on his ceasing to be liable to assessment by virtue of Chapter 2 or this Chapter or section 71(3) or 172(3), 5
 - (ii) if an application is made by or on behalf of the patient under section 35(1) or (3), on the making of an order in respect of him under subsection (3) of section 36 or by virtue of subsection (5), (6)(b) or (8)(c) of that section,
 - (iii) if the clinical supervisor determines for the purposes of subsection (2)(a) above that not all of the relevant conditions are met in the patient’s case, on the making of that determination, 10
 - (iv) if the clinical supervisor makes an application under section 38, on the making of an order under section 45,
 - (v) at the end of the period of 28 days beginning with the day on which the patient was admitted in pursuance of subsection (1) of section 23 or the imposition of conditions on him was authorised under subsection (4) of that section (as the case may be), 15
- (whichever occurs first). 20
- (7) Subsection (6)(b)(v) is subject to sections 72(2) and (3) and 255(1) and (2).
- (8) This section applies to the managers of a hospital with which a patient is subsequently registered under section 78(2) as it applies to the managers of the hospital with which the patient was registered under section 22(1); but the assessment period of a patient is not affected by any such subsequent registration. 25

26 Duty to keep status of resident patients under review

- (1) When assessing a patient who is liable to assessment as a resident patient, the clinical supervisor must keep under review, throughout the review period, the question of whether it is appropriate for the patient to be detained in a hospital while the assessment is carried out. 30
- (2) In subsection (1), the “review period”—
 - (a) in relation to a patient falling within the description specified for the purposes of section 15(2), means the period ending at the end of the patient’s assessment period, 35
 - (b) in relation to any other patient, means the period—
 - (i) beginning with the inclusion of a care plan in the patient’s records under section 31(1), and
 - (ii) ending at the end of the patient’s assessment period.
- (3) The following provisions apply if the clinical supervisor determines that it is not appropriate for the patient to be detained in a hospital while the assessment is carried out. 40
- (4) The determination must specify the conditions to be imposed on the patient to—
 - (a) secure that the assessment may be carried out, or 45

<ul style="list-style-type: none"> (b) protect his health or safety or other persons against the risk by reference to which the examiners (within the meaning of Chapter 2) determined that the third of the relevant conditions is met in his case. 	5
<ul style="list-style-type: none"> (5) The conditions may include – <ul style="list-style-type: none"> (a) a condition that the patient – <ul style="list-style-type: none"> (i) attends at a specified place at specified times, (ii) resides at a specified place, (iii) makes himself available for assessment during specified periods, (b) a condition that the patient does not engage in specified conduct. <p>In this subsection, “specified” means specified in the condition in question.</p>	10
<ul style="list-style-type: none"> (6) Before specifying the conditions, the clinical supervisor must consult – <ul style="list-style-type: none"> (a) the patient, unless inappropriate or impracticable, (b) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11, (c) the patient’s nominated person (unless he falls within paragraph (b)), if practicable, and (d) any carer of the patient (unless he falls within paragraph (b) or (c)), subject to section 12 and if practicable. 	15
<ul style="list-style-type: none"> (7) The patient is liable to assessment as a non-resident patient from the time when the determination is made. 	20
<ul style="list-style-type: none"> (8) The determination is sufficient authority for the managers of the hospital with which the patient is registered (whether under section 22(1) or 78(2)) to require the patient to comply with the conditions notified to the patient by the clinical supervisor. 	25
<ul style="list-style-type: none"> (9) The managers may not require the patient to comply with any conditions imposed under subsection (8) after – <ul style="list-style-type: none"> (a) he becomes liable to assessment as a resident patient, (b) he is registered under section 78(2) with another hospital, or (c) his assessment period ends. 	30
27 Duty to keep status of non-resident patients under review	
<ul style="list-style-type: none"> (1) When assessing a patient who is liable to assessment as a non-resident patient, the clinical supervisor must keep under review the question of whether it is appropriate for the patient to be detained in a hospital while the assessment is carried out. 	35
<ul style="list-style-type: none"> (2) The clinical supervisor must keep that question under review throughout the patient’s assessment period and must, in particular, determine that question if – <ul style="list-style-type: none"> (a) the patient fails to comply with any conditions imposed under section 23(4), 26(8), 29, 37(6) or 79(4), or (b) there is a material change in his circumstances. 	40
<ul style="list-style-type: none"> (3) Before determining that question, the clinical supervisor must consult – <ul style="list-style-type: none"> (a) the patient, unless inappropriate or impracticable, (b) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11, 	45

- (c) the patient’s nominated person (unless he falls within paragraph (b)), if practicable, and
- (d) any carer of the patient (unless he falls within paragraph (b) or (c)), subject to section 12 and if practicable.

28	Change in status of non-resident patient	5
(1)	This section applies if the clinical supervisor determines that it is appropriate for a patient who is liable to assessment as a non-resident patient to be detained in a hospital while an assessment of him is carried out.	
(2)	The patient is liable to assessment as a resident patient from the time when the determination is made.	10
(3)	The determination is sufficient authority –	
(a)	for the clinical supervisor, or any person authorised by him, to take the patient and convey him to the hospital with which he is registered (whether under section 22(1) or 78(2)) within the period specified in subsection (5), and	15
(b)	for the managers of that hospital to admit the patient and detain him until –	
(i)	he becomes liable to assessment as a non-resident patient,	
(ii)	he is registered under section 78(2) with another hospital, or	
(iii)	his assessment period ends.	20
(4)	If –	
(a)	the arrangements for the patient’s admission to and detention in hospital involve his being taken by the clinical supervisor, or a person authorised by him, and conveyed there, and	
(b)	the clinical supervisor or person fails to take him and convey him there within the period specified in subsection (5),	25
	the patient is, from the end of that period, to be treated as if he had never become liable to assessment as a resident patient.	
(5)	The period mentioned in subsections (3)(a) and (4)(b) is –	
(a)	if the clinical supervisor determines that it is of urgent necessity that an assessment of the patient as a resident patient be carried out, the period of 24 hours beginning with the time when the determination referred to in subsection (1) was made,	30
(b)	otherwise, the period of 5 days beginning with the day on which the determination referred to in that subsection was made.	35
(6)	The clinical supervisor must –	
(a)	notify the following persons of the determination referred to in subsection (1) as soon as practicable after making the determination –	
(i)	if the patient is aged under 16, each person with parental responsibility for him, subject to section 11, and	40
(ii)	any carer of the patient (unless he falls within sub-paragraph (i)), and	
(b)	if applicable, notify those persons of the fact that the patient is to be treated as referred to in subsection (4) as soon as practicable after the end of the period specified in subsection (5).	45

29 Duty to review conditions if status as non-resident patient unchanged

- (1) This section applies if the clinical supervisor determines that it is not appropriate for a patient who is liable to assessment as a non-resident patient to be detained in a hospital while the assessment is carried out.
- (2) The clinical supervisor must keep under review the following questions – 5
 - (a) whether the conditions imposed on the patient under section 23(4), 26(8), 37(6), 79(4) or this section are necessary to –
 - (i) secure that the assessment may be carried out, or
 - (ii) protect his health or safety or other persons against the risk by reference to which the examiners (within the meaning of Chapter 2) determined that the third of the relevant conditions is met in his case, and 10
 - (b) whether it is necessary to impose other conditions for either of those purposes.
- (3) If the clinical supervisor determines in accordance with subsection (2) that it is not necessary to impose one or more of the conditions in question or that it is necessary to impose other conditions, he may amend the conditions imposed on the patient. 15
- (4) Before amending the conditions, the clinical supervisor must consult – 20
 - (a) the patient, unless inappropriate or impracticable,
 - (b) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11,
 - (c) the patient’s nominated person (unless he falls within paragraph (b)), if practicable, and
 - (d) any carer of the patient (unless he falls within paragraph (b) or (c)), subject to section 12 and if practicable. 25
- (5) Notification by the clinical supervisor to the patient of an amendment in the conditions imposed on him is sufficient authority for the clinical supervisor to require the patient to comply with the amended conditions.
- (6) Subsection (5) of section 26 applies in respect of conditions imposed under this section. 30
- (7) Subsection (9) of that section applies to conditions imposed under this section as it applies to conditions imposed under subsection (8) of that section.

30 Power to give leave of absence etc

- (1) The clinical supervisor of a patient who is liable to assessment as a resident patient may give him leave to be absent from the hospital with which he is registered, subject to conditions. 35
- (2) The clinical supervisor of a patient who is liable to assessment as a non-resident patient may suspend any of the conditions imposed on him under section 23(4), 26(8), 29, 37(6) or 79(4), subject to conditions. 40
- (3) The references to conditions in subsections (1) and (2) are to such conditions as the clinical supervisor considers necessary in the interests of the patient or for the protection of other persons.
- (4) The clinical supervisor may give leave or suspend a condition on specified occasions or for a specified period. 45

-
- (5) If the clinical supervisor gives leave or suspends a condition for a specified period, he may extend that period in the absence of the patient by giving notice to him.
- (6) If it appears to the clinical supervisor that it is necessary to do so in the interests of the patient's health or safety or for the protection of other persons, he may, on giving leave or suspending a condition, direct that the patient is to remain in custody during his absence or be kept in custody during the suspension of the condition. 5
- (7) If a direction under subsection (6) is given, the patient may be kept in the custody of – 10
- (a) an officer on the staff of the hospital with which he is registered,
 - (b) a person authorised in writing by the managers of that hospital, or
 - (c) in the case of a patient to whom leave is given subject to a condition that he reside in another hospital, an officer on the staff of that other hospital. 15
- (8) The clinical supervisor must, as soon as practicable, notify the following persons of the matters specified in subsection (9) –
- (a) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11, and
 - (b) the patient's nominated person (unless he falls within paragraph (a)). 20
- (9) Those matters are –
- (a) the giving of leave to the patient under subsection (1), or the suspension of conditions in respect of the patient under subsection (2), and any conditions to which it is subject,
 - (b) whether that giving of leave or suspension of conditions is on specified occasions or for a specified period, 25
 - (c) any extension of the period for which that leave is given or those conditions are suspended under subsection (5), and
 - (d) any direction given in respect of the patient under subsection (6).
- (10) If it appears to the clinical supervisor that it is necessary to do so in the interests of the patient's health or safety or for the protection of other persons, he may – 30
- (a) revoke the leave and recall the patient to the hospital in question, or
 - (b) cancel the suspension of a condition,
- by giving notice to the following persons.
- (11) Those persons are – 35
- (a) the patient,
 - (b) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11,
 - (c) any person for the time being in charge of the patient (unless he falls within paragraph (b)), and 40
 - (d) the patient's nominated person (unless he falls within paragraph (b) or (c)).
- (12) Subsection (10) does not apply after the patient has ceased to be liable to assessment as a resident or non-resident patient (as the case may be).
- (13) In this section, references to the hospital with which the patient is registered are to the hospital with which he is registered under section 22(1) or 78(2) (as the case may be). 45

Care plans

31 Care plans

- (1) The managers of a hospital with which a patient is registered under section 22(1) must secure that—
 - (a) a care plan is prepared for the patient by the clinical supervisor, and 5
 - (b) the plan is included in the patient’s records, within the initial period.
- (2) The plan must—
 - (a) include the required information, and
 - (b) be prepared in the form prescribed by the appropriate authority in regulations. 10
- (3) In subsection (2)(a), the “required information”, in relation to the patient, means—
 - (a) a description of the medical treatment which is to be provided to the patient during the period for which the plan is in force, and 15
 - (b) such other information relating to the care of the patient during that period as may be prescribed by the appropriate authority in regulations.
- (4) In preparing a plan for the patient, the clinical supervisor must consult the following persons about the medical treatment to be specified in the plan— 20
 - (a) the patient, unless inappropriate or impracticable,
 - (b) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11,
 - (c) the patient’s nominated person (unless he falls within paragraph (b)), if practicable, and 25
 - (d) any carer of the patient (unless he falls within paragraph (b) or (c)), subject to section 12 and if practicable.
- (5) The clinical supervisor must send a copy of the plan to—
 - (a) the patient,
 - (b) if the patient is aged under 16, each person with parental responsibility for him, subject to section 32, 30
 - (c) the patient’s nominated person (unless he falls within paragraph (b)), subject to that section,
 as soon as practicable after the plan is in force.
- (6) The clinical supervisor may amend the patient’s plan at any time during the period for which it is in force; but he must consider amending the plan on or before the patient’s review day. 35
- (7) If the clinical supervisor amends the patient’s plan—
 - (a) the managers must secure that the amended plan is included in the patient’s records as soon as practicable after it is prepared, and 40
 - (b) subsections (2) to (6), this subsection and section 32 apply as if references to the plan were references to the amended plan.
- (8) A plan, or amended plan, is in force for the period—
 - (a) beginning with its inclusion in the patient’s records, and
 - (b) ending with— 45

- (i) the inclusion of an amended, or further amended, plan in the patient’s records, or
 - (ii) the end of the assessment period of the patient,
(whichever is earlier).
- (9) In this section – 5
 - “initial period”, in relation to a patient, means the period of 5 days beginning with the day on which he was admitted in pursuance of subsection (1) of section 23 or the imposition of conditions in respect of him was authorised under subsection (4) of that section (as the case may be); 10
 - “review day”, in relation to a patient, means the day falling 10 days after that day;
 - and any reference to the patient’s records is to the records relating to the patient which are kept by the clinical supervisor.
- (10) This section applies to the managers of a hospital with which a patient is subsequently registered under section 78(2) as it applies to the managers of the hospital with which the patient was registered under section 22(1). 15

32 Care plans: supplementary

- (1) The clinical supervisor may not send a copy of the care plan to – 20
 - (a) any particular person with parental responsibility for a patient under paragraph (b) of subsection (5) of section 31, or
 - (b) the patient’s nominated person under paragraph (c) of that subsection, without first ascertaining the patient’s wishes and feelings about his so sending such a copy (unless it is inappropriate or impracticable to do so).
- (2) The clinical supervisor must – 25
 - (a) make a determination about whether it would be appropriate to send a copy of the plan to the person in question, and
 - (b) have regard to the patient’s wishes and feelings in making that determination.
- (3) If the clinical supervisor determines that it would not be appropriate to send a copy of the plan to the person in question, he must not do so and, accordingly, the requirement under section 31(5)(b) or (c) (as the case may require) so to send such a copy ceases to have effect. 30
- (4) The clinical supervisor need not send a copy of the care plan to any particular person with parental responsibility for a patient if it is impracticable to do so. 35

Supplementary provision

33 Assessments: power to make supplementary provision

- (1) The appropriate authority may make regulations in connection with the carrying out of assessments.
- (2) The regulations may, in particular – 40
 - (a) require specified persons to notify other specified persons of specified matters within a specified time,

- (b) make provision as to the time by which any notification is to be given under this Chapter,
- (c) make provision as to the form in which any notification is to be given by virtue of this Chapter.
- In this subsection, “specified” means specified in the regulations. 5

CHAPTER 4

CHAPTERS 5 TO 10: REFERENCES TO THE TRIBUNAL

34 Interpretation of Chapters 5 to 10

- (1) Any provision under or by virtue of any of Chapters 5 to 7 and 10 requiring or permitting an application to be made to the Tribunal by or in respect of a patient is to be read as requiring or permitting an application to be made – 10
- (a) to the Mental Health Tribunal for England, if the patient is or is to be registered with a hospital in England, or
- (b) to the Mental Health Tribunal for Wales, if the patient is or is to be registered with a hospital in Wales, 15
- and references in Chapter 9 to whether an application should be made or the making of an application, or any related expression, are to be read accordingly.
- (2) Any other reference in any of Chapters 5 to 10 to the Tribunal is to be read as – 20
- (a) a reference to the Mental Health Tribunal for England in a case where an application has been made to that Tribunal under or by virtue of any of Chapters 5 to 7 and 10, or
- (b) a reference to the Mental Health Tribunal for Wales in a case where an application has been made to that Tribunal as mentioned in paragraph (a).
- (3) Subsection (2) is subject to – 25
- (a) subsection (4),
- (b) provision made in rules by virtue of section 74(2)(a) or 252(2)(c),
- (c) provision made in directions by virtue of section 254(6)(c), or
- (d) if responsibility for assessing a patient or providing him with medical treatment is transferred under Chapter 10 from a hospital in Wales to a hospital in England, such modifications as are necessary in consequence of the case having been remitted by the House of Lords to the Mental Health Tribunal for England instead of the Mental Health Tribunal for Wales (and vice versa). 30
- (4) References to the Tribunal in section 63 are to be read as – 35
- (a) references to the Mental Health Tribunal for England in a case where that Tribunal made the discharge order (as defined in subsection (4) of that section) in respect of the person in question, or
- (b) references to the Mental Health Tribunal for Wales in a case where that Tribunal made that order in respect of that person, 40
- (and references to the Tribunal in sections 64 and 65 are to be read accordingly).
- (5) For the purposes of this Chapter and Chapters 5 to 10, references to the hospital with which a patient is or is to be registered are to the hospital with which he is or is to be registered under section 22(1) or 78(2) (as the case may be).
- (6) Subsections (1) to (3) and (5) apply unless a contrary intention appears. 45

CHAPTER 5

DISCHARGE FROM LIABILITY TO ASSESSMENT ETC

35 Application to Tribunal for discharge of liability to assessment etc

- (1) An application may be made to the Tribunal by –
 - (a) a patient who is liable to assessment under Chapter 3, 5
 - (b) his nominated person, or
 - (c) if the patient is aged under 16, any person with parental responsibility for him,for an order discharging the patient’s liability to assessment (subject to subsections (5) and (6)). 10
- (2) An application under subsection (1) may be made –
 - (a) if the patient is an emergency patient, at any time after he continues to be liable to assessment,
 - (b) in the case of any other patient, at any time after he becomes liable to assessment. 15
- (3) An application may be made to the Tribunal by –
 - (a) a patient who is liable to assessment as a resident patient under Chapter 3,
 - (b) his nominated person, or
 - (c) if the patient is aged under 16, any person with parental responsibility for him, 20for an order directing that he is to be liable to assessment as a non-resident patient (subject to subsections (5) and (6)).
- (4) An application under subsection (3) may be made –
 - (a) if the patient is liable to assessment as a resident patient by virtue of his being an emergency patient, at any time after he continues to be liable to assessment, 25
 - (b) in the case of any other patient, at any time after he becomes liable to assessment as a resident patient.
- (5) Subsection (6) applies to a patient who is a ward of court. 30
- (6) An application under subsection (1) or (3) may not be made by –
 - (a) the patient’s nominated person, or
 - (b) a person with parental responsibility for him,without the leave of the court on an application by that person.
- (7) The Tribunal must, as soon as practicable, notify the patient’s clinical supervisor of the making of an application to it under this section; and the clinical supervisor must send to the Tribunal a copy of the care plan which is in force in respect of the patient under section 31. 35

36 Powers of Tribunal: applications under section 35

- (1) This section applies to the determination of an application under section 35. 40
- (2) The Tribunal must determine an application within the period specified in rules made by the Lord Chancellor.

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- (3) If, in the case of an application, the Tribunal determines that not all of the relevant conditions are met in the patient’s case, it must make an order discharging him from liability to assessment under Chapter 3.
- (4) The following subsections apply if the Tribunal determines that all of those conditions are met in the patient’s case. 5
- (5) If, in the case of an application, the Tribunal is satisfied that it is not necessary to assess further what medical treatment should be provided to the patient before making an order authorising his medical treatment under Chapter 6, it must make such an order.
- (6) If, in the case of an application under section 35(1), the Tribunal is satisfied that it is necessary to assess further what medical treatment should be provided to the patient before making such an order, it must make – 10
- (a) an order confirming the patient’s liability to assessment during his assessment period, or
- (b) an order authorising his assessment under that Chapter. 15
- (7) If –
- (a) the Tribunal makes an order under subsection (6)(a), and
- (b) the patient in respect of whom the order is made is liable to assessment as a resident patient,
- the order may, if the Tribunal thinks fit, include a direction that the patient is to be liable to assessment, during his assessment period, as a non-resident patient from the time specified in the direction. 20
- (8) If, in the case of an application under section 35(3), the Tribunal is satisfied that it is necessary to assess further what medical treatment should be provided to the patient before making an order authorising his medical treatment under Chapter 6, it must make – 25
- (a) an order confirming the patient’s liability to assessment, during his assessment period, as a resident patient,
- (b) an order directing that the patient is to be liable to assessment, during his assessment period, as a non-resident patient from the time specified in the direction, or 30
- (c) an order authorising his assessment under that Chapter.
- (9) Any direction given under subsection (7) or (8)(b) must specify the conditions imposed on the patient to – 35
- (a) secure that the assessment may be carried out, or
- (b) protect his health or safety or other persons against the risk by reference to which the Tribunal determined that the third of the relevant conditions is met in his case.
- (10) The conditions may include – 40
- (a) a condition that the patient –
- (i) attends at a specified place at specified times,
- (ii) resides at a specified place,
- (iii) makes himself available for assessment during specified periods,
- (b) a condition that the patient does not engage in specified conduct. 45
- In this subsection, “specified” means specified in the direction.

37 Section 36: supplementary

- (1) If the Tribunal makes an order under subsection (3) of section 36, the clinical supervisor must, as soon as practicable after the making of the order, notify any carer of the patient of its making.
- (2) Any order made under subsection (3), (6)(a) or (8)(a) or (b) of that section may deal with such matters incidental to or consequential on the making of the order as the Tribunal thinks fit. 5
- (3) The making of an order under subsection (6)(a) or (8)(a) or (b) of that section in respect of a patient does not affect the application of sections 26 to 29 in his case. 10
- (4) Subsection (3) is subject to any provision in the order requiring the giving of leave by the Tribunal in respect of the taking of an action specified in the order.
- (5) Subsection (6) applies if a direction is given under subsection (7) or (8)(b) of section 36 in respect of a patient.
- (6) The giving of the direction is sufficient authority for the managers of the hospital with which the patient is registered to require the patient to comply with the conditions specified in the direction. 15
- (7) The managers may not require the patient to comply with any conditions imposed under subsection (6) after –
 - (a) he becomes liable to assessment as a resident patient, 20
 - (b) he is registered under section 78(2) with another hospital, or
 - (c) his assessment period ends.
- (8) This section and section 36 are subject to section 74.

CHAPTER 6

FURTHER MEDICAL TREATMENT AND ASSESSMENT 25

Application for order

38 Duty to apply to Tribunal for order

- (1) Subsection (2) applies if –
 - (a) the clinical supervisor of a patient determines, for the purposes of paragraph (a) of subsection (2) of section 25, that all of the relevant conditions are met in the patient's case, and 30
 - (b) he determines for the purposes of paragraph (b)(ii) of that subsection that it is not necessary to assess further what medical treatment should be provided to the patient before an order authorising his medical treatment is made. 35
- (2) The managers of the hospital with which the patient is registered must secure that the clinical supervisor makes an application to the Tribunal for an order authorising his medical treatment.
- (3) Subsection (4) applies if –

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- (a) the clinical supervisor of a patient determines, for the purposes of paragraph (a) of subsection (2) of section 25, that all of the relevant conditions are met in the patient’s case, and
- (b) he determines for the purposes of paragraph (b)(ii) of that subsection that it is necessary to assess further what medical treatment should be provided to the patient before an order authorising his medical treatment is made. 5
- (4) The managers of the hospital with which the patient is registered must secure that the clinical supervisor makes an application to the Tribunal for an order authorising his assessment. 10
- (5) Subsection (6) applies if –
- (a) an order (or further order) authorising the assessment of a patient is in force, and
- (b) the patient’s clinical supervisor determines that –
- (i) all of the relevant conditions are met in his case, and 15
- (ii) it is not necessary to assess further what medical treatment should be provided to the patient before an order authorising his medical treatment is made.
- (6) The managers of the hospital with which the patient is registered must secure that the clinical supervisor makes an application to the Tribunal for an order authorising his medical treatment. 20
- (7) Any application under this section must be made within the period specified in rules made by the Lord Chancellor.
- (8) For the purposes of this Chapter and Chapter 7 –
- (a) references to an order (or further order) authorising the medical treatment of a patient are to an order (or further order) authorising that treatment made in accordance with section 46, and 25
- (b) references to an order (or further order) authorising the assessment of a patient are to an order (or further order) authorising his assessment made in accordance with section 49. 30
- 39 Application for order authorising medical treatment**
- (1) This section applies in connection with an application for an order authorising the medical treatment of a patient.
- (2) The clinical supervisor of the patient must –
- (a) review the care plan of the patient which is in force under section 31 or which was approved by the Tribunal on the making of the preceding order (or further order) authorising his assessment (as the case may be), and 35
- (b) amend it so that it complies with subsection (3).
- (3) The plan must – 40
- (a) include a description of the medical treatment which is to be provided to the patient while the order is in force,
- (b) include the prescribed information, and
- (c) be prepared in the prescribed form.
- (4) The application must include the plan. 45

-
- (5) The application must –
- (a) state the reasons for the determinations mentioned in subsection (1) or (5)(b) of section 38 (as the case may be),
 - (b) describe the mental disorder for which medical treatment is to be provided in accordance with the plan, 5
 - (c) describe any medical treatment or other treatment which is to be provided to the patient for that disorder otherwise than in accordance with the plan,
 - (d) state whether it is proposed that the patient should be provided with medical treatment – 10
 - (i) as a resident patient, or
 - (ii) as a non-resident patient,and state the reasons for that proposal, and
 - (e) deal with any other prescribed matter.
- (6) Before making an application, the clinical supervisor must consult the following persons about the medical treatment to be specified in the plan – 15
- (a) the patient, unless inappropriate or impracticable,
 - (b) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11,
 - (c) the patient’s nominated person (unless he falls within paragraph (b)), if practicable, and 20
 - (d) any carer of the patient (unless he falls within paragraph (b) or (c)), subject to section 12 and if practicable.
- (7) In this Chapter, “prescribed” means prescribed by regulations made by the appropriate authority. 25

40 Application for order authorising assessment

- (1) This section applies in connection with an application for an order authorising the assessment of a patient.
- (2) The clinical supervisor of the patient must review the care plan of the patient which is in force under section 31 and amend it so that it complies with subsection (3). 30
- (3) The plan must –
- (a) include a description of the medical treatment which is to be provided to the patient while the order is in force,
 - (b) include the prescribed information, and 35
 - (c) be prepared in the prescribed form.
- (4) The application must include the plan.
- (5) The application must –
- (a) state the reasons for the determinations mentioned in section 38(3),
 - (b) describe the mental disorder for which medical treatment is to be provided in accordance with the plan, 40
 - (c) describe any medical treatment or other treatment which is to be provided to the patient for that disorder otherwise than in accordance with the plan,
 - (d) state whether it is proposed that the patient should be assessed – 45
 - (i) as a resident patient, or

- (ii) as a non-resident patient,
and state the reasons for that proposal, and
- (e) deal with any other prescribed matter.
- (6) Before making an application, the clinical supervisor must consult the following persons about the medical treatment to be specified in the plan – 5
 - (a) the patient, unless inappropriate or impracticable,
 - (b) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11,
 - (c) the patient’s nominated person (unless he falls within paragraph (b)), if practicable, and 10
 - (d) any carer of the patient (unless he falls within paragraph (b) or (c)), subject to section 12 and if practicable.

41 Duty to apply to Tribunal for further order

- (1) Subsection (2) applies if – 15
 - (a) an order (or further order) authorising the medical treatment of a patient is in force, and
 - (b) the clinical supervisor of the patient determines that all of the relevant conditions are likely to continue to be met at the end of the period for which that order (or further order) is in force.
- (2) The managers of the hospital with which the patient is registered must secure that the clinical supervisor makes an application to the Tribunal for a further order authorising the medical treatment of the patient. 20
- (3) Subsection (4) applies if – 25
 - (a) an order (or further order) authorising the assessment of a patient is in force, and
 - (b) the clinical supervisor of the patient determines that – 30
 - (i) all of the relevant conditions are likely to continue to be met at the end of the period for which that order (or further order) is in force, and
 - (ii) it is necessary to assess further what medical treatment should be provided to the patient before an order authorising his medical treatment is made.
- (4) The managers of the hospital with which the patient is registered must secure that the clinical supervisor makes an application to the Tribunal for a further order authorising the assessment of the patient. 35
- (5) An application under this section must be made within the period specified in rules made by the Lord Chancellor.

42 Application for further order authorising medical treatment

- (1) This section applies in connection with an application for a further order authorising the medical treatment of a patient. 40
- (2) The clinical supervisor of the patient must –
 - (a) review the care plan of the patient which was approved by the Tribunal on the making of the preceding order (or further order) authorising his medical treatment, and

-
- (b) amend it so that it complies with subsection (3).
 - (3) The plan must –
 - (a) include a description of the medical treatment which is to be provided to the patient while the further order is in force,
 - (b) include the prescribed information, and 5
 - (c) be prepared in the prescribed form.
 - (4) The application must include the plan.
 - (5) The application must –
 - (a) state the reasons for the determination mentioned in section 41(1)(b),
 - (b) describe the mental disorder for which medical treatment is to be provided in accordance with the plan, 10
 - (c) describe any medical treatment or other treatment which is to be provided to the patient for that disorder otherwise than in accordance with the plan,
 - (d) state whether it is proposed that the patient should be provided with medical treatment – 15
 - (i) as a resident patient, or
 - (ii) as a non-resident patient,and state the reasons for that proposal, and
 - (e) deal with any other prescribed matter. 20
 - (6) Before making an application, the clinical supervisor must consult the following persons about the medical treatment to be specified in the plan –
 - (a) the patient, unless inappropriate or impracticable,
 - (b) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11, 25
 - (c) the patient’s nominated person (unless he falls within paragraph (b)), if practicable, and
 - (d) any carer of the patient (unless he falls within paragraph (b) or (c)), subject to section 12 and if practicable.
 - 43 Application for further order authorising assessment 30**
 - (1) This section applies in connection with an application for a further order authorising the assessment of a patient.
 - (2) The clinical supervisor of the patient must –
 - (a) review the care plan of the patient which was approved by the Tribunal on the making of the preceding order (or further order) authorising his assessment, and 35
 - (b) amend it so that it complies with subsection (3).
 - (3) The plan must –
 - (a) include a description of the medical treatment which is to be provided to the patient while the further order is in force, 40
 - (b) include the prescribed information, and
 - (c) be prepared in the prescribed form.
 - (4) The application must include the plan.
 - (5) The application must –

-
- (a) state the reasons for the determinations mentioned in section 41(3)(b),
 - (b) describe the mental disorder for which medical treatment is to be provided in accordance with the plan,
 - (c) describe any medical treatment or other treatment which is to be provided to the patient for that disorder otherwise than in accordance with the plan, 5
 - (d) state whether it is proposed that the patient should be assessed –
 - (i) as a resident patient, or
 - (ii) as a non-resident patient,
 and state the reasons for that proposal, and 10
 - (e) deal with any other prescribed matter.
- (6) Before making an application, the clinical supervisor must consult the following persons about the medical treatment to be specified in the plan –
- (a) the patient, unless inappropriate or impracticable,
 - (b) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11, 15
 - (c) the patient’s nominated person (unless he falls within paragraph (b)), if practicable, and
 - (d) any carer of the patient (unless he falls within paragraph (b) or (c)), subject to section 12 and if practicable. 20

Making of orders etc

44 Timing of proceedings

- (1) Subject to subsections (2) and (3), the Tribunal must determine any application for an order authorising the medical treatment or assessment of a patient within the period of 28 days beginning with the day on which the patient was admitted in pursuance of subsection (1) of section 23 or the imposition of conditions in respect of him was authorised under subsection (4) of that section (as the case may be). 25
- (2) If a patient is treated as continuing to be liable to assessment under Chapter 3 by virtue of section 72(3) or 255(2), the Tribunal must determine any application for an order authorising his medical treatment or assessment before he ceases to be so treated. 30
- (3) If –
 - (a) an application is for an order authorising the medical treatment of a patient, and 35
 - (b) the proposed order is to come into force immediately after an order (or further order) authorising his assessment ceases to be in force,
 the Tribunal must determine the application before that order (or further order) ceases to be in force.
- (4) The Tribunal must determine any application for a further order authorising the medical treatment of a patient before the order (or further order) authorising his medical treatment immediately preceding it ceases to be in force. 40
- (5) The Tribunal must determine any application for a further order authorising the assessment of a patient before the order (or further order) authorising his assessment immediately preceding it ceases to be in force. 45

- (6) This section is subject to section 74.

45 Powers of Tribunal: application under section 38 or 41

- (1) This section applies to the determination of –
- (a) an application under section 38 for an order authorising the medical treatment or assessment of a patient, or 5
 - (b) an application under section 41 for a further order authorising any such treatment or assessment.
- (2) If, in the case of an application, the Tribunal determines that not all of the relevant conditions are met in the patient’s case, it must make an order –
- (a) refusing the application for the order in question, and 10
 - (b) discharging any order (or further order) authorising the patient’s medical treatment or assessment which is in force at the time when the order is made.
- (3) If the Tribunal makes an order under subsection (2), the clinical supervisor must, as soon as practicable after the making of the order, notify the following persons of its making –
- (a) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11, and 15
 - (b) any carer of the patient (unless he falls within paragraph (a)).
- (4) Subsections (5) to (7) apply if the Tribunal determines that all of the relevant conditions are met in the patient’s case. 20
- (5) If, in the case of an application by virtue of section 38(2), (4) or (6) or 41(4), the Tribunal is satisfied that it is not necessary to assess further what medical treatment should be provided to the patient before making an order authorising his medical treatment, it must make such an order. 25
- (6) If, in the case of an application by virtue of section 38(2), (4) or (6) or 41(4), the Tribunal is satisfied that it is necessary to assess further what medical treatment should be provided to the patient before making an order authorising his medical treatment, it must make an order (or further order) authorising his assessment. 30
- (7) In the case of an application by virtue of section 41(2), the Tribunal must make a further order authorising the medical treatment of the patient.
- (8) This section is subject to section 74.

46 Order (or further order) authorising medical treatment

- (1) This section applies in relation to –
- (a) an order authorising the medical treatment of a patient, or 35
 - (b) a further order authorising any such treatment (and accordingly references in this section to an order include references to a further order).
- (2) The order must state that –
- (a) the care plan is approved by the Tribunal for the medical treatment of the patient, or 40
 - (b) the care plan is approved by the Tribunal for that purpose, with such modifications as are –

- (i) agreed with the clinical supervisor of the patient, and
(ii) specified by the Tribunal in the order,
but no modifications may be so agreed and specified unless the patient, each person with parental responsibility for the patient (if he is aged under 16), the patient’s nominated person and any carer of the patient have had an opportunity to make representations about the modifications, if practicable. 5
- (3) For the purposes of subsection (2), any reference to the care plan is to be read as follows –
- (a) in a case where the order is made on an application under section 38 or 41, the reference is to the care plan included in that application, 10
(b) in a case where the order is made on an application under section 35, the reference is to the care plan sent to the Tribunal under subsection (7) of that section.
- (4) The order must state whether the patient is to be provided with medical treatment – 15
- (a) as a resident patient for the period until the order ceases to be in force,
(b) as a non-resident patient for that period, or
(c) as a resident patient for the period specified in the order then as a non-resident patient for the period until the order ceases to be in force. 20
- (5) If the order states that the patient is to be provided with medical treatment as a resident patient for any period, the order must –
- (a) state whether – 25
- (i) the order may only be discharged by the Tribunal, or
(ii) the clinical supervisor is authorised to discharge the order,
- (b) state whether – 30
- (i) responsibility for providing the patient with medical treatment may only be transferred from the hospital with which he is registered with the leave of the Tribunal on an application made by the clinical supervisor, or
(ii) the clinical supervisor is authorised by the Tribunal to determine whether that responsibility should be so transferred in accordance with section 76 or 77 (subject to any condition specified in the order), 35
- but this paragraph does not apply to transfers made in accordance with section 161, and
- (c) state whether –
- (i) only the Tribunal may give the patient leave of absence from the hospital with which he is registered on an application made by the clinical supervisor (subject to any exception specified in the order), or 40
(ii) the clinical supervisor is authorised by the Tribunal to determine whether the patient should be given leave of absence from that hospital in accordance with section 62,
- but the Tribunal may exercise the power to reserve the determination of any matter to itself in pursuance of paragraph (a)(i), (b)(i) or (c)(i) only if the patient falls within a description specified in regulations made by the appropriate authority. 45

- (6) If the order states that the patient is to be provided with medical treatment as a non-resident patient for any period, the order must –
- (a) specify the conditions imposed on him to –
 - (i) secure that the treatment may be provided to him, or
 - (ii) protect his health or safety or other persons against the risk by reference to which the Tribunal determined that the third of the relevant conditions is met in his case, 5
 - (b) make a recommendation to the clinical supervisor as to the action which might be taken by him if the patient fails to comply with the conditions or there is a material change in the patient’s circumstances, and 10
 - (c) state that the clinical supervisor is authorised by the Tribunal to determine whether the conditions should be suspended in accordance with section 62.
- (7) The conditions may include – 15
- (a) a condition that the patient –
 - (i) attends at a specified place at specified times,
 - (ii) resides at a specified place,
 - (iii) makes himself available for treatment during specified periods,
 - (b) a condition that the patient does not engage in specified conduct. 20
- In this subsection, “specified” means specified in the order.
- (8) The order must specify the period for which it is to be in force (subject to section 47).

47 Order (or further order) authorising medical treatment: supplementary

- (1) In the case of an order authorising the medical treatment of a patient, the period specified under subsection (8) of section 46 may not exceed 6 months. 25
- (2) In the case of a further order authorising the medical treatment of a patient, the period specified under that subsection –
- (a) must commence on the ending of the period for which the order (or preceding further order) authorising medical treatment is in force; and
 - (b) may not exceed 6 months (subject to subsection (4)). 30
- (3) In subsection (2)(a), the reference to the ending of the period for which the order (or preceding further order) is in force is a reference to the ending of that period whether on the expiry of the order or preceding further order or on its discharge in consequence of the making of the further order. 35
- (4) If –
- (a) an order authorising medical treatment and at least two further orders authorising medical treatment have been made in respect of a patient, or
 - (b) a patient has been subject to an order authorising his medical treatment and further orders authorising his medical treatment for a total period of at least 12 months,
- the period specified under subsection (8) of section 46 may not exceed 12 months.
- (5) An order (or further order) authorising medical treatment – 45
- (a) must make such provision as is specified in regulations made –

- (i) if the Tribunal making the order (or further order) is the Mental Health Tribunal for England, by the Secretary of State,
- (ii) if the Tribunal making the order (or further order) is the Mental Health Tribunal for Wales, by the National Assembly for Wales, and
- (b) may make such provision as to matters incidental to or consequential on the making of the order as the Tribunal in question thinks fit.

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48 Effect of order (or further order) authorising medical treatment

- (1) This section applies if –
 - (a) an order is made authorising the medical treatment of a patient, or
 - (b) a further order is made authorising any such treatment (and accordingly references to orders include references to further orders).
- (2) If the order authorises the provision of medical treatment to the patient as a resident patient for any period by virtue of section 46(4)(a) or (c) (“the relevant period”), the making of the order is sufficient authority –
 - (a) for –
 - (i) the clinical supervisor, or any person authorised by him, to take the patient and convey him to the hospital with which he is registered within the period specified in subsection (3), and
 - (ii) the managers of the hospital to admit the patient and detain him until the relevant period ends, the patient is otherwise liable to be provided with medical treatment as a non-resident patient, he is registered under section 78(2) with another hospital or the order ceases to be in force, or
 - (b) if the patient is already detained in that hospital under this Chapter or Chapter 3, for the managers of the hospital to continue to detain him as mentioned in paragraph (a)(ii).
- (3) The period mentioned in subsection (2)(a) is the period of 24 hours beginning with the commencement of the relevant period.
- (4) If the order authorises the provision of medical treatment to the patient as a non-resident patient for any period by virtue of section 46(4)(b) or (c), the making of the order is sufficient authority for the clinical supervisor –
 - (a) to require the patient to comply with the conditions specified in the order until –
 - (i) he is liable to be provided with medical treatment as a resident patient, or
 - (ii) the order ceases to be in force, and
 - (b) if the patient fails to comply with those conditions or there is a material change in his circumstances, to determine whether medical treatment should be provided to him as a resident patient.
- (5) In making any determination under subsection (4)(b), the clinical supervisor must have regard to any recommendation specified in the order by virtue of section 46(6)(b).
- (6) If the clinical supervisor determines under subsection (4)(b) that medical treatment should be provided to the patient as a resident patient, the making of the determination is sufficient authority for –

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- (a) the clinical supervisor, or any person authorised by him, to take the patient and convey him to the hospital with which he is registered within the period specified in subsection (7),
- (b) the managers of the hospital to admit the patient and detain him until –
- (i) he is liable to be provided with medical treatment as a non-resident patient, 5
 - (ii) he is registered under section 78(2) with another hospital, or
 - (iii) the order ceases to be in force, and
- (c) the clinical supervisor to –
- (i) discharge the order, 10
 - (ii) determine whether the responsibility for providing the patient with medical treatment should be transferred from the hospital with which he is registered in accordance with section 76 or 77, and
 - (iii) determine whether the patient should be given leave of absence from the hospital with which he is registered in accordance with section 62. 15
- (7) The period mentioned in subsection (6)(a) is the period of 24 hours beginning with the making of the determination.
- (8) If the clinical supervisor determines under subsection (4)(b) that medical treatment should be provided to the patient as a non-resident patient, the clinical supervisor may amend the conditions specified in the order. 20
- (9) Before amending the conditions, the clinical supervisor must consult –
- (a) the patient, unless inappropriate or impracticable,
 - (b) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11, 25
 - (c) the patient’s nominated person (unless he falls within paragraph (b)), if practicable, and
 - (d) any carer of the patient (unless he falls within paragraph (b) or (c)), subject to section 12 and if practicable. 30
- (10) Notification by the clinical supervisor of an amendment in the conditions is sufficient authority for the clinical supervisor –
- (a) to require the patient to comply with the amended conditions until –
 - (i) he is liable to be provided with medical treatment as a resident patient, or 35
 - (ii) the order ceases to be in force, and
 - (b) if the patient fails to comply with those conditions or there is a material change in his circumstances, to determine whether medical treatment should be provided to him as a resident patient.
- (11) Subsections (5) to (10) apply to a determination under subsection (10)(b) as they apply to a determination under subsection (4)(b). 40
- (12) Any provision made in the order by virtue of subsection (5) of section 46 ceases to have effect if the patient becomes liable to be provided with medical treatment as a non-resident patient; and any provision made in the order by virtue of subsection (6) of that section ceases to have effect if the patient becomes liable to be provided with medical treatment as a resident patient. 45

49 Order (or further order) authorising assessment

- (1) This section applies in relation to –
- (a) an order authorising the assessment of a patient, or
 - (b) a further order authorising any such assessment (and accordingly references in this section to an order include references to a further order). 5
- (2) The order must state that –
- (a) the care plan is approved by the Tribunal for the purpose of providing medical treatment to the patient, or
 - (b) the care plan is approved by the Tribunal for that purpose, with such modifications as are – 10
 - (i) agreed with the clinical supervisor of the patient, and
 - (ii) specified by the Tribunal in the order,

but no modifications may be so agreed and specified unless the patient, each person with parental responsibility for the patient (if he is aged under 16), the patient’s nominated person and any carer of the patient have had an opportunity to make representations about the modifications, if practicable. 15
- (3) For the purposes of subsection (2), any reference to the care plan is to be read as follows – 20
- (a) in a case where the order is made on an application under section 38 or 41, the reference is to the care plan included in that application,
 - (b) in a case where the order is made on an application under section 35, the reference is to the care plan sent to the Tribunal under subsection (7) of that section. 25
- (4) The order must state whether the patient is to be assessed –
- (a) as a resident patient, or
 - (b) as a non-resident patient.
- (5) If the order states that the patient is to be assessed as a resident patient, the order must – 30
- (a) state whether –
 - (i) the order may only be discharged by the Tribunal, or
 - (ii) the clinical supervisor is authorised to discharge the order,
 - (b) state whether –
 - (i) responsibility for assessing the patient may only be transferred from the hospital with which he is registered with the leave of the Tribunal on an application made by the clinical supervisor, or 35
 - (ii) the clinical supervisor is authorised by the Tribunal to determine whether that responsibility should be so transferred in accordance with section 76 or 77 (subject to any condition specified in the order), 40

but this paragraph does not apply to transfers made in accordance with section 161, and
 - (c) state whether – 45
 - (i) only the Tribunal may give the patient leave of absence from the hospital with which he is registered on an application made by

- the clinical supervisor (subject to any exception specified in the order), or
- (ii) the clinical supervisor is authorised by the Tribunal to determine whether the patient should be given leave of absence from that hospital in accordance with section 62, 5
- but the Tribunal may exercise the power to reserve the determination of any matter to itself in pursuance of paragraph (a)(i), (b)(i) or (c)(i) only if the patient falls within the description specified for the purposes of section 46(5).
- (6) If the order states that the patient is to be assessed as a non-resident patient, the order must – 10
- (a) specify the conditions imposed on him to –
- (i) secure that the assessment may be carried out, or
- (ii) protect his health or safety or other persons against the risk by reference to which the Tribunal determined that the third of the relevant conditions is met in his case, 15
- (b) make a recommendation to the clinical supervisor as to the action which might be taken by him if the patient fails to comply with the conditions or there is a material change in the patient’s circumstances, and
- (c) state that the clinical supervisor is authorised by the Tribunal to determine whether the conditions should be suspended in accordance with section 62. 20
- (7) The conditions may include –
- (a) a condition that the patient –
- (i) attends at a specified place at specified times, 25
- (ii) resides at a specified place,
- (iii) makes himself available for assessment during specified periods,
- (b) a condition that the patient does not engage in specified conduct. 30
- In this subsection, “specified” means specified in the order.
- (8) The order must specify the period for which it is to be in force (subject to section 50).

50 Order (or further order) authorising assessment: supplementary

- (1) In the case of an order authorising the assessment of a patient, the period specified under subsection (8) of section 49 may not exceed 28 days. 35
- (2) In the case of a further order authorising the assessment of a patient, the period specified under that subsection –
- (a) must commence on the ending of the period for which the order (or preceding further order) authorising assessment is in force; and
- (b) may not exceed 28 days (subject to subsection (4)). 40
- (3) In subsection (2)(a), the reference to the ending of the period for which the order (or preceding further order) is in force is a reference to the ending of that period whether on the expiry of the order or preceding further order or on its discharge in consequence of the making of the further order.
- (4) No further order authorising the assessment of a patient may be made if the qualifying period in respect of him would exceed 3 months. 45

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- (5) For the purposes of subsection (4), the qualifying period is the total of the following periods –
- (a) the period which would be specified under subsection (8) of section 49 in the further order in question,
 - (b) the period for which any further orders preceding that order were in force in respect of the patient, 5
 - (c) the period for which the order authorising the assessment of the patient was in force.
- (6) An order (or further order) authorising assessment –
- (a) must make such provision as is specified in regulations made – 10
 - (i) if the Tribunal making the order (or further order) is the Mental Health Tribunal for England, by the Secretary of State,
 - (ii) if the Tribunal making the order (or further order) is the Mental Health Tribunal for Wales, by the National Assembly for Wales, and 15
 - (b) may make such provision as to matters incidental to or consequential on the making of the order as the Tribunal in question thinks fit.
- 51 Effect of order (or further order) authorising assessment**
- (1) This section applies if –
- (a) an order is made authorising the assessment of a patient, or 20
 - (b) a further order is made authorising any such assessment (and accordingly references to orders include references to further orders).
- (2) The managers of the hospital with which the patient is registered must secure that the patient is assessed, during the period for which the order is in force, by the clinical supervisor. 25
- (3) The assessment is for the purpose of determining –
- (a) whether all of the relevant conditions continue to be met in the patient’s case, and
 - (b) if so –
 - (i) whether it is necessary to assess further what medical treatment should be provided to the patient before an order authorising his medical treatment is made, and 30
 - (ii) what medical treatment should be provided to him in accordance with a subsequent order (or further order) under this Chapter. 35
- (4) If the order authorises the assessment of the patient as a resident patient, the making of the order is sufficient authority –
- (a) for –
 - (i) the clinical supervisor, or any person authorised by him, to take the patient and convey him to the hospital with which he is registered within the period specified in subsection (5), and 40
 - (ii) the managers of the hospital to admit the patient and detain him until he is liable to be assessed as a non-resident patient, he is registered under section 78(2) with another hospital or the order ceases to be in force, or 45

- (b) if the patient is already detained in that hospital under this Chapter or Chapter 3, for the managers of the hospital to continue to detain him as mentioned in paragraph (a)(ii).
- (5) The period mentioned in subsection (4)(a) is the period of 24 hours beginning with the making of the order. 5
- (6) If the order authorises the assessment of the patient as a non-resident patient, the making of the order is sufficient authority for the clinical supervisor –
- (a) to require the patient to comply with the conditions specified in the order until –
- (i) he is liable to be assessed as a resident patient, or 10
- (ii) the order ceases to be in force, and
- (b) if the patient fails to comply with those conditions or there is a material change in his circumstances, to determine whether he should be assessed as a resident patient.
- (7) In making any determination under subsection (6)(b), the clinical supervisor must have regard to any recommendation specified in the order by virtue of section 49(6)(b). 15
- (8) If the clinical supervisor determines under subsection (6)(b) that the patient should be assessed as a resident patient, the making of the determination is sufficient authority for – 20
- (a) the clinical supervisor, or any person authorised by him, to take the patient and convey him to the hospital with which he is registered within the period specified in subsection (9),
- (b) the managers of the hospital to admit the patient and detain him until – 25
- (i) he is liable to be assessed as a non-resident patient,
- (ii) he is registered under section 78(2) with another hospital, or
- (iii) the order ceases to be in force, and
- (c) the clinical supervisor to –
- (i) discharge the order,
- (ii) determine whether the responsibility for assessing the patient should be transferred from the hospital with which he is registered in accordance with section 76 or 77, and 30
- (iii) determine whether the patient should be given leave of absence from the hospital with which he is registered in accordance with section 62. 35
- (9) The period mentioned in subsection (8)(a) is the period of 24 hours beginning with the making of the determination.
- (10) If the clinical supervisor determines under subsection (6)(b) that the patient should be assessed as a non-resident patient, the clinical supervisor may amend the conditions specified in the order. 40
- (11) Before amending the conditions, the clinical supervisor must consult –
- (a) the patient, unless inappropriate or impracticable,
- (b) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11,
- (c) the patient’s nominated person (unless he falls within paragraph (b)), if practicable, and 45
- (d) any carer of the patient (unless he falls within paragraph (b) or (c)), subject to section 12 and if practicable.

- (12) Notification by the clinical supervisor of an amendment in the conditions is sufficient authority for the clinical supervisor –
- (a) to require the patient to comply with the amended conditions until –
 - (i) he is liable to be assessed as a resident patient, or
 - (ii) the order ceases to be in force, and 5
 - (b) if the patient fails to comply with those conditions or there is a material change in his circumstances, to determine whether the patient should be assessed as a resident patient.
- (13) Subsections (7) to (12) apply to a determination under subsection (12)(b) as they apply to a determination under subsection (6)(b). 10
- (14) Any provision made in the order by virtue of subsection (5) of section 49 ceases to have effect if the patient becomes liable to be assessed as a non-resident patient; and any provision made in the order by virtue of subsection (6) of that section ceases to have effect if the patient becomes liable to be assessed as a resident patient. 15

52 Copying of care plan to patient etc

- (1) Subsection (2) applies if the Tribunal makes –
- (a) an order (or further order) authorising the medical treatment of a patient, or
 - (b) an order (or further order) authorising the assessment of a patient. 20
- (2) The clinical supervisor must send a copy of the care plan approved by the Tribunal in the order (or further order) to –
- (a) the patient,
 - (b) if the patient is aged under 16, each person with parental responsibility for him, and
 - (c) the patient’s nominated person (unless he falls within paragraph (b)), as soon as practicable after the making of the order (or further order). 25
- (3) The requirements under subsection (2)(b) and (c) are subject to subsections (4) to (7).
- (4) The clinical supervisor may not send a copy of the plan to –
- (a) any particular person with parental responsibility for the patient under paragraph (b) of subsection (2), or
 - (b) the patient’s nominated person under paragraph (c) of that subsection, without first ascertaining the patient’s wishes and feelings about his so sending such a copy (unless it is inappropriate or impracticable to do so). 30
- (5) The clinical supervisor must –
- (a) make a determination about whether it would be appropriate to so send a copy of the plan to the person in question, and
 - (b) have regard to the patient’s wishes and feelings in making that determination. 35
- (6) If the clinical supervisor determines that it would not be appropriate to so send a copy of the plan to the person in question, he must not do so and, accordingly, the requirement under subsection (2)(b) or (c) (as the case may require) so to send such a copy ceases to have effect. 40

- (7) The clinical supervisor need not send a copy of the care plan to any particular person with parental responsibility for a patient if it is impracticable to do so.

Services before discharge

53 Free care services etc before discharge

- (1) Where the acceptance of a care service is a relevant requirement imposed in relation to a patient, no charge may be recovered for the service. 5
- (2) But nothing in subsection (1) prevents a charge being recovered for accommodation which –
- (a) the patient is required to reside in by virtue of a relevant requirement, and 10
 - (b) at the time the requirement is imposed, is his ordinary residence.
- (3) In determining a person’s ordinary residence for this purpose, any period during which he is detained in a hospital under this Part is to be disregarded.
- (4) Where, in accordance with a relevant requirement imposed in relation to a patient aged under 18, the patient is looked after by a local authority, no contributions towards his maintenance may be recovered by the authority under Part 3 of Schedule 2 to the Children Act 1989 (c. 41). 15
- (5) In this section –
- “care service” means any service provided by, or in pursuance of arrangements made by, a local authority in England and Wales under the following enactments – 20
 - (a) Part 3 of the National Assistance Act 1948 (c. 29) (provision of certain accommodation and welfare services),
 - (b) section 45(1) of the Health Services and Public Health Act 1968 (c. 46) (welfare of old people), 25
 - (c) section 21 of, and Schedule 8 to, the National Health Service Act 1977 (c. 49) (care of mothers and young children, prevention of illness etc);
 - and any service to which section 29(1) of the Children Act 1989 (charges for services for children in need etc) applies; 30
 - “relevant requirement”, in relation to a patient, means a requirement imposed on him by virtue of section 23(4), 26(8), 29, 30(2), 37(6), 48(4) or (10), 51(6) or (12), 57(2) or (8), 59, 61(4), 62(4) or 79(4) (including any of those provisions as applied by a provision of this Chapter or Chapter 7); 35
- and a reference to being looked after by a local authority is to be construed in accordance with section 22(1) of the Children Act 1989.

CHAPTER 7

DISCHARGE OF ORDERS MADE UNDER CHAPTER 6 ETC

Application by patient for discharge or change in status

- 54 Application to Tribunal for discharge of order (or further order) authorising medical treatment** 5
- (1) This section applies to a patient if –
- (a) an order (or further order) authorising his medical treatment is in force, and
 - (b) the period specified in the order (or further order) as the period for which it is to be in force is 3 months or longer. 10
- (2) An application may be made to the Tribunal by –
- (a) the patient,
 - (b) his nominated person, or
 - (c) if the patient is aged under 16, any person with parental responsibility for him, 15
- for an order discharging the order (or further order) in question (subject to subsections (3) and (4)).
- (3) Subsection (4) applies to a patient who is a ward of court.
- (4) An application under subsection (2) may not be made by –
- (a) the patient’s nominated person, or 20
 - (b) a person with parental responsibility for him, without the leave of the court on an application by that person.
- (5) In a case where subsection (4) applies, an application under subsection (2) may be made at any time during the relevant period.
- (6) In any other case, an application under subsection (2) may be made at any time during the relevant period but only one application may be made under that subsection during that period (subject to subsections (7) and (8)). 25
- (7) If –
- (a) an application has been made under subsection (2) during the relevant period, and
 - (b) the clinical supervisor has determined for the purposes of section 85(2) that the order (or further order) should not be discharged under section 60 or an application should not be made to the Tribunal under section 61, 30
- a further application under subsection (2) may be made during that period. 35
- (8) One or more further applications under subsection (2) (in addition to that permitted under subsection (7)) may be made during the relevant period if the Tribunal gives leave on an application by –
- (a) the patient,
 - (b) his nominated person, or 40
 - (c) if the patient is aged under 16, any person with parental responsibility for the patient.

- (9) The Tribunal must, as soon as practicable, notify the clinical supervisor of the patient of the making of an application to it under this section.
- (10) The relevant period, for the purposes of this section, is the period for which the order (or further order) in question is in force.

55 Application to Tribunal for change in status of resident patient 5

- (1) Subsection (2) applies to a patient at any time if –
 - (a) an order (or further order) authorising his medical treatment is in force, and
 - (b) he is liable to be provided with medical treatment as a resident patient by virtue of –
 - (i) a determination made under subsection (4)(b) or (10)(b) of section 48 (including a determination made by virtue of subsection (11) of that section), or
 - (ii) a determination made under subsection (2)(b) or (8)(b) of section 57 (including a determination made by virtue of subsection (9) of that section). 10
- (2) An application may be made to the Tribunal by –
 - (a) the patient,
 - (b) his nominated person, or
 - (c) if the patient is aged under 16, any person with parental responsibility for him, 20

for an order directing that he is to be liable to be provided with medical treatment as a non-resident patient (subject to subsections (5) and (6)).
- (3) Subsection (4) applies to a patient at any time if –
 - (a) an order (or further order) authorising his assessment is in force, and 25
 - (b) he is liable to be assessed as a resident patient by virtue of –
 - (i) a determination made under subsection (6)(b) or (12)(b) of section 51 (including a determination made by virtue of subsection (13) of that section), or
 - (ii) a determination made under subsection (2)(b) or (8)(b) of section 57 (including a determination made by virtue of subsection (9) of that section). 30
- (4) An application may be made to the Tribunal by –
 - (a) the patient,
 - (b) his nominated person, or 35
 - (c) if the patient is aged under 16, any person with parental responsibility for him,

for an order directing that he is to be liable to be assessed as a non-resident patient (subject to subsections (5) and (6)).
- (5) Subsection (6) applies to a patient who is a ward of court. 40
- (6) An application under subsection (2) or (4) may not be made by –
 - (a) the patient’s nominated person, or
 - (b) a person with parental responsibility for him, without the leave of the court on an application by that person.

-
- (7) In a case where subsection (6) applies, an application under subsection (2) or (4) may be made at any time during the relevant period.
- (8) In any other case, an application under subsection (2) or (4) may be made at any time during the relevant period but only one such application may be made during that period (subject to subsection (9)). 5
- (9) One or more further applications under subsection (2) or (4) may be made during the relevant period if the Tribunal gives leave on an application by –
- (a) the patient,
 - (b) his nominated person, or
 - (c) if the patient is aged under 16, any person with parental responsibility for the patient. 10
- (10) The Tribunal must, as soon as practicable, notify the clinical supervisor of the patient of the making of an application to it under this section.
- (11) The relevant period, for the purposes of this section, is the period for which the determination in question has effect. 15
- 56 Powers of Tribunal: applications under section 54 or 55**
- (1) This section applies to the determination of an application under section 54 or 55.
- (2) The Tribunal must determine an application within the period specified in rules made by the Lord Chancellor. 20
- (3) If, in the case of an application, the Tribunal determines that not all of the relevant conditions are met in the patient's case, it must make an order discharging the order (or further order) authorising his medical treatment or assessment.
- (4) If the Tribunal makes an order under subsection (3), the clinical supervisor must, as soon as practicable after the making of the order, notify the following persons of its making –
- (a) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11, and
 - (b) any carer of the patient (unless he falls within paragraph (a)). 30
- (5) Subsections (6) to (10) apply if the Tribunal determines that all of those conditions are met in the patient's case.
- (6) If the application is made under section 54, the Tribunal must make an order refusing the application.
- (7) If –
- (a) the Tribunal makes an order under subsection (6), and
 - (b) the patient in respect of whom it is made is liable to be provided with medical treatment as a resident patient,
- the order may, if the Tribunal thinks fit, include a direction that the patient is to be liable to be provided with medical treatment as a non-resident patient from the time specified in the direction. 40
- (8) If the application is made under section 55, the Tribunal must –

- (a) make an order confirming the patient’s liability to be provided with medical treatment or assessed (as the case may be) as a resident patient, or
 - (b) make an order directing that the patient is to be liable to be provided with medical treatment or assessed (as the case may be) as a non-resident patient from the time specified in the direction. 5
- (9) Any direction given under subsection (7) or (8)(b) must –
 - (a) specify the conditions imposed on the patient to –
 - (i) secure that the treatment may be provided to him or his assessment carried out (as the case may be), or 10
 - (ii) protect his health or safety or other persons against the risk by reference to which the Tribunal determined that the third of the relevant conditions is met in his case,
 - (b) make a recommendation to the clinical supervisor as to the action which might be taken by him if the patient fails to comply with the conditions or there is a material change in the patient’s circumstances, and 15
 - (c) state that the clinical supervisor is authorised by the Tribunal to determine whether the conditions should be suspended in accordance with section 62. 20
- (10) The conditions may include –
 - (a) a condition that the patient –
 - (i) attends at a specified place at specified times,
 - (ii) resides at a specified place,
 - (iii) makes himself available for treatment or assessment (as the case may be) during specified periods, 25
 - (b) a condition that the patient does not engage in specified conduct.

In this subsection, “specified” means specified in the direction.
- (11) An order made under this section –
 - (a) must make such provision as is specified in regulations made – 30
 - (i) if the Tribunal making the order is the Mental Health Tribunal for England, by the Secretary of State,
 - (ii) if the Tribunal making the order is the Mental Health Tribunal for Wales, by the National Assembly for Wales, and
 - (b) may make such provision as to matters incidental to or consequential on the making of the order as the Tribunal in question thinks fit. 35
- (12) This section is subject to section 74.

57 Effect of direction under section 56

- (1) This section applies if a direction is given under section 56(7) or (8)(b) in respect of a patient. 40
- (2) The giving of the direction is sufficient authority for the clinical supervisor –
 - (a) to require the patient to comply with the conditions specified in the direction until –
 - (i) he is liable to be provided with medical treatment or assessed as a resident patient, or 45

-
- (ii) the order or further order authorising his medical treatment or assessment ceases to be in force, and
 - (b) if the patient fails to comply with those conditions or there is a material change in his circumstances, to determine whether medical treatment should be provided to him or he should be assessed as a resident patient. 5
- (3) In making any determination under subsection (2)(b), the clinical supervisor must have regard to any recommendation specified in the direction by virtue of section 56(9)(b).
- (4) If the clinical supervisor determines under subsection (2)(b) that medical treatment should be provided to the patient or he should be assessed as a resident patient, the making of the determination is sufficient authority for – 10
- (a) the clinical supervisor, or any person authorised by him, to take the patient and convey him to the hospital with which he is registered within the period specified in subsection (5), 15
 - (b) the managers of the hospital to admit the patient and detain him until –
 - (i) he is liable to be provided with medical treatment or assessed as a non-resident patient,
 - (ii) he is registered under section 78(2) with another hospital, or
 - (iii) the order or further order authorising his medical treatment or assessment ceases to be in force, and 20
 - (c) the clinical supervisor to –
 - (i) discharge the order or further order,
 - (ii) determine whether the responsibility for providing the patient with medical treatment or assessing him should be transferred from the hospital with which he is registered in accordance with section 76 or 77, and 25
 - (iii) determine whether the patient should be given leave of absence from the hospital with which he is registered in accordance with section 62. 30
- (5) The period mentioned in subsection (4)(a) is the period of 24 hours beginning with the making of the determination.
- (6) If the clinical supervisor determines under subsection (2)(b) that medical treatment should be provided to the patient or he should be assessed as a non-resident patient, the clinical supervisor may amend the conditions specified in the direction. 35
- (7) Before amending the conditions, the clinical supervisor must consult –
- (a) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11,
 - (b) the patient’s nominated person (unless he falls within paragraph (a)), if practicable, and 40
 - (c) any carer of the patient (unless he falls within paragraph (a) or (b)), subject to section 12 and if practicable.
- (8) Notification by the clinical supervisor of an amendment in the conditions is sufficient authority for the clinical supervisor – 45
- (a) to require the patient to comply with the amended conditions until –
 - (i) he is liable to be provided with medical treatment or assessed as a resident patient, or

- (ii) the order or further order authorising his medical treatment or assessment ceases to be in force, and
 - (b) if the patient fails to comply with those conditions or there is a material change in his circumstances, to determine whether medical treatment should be provided to him or he should be assessed as a resident patient. 5
- (9) Subsections (3) to (8) apply to a determination under subsection (8)(b) as they apply to a determination under subsection (2)(b).

Application by clinical supervisor for variation

58 Application for variation of order (or further order) authorising medical treatment or assessment 10

- (1) This section applies to a patient at any time if an order (or further order) authorising his medical treatment or assessment is in force.
- (2) If, at that time, the clinical supervisor determines that –
 - (a) all of the relevant conditions are met in the patient’s case, but 15
 - (b) it is necessary that the order (or further order) in question be varied, he must make an application to the Tribunal for an order varying the order (or further order).
- (3) The clinical supervisor of the patient must –
 - (a) review the care plan of the patient which was approved by the Tribunal on the making of the order (or further order) in question, and 20
 - (b) amend it so that it complies with subsection (4).
- (4) The plan must –
 - (a) include a description of the medical treatment which is to be provided to the patient while the order (or further order) as proposed to be varied is in force, 25
 - (b) include such information as may be prescribed by regulations made by the appropriate authority, and
 - (c) be prepared in such form as may be so prescribed.
- (5) The application must include the plan. 30
- (6) The application must –
 - (a) state the reasons for the determinations mentioned in subsection (2),
 - (b) describe the mental disorder for which medical treatment is to be provided in accordance with the plan,
 - (c) describe any medical treatment or other treatment which is to be provided to the patient for that disorder otherwise than in accordance with the plan, 35
 - (d) state whether it is proposed that the patient should be provided with medical treatment –
 - (i) as a resident patient, or 40
 - (ii) as a non-resident patient,and state the reasons for that proposal, and
 - (e) deal with any other matter prescribed by regulations made by the appropriate authority.

- (7) Before making an application, the clinical supervisor must consult the following persons about the medical treatment to be specified in the plan –
- (a) the patient, unless inappropriate or impracticable,
 - (b) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11, 5
 - (c) the patient’s nominated person (unless he falls within paragraph (b)), if practicable, and
 - (d) any carer of the patient (unless he falls within paragraph (b) or (c)), subject to section 12 and if practicable.
- 59 Powers of Tribunal: application under section 58 10**
- (1) In determining an application under section 58 in respect of a patient –
- (a) if the Tribunal is satisfied that all of the relevant conditions are met in the patient’s case, it may make an order varying the order (or further order) in respect of which the application is made,
 - (b) if it is not so satisfied, it must make an order discharging that order (or further order). 15
- (2) Any order made by the Tribunal under subsection (1)(a) must make provision for the variation of the order (or further order) in respect of which the application is made so that it states that –
- (a) the care plan is approved by the Tribunal for the medical treatment of the patient, or 20
 - (b) the care plan is approved by the Tribunal for that purpose, with such modifications as are –
 - (i) agreed with the clinical supervisor of the patient, and
 - (ii) specified by the Tribunal in the order or further order, 25
 but no modifications may be so agreed and specified unless the patient, the patient’s nominated person and any carer of the patient have had an opportunity to make representations about the modifications, if practicable.
- (3) If the Tribunal makes an order under subsection (1)(b), the clinical supervisor must, as soon as practicable after the making of the order, notify the following persons of its making – 30
- (a) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11, and
 - (b) any carer of the patient (unless he falls within paragraph (a)). 35
- (4) Any order made under this section may deal with such matters incidental to or consequential on the making of the order as the Tribunal thinks fit.
- (5) This section is subject to section 74.
- Discharge by clinical supervisor or Tribunal*
- 60 Discharge by clinical supervisor of order (or further order) authorising medical treatment or assessment 40**
- (1) This section applies to a patient at any time if –
- (a) an order (or further order) authorising his medical treatment or assessment is in force,

-
- (b) he is liable to be provided with medical treatment or assessed as a resident patient, and
- (c) the clinical supervisor is authorised to discharge the order (or further order) by virtue of section 46(5)(a)(ii), 48(6)(c)(i), 49(5)(a)(ii), 51(8)(c)(i) or 57(4)(c)(i). 5
- (2) This section also applies to a patient at any time if –
- (a) an order (or further order) authorising his medical treatment or assessment is in force, and
- (b) he is liable to be provided with medical treatment or assessed as a non-resident patient. 10
- (3) If, at that time, the clinical supervisor is not satisfied that all of the relevant conditions are met in the patient’s case, he must discharge the order (or further order).
- (4) If the clinical supervisor discharges an order under subsection (3), he must, as soon as practicable after the discharging of the order, notify the following persons of its discharge – 15
- (a) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11, and
- (b) any carer of the patient (unless he falls within paragraph (a)).
- 61 Discharge by Tribunal of order (or further order) authorising medical treatment or assessment 20**
- (1) This section applies to a patient at any time if –
- (a) an order (or further order) authorising his medical treatment or assessment is in force,
- (b) he is liable to be provided with medical treatment or assessed as a resident patient, and 25
- (c) the order (or further order) may only be discharged by the Tribunal by virtue of section 46(5)(a)(i) or 49(5)(a)(i).
- (2) If, at that time, the clinical supervisor is not satisfied that all of the relevant conditions are met in the patient’s case, he must make an application to the Tribunal for an order discharging the order (or further order). 30
- (3) In determining the application, the Tribunal must –
- (a) if it is satisfied that all of those conditions are met in the patient’s case, make an order refusing the application,
- (b) otherwise, make an order discharging the order (or further order) in respect of which the application is made, 35
- (subject, in particular, to paragraphs 3 and 4 of Schedule 7).
- (4) An order made under subsection (3)(a) may also provide for the variation of any provision made in the order (or further order) in respect of which the application is made. 40
- (5) If the Tribunal makes an order under subsection (3)(b), the clinical supervisor must, as soon as practicable after the making of the order, notify the following persons of its making –
- (a) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11, and 45
- (b) any carer of the patient (unless he falls within paragraph (a)).

- (6) Any order made under this section may deal with such matters incidental to or consequential on the making of the order as the Tribunal thinks fit.
- (7) This section is subject to section 74.

Leave of absence etc

62	Power to give leave of absence etc while order (or further order) in force	5
(1)	This section applies if –	
	(a) an order (or further order) authorising the medical treatment or assessment of a patient is in force,	
	(b) the patient is liable to be provided with medical treatment or assessed as a resident patient, and	10
	(c) the clinical supervisor is authorised to give the patient leave of absence from the hospital with which he is registered by virtue of section 46(5)(c)(ii), 48(6)(c)(iii), 49(5)(c)(ii), 51(8)(c)(iii) or 57(4)(c)(iii).	
(2)	This section also applies if –	
	(a) an order (or further order) authorising the medical treatment or assessment of a patient is in force, and	15
	(b) the patient is liable to be provided with medical treatment or assessed as a non-resident patient.	
(3)	In the case of a patient who is liable to be provided with medical treatment or assessed as a resident patient, the clinical supervisor may make the giving of leave subject to conditions.	20
(4)	In the case of a patient who is liable to be provided with medical treatment or assessed as a non-resident patient, the clinical supervisor may make the suspension of a condition subject to conditions.	
(5)	The references to conditions in subsections (3) and (4) are to such conditions as the clinical supervisor considers necessary in the interests of the patient or for the protection of other persons.	25
(6)	The clinical supervisor may give leave or suspend a condition on specified occasions or for a specified period.	
(7)	If the clinical supervisor gives leave or suspends a condition for a specified period, he may extend that period in the absence of the patient by giving notice to him.	30
(8)	If it appears to the clinical supervisor that it is necessary to do so in the interests of the patient’s health or safety or for the protection of other persons, he may, on giving leave or suspending a condition, direct that the patient is to remain in custody during his absence or be kept in custody during the suspension of the condition.	35
(9)	If a direction under subsection (8) is given, the patient may be kept in the custody of –	
	(a) an officer on the staff of the hospital with which he is registered,	40
	(b) a person authorised in writing by the managers of that hospital, or	
	(c) in the case of a patient to whom leave is given subject to a condition that he reside in another hospital, an officer on the staff of that other hospital.	

- (10) The clinical supervisor must, as soon as practicable, notify the following persons of the matters specified in subsection (11) –
- (a) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11, and
 - (b) the patient’s nominated person (unless he falls within paragraph (a)). 5
- (11) Those matters are –
- (a) the giving of leave to the patient, or the suspension of conditions in respect of the patient, in accordance with this section and any conditions to which it is subject,
 - (b) whether that giving of leave or suspension of conditions is on specified occasions or for a specified period, 10
 - (c) any extension of the period for which that leave is given or those conditions are suspended under subsection (7), and
 - (d) any direction given in respect of the patient under subsection (8).
- (12) If it appears to the clinical supervisor that it is necessary to do so in the interests of the patient’s health or safety or for the protection of other persons, he may –
- (a) revoke the leave and recall the patient to the hospital in question, or
 - (b) cancel the suspension of a condition,
- by giving notice to the following persons. 15
- (13) Those persons are –
- (a) the patient,
 - (b) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11,
 - (c) any person for the time being in charge of the patient (unless he falls within paragraph (b)), and 20
 - (d) the patient’s nominated person (unless he falls within paragraph (b) or (c)). 25
- (14) Subsection (12) does not apply after the patient has ceased to be liable to be provided with medical treatment or assessed as a resident or non-resident patient (as the case may be). 30

CHAPTER 8

DEFERRED DISCHARGE AND SERVICES AFTER DISCHARGE

Deferred discharge

63 Duty to make a deferral order

- (1) This section applies if the Tribunal makes a discharge order in relation to a person who has been detained in a hospital under this Part for the period which –
- (a) began 28 days before the day on which that order is made, and
 - (b) ended with the making of that order. 35
- (2) The Tribunal must at the same time make a deferral order in relation to that person if it is satisfied that –
- (a) no plan has been prepared by the managers of the relevant hospital and the relevant local authority containing a statement by each of them of 40

- the post-discharge services to be available to that person following the discharge, and
- (b) all of the relevant conditions are likely to be met in his case within the 8 week period, if he is not provided with one or more post-discharge services after he ceases to be detained in hospital. 5
- (3) A deferral order is an order authorising the managers of the hospital with which the person is registered immediately before the order is made to detain him in that hospital until –
- (a) the end of the 8 week period, or
- (b) if earlier, the time he is given a copy of the plan prepared under section 64. 10
- (4) In this section and section 64 –
- “discharge order” means an order under section 45(2)(b), 56(3), 59(1)(b) or 61(3)(b);
- “post-discharge service” means – 15
- (a) in relation to a statement by the managers of the relevant hospital, a facility for the prevention of illness, the care of persons suffering from illness or the after-care of persons who have suffered from illness, and
- (b) in relation to a statement by the relevant local authority – 20
- (i) a care service within the meaning given in section 53, or
- (ii) a facility or service provided under Part 3 of the Children Act 1989 (c. 41) (local authority support for children and families),
- and for this purpose “illness” has the same meaning as in the National Health Service Act 1977 (c. 49); 25
- “relevant hospital”, in relation to a person in relation to whom a discharge order is made, means the hospital which is determined by the appropriate authority to be the relevant hospital for the purposes of this section and section 64; 30
- “relevant local authority”, in relation to a person in relation to whom a discharge order is made, means the local social services authority in whose area he is ordinarily resident at the time that order is made (and, for the purposes of determining where he is so resident, any period during which he is detained in a hospital under this Part is to be disregarded); 35
- “the 8 week period”, in relation to a deferral order, means the period which –
- (a) begins when the order is made, and
- (b) ends at the end of the period of 8 weeks beginning with the day on which the order is made. 40

64 Duties resulting from deferral order

- (1) This section applies if the Tribunal makes a deferral order under section 63 in relation to a person (“the relevant person”).
- (2) The Tribunal must give notice of the deferral order in writing to – 45
- (a) the relevant person,
- (b) the managers of the hospital with which the relevant person was registered immediately before the order was made, and

- (c) the managers of the relevant hospital (if different),
as soon as practicable and, in any event, no later than 7 days after the order is made.
- (3) As soon as practicable after receiving notice under subsection (2) in respect of the relevant person, the managers of the relevant hospital must notify the relevant local authority that a deferral order has been made in relation to him. 5
- (4) The managers and the relevant local authority must as soon as practicable and, in any event, no later than the end of the 8 week period –
- (a) prepare a plan containing a statement by each of them of the post-discharge services which, for the purpose of preventing all of the relevant conditions being met in the case of the relevant person, are to be available to him when he ceases to be detained under section 63(3), and 10
- (b) give a copy of the plan to the relevant person.
- 65 Duty of hospital managers to give information 15**
- (1) This section applies if the Tribunal makes a deferral order under section 63 in relation to a person.
- (2) As soon as practicable after the order is made, the managers of the relevant hospital must explain to the person the effect of the provision made by sections 63 and 64. 20
- (3) In this section, “relevant hospital” has the same meaning as in those sections.
- 66 Ordinary residence**
- (1) Any question arising under this Chapter as to the ordinary residence of a person is to be determined by the Secretary of State or by the National Assembly for Wales. 25
- (2) The Secretary of State and the National Assembly for Wales must make and publish arrangements for determining which cases are to be dealt with by the Secretary of State and which are to be dealt with by the Assembly.
- (3) Those arrangements may include provision for the Secretary of State and the Assembly to agree, in relation to any question that has arisen, which of them is to deal with the case. 30
- 67 Adjustments between social services authorities**
- (1) Regulations made by the appropriate authority may make provision as to the application of this Chapter in cases where, in relation to a person –
- (a) it is uncertain (without a determination by virtue of section 66) where that person is ordinarily resident, or 35
- (b) it appears to the local social services authority to which notice in relation to the person was given under section 64(3) that the person is ordinarily resident in the area of another local social services authority.
- (2) The regulations may, in particular, authorise or require a local social services authority – 40
- (a) to accept a notice given to it under section 64(3) notwithstanding that it may wish to dispute that it was the right authority to be notified;

- (b) to become the local social services authority responsible for a person's case in place of the local social services authority previously responsible;
- (c) to recover expenditure incurred as the local social services authority responsible for a person's case in the performance of functions under this Chapter from another local social services authority. 5

Services after discharge

68 Free care services, etc after discharge

- (1) Subsections (2) to (5) apply if a discharge order is made in respect of a person ("the discharged person"). 10
- (2) If any of the conditions specified in this section is met, no charge may be recovered for any care service provided in respect of the discharged person during the initial 6 week period.
- (3) But nothing in subsection (2) prevents a charge being made for accommodation which – 15
 - (a) is the discharged person's ordinary residence, and
 - (b) is not provided to him as intermediate care.
- (4) For the purposes of subsection (3) –
 - (a) in determining the discharged person's ordinary residence, any period during which he is detained in hospital under this Part is to be disregarded, and 20
 - (b) accommodation is provided to the discharged person as intermediate care if a local authority arrange for the provision of the accommodation as part of a structured programme of care provided for him for a limited period of time to assist him to maintain or regain the ability to live in his home. 25
- (5) If –
 - (a) the discharged person is aged under 18, and
 - (b) any of the conditions specified in this section is met,
 a local authority may not recover any contribution towards his maintenance under Part 3 of Schedule 2 to the Children Act 1989 (c. 41) in respect of any part of the initial 6 week period during which he is looked after by the local authority. 30
- (6) The first condition is that –
 - (a) when the discharge order was made, a deferral order was made in respect of the discharged person, and 35
 - (b) that deferral order has ceased to have effect.
- (7) The second condition is that –
 - (a) no deferral order was made in respect of the discharged person, and
 - (b) the discharged person was detained in a hospital under this Part for the period – 40
 - (i) beginning 28 days before the day on which the discharge order was made, and
 - (ii) ending with the making of that order.

- (8) The third condition is that immediately before the discharge order was made –
- (a) if the discharged person is aged under 18, he was being looked after by the local authority in circumstances where subsection (4) of section 53 applied,
 - (b) in any other case, the care service was being provided in respect of him free of charge by virtue of that section. 5
- (9) In this section –
- “care service” has the meaning given in section 53(5);
 - “deferral order” means an order under section 63;
 - “discharge order” means an order under section 45(2)(b), 56(3) or 59(1)(b); 10
 - “the initial 6 week period”, in relation to the discharged person, means –
 - (a) if a deferral order is made at the time the discharge order is made, the period of 6 weeks beginning with the day on which the deferral order ceases to have effect,
 - (b) in any other case, the period of 6 weeks beginning with the day the discharge order is made; 15
- and the reference to being looked after by a local authority is to be construed in accordance with section 22(1) of the Children Act 1989 (c. 41).

CHAPTER 9

20

MENTAL HEALTH TRIBUNALS FOR ENGLAND AND WALES: PROCEEDINGS ETC

Visiting etc patients

69 Visiting and examination of patients

- (1) A registered medical practitioner authorised by or on behalf of a patient may, for the purposes mentioned in subsection (2), at any reasonable time – 25
- (a) visit and examine the patient (in private if he considers it appropriate), and
 - (b) require the production of and inspect any records relating to the patient which are kept by the clinical supervisor of the patient.
- (2) Those purposes are – 30
- (a) advising whether an application to the Tribunal should be made by or on behalf of the patient under or by virtue of this Part,
 - (b) advising in connection with any other application made under or by virtue of this Part, and
 - (c) obtaining information as to the condition of the patient for the purposes of such an application as is mentioned in paragraph (a) or (b). 35
- (3) In determining for the purposes of subsection (1)(a) whether it is appropriate to visit or examine the patient in private, the registered medical practitioner in question must have regard to any wishes and feelings of the patient about the visit or examination being in private. 40

70 Assistance by Expert Panel

- (1) This section applies on the making of an application to the Tribunal by or in respect of a patient under or by virtue of this Part (subject to subsection (8)).
- (2) The Tribunal –
 - (a) must appoint a member of the Expert Panel who is a registered medical practitioner (the “medical expert”), and 5
 - (b) may appoint one or more other members of the Panel, to assist it in determining the application.
- (3) A member of the Expert Panel appointed under subsection (2)(b) may or may not be a registered medical practitioner. 10
- (4) A member of the Expert Panel appointed under subsection (2) may, for the purpose of discharging the functions conferred on him by virtue of that subsection, at any reasonable time –
 - (a) visit, interview and examine the patient (in private if he considers it appropriate), and 15
 - (b) require the production of and inspect any records relating to the patient which are kept by the clinical supervisor of the patient.
- (5) In determining for the purposes of subsection (4)(a) whether it is appropriate to visit, interview or examine the patient in private, the member of the Expert Panel in question must have regard to any wishes and feelings of the patient about the visit, interview or examination being in private. 20
- (6) The medical expert must –
 - (a) prepare a report for the Tribunal dealing with the merits of the application, and
 - (b) exercise the power conferred by subsection (4)(a) for the purposes of preparing the report. 25
- (7) The report must include comments on each of the matters dealt with in the application.
- (8) This section does not apply to applications to the Tribunal made by virtue of the following provisions –
 - (a) section 46(5)(b)(i) or (c)(i),
 - (b) section 49(5)(b)(i) or (c)(i),
 - (c) section 54(8),
 - (d) section 55(9),
 - (e) section 76(8) or 77(10). 35

Proceedings

71 Remitted cases: powers of Tribunal etc

- (1) This section applies if a person’s or patient’s case is remitted to the Tribunal.
- (2) If, within the period specified in rules by virtue of section 74(7), no application to the Tribunal for the case to be determined has been made –
 - (a) in the case of a person subject to an order under section 63, by the managers of the relevant hospital (as defined in subsection (4) of that section), 40

- (b) in any other case, by the patient’s clinical supervisor, the Tribunal must dismiss the case at the end of that period.
- (3) If the Tribunal dismisses the case of a patient who is liable to assessment under Chapter 3, the patient ceases to be so liable to assessment.
- (4) If the Tribunal dismisses the case of – 5
- (a) a patient who is subject to an order or further order under Chapter 6 authorising his medical treatment or assessment, or
- (b) a person who is subject to an order under 63, the order or further order in question ceases to be in force.
- (5) In determining an application for the determination of a remitted case, the Tribunal has the same powers under this Part – 10
- (a) if the case is remitted by the Mental Health Appeal Tribunal, as the Tribunal had when making the determination which was set aside on the case being remitted by the Appeal Tribunal,
- (b) if the case is remitted by the Court of Appeal or the House of Lords, as the Tribunal had when making the determination in respect of which an appeal was made to the Appeal Tribunal, 15
- (subject to any provision made by rules under section 74).
- (6) This section and section 72 are subject to – 20
- (a) provision made in rules by virtue of section 74(2)(a) or 252(2)(c),
- (b) provision made in directions by virtue of section 254(6)(c), or
- (c) if responsibility for assessing a patient or providing him with medical treatment is transferred under Chapter 10 from a hospital in Wales to a hospital in England, such modifications as are necessary in consequence of the case having been remitted by the House of Lords to the Mental Health Tribunal for England instead of the Mental Health Tribunal for Wales (and vice versa). 25
- (7) References in this Chapter to the remitting of a case to the Tribunal are to the remitting of a case to it under section 250 or 254 or by the House of Lords for reconsideration by the Tribunal under this Part (and related expressions are to be read accordingly) unless a contrary intention appears. 30

72 Remitted cases: effect of remission

- (1) The setting aside of a determination made by the Tribunal, Mental Health Appeal Tribunal or Court of Appeal on a case being remitted does not affect – 35
- (a) the continued assessment, detention or medical treatment of a patient, or the imposition of conditions on him, under this Part during the period between the setting aside and remission and the determination by the Tribunal on reconsideration of the case or the continuation in force of an order under any of Chapters 5 to 7 during that period,
- (b) the continuation in force of any order under section 63 in respect of a person during that period, or 40
- (c) the exercise in relation to the patient or person during that period of any function conferred on any person under or by virtue of this Act.
- (2) Subsection (3) applies if – 45
- (a) a patient is liable to assessment under Chapter 3 at the time of the setting aside of a determination made by the Tribunal, Mental Health Appeal Tribunal or Court of Appeal on his case being remitted, but

- (b) he would (apart from subsection (3)) cease to be liable to assessment under that Chapter before the Tribunal has made a determination on reconsideration of the case.
- (3) The patient is to be treated as continuing to be liable to assessment under that Chapter until the Tribunal makes a determination on reconsideration of the case (unless his assessment period has ended by virtue of any of subparagraphs (i) to (iv) of section 25(6)(b)). 5
- (4) Subsection (5) applies if—
- (a) any of the following is in force in respect of a patient or person at the time of the setting aside of a determination made by the Tribunal, Mental Health Appeal Tribunal or Court of Appeal on his case being remitted— 10
- (i) an order or further order under Chapter 6 authorising his medical treatment or assessment, or
- (ii) an order under section 63, but 15
- (b) the order or further order would (apart from subsection (5)) cease to be in force before the Tribunal has made a determination on reconsideration of the case.
- (5) The order or further order is to be treated as continuing in force until the Tribunal makes a determination on reconsideration of the case (unless the order or further order has been discharged by virtue of Chapter 7 or ceased to be in force by virtue of section 71(4) or 172(4)). 20
- (6) Subsections (1) to (5) are subject to sections 250(8)(c) and 254(6)(d).

73 Proceedings: powers of the Tribunal etc

- (1) In determining any application under or by virtue of this Part, the Tribunal may, if it is of the opinion that it is appropriate to do so, consider a matter which is not raised by the application. 25
- (2) The chairman of the Tribunal must record—
- (a) the determination made by the Tribunal on an application under or by virtue of this Part, 30
- (b) the reasons for that determination,
- (c) any findings of fact by the Tribunal which are relevant to that determination, and
- (d) any other matters specified in rules made by the Lord Chancellor.
- (3) The Tribunal may pay allowances in respect of expenses for travel and subsistence and loss of earnings to— 35
- (a) any person attending the Tribunal as an applicant or witness,
- (b) the patient who is the subject of the proceedings if he attends otherwise than as an applicant or witness,
- (c) any person who attends as the representative of an applicant (other than counsel or a solicitor). 40
- (4) Part 1 of the Arbitration Act 1996 (c. 23) shall not apply to any proceedings before the Tribunal but rules made under section 74 may apply any provision of that Act, with or without modifications.

74 Rules

- (1) The Lord Chancellor may make rules with respect to—
 - (a) the making of applications to the Tribunal under or by virtue of this Part,
 - (b) the proceedings for determining, or in connection with, such applications, and 5
 - (c) any matters incidental to or consequential on such proceedings.
- (2) The rules may, in particular, make provision—
 - (a) for the transfer of proceedings in respect of a patient from the Mental Health Tribunal for England to the Mental Health Tribunal for Wales, in a case where responsibility for assessing the patient or providing him with medical treatment is transferred under Chapter 10 from a hospital in England to a hospital in Wales (and vice versa), 10
 - (b) as to the procedure for applying for—
 - (i) a variation of an order or further order made under Chapter 5 or 6, or 15
 - (ii) the leave of the Tribunal or a chairman,
 and for determining such an application,
 - (c) as to the circumstances in which the Tribunal may give leave on an application under— 20
 - (i) section 54(8), or
 - (ii) section 55(9),
 - (d) as to the circumstances in which the Tribunal may appoint a member of the Expert Panel to assist it in determining an application for leave,
 - (e) for authorising that member to visit, interview and examine the patient in respect of whom the application is made (or to visit, interview and examine that patient in private) and require the production of and inspect any medical records relating to the patient kept by the clinical supervisor of the patient, 25
 - (f) for requiring persons to attend to give evidence and produce documents, 30
 - (g) for authorising the administration of oaths to witnesses,
 - (h) for enabling any functions of the Tribunal which relate to matters preliminary or incidental to an application to be performed by a chairman or the President, 35
 - (i) as to any matter specified in Schedule 7 (which contains supplementary provision).
- (3) Rules made by virtue of subsection (2)(a) may make provision modifying the application of this Part.
- (4) If a person fails to comply with any requirement imposed by rules made by virtue of subsection (2)(f), the chairman of the Tribunal may certify the fact to the High Court. 40
- (5) The High Court may enquire into the case.
- (6) If, after hearing—
 - (a) any witnesses who may be produced against or on behalf of the person in question, and 45
 - (b) any statement made by or on behalf of that person,

the High Court is satisfied that he did not have a reasonable excuse for failing to comply with the requirement in question, it may punish him as if he had been guilty of contempt of that court.

- (7) The Lord Chancellor must make rules specifying the period within which an application to the Tribunal for the determination of a remitted case is to be made in pursuance of section 71. 5

CHAPTER 10

ANCILLARY POWERS

Transfer between hospitals

- 75 Transfer of responsibility for patients: application of sections 76 and 77** 10
- (1) Sections 76 and 77 apply to patients who fall within any of subsections (2) to (4).
- (2) A patient falls within this subsection if –
- (a) he is liable to assessment under Chapter 3 as a resident patient, or
 - (b) he is liable to assessment under that Chapter as a non-resident patient. 15
- (3) A patient falls within this subsection if –
- (a) an order (or further order) under Chapter 6 is in force in respect of him,
 - (b) he is liable to be provided with medical treatment or assessed as a resident patient in a hospital, and
 - (c) the clinical supervisor is authorised to determine whether responsibility for providing the patient with medical treatment or assessing him should be transferred to another hospital by virtue of section 46(5)(b)(ii), 48(6)(c)(ii), 49(5)(b)(ii), 51(8)(c)(ii) or 57(4)(c)(ii). 20
- (4) A patient falls within this subsection if –
- (a) an order (or further order) under Chapter 6 is in force in respect of him, and
 - (b) he is liable to be provided with medical treatment or assessed as a non-resident patient by a hospital. 25
- (5) In the case of a patient falling within subsection (3), the application of sections 76 and 77 is subject to any condition specified in the order (or further order) under Chapter 6 by virtue of section 46(5)(b)(ii) or 49(5)(b)(ii). 30
- 76 Transfer of responsibility for patients between hospitals**
- (1) Subsections (2) to (10) apply if the clinical supervisor of a patient determines (whether following a request by the patient or otherwise) that responsibility for –
- (a) assessing him (in the case of a patient falling within subsection (2) of section 75), or
 - (b) providing him with medical treatment or assessing him (in the case of a patient falling within subsection (3) or (4) of that section),
- should be transferred to another hospital (subject to subsection (12)). 40
- (2) If –

-
- (a) the patient falls within section 75(2)(a) or (3), and
- (b) he is not already required to reside at the other hospital in accordance with conditions imposed on the giving of leave of absence under section 30 or 62 or by the Tribunal or is not otherwise residing there, the clinical supervisor must, as soon as practicable after making the determination, make such arrangements as he considers appropriate for conveying the patient to the other hospital. 5
- (3) The clinical supervisor must notify the following persons of the proposed transfer and the reasons for it –
- (a) the patient, 10
- (b) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11, and
- (c) the patient’s nominated person (unless he falls within paragraph (b)).
- (4) The notice under subsection (3) must –
- (a) be in the form prescribed by the appropriate authority in regulations, 15
- (b) specify a date, falling at least 7 days after the date on which the notice is given, as –
- (i) the earliest date on which the proposed transfer might take place, and
- (ii) the date by which any notice under subsection (5) must be given, and 20
- (c) give information about the right conferred by that subsection.
- (5) The patient may object to the proposed transfer by notifying his objections to the clinical supervisor on or before the date specified under subsection (4)(b).
- (6) The right conferred by subsection (5) may be exercised on the patient’s behalf by his nominated person. 25
- (7) Subsection (8) applies if the clinical supervisor is notified under subsection (5) and the notification is not withdrawn.
- (8) The proposed transfer may not take place unless the Tribunal gives leave on an application made by the clinical supervisor. 30
- (9) Otherwise, the transfer may take place on such date, falling no more than 14 days after the date specified under subsection (4)(b), as is agreed between the managers of the hospitals from which and to which the transfer is to be made.
- (10) If arrangements are made in relation to a patient by virtue of subsection (2), the managers of the hospital from which the transfer is to be made must secure that the patient is conveyed, on the date agreed for the purposes of subsection (9), to the other hospital by a person authorised by them to do so. 35
- (11) Before making a determination under subsection (1), the clinical supervisor must consult –
- (a) the patient, unless inappropriate or impracticable, 40
- (b) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11,
- (c) the patient’s nominated person (unless he falls within paragraph (b)), if practicable, and
- (d) any carer of the patient (unless he falls within paragraph (b) or (c)), subject to section 12 and if practicable. 45

(12) This section does not apply if section 77 applies.

77 Transfer of responsibility for patients between hospitals: emergencies

- (1) Subsections (2) to (12) apply if the clinical supervisor of a patient determines (whether following a request by the patient or otherwise) that –
- (a) responsibility for – 5
 - (i) assessing him (in the case of a patient falling within subsection (2) of section 75), or
 - (ii) providing him with medical treatment or assessing him (in the case of a patient falling within subsection (3) or (4) of that section), 10
 - should be transferred to another hospital, and
 - (b) it is of urgent necessity that the proposed transfer take place.
- (2) If –
- (a) the patient falls within section 75(2)(a) or (3), and
 - (b) he is not already required to reside at the other hospital in accordance with conditions imposed on the giving of leave of absence under section 30 or 62 or by the Tribunal or is not otherwise residing there, 15
- the clinical supervisor must, as soon as practicable after making the determination, make such arrangements as he considers appropriate for conveying the patient to the other hospital. 20
- (3) The proposed transfer may take place, as soon as practicable, on such date as is agreed between the managers of the hospitals from which and to which the transfer is to be made.
- (4) The clinical supervisor must notify the following persons of the transfer or proposed transfer (as the case may be) and the reasons for it – 25
- (a) the patient,
 - (b) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11, and
 - (c) the patient’s nominated person (unless he falls within paragraph (b)).
- (5) The notice under subsection (4) must – 30
- (a) be in the form prescribed by the appropriate authority in regulations,
 - (b) state that the clinical supervisor has made a determination under subsection (1)(b),
 - (c) specify – 35
 - (i) the date on which the transfer took place, or
 - (ii) the earliest date on which the transfer might take place, (as the case may be),
 - (d) specify a date, falling at least 7 days after the date on which the notice was given, as the date by which any notice under subsection (6) may be given, and 40
 - (e) give information about the right conferred by that subsection.
- (6) The patient may object to the transfer or proposed transfer by notifying his objections to the clinical supervisor on or before the date specified under subsection (5)(d).
- (7) The right conferred by subsection (6) may be exercised on the patient’s behalf by his nominated person. 45

- (8) Subsection (9) applies if the clinical supervisor is notified under subsection (6) and the notification is not withdrawn.
- (9) Responsibility for –
- (a) assessing the patient, or
 - (b) providing him with medical treatment or assessing him, 5
- (as the case may be) must be transferred to the hospital from which that responsibility was transferred within the period of 7 days beginning with the date on which the notification under subsection (6) was given unless the clinical supervisor makes an application under subsection (10) within that period. 10
- (10) An application under this subsection –
- (a) is to be made –
 - (i) to the Mental Health Tribunal for England, if the hospital from which that responsibility was transferred is in England, or
 - (ii) to the Mental Health Tribunal for Wales, if the hospital from which that responsibility was transferred is in Wales, and 15
 - (b) is an application for the leave of the Tribunal in question for that responsibility to remain with the hospital to which it was transferred.
- (11) If –
- (a) responsibility in respect of a patient is to be transferred to a hospital under subsection (9), 20
 - (b) he falls within section 75(2)(a) or (3), and
 - (c) he is not already required to reside at the hospital in accordance with conditions imposed on the giving of leave of absence under section 30 or 62 or by the Tribunal or is not otherwise residing there, 25
- the clinical supervisor must, as soon as practicable after the date specified under subsection (5)(d), make such arrangements as he considers appropriate for conveying the patient to the hospital.
- (12) If arrangements are made in relation to a patient by virtue of subsection (2) or (11), the managers of the hospital from which the transfer is to be made must secure that the patient is conveyed to the hospital to which the transfer is to be made by a person authorised by them to do so. 30
- (13) The clinical supervisor must consult –
- (a) the patient, unless inappropriate or impracticable,
 - (b) if the patient is aged under 16, each person with parental responsibility for him, subject to section 11, 35
 - (c) the patient’s nominated person (unless he falls within paragraph (b)), if practicable, and
 - (d) any carer of the patient (unless he falls within paragraph (b) or (c)), subject to section 12 and if practicable, 40
- whether before or after making determinations under subsection (1).

78 Transfers: registration

- (1) Subsection (2) applies if responsibility for assessing a patient or providing him with medical treatment or assessing him (as the case may be) is transferred to another hospital – 45
- (a) in the case of a patient falling within section 75(2)(a) or (3) –

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- (i) in pursuance of leave given by the Tribunal in accordance with section 46(5)(b)(i) or 49(5)(b)(i),
 - (ii) in pursuance of leave given by the Tribunal on an application under section 76(8) or 77(10),
 - (iii) in pursuance of a direction given by the Tribunal if leave is not given on an application under section 77(10), 5
 - (iv) under section 76(9) or 77(3), or
 - (v) under section 77(9), or
 - (b) in the case of a patient falling within section 75(2)(b) or (4) –
 - (i) in pursuance of leave given by the Tribunal on an application under section 76(8) or 77(10), 10
 - (ii) in pursuance of a direction given by the Tribunal if leave is not given on an application under section 77(10), or
 - (iii) under section 76(9) or 77(3) or (9).
 - (2) The managers of the hospital to which the transfer is made must – 15
 - (a) if the patient is conveyed to the hospital in pursuance of arrangements –
 - (i) under section 76(2) or 77(2) or (11), or
 - (ii) in the case of a patient falling within subsection (1)(a)(i), made by the Tribunal, 20
 register him with the hospital on his arrival there,
 - (b) if –
 - (i) the patient is already required to reside at the hospital in accordance with conditions imposed on the giving of leave of absence under section 30 or 62 or by the Tribunal or is otherwise residing there, or 25
 - (ii) he falls within section 75(2)(b) or (4),
 register him with the hospital as soon as practicable after the transfer.
 - (3) When the patient is registered under subsection (2) his registration with the hospital from which the transfer was made ceases to have effect. 30

79 Transfers: effect of registration

- (1) Subsection (2) applies if a patient –
 - (a) who falls within section 75(2)(a), and
 - (b) in respect of whom a transfer is made as mentioned in any of subparagraphs (i) to (v) of subsection (1)(a) of section 78, 35
 is registered with a hospital under subsection (2) of that section.
- (2) The registration is sufficient authority –
 - (a) for the managers of the hospital to admit the patient and detain him until –
 - (i) he is liable to assessment as a non-resident patient, 40
 - (ii) he is registered under section 78(2) with another hospital, or
 - (iii) his assessment period ends, or
 - (b) if the patient is already required to reside at the hospital in accordance with conditions imposed on the giving of leave of absence under section 30 or by the Tribunal or is otherwise residing there, for the managers of the hospital to continue to detain him as mentioned in paragraph (a). 45

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- (3) Subsections (4) and (5) apply if a patient –
- (a) who falls within section 75(2)(b), and
 - (b) in respect of whom a transfer is made as mentioned in any of subparagraphs (i) to (iii) of subsection (1)(b) of section 78,
- is registered with a hospital under subsection (2) of that section. 5
- (4) The registration is sufficient authority for –
- (a) the approved mental health professional, and
 - (b) the clinical supervisor of the patient,
- to require the patient to continue to comply with the conditions notified to him under section 23(4), 26(8) or 29 or specified in a direction by virtue of section 36(9). 10
- (5) The approved mental health professional or clinical supervisor may not require the patient to comply with any conditions imposed under subsection (4) after –
- (a) he is liable to assessment as a resident patient, or
 - (b) his assessment period ends. 15
- (6) Subsection (7) applies if a patient –
- (a) who falls within section 75(3), and
 - (b) in respect of whom a transfer is made as mentioned in any of subparagraphs (i) to (v) of subsection (1)(a) of section 78,
- is registered with a hospital under subsection (2) of that section. 20
- (7) The registration is sufficient authority –
- (a) for the managers of the hospital to admit the patient and detain him until –
 - (i) a non-residency event occurs, 25
 - (ii) he is registered under section 78(2) with another hospital, or
 - (iii) the order (or further order) authorising his medical treatment or assessment ceases to be in force, or
 - (b) if the patient is already required to reside at the hospital in accordance with conditions imposed on the giving of leave of absence under section 62 or by the Tribunal or is otherwise residing there, for the managers of the hospital to continue to detain him as mentioned in paragraph (a). 30
- (8) The following are non-residency events for the purposes of subsection (7)(a)(i) – 35
- (a) if an order (or further order) authorising the medical treatment of the patient is in force –
 - (i) the end of the period for which the order (or further order) states, by virtue of section 46(4)(a) or (c), that the patient is to be provided with medical treatment as a resident patient, or 40
 - (ii) the patient being otherwise liable to be provided with medical treatment as a non-resident patient,
 - (b) if an order (or further order) authorising his assessment is in force, the patient being liable to be assessed as a non-resident patient.

*Compulsory attendance at hospital***80 Enforcement of requirement to attend hospital**

- (1) Subsection (3) applies to a non-resident patient who is liable to assessment under Chapter 3, or in respect of whom an order (or further order) under Chapter 6 is in force, and who – 5
- (a) is subject to a requirement to attend a hospital or at another specified place which is not suspended under section 30 or 62, and
- (b) fails to attend the relevant hospital or at the relevant place at a time at which, or before the end of a period within which, he is required to do so by virtue of that requirement. 10
- (2) Subsection (3) also applies to a non-resident patient who is so liable, or in respect of whom such an order (or further order) is in force, and who –
- (a) is subject to a requirement to attend a hospital or at another specified place which is suspended under section 30 or 62 subject to a condition that he attend that hospital or at that place, or (in either case) a different one, and 15
- (b) fails to attend the relevant hospital or at the relevant place at a time at which, or before the end of a period within which, he is required to do so by virtue of that condition.
- (3) The patient may be taken into custody and conveyed to the relevant hospital or place by the patient’s clinical supervisor or a person authorised by him in writing. 20
- (4) The power conferred by subsection (3) may not be exercised –
- (a) after the end of the period during which the patient is subject to the requirement or condition, or 25
- (b) in relation to any particular failure to attend, after the occasion (if there is one) when the patient attends the relevant hospital or at the relevant place at a subsequent time at which, or before the end of a subsequent period within which, he is required to do so by virtue of the requirement or condition. 30
- (5) In this section, “relevant hospital” and “relevant place” mean the hospital which the patient is required to attend, or the place at which he is required to attend, by virtue of –
- (a) the requirement referred to in subsection (1)(a), or
- (b) the condition referred to in subsection (2)(a). 35

*Patients absent without leave etc***81 Return of patients absent without leave etc**

- (1) Subsection (3) applies to a patient if –
- (a) he is liable to assessment under Chapter 3 as a resident patient, or
- (b) an order or further order authorising medical treatment or assessment under Chapter 6 is in force in respect of him and he is liable to be provided with medical treatment or assessed as a resident patient, and he does or makes any of the acts or omissions specified in subsection (2). 40
- (2) Those acts or omissions are –

- (a) absenting himself from the hospital with which he is registered without leave given under section 30 or 62 or by the Tribunal,
 - (b) failing to return to the hospital on any occasion on which, or at the end of a period for which, leave was so given,
 - (c) failing to return to the hospital on being recalled under the section in question or by the Tribunal, 5
 - (d) absenting himself without permission from any place where he is required to reside in accordance with conditions imposed on the giving of leave of absence under that section or by the Tribunal,
 - (e) absconding while in custody in pursuance of a direction given by the clinical supervisor under that section, or 10
 - (f) absconding while being conveyed to a hospital in pursuance of arrangements under section 76(2) or 77(2) or (11).
- (3) The patient may be –
- (a) taken into custody, and 15
 - (b) returned to the custody of the person in whose custody he is liable to be kept in pursuance of the direction (in the case of an act falling within paragraph (e) of subsection (2)) or returned or taken to the hospital or other place in question (in any other case),
- by any of the persons specified in subsection (4). 20
- (4) Those persons are –
- (a) an approved mental health professional,
 - (b) an officer on the staff of the hospital with which the patient is registered,
 - (c) a person authorised in writing by the managers of that hospital, or 25
 - (d) a constable.
- (5) If the place referred to in subsection (2)(d) is a hospital other than the one with which the patient is registered, the references in subsection (4)(b) and (c) to the hospital with which the patient is registered are to be read as including a reference to that hospital. 30
- (6) Subsection (8) applies to a patient if –
- (a) he is liable to assessment under Chapter 3 as a non-resident patient, or
 - (b) an order or further order authorising medical treatment or assessment under Chapter 6 is in force in respect of him and he is liable to be provided with medical treatment or assessed as a non-resident patient, 35
- and he does or makes any of the acts or omissions specified in subsection (7).
- (7) Those acts or omissions are –
- (a) absenting himself from the place in which he is required to reside under a residence condition without the condition being suspended under section 30 or 62, 40
 - (b) failing to return to the place on any occasion on which, or at the end of a period for which, such a condition was so suspended,
 - (c) failing to return to the place on being recalled under the section in question,
 - (d) absconding while being kept in custody in pursuance of a direction given by the clinical supervisor under that section, 45

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- (e) absenting himself without permission from any place where he is required to reside in accordance with conditions imposed on the suspension under that section, or
- (f) absconding while being conveyed to a hospital in pursuance of section 80(3). 5
- (8) The patient may be –
- (a) taken into custody, and
- (b) returned to the custody of the person in whose custody he is liable to be kept in pursuance of the direction (in the case of an act falling within paragraph (d) of subsection (7)) or returned or taken to the place or hospital in question (in any other case), 10
- by any of the persons specified in subsection (9).
- (9) Those persons are –
- (a) an approved mental health professional,
- (b) an officer on the staff of the hospital with which the patient is registered, 15
- (c) a person authorised in writing by the managers of that hospital, or
- (d) a constable.
- 82 Section 81: time limits**
- (1) Subsection (2) applies to a patient – 20
- (a) who is liable to assessment under Chapter 3, or
- (b) in respect of whom an order or further order authorising assessment under Chapter 6 is in force.
- (2) The patient may not be taken into custody under section 81 after the end of his assessment period or the period for which the order or further order is in force, as the case may be. 25
- (3) A patient in respect of whom –
- (a) an order authorising medical treatment under Chapter 6 is in force, or
- (b) a further such order is in force for a period which does not exceed 6 months, 30
- may not be taken into custody under section 81 after the end of the period of 6 months beginning with the first day on which he was absent without leave.
- (4) A patient in respect of whom a further order authorising medical treatment under Chapter 6 is in force for a period which exceeds 6 months may not be taken into custody under section 81 after the end of – 35
- (a) that period, or
- (b) the period of 6 months beginning with the first day on which he was absent without leave,
- (whichever is later).
- 83 Section 81 etc: supplementary** 40
- (1) In calculating any assessment period or period for which an order or further order is in force for the purposes of section 82, section 84 is to be disregarded.

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- (2) In sections 81 and 84, any reference to a residence condition, in relation to a non-resident patient, is to a condition imposed on him under or by virtue of any of Chapters 3 to 7 that he reside at a specified place.
- (3) In section 82(3) and (4) and sections 84 and 85, references to a patient who is absent without leave are to a patient to whom subsection (3) or (8) of section 81 applies (and related expressions in those provisions and subsection (4) below are to be read accordingly). 5
- (4) The appropriate authority may make regulations as to the recording and reporting of absences without leave and returns.
- 84 Special provision as to patients absent without leave 10**
- (1) Subsection (2) applies if a patient who is liable to assessment under Chapter 3 returns from absence without leave on or before the last day on which he could be taken into custody under section 81.
- (2) Section 31(9) has effect as if for the words from “he was admitted” to “(as the case may be)” there were substituted “the patient returned from being absent without leave”. 15
- (3) Subsections (4) and (5) apply if –
- (a) a patient returns from absence without leave on the last day on which he could be taken into custody under section 81, or
 - (b) such a patient so returns within the period of 7 days ending with that day. 20
- (4) If the patient is liable to assessment under Chapter 3 –
- (a) section 25(6)(b)(v) has effect as if for the words from “28 days” onwards there were substituted “7 days beginning with the day on which the patient returned from being absent without leave”, and 25
 - (b) section 44(1) has effect as if for the words from “28 days” onwards there were substituted “7 days beginning with the day on which the patient returned from being absent without leave”.
- (5) If –
- (a) an order or further order authorising assessment is in force in respect of the patient under Chapter 6, or 30
 - (b) an order or further order authorising medical treatment is in force in respect of the patient under that Chapter,
- the order or further order is to be treated as continuing in force until the end of the period of 7 days beginning with the day on which the patient returned from being absent without leave. 35
- (6) Subsection (7) applies if, within the period during which he could be taken into custody under section 81, a patient –
- (a) is taken into custody under that section, or
 - (b) otherwise returns from absence without leave to the hospital or other place where he ought to be. 40
- (7) If –
- (a) on the first day when the patient was absent without leave an order or further order authorising medical treatment was in force in respect of the patient under Chapter 6, and 45

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- (b) the order or further order ceased to be in force before he returned from being absent without leave,
the order or further order is to be treated as having continued in force until the end of the period of 7 days beginning with the day on which the patient returned from being absent without leave. 5
- (8) Subsections (9) and (10) apply to a patient if—
(a) he is liable to assessment under Chapter 3 as a non-resident patient, and
(b) he returns from being absent without leave within the period during which he could be taken into custody under section 81.
- (9) The duty under section 27(2) to determine whether it is appropriate for the patient to be detained in a hospital while the assessment is carried out may be discharged on his return. 10
- (10) If, under section 29(3), the clinical supervisor of the patient amends a residence condition imposed on him, the power conferred by section 81(8) to return him to the place in which he was required to reside is to be read as a power to take him to the place specified in the amended condition. 15
- (11) If—
(a) an order (or further order) authorising the medical treatment or assessment of a patient is in force under Chapter 6,
(b) he is liable to be provided with medical treatment or assessed as a non-resident patient by virtue of that order, and 20
(c) he returns from being absent without leave within the period during which he could be taken into custody under section 81,
the determination under section 48(4)(b) or 51(6)(b) may be made on his return.
- (12) References in this section (except subsection (6)) and section 85 to a patient returning from absence without leave are to his returning, having been absent without leave, to the hospital or other place where he ought to be (whether under section 81 or otherwise). 25
- 85 Requirements as to examination etc of certain patients who return**
- (1) Subsection (2) applies if— 30
(a) an order or further order authorising medical treatment is in force in respect of a patient under Chapter 6, and
(b) he returns from absence without leave after the period of 28 days beginning with the first day on which he was absent without leave.
- (2) The clinical supervisor must, within the period of 7 days beginning with the patient's return, examine him for the purpose of determining whether the order or further order should be discharged under section 60 or an application should be made to the Tribunal under section 61. 35
- (3) Subsection (4) applies if—
(a) on the first day when the patient was absent without leave an order or further order authorising medical treatment was in force in respect of him under Chapter 6, and 40
(b) the order or further order ceased to be in force before he returned from absence without leave.

- (4) The clinical supervisor must, within the period of 7 days beginning with the patient’s return, examine him for the purpose of determining whether an application should be made to the Tribunal under section 41.
- (5) In determining whether an order or further order authorising medical treatment is in force for the purposes of this section, section 84 is to be disregarded. 5
- (6) References in this section to a patient returning from absence without leave are to his so returning within the period during which he could be taken into custody under section 81.

PART 3 10

PATIENTS CONCERNED IN CRIMINAL PROCEEDINGS ETC

CHAPTER 1

REMAND

Remand on bail for report

86 Remand on bail for mental health report 15

- (1) In relation to the Crown Court, this section applies to a person who –
 - (a) has been sent for trial before the court for an offence punishable with imprisonment and has not yet been sentenced or otherwise dealt with for it (unless he has been convicted of the offence and the sentence is fixed by law), 20
 - (b) has been committed to the court to be sentenced for such an offence and has not yet been sentenced or otherwise dealt with for it, or
 - (c) has been committed to the court under section 126 and has not yet been dealt with under that section.
- (2) In relation to a magistrates’ court, this section applies to a person who has appeared before the court charged with an offence punishable on summary conviction with imprisonment and has not yet been sentenced or otherwise dealt with for it. 25
- (3) Subsections (4) and (5) apply if the court –
 - (a) remands on bail a person to whom this section applies, and 30
 - (b) is satisfied on the evidence of a registered medical practitioner that there is reason to suspect that the person is suffering from mental disorder.
- (4) The court may require the appropriate authority to arrange for an approved clinician to prepare a report on – 35
 - (a) the person’s mental condition, or
 - (b) the appropriate medical treatment for that condition,(or both) in order to assist the court in dealing with the person for the offence.
- (5) The court may specify any particular matters which are to be included in the report (including an assessment of the risk posed by the person to members of the public). 40

Remand to hospital for report

87 Remand to hospital for mental health report: preliminary

- (1) In relation to the Court of Appeal, section 88 applies to a person who has appealed to the court against—
- (a) a custodial sentence, 5
 - (b) a mental health order (see section 116), or
 - (c) a hospital direction (see section 130),
- and whose appeal has not been determined, withdrawn or otherwise disposed of.
- (2) In relation to the Court of Appeal, section 88 also applies to a person— 10
- (a) who has appealed to the court against a conviction, and
 - (b) in respect of whom the court is considering passing a sentence under section 3(2) or 4(2) of the Criminal Appeal Act 1968 (c. 19).
- (3) In relation to the Crown Court, section 88 applies to a person who—
- (a) has been sent for trial before the court for an offence punishable with imprisonment and has not yet been sentenced or otherwise dealt with for it (unless he has been convicted of the offence and the sentence is fixed by law), 15
 - (b) has been committed to the court to be sentenced for such an offence and has not yet been sentenced or otherwise dealt with for it, or 20
 - (c) has been committed to the court under section 126 and has not yet been dealt with under that section.
- (4) In relation to the Crown Court, section 88 also applies to a person who has appealed to the court under section 108 of the Magistrates' Courts Act 1980 (c. 43)— 25
- (a) against a custodial sentence or a mental health order and whose appeal has not been determined, withdrawn or otherwise disposed of, or
 - (b) against a conviction, or against a sentence other than a custodial sentence or a mental health order, and in respect of whom the court is considering passing a custodial sentence or making a mental health order. 30
- (5) In relation to a magistrates' court, section 88 applies to a person who has appeared before the court charged with an offence punishable on summary conviction with imprisonment and has not yet been sentenced or otherwise dealt with for it. 35
- (6) But section 88 does not apply in relation to a person who is already remanded under that section or further remanded under section 89.
- (7) In this section “custodial sentence” has the same meaning as in the 2000 Act.

88 Remand to hospital for mental health report

- (1) Instead of remanding in custody a person to whom this section applies the court may remand him to a hospital or a hospital unit specified by it for a report by an approved clinician on— 40
- (a) the person's mental condition, or
 - (b) the appropriate medical treatment for that condition,

(or both) if the conditions specified in subsections (2) and (3) are met in the person's case.

- (2) The first condition is that the court is satisfied, on the evidence of a registered medical practitioner, that there is reason to suspect that the person is suffering from mental disorder. 5
- (3) The second condition is that the court is of the opinion that it would be impracticable for the report to be made if the person were remanded in custody.

89 Further remand for mental health report

- (1) This section applies to a person who is remanded under section 88 or further remanded under this section. 10
- (2) Instead of remanding in custody a person to whom this section applies, the court which remanded or further remanded him may further remand him to a hospital or a hospital unit specified by it.
- (3) A person may be further remanded under this section only if it appears to the court, on the evidence mentioned in subsection (4), that – 15
 - (a) a further remand is necessary to complete the report, and
 - (b) its completion would be impracticable if the person were remanded in custody.
- (4) That evidence is evidence of the approved clinician who would be responsible for the report at the hospital to which the person would be further remanded (or at the hospital containing the hospital unit to which he would be further remanded). 20
- (5) The court may further remand a person under this section without his being brought before the court if – 25
 - (a) he is represented by counsel or a solicitor, and
 - (b) his counsel or solicitor is given an opportunity of being heard.

90 Duration of remand or further remand

- (1) This section applies in relation to remands under section 88 and further remands under section 89. 30
- (2) The remand or further remand of a person by the Court of Appeal does not affect any power to release him from detention in a prison or other institution before his release date (if he has one).
- (3) The Court of Appeal may not remand or further remand a person – 35
 - (a) in a case where his release date (if he has one) is less than 16 weeks after the beginning of his remand period, if his remand period would continue after his release date, or
 - (b) in any other case, if his remand period would exceed 16 weeks.
- (4) The Crown Court or a magistrates' court may not remand or further remand a person – 40
 - (a) for a period which exceeds 28 days, or
 - (b) if his remand period would exceed 16 weeks.
- (5) A person's remand or further remand ceases to have effect –

- (a) on the consideration of the report by the court, or
 (b) if sooner, when (apart from the remand) the person would have been released from detention by the exercise of any power to release him as mentioned in subsection (2).
- (6) But subsection (5) does not prevent a remand or further remand from ceasing to have effect in other circumstances. 5
- (7) A person's release date is the day on which he would be entitled to be released (whether unconditionally or on licence) from any prison or other institution in which he might have been detained if he had not been remanded or further remanded; and in determining that day there are to be disregarded – 10
- (a) any powers that would be exercisable by the Parole Board if he were detained in such a prison or other institution, and
 (b) any practice of the Secretary of State in relation to the early release under discretionary powers of persons detained in such a prison or other institution. 15
- (8) If there is no such day in relation to a particular person, that person does not have a release date.
- (9) A person's remand period is the period (beginning with his remand under section 88) during which he is remanded under that section or further remanded under section 89. 20

91 Remand and further remand: supplementary

- (1) This section applies in relation to remands under section 88 and further remands under section 89 (but subsection (5) applies only in relation to remands under section 88).
- (2) Only the Crown Court may give a person remanded or further remanded by the Court of Appeal leave of absence from the hospital or hospital unit specified by the Court of Appeal. 25
- (3) If a person is remanded or further remanded by the Crown Court or a magistrates' court, the court must state whether – 30
- (a) only the court may give the person leave of absence from the hospital or hospital unit specified by the court, or
 (b) subsection (4) applies in relation to the giving of leave of absence from that hospital or hospital unit.
- (4) If this subsection applies – 35
- (a) the person's clinical supervisor, or
 (b) if the person does not have a clinical supervisor, the approved clinician responsible for preparing the report,
 may determine whether the person should be given leave of absence from the hospital or hospital unit specified by the court.
- (5) A court remanding a person may specify any particular matters which are to be dealt with in the report (including an assessment of the risk posed by the person to members of the public). 40
- (6) A court remanding or further remanding a person may authorise the provision of medical treatment to him if it is satisfied, on the evidence of two registered medical practitioners, that the conditions specified in section 96 are (or continue to be) met in his case. 45

- (7) If a person remanded or further remanded by the court is subject to a mental health order, a hospital direction, a transfer for treatment direction (see section 135) or an order under paragraph 8(8) of Schedule 8 –
- (a) the court may not remand or further remand him except to his responsible hospital,
 - (b) subsections (2) to (4) and (6) of this section and sections 92 and 104 do not apply.

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92 Medical treatment of persons remanded by Court of Appeal

- (1) This section applies if the Court of Appeal remands a person under section 88 or further remands a person under section 89 but does not authorise the provision of medical treatment to him under section 91(6).
- (2) Such a person is referred to in this section as the “remanded person” (and references in this section to the “approved clinician” are to the approved clinician responsible for preparing the report on the remanded person).
- (3) The approved clinician may apply to the Mental Health Tribunal for an order authorising the provision of medical treatment to the remanded person if it appears to the approved clinician that the conditions specified in section 96 are met in the case of the remanded person.
- (4) Such an application must be accompanied by a care plan prepared by the approved clinician.
- (5) The plan must –
- (a) include a description of the medical treatment which is to be provided to the remanded person if the plan is approved by the Tribunal,
 - (b) include the information prescribed in regulations made by the appropriate authority, and
 - (c) be prepared in the form so prescribed.
- (6) The Tribunal may make an order authorising the provision of medical treatment to the remanded person if –
- (a) it is satisfied on the evidence of two registered medical practitioners that the conditions specified in section 96 are met in his case, and
 - (b) subsection (7) is satisfied.
- (7) This subsection is satisfied if the Tribunal –
- (a) approves a care plan for the medical treatment of the remanded person prepared by the approved clinician in accordance with subsections (4) and (5), or
 - (b) approves such a plan for that purpose with such modifications as are agreed with the approved clinician and specified by the Tribunal in the order.

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Remand or committal for medical treatment

93 Remand for medical treatment

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- (1) In relation to the Crown Court, this section applies to a person who –
- (a) has been sent for trial before the court for an offence punishable with imprisonment and has not yet been sentenced or otherwise dealt with for it,

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- (b) has been committed to the court to be sentenced for such an offence and has not yet been sentenced or otherwise dealt with for it, or
- (c) has been committed to the court under section 126 and has not yet been dealt with under that section.
- (2) In relation to a magistrates' court, this section applies to a person who has appeared before the court charged with an offence punishable on summary conviction with imprisonment and has not yet been sentenced or otherwise dealt with for it. 5
- (3) But this section does not apply to a person—
- (a) who is already remanded under this section, 10
- (b) who is detained by virtue of a committal for medical treatment under section 94,
- (c) who is remanded for medical treatment under section 95,
- (d) in respect of whom a remand transfer direction (see section 137) is in force. 15
- (4) If the court is satisfied on the evidence of two registered medical practitioners that the conditions specified in section 96 are (or continue to be) met in the person's case, it may remand him to a hospital or a hospital unit specified by it for medical treatment instead of remanding him in custody.
- (5) The court may not remand a patient under this section for a period which exceeds 28 days. 20
- (6) When remanding a patient under this section the court must state whether—
- (a) only the court may give the patient leave of absence from the hospital or hospital unit specified by the court, or
- (b) the patient's clinical supervisor is authorised by the court to determine whether the patient should be given leave of absence from that hospital or hospital unit. 25
- 94 Committal for medical treatment**
- (1) Where a magistrates' court has power to send a person in custody to the Crown Court for trial it may (if subsection (3) applies) send him for trial and instead of committing him to custody commit him to a hospital or a hospital unit specified by it for medical treatment. 30
- (2) Where a magistrates' court has power to commit a person in custody to the Crown Court—
- (a) to be sentenced in respect of an offence, or
- (b) to be dealt with under section 126, 35
- it may (if subsection (3) applies) instead of committing him in custody commit him to a hospital or a hospital unit specified by it for medical treatment.
- (3) This subsection applies if the court is satisfied on the evidence of two registered medical practitioners that the conditions specified in section 96 are (or continue to be) met. 40
- (4) Where the court commits a person to a hospital or to a hospital unit under this section it may not authorise his detention for a period which exceeds 28 days beginning with the date of the committal.

- (5) The court may commit under this section a person remanded under section 93 or 95, or in respect of whom a remand transfer direction is in force, without his being brought before the court if –
- (a) he is represented by counsel or a solicitor, and
 - (b) his counsel or solicitor is given an opportunity of being heard. 5
- (6) When committing a patient under this section the court must state whether –
- (a) only the Crown Court may give the patient leave of absence from the hospital or hospital unit specified by the court, or
 - (b) the patient’s clinical supervisor is authorised by the magistrates’ court to determine whether the patient should be given leave of absence from that hospital or hospital unit. 10

95 Further medical treatment

- (1) Instead of remanding in custody a patient who is remanded under section 93 or this section, the court which remanded him may remand him for medical treatment to a hospital or a hospital unit specified by it. 15
- (2) Instead of remanding in custody a patient who is committed under section 94, the Crown Court may remand him for medical treatment to a hospital or a hospital unit specified by it.
- (3) Instead of remanding in custody a person in respect of whom a remand transfer direction is in force – 20
- (a) the Crown Court (in the case of a person remanded in custody by, or committed for sentence or sent for trial in, that court), or
 - (b) a magistrates’ court (in any other case),
- may remand him for medical treatment to a hospital or a hospital unit specified by it. 25
- (4) The court may remand a person under this section only if it is satisfied on the evidence of two registered medical practitioners that the conditions specified in section 96 continue to be met (or in the case of a remand by virtue of subsection (3) of this section, are met) in the case of the person.
- (5) The court may not remand a person under this section for a period which exceeds 28 days. 30
- (6) The court may remand a person under this section without his being brought before the court if –
- (a) he is represented by counsel or a solicitor, and
 - (b) his counsel or solicitor is given an opportunity of being heard. 35
- (7) When remanding a patient under this section the court must state whether –
- (a) only the court may give the patient leave of absence from the hospital or hospital unit specified by the court, or
 - (b) the patient’s clinical supervisor is authorised by the court to determine whether the patient should be given leave of absence from that hospital or hospital unit. 40

96 Conditions for medical treatment

- (1) The first condition is that the person is suffering from mental disorder.

- (2) The second condition is that that mental disorder is of such a nature or degree as to warrant the provision of medical treatment to the person.
- (3) The third condition is that medical treatment is available which is appropriate in the person’s case, taking into account the nature or degree of his mental disorder and all other circumstances of his case. 5

Medical treatment

97 Deemed registration

- (1) This section applies to a patient who is –
- (a) remanded under section 88 or further remanded under section 89 and in respect of whom medical treatment is authorised under section 91(6), 10
 - (b) remanded under section 88 or further remanded under section 89 and in respect of whom medical treatment is authorised under section 92,
 - (c) remanded under section 93 or 95 or committed under section 94, or
 - (d) subject to a remand transfer direction.
- (2) A patient to whom this section applies by virtue of paragraph (a), (c) or (d) of subsection (1) is deemed to be registered at the hospital specified by the court or in the remand transfer direction (or at the hospital containing the hospital unit so specified) at the time when he is first detained at that hospital (or hospital unit) in pursuance of the remand, further remand, committal or remand transfer direction. 15
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- (3) A patient to whom this section applies by virtue of paragraph (b) of subsection (1) is deemed to be registered at the hospital specified by the Court of Appeal (or at the hospital containing the hospital unit so specified) –
- (a) if he is already detained at that hospital (or hospital unit) when treatment is authorised under section 92, at the time when the treatment is so authorised, or 25
 - (b) in any other case, when he is first detained at that hospital (or hospital unit) in pursuance of the remand or further remand.
- (4) Subsection (2) does not apply in relation to a patient who is already deemed to be registered at the hospital in question by the previous operation of subsection (2) or (3) in relation to him. 30
- (5) For the purposes of this section and sections 98 to 102 a patient –
- (a) becomes a “registered patient” on being deemed by subsection (2) or (3) to be registered at a hospital (unless he is already a registered patient by the previous operation of this paragraph in relation to him), and 35
 - (b) ceases to be a “registered patient” on ceasing to be a patient to whom this section applies.
- (6) The references in sections 100 and 101 to a registered patient’s “treatment period” are to the period beginning with the day when he became a registered patient (but excluding any day since then during which he has been absent without leave). 40
- (7) In this Chapter (except section 91(7)) “responsible hospital” means the hospital at which a registered patient is for the time being deemed to be registered.
- (8) A registered patient’s deemed registration at a hospital ceases to have effect –
- (a) on his deemed registration at a different hospital, or 45

- (b) on his ceasing to be a registered patient,
(whichever is earlier).

98 Appointment of clinical supervisor

- (1) Subsections (2) and (3) apply if –
 - (a) a patient becomes a registered patient, or 5
 - (b) there is a change of responsible hospital in relation to such a patient.
- (2) If the registered patient does not have a clinical supervisor, the managers of the responsible hospital must as soon as practicable appoint an approved clinician to be in charge of the patient’s medical treatment in accordance with this Act.
- (3) If the registered patient does have a clinical supervisor, the managers of the responsible hospital must as soon as practicable consider whether to exercise the power in subsection (4). 10
- (4) The managers of the responsible hospital may at any time appoint an approved clinician to succeed the approved clinician appointed under subsection (2) or this subsection. 15
- (5) When a new approved clinician is appointed under subsection (4), the appointment of the existing approved clinician ceases to have effect.
- (6) The approved clinician appointed under this section in respect of a registered patient is referred to in this Chapter as the patient’s “clinical supervisor”.

99 Care plans 20

- (1) The managers of the responsible hospital must secure that –
 - (a) a care plan is prepared for the registered patient by the clinical supervisor, and
 - (b) the plan is included in the patient’s records, 25within the initial period.
- (2) The plan must –
 - (a) include the required information, and
 - (b) be prepared in the form prescribed by the appropriate authority in regulations.
- (3) In subsection (2)(a), the “required information”, in relation to the registered patient, means – 30
 - (a) a description of the medical treatment which is to be provided to the registered patient during the period for which the plan is in force, and
 - (b) such other information relating to the care of the patient during that period as may be prescribed by the appropriate authority in regulations. 35
- (4) The clinical supervisor may amend the registered patient’s plan at any time during the period for which it is in force; but he must consider amending the plan on or before the patient’s review day.
- (5) If the clinical supervisor amends the registered patient’s plan – 40
 - (a) the managers of the responsible hospital must secure that the amended plan is included in the patient’s records as soon as practicable after it is prepared, and

- (b) subsections (2) to (4) and this subsection apply as if references to the plan were to the amended plan.
- (6) A plan, or an amended plan, is in force for the period –
- (a) beginning with its inclusion in the registered patient’s records, and
 - (b) ending as determined in accordance with subsection (7) or (8). 5
- (7) A plan, or an amended plan, ceases to be in force in relation to a registered patient who was remanded by the Court of Appeal under section 88 or further remanded by the Court of Appeal under section 89, with the earliest of –
- (a) the inclusion under subsection (5) in his records of an amended, or further amended, plan, 10
 - (b) the time when he ceases to be a registered patient,
 - (c) the end of the period of 28 days beginning with the day when he became a registered patient, or
 - (d) the approval by the Mental Health Tribunal under section 100(4) of a plan prepared in accordance with section 102. 15
- (8) A plan, or an amended plan, ceases to be in force in relation to any other registered patient with the earliest of –
- (a) the inclusion under subsection (5) in his records of an amended, or further amended, plan,
 - (b) the time when he ceases to be a registered patient, or 20
 - (c) the approval by the court under section 101(3) of a plan prepared in accordance with section 102.
- (9) In this section –
- “initial period”, in relation to a registered patient, means the period of 5 days beginning with the day when he became a registered patient, 25
- “review day”, in relation to such a patient, means the day falling 10 days after that day;
- and any reference to the registered patient’s records is to the records relating to him which are kept by his clinical supervisor.
- (10) This section does not apply in relation to a patient who became a registered patient by virtue of section 97(3). 30

100 Remand by Court of Appeal where treatment period exceeds 28 days

- (1) This section applies to a patient in respect of whom medical treatment is authorised by the Court of Appeal under section 91(6) (unless he became a registered patient by virtue of section 97(3)). 35
- (2) If it appears to the managers of the responsible hospital that the patient’s treatment period is likely to exceed 28 days, they must secure that (if he has not already done so) the patient’s clinical supervisor –
- (a) prepares a care plan for the patient in accordance with section 102, and
 - (b) makes an application to the Mental Health Tribunal for an order approving that plan. 40
- (3) The Secretary of State must by regulations specify the period within which an application under this section must be made to, and determined by, the Tribunal.
- (4) On an application under subsection (2) the Tribunal may by order – 45

- (a) refuse the application,
- (b) approve the plan for the medical treatment of the patient, or
- (c) approve the plan for that purpose with such modifications as are agreed with the patient’s clinical supervisor and specified by the Tribunal in the order.

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101 Other remand or committal where treatment period exceeds 28 days

- (1) This section applies if the exercise in relation to a registered patient of a power mentioned in subsection (2) would cause his treatment period to include –
 - (a) the 29th day of that period,
 - (b) the last day of a relevant period.
- (2) The powers mentioned in this subsection are –
 - (a) when exercised by the Crown Court or a magistrates’ court, section 91(6) (power to authorise medical treatment in connection with remand or further remand),
 - (b) section 93 (power to remand for medical treatment),
 - (c) section 94 (power to commit for medical treatment),
 - (d) section 95 (power to remand for further medical treatment).
- (3) The power may not be exercised unless the court also –
 - (a) approves a care plan for the medical treatment of the patient prepared by his clinical supervisor in accordance with section 102, or
 - (b) approves such a plan for that purpose with such modifications as are agreed with the patient’s clinical supervisor and specified by the court.
- (4) The first relevant period is the first six months of the treatment period; and each period of six months which begins on the day after the last day of a relevant period is also a relevant period.

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102 Preparation of care plans for purposes of sections 100 and 101

- (1) The clinical supervisor of a registered patient prepares a care plan for the medical treatment of that patient in accordance with this section by –
 - (a) reviewing that patient’s existing care plan, and
 - (b) amending it so that it complies with subsection (3).
- (2) A registered patient’s “existing care plan” is the care plan relating to him most recently –
 - (a) approved under section 92, 100 or 101, or
 - (b) in force under section 99.
- (3) The plan must –
 - (a) include a description of the medical treatment which is to be provided to the registered patient if the plan is approved by the court or the Mental Health Tribunal,
 - (b) include the information prescribed in regulations made by the appropriate authority, and
 - (c) be prepared in the form so prescribed.

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Supplementary

103 Appointment of members of Expert Panel

- (1) If under section 92 or 100 the Mental Health Tribunal is required to approve a care plan, the Tribunal –
- (a) must appoint a member of the Expert Panel who is a registered medical practitioner, and 5
 - (b) may appoint one or more other members of the Expert Panel, to assist it in determining whether to approve the plan (or to approve it with modifications). 10
- (2) If under section 101 the Crown Court or a magistrates' court is required to determine whether to approve a care plan, the court –
- (a) may appoint a member of the Expert Panel who is a registered medical practitioner, and 10
 - (b) may also appoint one or more other members of the Expert Panel, to assist it in determining whether to approve the plan (or to approve it with modifications). 15
- (3) A member of the Expert Panel appointed under subsection (1)(b) or (2)(b) may or may not be a registered medical practitioner.
- (4) A member of the Expert Panel appointed under subsection (1) or (2) may, for the purpose of discharging any functions conferred on him by virtue of that subsection, at any reasonable time –
- (a) visit, interview and examine the patient (in private if he considers it appropriate), and 20
 - (b) require the production of and inspect any records relating to the patient which are kept by the clinical supervisor of the patient. 25
- (5) A member of the Expert Panel appointed under subsection (1)(a) or any such member appointed under subsection (2)(a) must –
- (a) prepare a report for the Tribunal or court, and
 - (b) exercise the power conferred by subsection (4)(a) for the purposes of preparing that report. 30

104 Remands and committals: choice of hospital

- (1) This section applies if a court exercises one of the following powers in relation to a person –
- (a) section 88 (power to remand to hospital for mental health report),
 - (b) section 89 (power further to remand to hospital for mental health report), 35
 - (c) section 93 (power to remand for medical treatment),
 - (d) section 94 (power to commit for medical treatment),
 - (e) section 95 (power to remand for further medical treatment).
- (2) Subsections (3) to (5) apply if immediately before the exercise of the power the person in question was –
- (a) liable to be detained in a hospital as a resident patient under Part 2,
 - (b) liable to be detained in a hospital or a hospital unit under this Part, or 40

- (c) receiving treatment for mental disorder at a hospital to which he has been admitted otherwise than in accordance with Part 2 or this Part.
- (3) If the person in question was liable to be detained in, or was receiving treatment at, a hospital, the court may not remand, further remand or commit him – 5
- (a) to that hospital, unless it is satisfied on the appropriate evidence that it is practicable for him to remain there,
- (b) to a hospital unit contained in that hospital, unless it is satisfied on the appropriate evidence that arrangements have been made for his admission to that hospital unit within the relevant period, 10
- (c) to any other hospital or hospital unit, unless it is satisfied on the appropriate evidence that arrangements have been made for his admission to that hospital or hospital unit within the relevant period.
- (4) If the person was liable to be detained in a hospital unit, the court may not remand, further remand or commit him – 15
- (a) to that hospital unit, unless it is satisfied on the appropriate evidence that it is practicable for him to remain there,
- (b) to another hospital unit contained in the same hospital, unless it is satisfied on the appropriate evidence that arrangements have been made for his admission to that hospital unit within the relevant period, 20
- (c) to the hospital containing the hospital unit, unless it is satisfied on the appropriate evidence that arrangements have been made for his admission to that hospital within the relevant period,
- (d) to any other hospital or hospital unit, unless it is satisfied on the appropriate evidence that arrangements have been made for his admission to that hospital or hospital unit within the relevant period. 25
- (5) Where a patient is remanded, further remanded or committed as mentioned in subsection (3)(c) or (4)(d) –
- (a) the managers of the hospital in which he was liable to be detained or at which he was receiving treatment must detain him until he is conveyed to the other hospital or hospital unit in accordance with paragraph (b), 30
- (b) a constable or any other person directed to do so by the court must convey him to the other hospital (or the hospital containing the other hospital unit) within the relevant period, and
- (c) the managers of that hospital (or of the hospital containing that hospital unit) must admit him within that period and detain him in accordance with the provisions of this Chapter. 35
- (6) Subsections (7) to (10) apply if a power mentioned in paragraph (a), (c) or (d) of subsection (1) is exercised and subsections (3) to (5) do not then apply.
- (7) The court may not remand or commit the person to a hospital or hospital unit unless it is satisfied on the appropriate evidence that arrangements have been made for the admission of the person to the hospital or hospital unit within the relevant period. 40
- (8) The court may give directions for his conveyance to and detention in a place of safety pending his admission to the hospital specified by the court (or the hospital containing the hospital unit so specified). 45
- (9) A constable or other person directed to do so by the court must convey him to the hospital specified by the court (or to the hospital containing the hospital unit so specified) within the relevant period.

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- (10) The managers of that hospital must admit him within that period and detain him in accordance with the provisions of this Chapter.
- (11) If this section applies by virtue of paragraph (a) or (b) of subsection (1), “the appropriate evidence” means the evidence of—
- (a) the approved clinician who would be responsible for the report under section 88 or 89, or 5
 - (b) any other person representing the managers of the hospital (or the hospital containing the hospital unit) in question.
- (12) If this section applies by virtue of paragraph (c), (d) or (e) of subsection (1), “the appropriate evidence” means the evidence of— 10
- (a) an approved clinician at the hospital in question (or the hospital containing the hospital unit in question), or
 - (b) any other person representing the managers of that hospital.
- (13) In this section “relevant period” means the period of 7 days beginning with the date of the remand, further remand or committal. 15
- 105 Leave of absence: preliminary**
- (1) This section has effect for the purposes of sections 106 and 107.
- (2) “Detained person” means—
- (a) a person remanded under section 88 or further remanded under section 89, or 20
 - (b) a patient remanded under section 93 or 95, or committed under section 94.
- (3) Unless subsection (5) applies to a detained person, the “person responsible” for him is his clinical supervisor.
- (4) If subsection (5) applies to a detained person, the “person responsible” for him is the approved clinician responsible for preparing a report on him. 25
- (5) This subsection applies to a person who—
- (a) is a detained person by virtue of subsection (2)(a), and
 - (b) does not have a clinical supervisor.
- 106 Leave of absence: role of person responsible for detained person** 30
- (1) This section applies if the court has authorised the person responsible for a detained person to determine whether the detained person should be given leave of absence from the hospital or the hospital unit specified by the court.
- (2) The person responsible may give leave of absence subject to such conditions as he considers necessary in the interests of the detained person or for the protection of other persons. 35
- (3) He may give leave of absence on specified occasions or for a specified period.
- (4) If he gives leave of absence for a specified period, he may extend that period in the absence of the detained person.
- (5) If it appears to the person responsible for the detained person that it is necessary to do so in the interests of the detained person’s health or safety or 40

for the protection of other persons, he may, on giving leave of absence, direct that the detained person is to remain in custody during his absence.

- (6) If a direction under subsection (5) is given, the detained person may be kept in the custody of –
- (a) an officer on the staff of the hospital specified by the court (or of the hospital containing the hospital unit so specified), 5
 - (b) a person authorised in writing by the managers of that hospital, or
 - (c) in the case of a detained person who is given leave of absence subject to a condition that he resides in another hospital or hospital unit, an officer on the staff of that other hospital (or the hospital containing that other hospital unit). 10

107 Revocation of leave of absence

- (1) The person responsible for a detained person may by giving notice to him or to any person for the time being in charge of him –
- (a) revoke any leave of absence given to the detained person (whether by the court or by the person responsible for him), and 15
 - (b) recall him to the hospital or to the hospital unit specified by the court.
- (2) The power in subsection (1) may be exercised only if its exercise appears to the person responsible for the detained person to be necessary in the interests of the detained person's health or safety or for the protection of other persons. 20
- (3) That power may not be exercised –
- (a) in the case of a detained person who is remanded under section 88, 93 or 95, or further remanded under section 89, after the end of the period for which he is remanded or further remanded,
 - (b) in the case of a detained person committed under section 94, after the end of the period for which his detention is authorised. 25

108 Report on medical condition and treatment

- (1) A person who is –
- (a) remanded under section 88, 93 or 95,
 - (b) further remanded under section 89, or 30
 - (c) committed for medical treatment under section 94,
- is entitled to obtain (at his own expense) a report on his mental condition or the appropriate medical treatment for that condition (or both).
- (2) A registered medical practitioner authorised by such a person may, for one or more of the purposes mentioned in subsection (3), at any reasonable time – 35
- (a) visit him and examine him (in private if he considers it appropriate), and
 - (b) require the production of and inspect any relevant records.
- (3) Those purposes are – 40
- (a) preparing a report mentioned in subsection (1),
 - (b) advising whether an application to the court or the Mental Health Tribunal should be made under section 109,
 - (c) obtaining information as to the condition of the person for the purposes of such an application.

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- (4) In the case of a remand under section 88 or a further remand under section 89, the “relevant records” are records relating to the person kept by the approved clinician responsible for preparing the report on him.
- (5) If the provision of medical treatment is authorised under section 91(6) or 92, the “relevant records” also include records relating to the person kept by his clinical supervisor. 5
- (6) In the case of a remand under section 93 or 95 or a committal under section 94, the “relevant records” are records relating to the person kept by his clinical supervisor.
- 109 Termination of remands, committals and authorisations 10**
- (1) A person remanded or further remanded as mentioned in paragraph (a) or (b) of subsection (1) of section 108 is entitled on the basis of a mental health report to apply to the court for it to terminate the remand or further remand.
- (2) A person committed for medical treatment under section 94(1) is entitled on the basis of a mental health report to apply to the Crown Court for it to terminate the committal. 15
- (3) If under subsection (2) the Crown Court terminates a committal it must remand the person either in custody or on bail.
- (4) A person committed for medical treatment under section 94(2) is entitled on the basis of a mental health report to apply to the Crown Court for his committal to have effect instead as a committal in custody or on bail. 20
- (5) A court may at any time when it thinks it appropriate terminate any authorisation it has given under section 91(6).
- (6) A person in relation to whom the court has authorised the provision of medical treatment under section 91(6) is entitled on the basis of a mental health report to apply to the court for it to exercise its power under subsection (5). 25
- (7) The Mental Health Tribunal may at any time when it thinks it appropriate terminate any authorisation it has given under section 92(6).
- (8) A person in relation to whom the Tribunal has authorised the provision of medical treatment under section 92(6) is entitled on the basis of a mental health report to apply to the Tribunal for it to exercise its power under subsection (7). 30
- (9) In this section “mental health report” means a report obtained under section 108.
- 110 References to court**
- (1) Subsections (3) and (4) apply if, at any time during the remand of a person under section 88, the approved clinician responsible for the report is not satisfied – 35
- (a) that there is reason to suspect that the person is suffering from mental disorder, or
- (b) that it would be impracticable to produce the report if the person were remanded in custody. 40

- (2) Subsections (3) and (4) also apply if, at any time during the further remand of a person under section 89, the approved clinician responsible for the report is not satisfied –
 - (a) that the further remand is necessary for completing the report, or
 - (b) that it would be impracticable for the report to be made if the person were remanded in custody. 5
- (3) If the person in question was remanded by the Court of Appeal, the approved clinician must refer his case to the Court of Appeal.
- (4) In any other case the approved clinician may refer his case to the court which has jurisdiction to try or otherwise deal with him. 10
- (5) Subsection (6) applies if at any time during the remand of a patient under section 93 or 95 or his committal for medical treatment under section 94, the clinical supervisor is not satisfied that the conditions specified in section 96 are met in his case.
- (6) The clinical supervisor may refer his case to the court which has jurisdiction to try or otherwise deal with him. 15

111 Remands: persons who abscond or are absent without leave

- (1) This section applies if a person remanded under section 88, 93 or 95, or further remanded under section 89 –
 - (a) absconds while being conveyed to or from the hospital to which he was remanded or further remanded (or the hospital containing the hospital unit to which he was remanded or further remanded), 20
 - (b) absents himself from that hospital without leave given under section 106 or by the court,
 - (c) fails to return to that hospital on any occasion on which, or at the end of a period for which, leave was so given, 25
 - (d) fails to return to that hospital on being recalled under section 107 or by the court,
 - (e) absents himself without permission from any place where he is required to reside in accordance with conditions imposed on the giving of leave of absence under section 106 or by the court, 30
 - (f) absconds from custody in which he is being kept in pursuance of a direction given under section 106(5),
 - (g) absconds while being conveyed to a place of safety (in pursuance of directions given under 104(8)), or 35
 - (h) absconds from that place of safety.
- (2) The person may be taken into custody by –
 - (a) an approved mental health professional,
 - (b) an officer on the staff of the relevant hospital,
 - (c) a person authorised in writing by the managers of that hospital, or 40
 - (d) a constable.
- (3) Unless subsection (4) or (5) applies, the “relevant hospital” is the hospital (or the hospital containing the hospital unit) to which the person is remanded or further remanded.
- (4) This subsection applies if the person absents himself as mentioned in paragraph (e) of subsection (1) and the place where he is required to reside is a 45

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- hospital or hospital unit, in which case the “relevant hospital” is that hospital (or the hospital containing that hospital unit).
- (5) This subsection applies if the person absconds as mentioned in paragraph (g) or (h) of subsection (1) and the place of safety in question is a hospital or hospital unit, in which case the “relevant hospital” is that hospital (or the hospital containing that hospital unit). 5
- (6) Where the person was remanded by the Court of Appeal, as soon as practicable after being taken into custody he must be taken –
- (a) in a case where the Secretary of State directs that he should be taken to a hospital or hospital unit specified in the direction, to that hospital (or the hospital containing that hospital unit), or 10
- (b) otherwise, to the hospital specified by the court or the Mental Health Tribunal (or the hospital containing the hospital unit so specified).
- (7) Where the person was remanded (or further remanded) by the Crown Court or the magistrates’ court, he must be brought before the court that remanded him as soon as practicable after being taken into custody. 15
- (8) That court may terminate the remand (or further remand) and deal with the person in any way in which it could have dealt with him if he had not been so remanded (or further remanded).
- 112 Committals: persons who abscond or are absent without leave 20**
- (1) This section applies if a patient who has been committed for medical treatment under section 94 –
- (a) absconds while being conveyed to or from the hospital to which he was committed (or the hospital containing the hospital unit to which he was committed), 25
- (b) absents himself from that hospital without leave given under section 106 or by the Crown Court,
- (c) fails to return to that hospital on any occasion on which, or at the end of a period for which, leave was so given,
- (d) fails to return to that hospital on being recalled under section 107 or by the Crown Court, 30
- (e) absents himself without permission from any place where he is required to reside in accordance with conditions imposed on the giving of leave of absence under section 106 or by the Crown Court,
- (f) absconds from custody in which he is being kept in pursuance of a direction given under section 106(5), 35
- (g) absconds while being conveyed to a place of safety (in pursuance of directions given under section 104(8)), or
- (h) absconds from that place of safety.
- (2) The patient may be taken into custody by – 40
- (a) an approved mental health professional,
- (b) an officer on the staff of the relevant hospital,
- (c) a person authorised in writing by the managers of that hospital, or
- (d) a constable.
- (3) Unless subsection (4) or (5) applies, the “relevant hospital” is the hospital (or the hospital containing the hospital unit) to which the patient is committed. 45

- (4) This subsection applies if the patient absents himself as mentioned in paragraph (e) of subsection (1) and the place where he is required to reside is a hospital or hospital unit, in which case the “relevant hospital” is that hospital (or the hospital containing that hospital unit).
- (5) This subsection applies if the patient absconds as mentioned in paragraph (g) or (h) of subsection (1) and the place of safety in question is a hospital or hospital unit, in which case the “relevant hospital” is that hospital (or the hospital containing that hospital unit). 5
- (6) The patient must be brought before the Crown Court as soon as practicable after being taken into custody. 10
- (7) The Crown Court may terminate the committal for medical treatment of a patient committed by virtue of section 94(1) and deal with the patient in any way in which it could have dealt with him if the period for which his detention was authorised under that section had come to an end.
- (8) The Crown Court may order that the committal to a hospital or a hospital unit of a person committed by virtue of section 94(2) has effect instead as a committal in custody or on bail. 15

113 Chapter 1: supplementary

- (1) Anything authorised by this Chapter to be done by a magistrates’ court by which any other thing was done may be done by any magistrates’ court acting in the same local justice area as that court. 20
- (2) References in this Chapter to the Mental Health Tribunal, in relation to an application to it under section 92, are to be read as references to –
 - (a) the Mental Health Tribunal for England, in the case of a person remanded or further remanded to a hospital or a hospital unit in England, 25
 - (b) the Mental Health Tribunal for Wales, in the case of a patient remanded or further remanded to a hospital or a hospital unit in Wales.
- (3) Other references in this Chapter to the Mental Health Tribunal are to be read as references to –
 - (a) the Mental Health Tribunal for England, if the patient’s responsible hospital is in England, 30
 - (b) the Mental Health Tribunal for Wales, if the patient’s responsible hospital is in Wales.

CHAPTER 2

35

ORDERS AND DIRECTIONS

Mental health orders

114 Mental health order: preliminary

- (1) Section 116 applies to a person who is convicted –
 - (a) before the Crown Court of an offence punishable with imprisonment (other than one for which the sentence is fixed by law), 40

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- (b) by a magistrates’ court of an offence punishable on summary conviction with imprisonment.
 - (2) Section 116 also applies to a person if –
 - (a) he is charged before a magistrates’ court with any act or omission constituting an offence of the kind mentioned in subsection (1)(b), and 5
 - (b) the court is satisfied that he did the act or made the omission.
 - (3) If subsection (2) applies, and the court thinks fit to make an order in respect of the person under section 116, it may do so without convicting him.
 - (4) In the case of an offence the sentence for which would otherwise fall to be imposed – 10
 - (a) under section 51A(2) of the Firearms Act 1968 (c. 27),
 - (b) under section 110(2) or 111(2) of the 2000 Act, or
 - (c) under any of sections 225 to 228 of the Criminal Justice Act 2003 (c. 44), nothing in those provisions prevents the Crown Court from making an order under section 116. 15
 - (5) References in subsection (4) to a sentence falling to be imposed under any of the provisions mentioned there are to be read in accordance with section 305(4) of the Criminal Justice Act 2003.

115 Mental health order: care plans, etc

- (1) A court may not consider making an order under section 116 in respect of a person unless a plan for his medical treatment (a “care plan”) has been submitted to it by an approved clinician. 20
- (2) The care plan must –
 - (a) include a description of the medical treatment which would be provided to the person if the order were made, 25
 - (b) include the prescribed information, and
 - (c) be prepared in the prescribed form.
- (3) The approved clinician must also give the court –
 - (a) a description of the mental disorder for which medical treatment is to be provided in accordance with the plan, 30
 - (b) a description of any medical treatment or other treatment which would be provided to the patient for that disorder otherwise than in accordance with that plan, and
 - (c) information relating to any other prescribed matter.
- (4) In addition, the approved clinician must make a recommendation under subsection (5) or (6). 35
- (5) In relation to the Crown Court, he must recommend –
 - (a) whether or not a restriction order (see section 125) should be made in respect of the person,
 - (b) if not, whether the person should be provided with medical treatment as a resident patient or as a non-resident patient. 40
- (6) In relation to a magistrates’ court, he must recommend whether the person should be provided with medical treatment as a resident patient or as a non-resident patient.

- (7) In this section, “prescribed” means prescribed by regulations, made by –
(a) the appropriate authority, for regulations under subsection (2)(b) or (c),
(b) the Secretary of State, for regulations under subsection (3)(c).

116 Power of court to make mental health order

- (1) The court may make an order under this section in respect of a person to whom this section applies if – 5
(a) it is satisfied on the appropriate evidence that the conditions specified in subsections (2) to (5) are met in the person’s case, and
(b) it is of the opinion, having regard to all the circumstances (including the nature of the offence and the person’s character and antecedents) and the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of an order under this section. 10
- (2) The first condition is that the person is suffering from mental disorder.
- (3) The second condition is that that mental disorder is of such a nature or degree as to warrant the provision of medical treatment to the person. 15
- (4) The third condition is that medical treatment is available which is appropriate in the person’s case, taking into account the nature or degree of his mental disorder and all other circumstances of his case.
- (5) The fourth condition is – 20
(a) if the court is minded to order that medical treatment should be provided to the person as a resident patient, that arrangements have been made for his admission to the hospital specified by the court within the period of 28 days beginning with the date of the order,
(b) in any other case, that arrangements have been made for the provision of medical treatment to the person as a non-resident patient by the hospital specified by the court. 25
- (6) For the purposes of this section, the “appropriate evidence” – 30
(a) in relation to subsections (2) to (4), means the evidence of two registered medical practitioners and an approved mental health professional,
(b) in relation to subsection (5), means the evidence of a person who represents the managers of the hospital in question.
- (7) If the court is also to make a restriction order (see section 125) in respect of the person, subsections (5) and (6) apply as modified by section 122. 35
- (8) The Secretary of State may by order amend subsection (5)(a) so as to substitute for “28 days” another period (of not more than 28 days) specified in the order.
- (9) An order under this section is referred to in this Act as a “mental health order”.

117 Appointment of members of Expert Panel

- (1) The court – 40
(a) may appoint a member of the Expert Panel who is a registered medical practitioner (the “medical expert”), and
(b) may also appoint one or more other members of the Expert Panel,

to assist it in determining whether to approve the care plan submitted to the court under section 115(1) (or to approve it with modifications).

- (2) A member of the Expert Panel appointed under subsection (1)(b) may or may not be a registered medical practitioner.
- (3) A member of the Expert Panel appointed under subsection (1) may, for the purpose of discharging any functions conferred on him by virtue of that subsection, at any reasonable time –
 - (a) visit, interview and examine the patient (in private if he considers it appropriate), and
 - (b) require the production of and inspect any records relating to the patient which are kept by the clinical supervisor of the patient.
- (4) The medical expert (if one is appointed) must –
 - (a) prepare a report for the court, and
 - (b) exercise the power conferred by subsection (3)(a) for the purposes of preparing that report.

118 Mental health order: contents etc

- (1) This section and section 119 apply if the court makes a mental health order in respect of a patient.
- (2) The mental health order must state that –
 - (a) the care plan submitted to the court under section 115(1) is approved by it for the medical treatment of the patient, or
 - (b) that plan is approved by the court for that purpose with modifications.
- (3) Modifications must be –
 - (a) agreed with an approved clinician, and
 - (b) specified by the court in the order.
- (4) The mental health order must specify the period for which it is to be in force (which may not exceed 6 months).
- (5) Subsection (4) does not apply in relation to a mental health order made by the Crown Court if it also makes a restriction order (see section 125).
- (6) The mental health order –
 - (a) must make such provision as is specified by the Secretary of State in regulations, and
 - (b) may make such provision as to matters incidental to or consequential on the making of the order as the court thinks fit.

119 Mental health order: resident and non-resident patients

- (1) A mental health order must state whether the patient in respect of whom it is made is to be provided with medical treatment –
 - (a) as a resident patient, or
 - (b) as a non-resident patient.
- (2) But if the court in question is the Crown Court, and it also makes a restriction order (see section 125), the mental health order must state that the patient is to be provided with medical treatment as a resident patient.

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- (3) If the mental health order states that the patient is to be provided with medical treatment as a resident patient, and no restriction order is also made, the patient’s clinical supervisor may determine whether the patient should be given leave of absence from the responsible hospital (see Schedule 8).
- (4) Subsections (3) and (5) to (14) of section 62 apply in relation to the giving of such leave as they apply for the purposes of that section in relation to the giving of leave of absence to a patient liable to be provided with medical treatment as a resident patient. 5
- (5) If the mental health order states that the patient is to be provided with medical treatment as a non-resident patient, it must specify the conditions imposed in respect of him to – 10
- (a) secure that the treatment may be provided to him, or
- (b) protect his health or safety or other persons.
- (6) In that case the mental health order must also contain a recommendation to the clinical supervisor as to the action which might be taken by him if the patient fails to comply with the conditions or there is a material change in the patient’s circumstances. 15
- (7) The conditions may include –
- (a) a condition that the patient – 20
- (i) attends at a specified place at specified times,
- (ii) resides at a specified place,
- (iii) makes himself available for treatment during specified periods,
- (b) a condition that the patient does not engage in specified conduct.
- In this subsection, “specified” means specified in the mental health order.
- (8) Subsections (4) to (14) of section 62 apply in relation to the giving of leave of absence from the responsible hospital to a patient liable to be provided with medical treatment as a non-resident patient as they apply in relation to a patient in respect of whom there is in force an order (or further order) under Chapter 6 of Part 2 authorising the medical treatment of the patient. 25
- 120 Mental health order: supplementary 30**
- (1) If it makes a mental health order, the court may not –
- (a) pass a sentence of imprisonment (including any sentence of detention) or impose a fine in respect of the offence,
- (b) pass a community sentence (within the meaning of Part 12 of the Criminal Justice Act 2003 (c. 44)) in respect of the offence, 35
- (c) make a referral order (within the meaning of the 2000 Act) in respect of the offence,
- (d) grant an absolute or conditional discharge in respect of the offence,
- (e) make in respect of the patient an order under section 150 of the 2000 Act (binding over of parent or guardian) or an order under section 8 of the Crime and Disorder Act 1998 (c. 37) (parenting order in respect of parent or guardian); 40
- but the court may make any other order which it has power to make apart from this subsection.
- (2) Subsections (3) and (4) apply to a patient if the court makes a mental health order which authorises his treatment as a resident patient. 45

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- (3) The court may, pending the patient’s admission to the hospital specified in the mental health order within the period specified in section 116(5)(a), give directions for his conveyance to and detention in a place of safety.
- (4) If, because of an emergency or other special circumstances, the patient cannot be admitted to that hospital within that period – 5
- (a) the person having custody of him must bring him before the court as soon as practicable, and
- (b) the court may discharge the mental health order (and any restriction order – see section 125), and deal with him in any way in which it could have dealt with him if that order or those orders had not been made. 10

121 Effect of mental health order etc

- (1) This section applies if a mental health order is made in respect of a patient.
- (2) If the mental health order authorises the provision of medical treatment to the patient as a resident patient, the making of that order is sufficient authority for – 15
- (a) a constable, or any person directed to do so by the court, to take the patient and convey him to the hospital specified in the mental health order within the period specified in section 116(5)(a), and
- (b) the managers of the hospital to admit him and detain him in accordance with this Act. 20
- (3) If the mental health order authorises the provision of medical treatment to the patient as a non-resident patient, the making of the order is sufficient authority for the clinical supervisor –
- (a) to require the patient to comply with the conditions specified in the order until it ceases to be in force or he is provided with medical treatment as a resident patient, and 25
- (b) if the patient fails to comply with those conditions or there is a material change in his circumstances, to determine whether medical treatment should be provided to him as a resident patient.
- (4) In making any determination under subsection (3)(b), the clinical supervisor must have regard to any recommendation specified in the order by virtue of section 119(6). 30
- (5) If the clinical supervisor determines under subsection (3)(b) that medical treatment should be provided to the patient as a resident patient, the making of the determination is sufficient authority for – 35
- (a) the clinical supervisor, or any person authorised by him, to take the patient and convey him to the hospital specified in the order within the period specified in subsection (6), and
- (b) the managers of the hospital to admit the patient and detain him in accordance with this Act. 40
- (6) The period mentioned in subsection (5)(a) is the period of 24 hours beginning with the making of the determination.
- (7) If the clinical supervisor determines under subsection (3)(b) that medical treatment should be provided to the patient as a non-resident patient, the clinical supervisor may amend the conditions specified in the order. 45

- (8) Notification by the clinical supervisor of an amendment in the conditions is sufficient authority for the clinical supervisor –
- (a) to require the patient to comply with the amended conditions until the order ceases to be in force or he is provided with medical treatment as a resident patient, or 5
 - (b) if the patient fails to comply with those conditions or there is a material change in his circumstances, to determine whether medical treatment should be provided to him as a resident patient.
- (9) Subsections (4) to (8) apply to a determination under subsection (8)(b) as they apply to a determination under subsection (3)(b). 10

122 Hospitals and hospital units

- (1) This section applies if the court is to make a restriction order (see section 125) in respect of a patient.
- (2) The power on the part of the court to specify a hospital in the mental health order made in respect of that patient includes power to specify instead a hospital unit. 15
- (3) Accordingly, where this section applies, the provisions of this Chapter specified in the first column of this Table have effect with the modifications specified in the second column.

<i>Provision</i>	<i>Modification</i>	
Section 116(5)(a)	After “hospital” insert “or the hospital unit”.	20
Section 116(6)(b)	After “hospital” insert “(or the hospital containing the hospital unit)”.	25
Section 120(3) and (4)	After “hospital” insert “or hospital unit”.	
Section 121(2)(a)	After “order” insert “(or the hospital containing the hospital unit so specified)”.	30

123 Appeals

- (1) Subsections (2) to (4) apply to a patient if, on the trial of an information charging him with an offence, a magistrates’ court makes a mental health order without convicting him.
- (2) He has the same right of appeal against the mental health order as if it had been made on his conviction. 35
- (3) If he appeals, the Crown Court has the same powers as if the appeal had been against both conviction and sentence.

- (4) If he is a child or young person, the appeal may be brought by him or by his parent or guardian on his behalf (whether it is against the order or the finding on which the order was made).
- (5) In section 50 of the Criminal Appeal Act 1968 (c. 19) (meaning of “sentence”), in subsection (1), for paragraphs (a) and (b) substitute— 5
- “(aa) a mental health order under Part 3 of the Mental Health Act 2004;”.

124 Treatment etc following mental health order

Schedule 8 (which makes further provision in connection with patients in respect of whom a mental health order has been made) has effect. 10

Restriction orders

125 Power of Crown Court to make restriction order

- (1) If the Crown Court makes a mental health order in respect of a patient, and subsection (2) applies, it may also make an order under this section in respect of him. 15
- (2) This subsection applies if it appears to the court, having regard to the nature of the offence and the patient’s character and antecedents and the risk of his committing further offences if set at large, that it is necessary to protect the public from serious harm to make an order under this section.
- (3) An order under this section is referred to in this Act as a “restriction order”. 20
- (4) The Crown Court may not make a restriction order in respect of a patient unless at least one of the registered medical practitioners (referred to in section 116(6)(a)) who gave evidence for the purposes of section 116(1)(a) has given evidence orally before it.

126 Power of magistrates’ court to commit for restriction order 25

- (1) This section applies where a person aged 14 years or over is convicted by a magistrates’ court of an offence punishable on summary conviction with imprisonment.
- (2) Instead of making a mental health order or dealing with the person in any other way, the magistrates’ court may commit him in custody or on bail to the Crown Court to be dealt with in respect of the offence, if— 30
- (a) paragraphs (a) and (b) of section 116(1) apply in respect of the person, and
- (b) it appears to the magistrates’ court, having regard to the nature of the offence and the person’s character and antecedents and the risk of his committing further offences if set at large, that if a mental health order is made a restriction order should also be made. 35
- (3) If a person is committed to the Crown Court under subsection (2) it must inquire into the circumstances of the case, and subsections (4) and (5) apply.
- (4) The Crown Court may make a mental health order in respect of that person (with or without a restriction order) if it would have power to do so under 40

section 116 on the conviction of the person before it of an offence of the kind mentioned in section 114(1)(a).

- (5) If the Crown Court does not make a mental health order in respect of the person, it may deal with him in any other way in which the magistrates' court might have dealt with him. 5
- (6) The committal of a person to the Crown Court under subsection (2) does not prevent the magistrates' court from also committing him to the Crown Court under section 3 or 3B of the 2000 Act (which enable such a court to commit an offender to the Crown Court where the court is of the opinion, or it appears to the court, as mentioned in the section in question). 10

127 Restriction orders: transfers and leave of absence

- (1) This section applies to a patient in respect of whom a restriction order is in force.
- (2) If responsibility for providing the patient with medical treatment is transferred to another hospital under paragraph 17 of Schedule 8 – 15
- (a) his mental health order is to have effect, from the time of the transfer, as if that other hospital were the one specified by the court in relation to him (or, if he is transferred to a hospital unit within that hospital, as if that hospital unit were so specified), and
 - (b) this Part, and Schedule 8, have effect accordingly from that time. 20
- (3) The power to give leave of absence to the patient is to be dealt with in accordance with subsections (4) to (7).
- (4) The patient's clinical supervisor may with the consent of the Secretary of State give the patient leave of absence from the hospital or hospital unit in which he is detained, subject to such conditions (if any) as the clinical supervisor thinks fit. 25
- (5) The conditions are such conditions as the clinical supervisor considers necessary in the interests of the patient or for the protection of other persons.
- (6) Subsections (6) to (9), (10)(a), (11), (12) and (13)(a) to (c) of section 62 apply in relation to leave given under this section as they apply in relation to leave given under that section, but as if – 30
- (a) in subsections (6) and (7), after "may" there were inserted "with the consent of the Secretary of State",
 - (b) in subsection (9)(c), after "another hospital" there were inserted "or in a hospital unit in another hospital", and 35
 - (c) in subsection (12), after "the clinical supervisor" there were inserted "or the Secretary of State", and in paragraph (a), after "hospital" there were inserted "or hospital unit".
- (7) Subsections (1) to (5) of section 81 apply in relation to a patient who has been given leave under this section as they apply in relation to a patient given leave under section 62, reading paragraphs (a) and (b) of section 81(1) as referring to a patient to whom this section applies. 40

128 Restriction orders: supplementary

- (1) If the Secretary of State is satisfied that it is no longer necessary to protect the public from serious harm that a patient should be subject to a restriction order, 45

he may direct that the order is to cease to have effect, and the order ceases to have effect upon his doing so.

- (2) This does not affect the mental health order made in respect of that patient except as follows –
- (a) if it specified a hospital unit, it is to be treated after the Secretary of State’s direction under subsection (1) as specifying instead the hospital containing that hospital unit, and 5
 - (b) it ceases to have effect at the end of the period of 28 days beginning with the date of the Secretary of State’s direction under subsection (1), or (if earlier) the date on which the Mental Health Tribunal discharges it upon the case being referred to it under section 145(1). 10
- (3) If the Secretary of State is satisfied that it is desirable –
- (a) in the interests of justice, or
 - (b) for the purposes of a public inquiry,
- for a patient in respect of whom a restriction order is in force to attend at any place in Great Britain, the Secretary of State may direct that the patient be taken there. 15
- (4) Unless the Secretary of State directs otherwise, the patient is to be kept in custody –
- (a) while he is being taken to that place, 20
 - (b) while he is there, and
 - (c) while he is being taken back to his hospital or hospital unit.
- (5) Subsections (3) and (4) do not apply in relation to a patient if, by virtue of section 129 or 147(5), he is for the time being not required to be treated as a resident patient. 25
- (6) While a patient is subject to a restriction order, his clinical supervisor must at such intervals as the Secretary of State directs examine him and report on him to the Secretary of State.
- (7) The intervals are not to exceed one year.
- (8) Each report must contain whatever particulars the Secretary of State requires. 30

129 Conditional lifting of residence requirement

- (1) Subsection (2) applies if the clinical supervisor of a patient in respect of whom a restriction order is in force recommends to the Secretary of State that he exercise his powers under that subsection.
- (2) The Secretary of State may, if he thinks fit, by warrant disapply any requirement that the patient be treated as a resident patient, subject to such conditions (if any) as he sees fit to impose; and if the Secretary of State does so, the patient’s clinical supervisor may discharge him from hospital. 35
- (3) The Secretary of State may vary or revoke any condition, or add new conditions. 40
- (4) If the conditions include a requirement that the patient in question be subject to supervision not only by his clinical supervisor but also by some other person, subsections (6) to (8) of section 128 apply in relation to that other person as they apply in relation to the clinical supervisor.

- (5) Exercising the power in subsection (2) does not cause the restriction order to cease to have effect.
- (6) If the restriction order does cease to have effect, any conditions imposed by virtue of subsection (2) or (3) also cease to apply to the patient.
- (7) While a patient’s residence requirement is disapplied by virtue of subsection (2), he is to be treated as if his mental health order were one which stated that he was to be provided with medical treatment as a non-resident patient, subject to the conditions imposed on him by virtue of subsection (2) or (3). 5
- (8) The Secretary of State may by warrant, at any time while the restriction order is still in force, reimpose the residence requirement and recall such a patient to a hospital or hospital unit specified in the warrant. 10
- (9) The warrant may specify a hospital or a hospital unit irrespective of whether it is a hospital or a hospital unit which is specified in the patient’s mental health order.
- (10) If the hospital or hospital unit specified in the warrant is different from whatever is specified in the patient’s mental health order, that order and his restriction order are to have effect from the time the warrant was issued as if the mental health order specified the hospital or hospital unit specified in the warrant. 15

Hospital directions 20

130 Power of Crown Court to give hospital direction

- (1) This section applies to a person if –
 - (a) he is convicted by the Crown Court of an offence (other than an offence for which the sentence is fixed by law), and
 - (b) it imposes a sentence of imprisonment or a sentence of detention in respect of the offence. 25
- (2) The court may give a direction under this section in respect of the person if –
 - (a) it is satisfied on the appropriate evidence that the conditions specified in subsections (3) to (6) are met in the case of the person, and
 - (b) it considered making a mental health order in respect of him before deciding to impose the sentence. 30
- (3) The first condition is that the person is suffering from mental disorder.
- (4) The second condition is that that mental disorder is of such a nature or degree as to warrant the provision of medical treatment to the person.
- (5) The third condition is that medical treatment is available which is appropriate in the person’s case, taking into account the nature or degree of his mental disorder and all other circumstances of his case. 35
- (6) The fourth condition is that arrangements have been made for the admission of the person to the hospital or the hospital unit specified by the Crown Court within the period of 28 days beginning with the date of the direction. 40
- (7) A direction under this section is referred to in this Act as a “hospital direction”.
- (8) A hospital direction is a direction –

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- (a) that, instead of being removed to and detained in a prison, the person be removed to and detained in the hospital or the hospital unit specified in the direction, and
- (b) that the person be subject to restrictions corresponding to those which apply when a restriction order is made. 5
- (9) The Crown Court may not give a hospital direction in respect of a person unless at least one of the registered medical practitioners (referred to in subsection (11)(a)) who gave evidence for the purposes of subsection (2)(a) has given evidence orally before it.
- (10) The Secretary of State may by order amend subsection (6) so as to substitute for “28 days” another period (of not more than 28 days) specified in the order. 10
- (11) For the purposes of this section, the “appropriate evidence” –
- (a) in relation to subsections (3) to (5), means the evidence of two registered medical practitioners and an approved mental health professional, 15
- (b) in relation to subsection (6), means the evidence of a person who represents the managers of the hospital in question, or the hospital containing the hospital unit in question.

131 Hospital directions: supplementary

- (1) This section applies if the Crown Court gives a hospital direction in respect of a patient. 20
- (2) The Crown Court may, pending the patient’s admission to the hospital specified in the direction (or the hospital containing the hospital unit so specified) within the period specified in section 130(6), give directions for his conveyance to and detention in a place of safety. 25
- (3) If, because of an emergency or other special circumstances, the patient cannot be admitted to that hospital or hospital unit within that period –
- (a) the person having custody of him must bring him before the Crown Court as soon as practicable, and
- (b) the court may discharge the hospital direction, or it may vary the direction by specifying a different hospital or hospital unit. 30
- (4) Before varying the direction as mentioned in subsection (3)(b), the court must be satisfied on the evidence referred to in subsection (11)(b) of section 130 that the condition specified in subsection (6) of that section is met in the case of the patient. 35
- (5) Subsections (2) to (4) apply in relation to a varied (or further varied) hospital direction as they apply in relation to the one which was varied.
- (6) The hospital direction has effect not only as regards the sentence in relation to which it was given but also (so far as applicable) as regards any other sentence of imprisonment imposed on the same or a previous occasion. 40
- (7) The making, variation or discharge of a hospital direction does not affect any of those sentences.
- (8) The making of a hospital direction is sufficient authority for –
- (a) a constable or any other person directed to do so by the Crown Court to take the patient and convey him to the hospital specified in the 45

- direction (or the hospital containing the hospital unit so specified) within the period specified in section 130(6), and
- (b) the managers of the hospital to admit him and detain him in accordance with this Act.
- (9) The Secretary of State may by order make further provision, in relation to hospital directions and patients subject to them, for purposes corresponding to those of Schedules 8 and 9. 5

132 Hospital directions: termination

- (1) If the patient to whom a hospital direction relates has a release date, the hospital direction ceases to have effect on that date, if it has not previously done so. 10
- (2) A patient's release date is the day on which he would be entitled to be released (whether unconditionally or on licence) from any prison or other institution in which he might have been detained if the hospital direction had not been given; and in determining that day there are to be disregarded – 15
- (a) any powers that would be exercisable by the Parole Board if he were detained in such a prison or other institution, and
- (b) any practice of the Secretary of State in relation to the early release under discretionary powers of persons detained in such a prison or other institution. 20
- (3) If there is no such day in relation to a particular patient, that patient does not have a release date.
- (4) If the Secretary of State is notified by the clinical supervisor of the patient to whom a hospital direction relates that not all of the conditions specified in subsections (3) to (5) of section 130 are met in his case, the Secretary of State may by warrant direct that the patient be remitted to any prison or other institution in which he might have been detained if he had not been admitted to hospital and be dealt with there as if he had not been so admitted. 25
- (5) If the Secretary of State gives a direction under subsection (4) in respect of the patient, the hospital direction given in respect of him ceases to have effect on his arrival in the prison or other institution in question. 30
- (6) For the purposes of subsection (2) of section 49 of the Prison Act 1952 (c. 52) (discount from sentence of prisoner who is unlawfully at large), a patient – 35
- (a) who has been admitted to hospital in pursuance of a hospital direction, and
- (b) who is at large in circumstances in which he is liable to be taken into custody under any provision of this Act,
- is to be treated as unlawfully at large and absent from such an institution as is referred to in that section.
- (7) In subsections (4) and (6)(a), references to admission to hospital include references to admission to a hospital unit. 40

CHAPTER 3

TRANSFER TO HOSPITAL

Transfer for mental health report

133 Transfer for mental health report of sentenced persons etc

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| (1) This section applies to any person who— | 5 |
| (a) is serving a sentence of imprisonment or is detained in pursuance of any sentence of detention passed by a court in criminal proceedings (other than under an enactment relating to the armed forces), | |
| (b) is committed to custody under section 115(3) of the Magistrates' Courts Act 1980 (c. 43) (failure to enter into recognisances to keep the peace etc), or | 10 |
| (c) is committed by a court to a prison or other institution to which the Prison Act 1952 (c. 52) applies in default of payment of any sum adjudged to be paid on his conviction. | |
| (2) If the Secretary of State is satisfied, on the evidence of a registered medical practitioner, that there is reason to suspect that the person is suffering from mental disorder, he may by warrant direct that he be removed to and detained in the hospital or the hospital unit specified in the direction for a report on his mental condition. | 15 |
| (3) A direction under subsection (2) is referred to in this Act as a “transfer for report direction”. | 20 |
| (4) As soon as practicable after the person has been received into the hospital or hospital unit specified in the transfer for report direction, the managers of the hospital (or of the hospital containing the hospital unit) must appoint an approved clinician to be responsible for preparing the report. | 25 |
| (5) For the purposes of subsection (1)(a), the following are enactments relating to the armed forces— | |
| (a) the Army Act 1955 (3 & 4 Eliz. 2 c. 18), | |
| (b) the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19), | |
| (c) the Naval Discipline Act 1957 (c. 53), | 30 |
| (d) the Courts-Martial (Appeals) Act 1968 (c. 20). | |
| (6) For the purposes of subsection (2) of section 49 of the Prison Act 1952 (discount from sentence of prisoner who is unlawfully at large), a person— | |
| (a) who has been transferred in pursuance of a transfer for report direction from an institution referred to in that section, and | 35 |
| (b) who is at large in circumstances in which he is liable to be taken into custody under any provision of this Act, | |
| is to be treated as unlawfully at large and absent from that institution. | |

134 Termination of transfer for report

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|--|----|
| (1) A transfer for report direction ceases to have effect at the end of the period of 14 days beginning with the date of the direction unless the person in respect of whom it was given has been received into the hospital or hospital unit specified in it. | 40 |
|--|----|

- (2) If he is so received, a transfer for report direction ceases to have effect—
 - (a) at the end of the period of 16 weeks beginning with the date on which he was so received, or
 - (b) on his release date, if he has one,(whichever is earlier); but this is subject to subsection (4). 5
- (3) The Secretary of State may by order amend subsection (2)(a) so as to substitute a different period.
- (4) The giving of a transfer for report direction does not affect any power exercisable apart from the giving of such a direction to release the person in question from detention in a prison or other institution before his release date (if any); and if such a power is exercised the transfer for report direction ceases to have effect at the time when (apart from the direction) he would have been released from such detention. 10
- (5) Subsections (2) and (3) of section 132 apply for the purposes of this section as they apply for the purposes of that. 15
- (6) Subsection (7) applies to a person if—
 - (a) a transfer for report direction was given in respect of him, and
 - (b) the approved clinician responsible for preparing the report on the person's mental condition notifies the Secretary of State that he is not satisfied that there is reason to suspect that the person is suffering from mental disorder. 20
- (7) The Secretary of State may by warrant direct that the person be remitted to any prison or other institution in which he might have been detained if he had not been removed to hospital and be dealt with there as if he had not been so removed. 25
- (8) If a direction under subsection (7) is given in respect of the person, the transfer for report direction given in respect of him ceases to have effect on his arrival in the prison or other institution in question.

Transfer for treatment

- 135 Transfer for treatment of sentenced persons etc** 30
- (1) This section applies to any person—
 - (a) who is serving a sentence of imprisonment or is detained in pursuance of any sentence of detention passed by a court in criminal proceedings (other than under an enactment relating to the armed forces),
 - (b) who is committed to custody under section 115(3) of the Magistrates' Courts Act 1980 (c. 43) (failure to enter into recognisances to keep the peace etc), 35
 - (c) who is committed by a court to a prison or other institution to which the Prison Act 1952 (c. 52) applies in default of payment of any sum adjudged to be paid on his conviction, 40
 - (d) who, not falling within paragraph (b) or (c), is committed by a court to a prison or other institution for a limited term, or
 - (e) who is detained under the Immigration Act 1971 (c. 77) or under section 62 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (detention by Secretary of State). 45

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- (2) This section also applies to any person –
- (a) who is detained in hospital pursuant to a transfer for report direction, or
 - (b) who is detained in hospital pursuant to an order under section 149(2).
- (3) If the Secretary of State – 5
- (a) is satisfied, on the evidence of two registered medical practitioners, that the conditions specified in subsections (5) to (7) are met in the case of the person, and
 - (b) is of the opinion, having regard to the public interest and all the circumstances, that it is expedient to give a direction under this section, 10
- he may by warrant direct that the person be removed to and detained in the hospital specified in the direction (and such a direction is referred to in this Act as a “transfer for treatment direction”).
- (4) If the person is already detained in the hospital specified in the direction pursuant to a transfer for report direction or an order under section 149(2), the reference in subsection (3) to his being removed there is irrelevant. 15
- (5) The first condition is that the person is suffering from mental disorder.
- (6) The second condition is that that mental disorder is of such a nature or degree as to warrant the provision of medical treatment to the person.
- (7) The third condition is that medical treatment is available which is appropriate in the person’s case, taking into account the nature or degree of his mental disorder and all other circumstances of his case. 20
- (8) A transfer for treatment direction ceases to have effect at the end of the period of 14 days beginning with the date of the direction unless the person in respect of whom it was given has been received into the hospital specified in it, or is already detained there. 25
- (9) If the Secretary of State is to give a restriction direction (see section 139) as well as a transfer for treatment direction in respect of the person, subsections (3) and (8) have effect as if after “hospital” there were inserted “or the hospital unit”.
- (10) Subsection (5) of section 133 applies for the purposes of subsection (1)(a) as it applies for the purposes of subsection (1)(a) of that section. 30

136 Termination of transfer for treatment

- (1) This section applies to any person in respect of whom the Secretary of State has given a transfer for treatment direction (whether or not he has also given a restriction direction). 35
- (2) If the person in respect of whom the transfer for treatment direction was given has a release date, it ceases to have effect on that date, if it has not previously done so, and so does any restriction direction given in respect of him.
- (3) Subsections (2) and (3) of section 132 apply for the purposes of this section as they apply for the purposes of that. 40
- (4) Subsection (5) applies only to persons in respect of whom a transfer for treatment direction and a restriction direction have been given.
- (5) If the Secretary of State is notified by the clinical supervisor of such a person that not all of the conditions specified in subsections (5) to (7) of section 135 are

met in his case, the Secretary of State may by warrant direct that the person be remitted to any prison or other institution in which he might have been detained if he had not been removed to hospital and be dealt with there as if he had not been so removed.

- (6) If the Secretary of State gives a direction under subsection (5) in respect of the person, the transfer for treatment direction and the restriction direction given in respect of him cease to have effect on his arrival in the prison or other institution in question. 5
- (7) Subsection (8) applies only to persons falling within any of paragraphs (a) to (c) of section 135(1). 10
- (8) For the purposes of subsection (2) of section 49 of the Prison Act 1952 (c. 52) (discount from sentence of prisoner who is unlawfully at large), such a person—
- (a) who has been transferred in pursuance of a transfer for treatment direction from an institution referred to in that section, and 15
 - (b) who is at large in circumstances in which he is liable to be taken into custody under any provision of this Act,
- is to be treated as unlawfully at large and absent from that institution.

137 Transfer for treatment of persons remanded or committed in custody

- (1) This section applies to any person who is detained in a prison or remand centre, having been—
- (a) remanded in custody by the Crown Court or a magistrates' court, or
 - (b) committed for sentence, or sent for trial, in custody, by a magistrates' court to the Crown Court,
- and to any person who is detained in secure accommodation having been remanded under section 23 of the Children and Young Persons Act 1969 (c. 54). 25
- (2) If the Secretary of State is satisfied, on the evidence of two registered medical practitioners, that the conditions specified in subsections (3) to (5) are met in the case of the person, he may by warrant direct that the person is to be removed to and detained in the hospital or hospital unit specified in the direction (referred to in this Act as a "remand transfer direction"). 30
- (3) The first condition is that the person is suffering from mental disorder.
- (4) The second condition is that the mental disorder is of such a nature or degree as to warrant the provision of medical treatment to the person.
- (5) The third condition is that medical treatment is available which is appropriate in the person's case, taking into account the nature or degree of his mental disorder and all other circumstances of his case. 35
- (6) A remand transfer direction ceases to have effect at the end of the period of 7 days beginning with the date of the direction unless the person in respect of whom it was given has been received into the hospital or hospital unit specified in it. 40
- (7) If he is so received, a remand transfer direction ceases to have effect—
- (a) at the end of the period of 28 days beginning with the date of the direction, or
 - (b) on the happening of an event referred to in subsection (8), 45

(whichever occurs first).

- (8) The events referred to are –
- (a) the person’s case is finally disposed of (whether under this Act or otherwise) by the court,
 - (b) if the person was remanded by a magistrates’ court, the period for which he was remanded comes to an end,
 - (c) the person is further remanded in custody,
 - (d) the person is remanded on bail,
 - (e) the person is committed for sentence by a magistrates’ court (whether in custody or on bail),
 - (f) the magistrates’ court commits, or the court remands, the person for treatment under section 94 or 95 respectively,
 - (g) the court remands the person for a report under section 88,
 - (h) the person arrives at a prison or other institution following the termination by the court of the remand transfer direction under section 138.
- (9) In this section and section 138, references to the court are to the court which has jurisdiction to try or otherwise deal with the person.

138 Remand transfer directions: supplementary

- (1) If it appears to the court that it is appropriate to do so, the court may at any time terminate a remand transfer direction.
- (2) A person who is the subject of a remand transfer direction is entitled –
- (a) to obtain, at his own expense, a report on –
 - (i) his mental condition,
 - (ii) the appropriate treatment for that condition, or
 - (iii) both, and
 - (b) to apply to the court, on the basis of the report, for the remand transfer direction to be terminated.
- (3) A registered medical practitioner authorised by such a person may, for the purposes mentioned in subsection (4), at any reasonable time –
- (a) visit him and examine him (in private, if he considers it appropriate) and
 - (b) require the production of and inspect any records relating to him which are kept by his clinical supervisor.
- (4) Those purposes are –
- (a) advising whether an application to the court should be made by the person under subsection (2), and
 - (b) obtaining information as to the condition of the person for the purposes of such an application.
- (5) If at any time during the period for which a remand transfer direction has effect the person’s clinical supervisor is not satisfied that the conditions specified in subsections (3) to (5) of section 137 are met in his case, the clinical supervisor may refer his case to the court.
- (6) Subsection (7) applies if –
- (a) the court terminates a remand transfer direction, or

- (b) it ceases to have effect by virtue of section 137(7)(a), and the person to whom it related would still be liable to detention in a prison or other institution if he had not been removed to hospital (whether or not, in a case falling within paragraph (a), this was because the court had also exercised any power it had to remand, further remand or commit him otherwise than for treatment). 5
- (7) The managers of the hospital to which the person was removed must arrange for him to be remitted to any prison or other institution in which he might have been detained if he had not been removed to hospital, and he may be dealt with there as if he had not been so removed. 10
- (8) In subsections (3) and (5), references to the person’s clinical supervisor are to the clinical supervisor appointed under section 98.

Transfers: restriction directions

139 Restriction on discharge of transferred persons

- (1) This section applies to any person in respect of whom the Secretary of State has given a transfer for report direction or a transfer for treatment direction. 15
- (2) If a transfer for report direction has been given in respect of the person, the Secretary of State must at the same time give a direction under this section in respect of him.
- (3) If the person falls within any of paragraphs (a) to (c) of section 135(1), the Secretary of State must at the same time give a direction under this section in respect of him. 20
- (4) If the person falls within paragraph (d) or (e) of section 135(1), the Secretary of State may at the same time give a direction under this section in respect of him.
- (5) A direction under this section is a direction by warrant that the person in question be subject to restrictions corresponding to those which apply when a restriction order is made (and such a direction is referred to in this Act as a “restriction direction”). 25
- (6) If a transfer for treatment direction is in force in respect of the patient, and responsibility for providing him with medical treatment has been transferred to another hospital under paragraph 16 of Schedule 9 – 30
- (a) his transfer for treatment direction is to have effect, from the time of the transfer, as if that other hospital were the one specified in it (or, if he is transferred to a hospital unit within that hospital, as if that hospital unit were so specified), and 35
- (b) this Part, and Schedule 9, have effect accordingly from that time.
- (7) The following provisions of this Part apply in relation to a patient in respect of whom a restriction direction (and its underlying transfer for report direction or transfer for treatment direction) has been given as they apply in relation to a patient in respect of whom a restriction order (and its underlying mental health order) is in force – 40
- section 127(3) to (7),
section 128(3), (4) and (6) to (8).

Transfers: supplementary

140 Transfers: further powers

The making of a transfer for report direction, a transfer for treatment direction or a remand transfer direction in respect of a person is sufficient authority for the managers of the hospital specified in the direction (or of the hospital containing the hospital unit so specified) to – 5

- (a) admit him and detain him in accordance with this Act, or
- (b) if he is already detained in that hospital or hospital unit pursuant to a transfer for report direction or an order under section 149(2), to continue to detain him there in accordance with this Act. 10

141 Treatment etc following transfer

Schedule 9 (which makes further provision in connection with patients in respect of whom a transfer for treatment direction has been given) has effect.

CHAPTER 4

APPLICATIONS AND REFERENCES TO THE MENTAL HEALTH TRIBUNAL 15

142 Interpretation of this Chapter, etc

- (1) In this Chapter, a “restricted patient” means a patient in relation to whom there is in force – 20
 - (a) a restriction order,
 - (b) a hospital direction, or
 - (c) a restriction direction.
- (2) References in this Chapter to the Mental Health Tribunal, in relation to an application by a patient to it, or the reference of a patient’s case to it, are to be read as references to – 25
 - (a) the Mental Health Tribunal for England, if the patient’s responsible hospital is in England,
 - (b) the Mental Health Tribunal for Wales, if the patient’s responsible hospital is in Wales.
- (3) An application under section 144 or 152 may be made on behalf of the patient, if he is aged under 16, by any person with parental responsibility for him; and references in this Chapter to such an application are to be construed accordingly. 30

143 Visiting and examination of patients

- (1) A restricted patient is entitled to obtain, at his own expense, a report on – 35
 - (a) his mental condition,
 - (b) the appropriate treatment for that condition, or
 - (c) both.
- (2) A registered medical practitioner authorised by such a patient may, for the purposes mentioned in subsection (3), at any reasonable time –

- (a) visit and examine the patient (in private if he considers it appropriate), and
 - (b) require the production of and inspect any records relating to the patient which are kept by the clinical supervisor of the patient.
- (3) Those purposes are – 5
- (a) advising whether an application to the Mental Health Tribunal should be made by the patient under this Chapter,
 - (b) advising in connection with any other application or reference made under this Chapter, and
 - (c) obtaining information as to the condition of the patient for the purposes of such an application or reference. 10
- (4) In determining for the purposes of subsection (2)(a) whether it is appropriate to visit or examine the patient in private, the registered medical practitioner in question must have regard to any wishes and feelings of the patient about the visit or examination being in private. 15

144 Applications to Mental Health Tribunal

- (1) A restricted patient (but, in the case of a patient in relation to whom a restriction order is in force, only one who is subject to a requirement that he be treated as a resident patient) may apply to the Mental Health Tribunal for an order – 20
- (a) in the case of a patient in relation to whom a mental health order is in force, discharging the mental health order, or disapplying the requirement that he be treated as a resident patient,
 - (b) in the case of other restricted patients, terminating the hospital direction or the transfer for treatment direction. 25
- (2) He may do so –
- (a) once during the period between the expiry of 6 months beginning with the relevant date and the expiry of 12 months beginning with that date, and
 - (b) once in every succeeding period of 12 months. 30
- (3) In subsection (2), the “relevant date” means the date on which the restriction order, the hospital direction or the restriction direction in force in respect of him was made or given.

145 References by Secretary of State concerning restricted patients

- (1) The Secretary of State must refer to the Mental Health Tribunal the case of any patient who was subject to a restriction order which has ceased to have effect by virtue of a direction of the Secretary of State under section 128(1). 35
- (2) He must do so before the end of the period of 28 days beginning with the date of that direction.
- (3) The Secretary of State must refer to the Mental Health Tribunal the case of any patient in respect of whom – 40
- (a) the Secretary of State has given a restriction direction which is about to cease to have effect by virtue of section 136(2), or

-
- (b) the Crown Court has given a hospital direction which is about to cease to have effect by virtue of corresponding provision made by virtue of section 131(9).
- (4) The Secretary of State may at any time refer the case of a restricted patient to the Mental Health Tribunal. 5
- (5) He must do so in the case of any restricted patient whose case has not been considered by the Tribunal during the last 3 years.
- (6) The Secretary of State may by order amend subsection (5) so as to substitute a different period.
- 146 References under section 145(1) or (3) 10**
- (1) This section applies if the Secretary of State makes a reference under section 145(1) or (3).
- (2) The patient's clinical supervisor must determine whether all of the relevant conditions (within the meaning of Part 2 – see section 9) are met in the patient's case. 15
- (3) The clinical supervisor must give notice of his determination, and of the reasons for it, to the Mental Health Tribunal.
- (4) The notice must be in a form prescribed in regulations made by the appropriate authority.
- (5) If the patient's clinical supervisor determines that not all of the relevant conditions are met in the patient's case – 20
- (a) if the reference was under section 145(1), the Tribunal must discharge the patient's mental health order, if it has not already ceased to have effect by virtue of section 128(2)(b),
- (b) if the reference was under section 145(3), the Tribunal must discharge 25 any order it has made by virtue of Part 3 of Schedule 9.
- (6) Subsection (7) applies if –
- (a) the reference was under section 145(1), and
- (b) the clinical supervisor determines that all of the relevant conditions are met in the patient's case. 30
- (7) If this subsection applies –
- (a) the approved mental health professional appointed under paragraph 2 of Schedule 8 to act in relation to the patient must act as mentioned in paragraphs (a) and (b) of paragraph 3(2) of that Schedule,
- (b) the reference to the Tribunal is to be treated as an application to the 35 Tribunal under paragraph 8(2) of that Schedule,
- (c) paragraphs 8(5) to (9) and 9 to 14 of that Schedule apply accordingly, reading the reference in paragraph 9(5)(a) to the clinical supervisor's determination under paragraph 8(1) as a reference to his determination under subsection (2), 40
- (d) any order the Tribunal makes is thereafter to be treated for the purposes of that Schedule as having been made under paragraph 8 of that Schedule, and
- (e) if the Tribunal makes an order under paragraph 8(5) of that Schedule, the patient's mental health order thereupon ceases to have effect. 45

- (8) Subsection (9) applies if –
- (a) the reference was under section 145(3) and related to a transfer for treatment direction, and
 - (b) the clinical supervisor determines that all of the relevant conditions are met in the patient’s case. 5
- (9) If this subsection applies –
- (a) the approved mental health professional appointed under paragraph 3 of Schedule 9 to act in relation to the patient must act as mentioned in paragraphs (a) and (b) of paragraph 4(2) of that Schedule,
 - (b) if no order authorising the patient’s medical treatment has yet been made, the clinical supervisor must also determine whether or not it is necessary to assess further what medical treatment should be provided to the patient before such an order is made, and give notice of that determination to the Tribunal, 10
 - (c) the reference to the Tribunal is then to be treated as an application to the Tribunal under whichever is appropriate of the following sections in Chapter 6 of Part 2 – 15
 - (i) section 39,
 - (ii) section 40,
 - (iii) section 42, 20
 - (iv) section 43,
 - (d) Part 2 applies accordingly, reading –
 - (i) references in section 39(5)(a), 40(5)(a), 42(5)(a) or 43(5)(a) to any determination of the clinical supervisor as being a reference to the corresponding determination under this section, and 25
 - (ii) (where appropriate) references to the patient’s care plan as being to the one prepared under paragraph 7 of Schedule 9,
 - (e) the Tribunal must determine the application before the patient’s transfer for treatment direction ceases to have effect (and section 44 accordingly does not apply in relation to that application), 30
 - (f) any order the Tribunal makes is to have effect from the expiry of the patient’s transfer for treatment direction and is thereafter to be treated as having been made under Chapter 6 of Part 2 (references in which to the approved mental health professional appointed to act in relation to the patient, to the patient’s clinical supervisor or nominated person, or to his care plan being read, where appropriate, as references to the corresponding person or care plan appointed or prepared under Schedule 9), and 35
 - (g) any order previously made in respect of the patient under a provision of Part 2 applied by Schedule 9 ceases to have effect on the coming into force of an order of the Tribunal under this section. 40
- (10) Subsection (9) also applies if –
- (a) the reference was under section 145(3) and related to a hospital direction, and
 - (b) the clinical supervisor determines that all of the relevant conditions are met in the patient’s case, 45

but references in subsection (9) to provisions of Schedule 9 are to corresponding provision made by virtue of section 131(9).

147 Powers of Mental Health Tribunal: patients subject to restriction orders

- (1) This section applies to the determination of –
 - (a) an application under section 144 by a patient in relation to whom a restriction order is in force,
 - (b) a reference by the Secretary of State under section 145(4) or (5) in respect of such a patient. 5
- (2) If the Mental Health Tribunal is not satisfied that all of the conditions mentioned in section 116(2) to (4) are met in the patient’s case, the Tribunal must make an order discharging the mental health order (and the restriction order accordingly ceases to have effect). 10
- (3) If the Tribunal is satisfied that all of those conditions are met in the patient’s case, it may not make an order discharging the mental health order, but (subject to subsections (4) and (5)) may make an order providing for the variation of any provision made in the mental health order.
- (4) The Tribunal may not under subsection (3) provide for the mental health order to be varied so as to – 15
 - (a) provide for the patient to be treated in a hospital or hospital unit different from the one in which he is being treated or to which the Secretary of State has agreed he may be transferred, or
 - (b) alter anything to do with leave of absence from hospital or the hospital unit. 20
- (5) Except as mentioned in subsection (6), the Tribunal may also make an order disapplying any requirement that the patient be treated as a resident patient, subject to such conditions (if any) as it sees fit to impose.
- (6) The Tribunal may not exercise the power in subsection (5) if it is satisfied that it is necessary for the protection of – 25
 - (a) the health or safety of the patient, or
 - (b) members of the public,
 that the patient be required to be treated as a resident patient.
- (7) For the purposes of subsection (6), the Tribunal may take into account whether or not appropriate treatment would be available to the patient if he were not a resident patient. 30
- (8) Exercising the power in subsection (5) does not cause the restriction order to cease to have effect.
- (9) Subsections (3), (4) and (6) to (10) of section 129 apply to a patient in relation to whom the Tribunal has made an order under subsection (5) (or in relation to whom the Tribunal has varied or added a condition under subsection (11)) as they apply in relation to a patient in relation to whom the Secretary of State has exercised the power in subsection (2) of that section. 35
- (10) For that purpose, references in the applied subsections of section 129 to conditions imposed by virtue of subsection (2) of that section are to be read as references to conditions imposed under subsection (5) or (11) of this section. 40
- (11) On any subsequent application to the Tribunal by the patient in question, the Tribunal may vary or revoke any condition imposed under subsection (5), or under section 129(3) as applied by subsection (9), or add new conditions. 45

148 Powers of Mental Health Tribunal: other restricted patients

- (1) This section applies to the determination of –
- (a) an application under section 144 by a restricted patient who is subject to a hospital direction or a transfer for treatment direction, or
 - (b) a reference by the Secretary of State under section 145(4) or (5) in respect of such a patient. 5
- (2) If the Mental Health Tribunal is not satisfied –
- (a) if the patient is subject to a hospital direction, that all of the conditions mentioned in subsections (3) to (5) of section 130 are met in his case, or
 - (b) if the patient is subject to a transfer for treatment direction, that all of the relevant conditions within the meaning of Part 2 (see section 9) are met in his case, 10
- the Tribunal must make an order for the termination of the direction in question and of any order made by virtue of Schedule 9 in respect of the patient under Chapter 6 of Part 2. 15
- (3) If the Tribunal does so, the managers of the hospital must (except as mentioned in section 149) transfer the patient to a prison or other institution in which he might have been detained if he had not been removed to hospital, and he may be dealt with there as if he had not been so removed.
- (4) The relevant transfer for treatment direction or, as the case may be, hospital direction ceases to have effect on the patient's arrival in the prison or other institution in question. 20
- (5) If the Tribunal is satisfied that all of the conditions mentioned in subsections (3) to (5) of section 130 or, as the case may be, all of the relevant conditions are met in the patient's case, it may (subject to subsection (6)) make an order providing for the variation of any provision of the hospital direction or of the transfer for treatment direction. 25
- (6) The Tribunal may not under subsection (5) provide for the direction to be varied so as to –
- (a) provide for the patient to be treated in a hospital or hospital unit different from the one in which he is being treated or to which the Secretary of State has agreed he may be transferred, or 30
 - (b) alter anything to do with leave of absence from hospital or the hospital unit.
- (7) Subsection (8) applies if – 35
- (a) the Tribunal does not make an order under subsection (2) because it was not satisfied as mentioned there, but
 - (b) it would (if the patient in question had been subject to a restriction order) have made an order under section 147(5).
- (8) If this subsection applies, the patient is to be treated for the purposes of the making of references or applications to the Parole Board as if the transfer for treatment direction or hospital direction had not been given. 40

149 Section 148: order for continued detention in hospital

- (1) This section applies if the Mental Health Tribunal makes an order under section 148(2), but is satisfied – 45
- (a) that the patient is suffering from mental disorder,

- (b) that the mental disorder is not of such a nature or degree as to warrant the provision of medical treatment to him, and
- (c) that if he were transferred to a prison or other institution in which he might have been detained if he had not been removed to hospital his mental disorder might come to be of such a nature or degree as to warrant the provision of medical treatment to him, 5
- and the patient, his clinical supervisor and the Secretary of State consent to the patient's continuing to be detained in hospital.
- (2) In such a case, the Tribunal may make an order for the continued detention of the patient in hospital. 10
- (3) If the Tribunal makes an order under subsection (2), the hospital direction or the transfer for treatment direction given in respect of the patient ceases to have effect, but any associated restriction direction continues to have effect as if the hospital direction or transfer for treatment direction had not ceased to have effect. 15
- (4) An order under subsection (2), and any restriction direction which continued to have effect by virtue of subsection (3), ceases to have effect on the patient's release date, if he has one.
- (5) Subsections (2) and (3) of section 132 apply for the purposes of this section as they apply for the purposes of that. 20
- (6) The making of an order under subsection (2) is sufficient authority for the managers of the hospital in which the patient is detained to continue to detain him in accordance with this Act.
- (7) While an order under subsection (2) is in force, the patient is to be treated for the purposes of the making of references or applications to the Parole Board as if the order had not been made and as if the hospital direction or transfer for treatment direction which ceased to have effect under subsection (3) had not been given. 25
- (8) Subsection (9) applies if—
- (a) the patient, or his clinical supervisor, or the Secretary of State gives notice to the managers of the hospital of the withdrawal of his consent to the patient's continuing to be detained in hospital, and 30
- (b) the order under subsection (2) has not ceased to have effect.
- (9) The managers of the hospital must transfer the patient to a prison or other institution in which he might have been detained if he had not been removed to hospital, and he may be dealt with there as if he had not been so removed. 35
- (10) The order under subsection (2) ceases to have effect upon his arrival in the prison or other institution in question.

150 Application for variation of restricted patient's care plan

- (1) If the clinical supervisor of a restricted patient determines that— 40
- (a) all of the relevant conditions are met in the patient's case, but
- (b) it is necessary that the patient's care plan which is currently in force be varied,
- he must make an application to the Mental Health Tribunal for an order approving a varied care plan. 45

- (2) For the purposes of this section and section 151, references to the relevant conditions are to –
- (a) the conditions mentioned in subsections (2) to (4) of section 116, if a mental health order is in force in relation to the patient,
 - (b) the conditions mentioned in subsections (3) to (5) of section 130, if a hospital direction is in force in relation to the patient, 5
 - (c) the relevant conditions within the meaning of Part 2 (see section 9), if a transfer for treatment direction is in force in relation to the patient.
- (3) The care plan referred to in subsection (1)(b) is –
- (a) if a mental health order is in force in relation to the patient, the care plan approved by the court on the making of the mental health order, 10
 - (b) if a transfer for treatment direction is in force in relation to the patient, the care plan approved by the Tribunal under section 46 or 49 as modified by Schedule 9,
 - (c) if a hospital direction is in force in relation to the patient, the care plan approved by the Tribunal under provision made by virtue of section 131(9) corresponding to that mentioned in paragraph (b), 15
- or, if an order has been made under section 151 approving a varied care plan for the patient, the most recent such care plan.
- (4) The clinical supervisor of the patient must – 20
- (a) review the care plan of the patient which is currently in force, and
 - (b) amend it so that it complies with subsection (5).
- (5) The plan must –
- (a) include a description of the medical treatment which is to be provided to the patient while the care plan as proposed to be varied is in force, 25
 - (b) include such information as may be prescribed by regulations made by the appropriate authority, and
 - (c) be prepared in such form as may be so prescribed.
- (6) The application must include the plan.
- (7) The application must – 30
- (a) state the reason for the determinations mentioned in subsection (1),
 - (b) describe the mental disorder for which medical treatment is to be provided in accordance with the plan,
 - (c) describe any medical treatment or other treatment which is to be provided to the patient for that disorder otherwise than in accordance with the plan, and 35
 - (d) deal with any other matter prescribed by regulations made by the appropriate authority.
- (8) Subsections (2) to (5) of section 103 apply in relation to the Tribunal's determination whether to approve a varied care plan following an application under this section as they apply in relation to a determination by the Tribunal whether to approve a care plan under the provisions mentioned in subsection (1)(a) of that section. 40

151 Powers of Mental Health Tribunal: application under section 150

- (1) In determining an application under section 150 in respect of a patient – 45

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- (a) if the Mental Health Tribunal is satisfied that all the relevant conditions are met in the patient’s case, it may make an order varying the relevant order in respect of which the application is made,
- (b) if it is not so satisfied, it must make an order discharging that relevant order. 5
- (2) In this section, “relevant order” means –
- (a) in the case of a patient in relation to whom a mental health order is in force, the mental health order,
- (b) in the case of a patient in relation to whom a transfer for treatment direction or a hospital direction is in force, the order (or further order) for medical treatment which is in force in relation to him under the provisions mentioned in section 150(3)(b) or (c), as the case may be. 10
- (3) Any order made by the Tribunal under subsection (1)(a) must make provision for the variation of the relevant order in respect of which the application is made so that it states that – 15
- (a) the care plan is approved by the Tribunal for the medical treatment of the patient, or
- (b) the care plan is approved by the Tribunal for that purpose, with such modifications as are – 20
- (i) agreed with the clinical supervisor of the patient, and
- (ii) specified by the Tribunal in the relevant order,
- but no modifications may be so agreed and specified unless the patient has had an opportunity to make representations about the modifications, if practicable.
- (4) An order under this section may deal with such matters incidental to or consequential on the making of the order as the Tribunal thinks fit. 25
- (5) If the Tribunal makes an order under subsection (1)(a), the clinical supervisor must send a copy of the varied care plan to –
- (a) the patient, and
- (b) if the patient is aged under 16, each person with parental responsibility for him, subject to subsection (6). 30
- (6) Subsections (4) to (7) of section 52 apply in relation to sending a copy of the care plan under subsection (5)(b) as they apply in relation to sending one under subsection (2)(b) of that section.
- (7) If the Tribunal makes an order under subsection (1)(b), the clinical supervisor must, as soon as practicable after the making of the order, notify – 35
- (a) the patient, and
- (b) if the patient is aged under 16, each person with parental responsibility for him.
- (8) The clinical supervisor need not notify any particular person with parental responsibility for a patient if – 40
- (a) he thinks it would be inappropriate to do so, or
- (b) it is impracticable to do so.
- (9) If the Tribunal makes an order under subsection (1)(b), and a transfer for treatment direction or a hospital direction is in force in relation to the patient in question – 45

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- (a) the managers of the patient’s responsible hospital must transfer the patient to a prison or other institution in which he might have been detained if he had not been removed to hospital, and he may be dealt with there as if he had not been so removed, and
- (b) the transfer for treatment direction or, as the case may be, hospital direction ceases to have effect on the patient’s arrival in the prison or other institution in question. 5
- (10) This section is subject to section 74 (as modified by section 158).
- 152 Powers of Mental Health Tribunal: patients whose residence requirement has been lifted 10**
- (1) Subsections (2) to (4) apply in relation to a patient subject to a restriction order where –
- (a) the Secretary of State has exercised his power under section 129(2), or
- (b) the Mental Health Tribunal has made an order under section 147(5), and the Secretary of State has under section 129(8) (whether or not as applied by section 147(9)) reimposed the patient’s residence requirement and recalled him to hospital or to a hospital unit. 15
- (2) The Secretary of State must refer the patient’s case to the Mental Health Tribunal before the end of the period of 7 days beginning with the day on which the patient is admitted to the hospital or hospital unit to which he has been recalled. 20
- (3) Subsections (2) to (11) of section 147 apply in relation to such a reference as if the patient had made an application to which that section applies.
- (4) If the Tribunal does not exercise its power under section 147(5) as thus applied, the “relevant date” for the purposes of section 144(2) is to be treated as being the date of the Tribunal’s order made by virtue of this section. 25
- (5) Subsection (6) applies in relation to a patient subject to a restriction order if his residence requirement is for the time being disapplied –
- (a) by virtue of section 129(2), or
- (b) because the Tribunal has exercised its power under section 147(5) (whether or not as applied by subsection (3)). 30
- (6) The patient may apply to the Tribunal once –
- (a) during the period between the expiry of 6 months beginning with the date on which his residence requirement was disapplied and the expiry of 12 months beginning with that date, and
- (b) in every succeeding period of 12 months. 35
- (7) Subsections (2) and (3) of section 147 apply in relation to such an application as they apply in relation to the determination of an application mentioned in subsection (1) of that section, but as if in subsection (3) of that section “(subject to subsections (4) and (5))” were omitted. 40
- (8) On such an application, the Tribunal may also make an order varying, revoking or adding to any of the conditions subject to which his residence requirement was disapplied.

153 Remitted cases

- (1) This section applies if a case arising under this Chapter is remitted to the Mental Health Tribunal under section 250 or 254 or by the House of Lords for reconsideration by the Tribunal.
- (2) The Tribunal must hear the case within the period specified in rules made by the Lord Chancellor, unless the case falls within a description of case so specified (and, in relation to such a case, the rules may provide that the Tribunal need not reconsider the case at all). 5
- (3) The Tribunal is to reconsider a remitted case on the facts which obtain at the time of the reconsideration. 10
- (4) In determining a remitted case, the Tribunal has the same powers as it had under this Chapter when making the determination –
 - (a) which was set aside on the case being remitted by the Mental Health Appeal Tribunal (if the case is remitted by that Tribunal), or
 - (b) in respect of which an appeal was made to the Appeal Tribunal (if the case is remitted by the Court of Appeal or the House of Lords). 15
- (5) Section 72(1) applies for the purposes of this section as it applies for the purposes of Part 2, but as if –
 - (a) the reference in paragraph (a) to Part 2 included a reference to Part 3, and the reference to an order under any of Chapters 5 to 7 of Part 2 included a reference to a mental health order, a restriction order and any direction made or given under Part 3, and
 - (b) paragraph (b) were omitted. 20
- (6) Subsection (5) is subject to sections 250(8)(c) and 254(6)(d).
- (7) This section is subject to –
 - (a) provision made in rules by virtue of section 158(2) and (3) or 252(2)(c),
 - (b) provision made in directions by virtue of section 254(6)(c),
 - (c) if responsibility for the patient’s medical treatment is transferred under Chapter 10 of Part 2, paragraph 17 of Schedule 8 or paragraph 16 of Schedule 9 from a hospital in Wales to a hospital in England, such modifications as are necessary in consequence of the case having been remitted by the House of Lords to the Mental Health Tribunal for England instead of the Mental Health Tribunal for Wales (and vice versa). 25 30

CHAPTER 5

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SUPPLEMENTARY

154 Persons appearing before magistrates’ court: supplementary

- (1) This section applies if –
 - (a) a magistrates’ court has to decide whether or not to send a person to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998 (c. 37), and
 - (b) the person is detained in hospital under any provision of this Act. 40
- (2) The magistrates’ court may make that decision in the person’s absence if the requirements of subsection (3) are satisfied.

- (3) The requirements are –
- (a) the court must be satisfied, on the written or oral evidence of an approved clinician, that the person is unfit to take part in the proceedings, and
 - (b) he must be represented by counsel or a solicitor.

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155 Information about hospitals

- (1) This section applies if a court is minded to –
- (a) remand a person under section 88 or 93,
 - (b) commit a person for medical treatment under section 94,
 - (c) remand, further remand or commit a person to a hospital or hospital unit as mentioned in section 104,
 - (d) make a mental health order in respect of a person, or
 - (e) give a hospital direction in respect of a person.
- (2) The court may request –
- (a) the Primary Care Trust or Local Health Board for the area in which the person in question resides or last resided, or
 - (b) any other Primary Care Trust or Local Health Board that appears to the court to be appropriate,
- to provide the court with information which they have, or can reasonably obtain, about any hospital or hospital unit in their area or elsewhere at which arrangements could be made for the admission of that person in pursuance of the remand, committal (etc) referred to in the relevant paragraph of subsection (1), or about other arrangements that could be made in their area or elsewhere in relation to the person subject to that remand, committal (etc).
- (3) A Primary Care Trust or Local Health Board must comply with a request under subsection (2).

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156 Requirements as to medical evidence

- (1) Subsection (2) applies where, under any provision of this Part, a court may act on the evidence of –
- (a) a registered medical practitioner, or
 - (b) an approved clinician (including an approved clinician of a particular description).
- (2) A report purporting to be signed by a such a person may be received in evidence without proof –
- (a) of the practitioner’s or clinician’s signature,
 - (b) that the practitioner is a registered medical practitioner, or
 - (c) that the clinician is an approved clinician or (where applicable) that he is of the relevant description.
- (3) Where, under any provision of this Part, a court may act on the evidence of a person who represents the managers of a hospital, a report purporting to be signed by such a person may be received in evidence without proof –
- (a) of the person’s signature, or
 - (b) that the person has the requisite authority.
- (4) The court may require the signatory of a report referred to in subsection (2) or (3) to be called to give oral evidence.

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- (5) Where any report referred to in subsection (2) or (3) is tendered in evidence other than by or on behalf of the person who is the subject of the report, then –
- (a) if that person is represented by counsel or a solicitor, a copy of the report must be given to his counsel or solicitor,
 - (b) if that person is not so represented, the report must (unless the court orders otherwise) be given to him or, where he is a child or young person, to his parent or guardian if present in court. 5
- (6) In such a case, where the report has been given as mentioned in paragraph (a) or (b) of subsection (5), the person who is the subject of the report may (except where the report relates only to arrangements for his admission to hospital or to a hospital unit) require the signatory of the report to be called to give oral evidence, and evidence to rebut the evidence contained in the report may be called by or on behalf of that person. 10
- 157 Restricted patients: requirement to attend hospital, and absence without leave** 15
- (1) This section applies to a patient in respect of whom a restriction order is in force if –
- (a) the Secretary of State has exercised his power under section 129(2) to disapply a requirement that the patient be treated as a resident patient, or the Tribunal has made an order under section 147(5) disapplying such a requirement, and 20
 - (b) the requirement has not been reimposed under section 129(8) (or that provision as applied by section 147(9)).
- (2) Subsection (3) applies to the patient if the disapplication of the requirement is subject to a condition that he attend a hospital or at another specified place. 25
- (3) If the patient fails to attend the hospital, or at the specified place, at a time at which, or before the end of a period within which, he is required to do so by virtue of the condition, his clinical supervisor or a person authorised in writing by his clinical supervisor may take the patient into custody and convey him to that hospital or place. 30
- (4) The power conferred by subsection (3) may not be exercised –
- (a) after the end of the period during which the patient is subject to the condition, or
 - (b) in relation to any particular failure to attend, after the occasion (if there is one) when the patient attends the specified hospital or at the specified place at a subsequent time at which, or before the end of a subsequent period within which, he is required to do so by virtue of the condition. 35
- (5) If a patient to whom this section applies does or makes any of the acts or omissions specified in subsection (7) of section 81, subsections (8) and (9) of that section apply to him as they apply to a patient who falls within subsection (6) of that section, reading the reference in subsection (9)(b) to the hospital with which the patient is registered as a reference to the responsible hospital. 40
- (6) In section 81(7), as so applied, references to a residence condition are to a condition imposed –
- (a) by the Secretary of State under section 129(2), or
 - (b) by the Tribunal under 147(5) or (11) or 152(8), 45

that the patient reside in a specified place.

- (7) The appropriate authority may make regulations as to the recording and reporting of absences without leave and returns of patients to whom this section applies.

158 Applications and references to Tribunal 5

- (1) Section 70 applies in relation to an application or reference to the Mental Health Tribunal under this Part as it applies in relation to an application under or by virtue of Part 2.
- (2) Sections 73 and 74 and Schedule 7 apply in relation to an application or a reference to the Mental Health Tribunal under this Part, and to the reconsideration of a remitted case under section 153, as they apply in relation to an application under or by virtue of Part 2, but as if in section 74 –
- (a) the reference in subsection (2)(a) to Chapter 10 included a reference to paragraph 17 of Schedule 8 and paragraph 16 of Schedule 9, 10
 - (b) the reference in subsection (3) to the application of Part 2 included a reference to the application of those Schedules, 15
- and as if in paragraph 1(b) of Schedule 7 the reference to an order or further order under Chapter 6 or 7 included a reference to a mental health order.
- (3) But the rules made under section 74 as so applied may also make provision –
- (a) for the Secretary of State to be a party to proceedings before the Tribunal where he would not otherwise be a party, and entitling him to appear and be heard accordingly, 20
 - (b) about information which the Secretary of State must provide to the Tribunal on an application or reference under Chapter 4 of this Part.

159 Interpretation 25

- (1) This section has effect for the purposes of this Part.
- (2) Section 99 of the Children and Young Persons Act 1933 (c. 12) (presumption and determination of age) applies as it applies for the purposes of that Act.
- (3) “Child” and “young person” have the same meaning as in the Children and Young Persons Act 1933. 30
- (4) “Guardian”, in relation to a child or young person, has the same meaning as in that Act.
- (5) “Hospital unit” means any part of a hospital which is treated as a separate unit.
- (6) “Place of safety” –
- (a) in relation to a child or young person, has the same meaning as in the Children and Young Persons Act 1933, 35
 - (b) in relation to any other person, means any police station, prison or remand centre, or any hospital the managers of which are willing to temporarily receive him.
- (7) References to a patient’s clinical supervisor – 40
- (a) in Chapter 1, have the meaning given by section 98,
 - (b) in Chapters 2 to 4, except in section 138, and in section 157(3), are to a person appointed under paragraph 4(1) or (4) of Schedule 8 or

paragraph 5(1) or (4) of Schedule 9, or by virtue of section 131(9), as the case requires.

- (8) Except in sections 103(3), 108(2), 138(3) and 143(2), a reference to a registered medical practitioner is to a registered medical practitioner who –
- (a) is of a description specified in regulations under paragraph (a) of subsection (5) of section 14 (except as mentioned in subsection (9)), and 5
 - (b) is not of a description specified in regulations under paragraph (b) of that subsection.
- (9) If the reference is to the evidence of two registered medical practitioners, only one of them need be of the description referred to in subsection (8)(a). 10
- (10) Any reference to an offence punishable on summary conviction with imprisonment is to be read without regard to any prohibition or restriction imposed by or under any enactment relating to the imprisonment of young offenders.
- (11) For the purposes of Chapter 2, a sentence falls to be imposed under section 110(2) or 111(2) of the 2000 Act if it is required by that provision and the court is not of the opinion there mentioned. 15
- (12) The “2000 Act” means the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6).

PART 4 20

CROSS BORDER PROVISIONS

Interpretation

160 Interpretation: Part 4

- (1) This section has effect for the purposes of this Part.
- (2) “Relevant patient” means – 25
- (a) a patient who is liable to assessment under Chapter 3 of Part 2 (subject to subsection (3)),
 - (b) a patient who is liable to be provided with medical treatment or assessed by virtue of an order (or further order) under Chapter 6 of that Part, 30
 - (c) a patient in respect of whom there is in force a mental health order or a hospital direction, or
 - (d) a patient in respect of whom there is in force a transfer for report direction or a transfer for treatment direction.
- (3) An emergency patient (within the meaning given by section 17(2)) who is liable to assessment under Chapter 3 of Part 2 is not a relevant patient unless and until notification under section 20(2) has been given in respect of him. 35
- (4) “Relevant territory” means –
- (a) Scotland,
 - (b) Northern Ireland, 40
 - (c) any of the Channel Islands, or
 - (d) the Isle of Man.

- (5) “Restricted patient” means a patient in respect of whom there is in force –
 - (a) a restriction order,
 - (b) a hospital direction, or
 - (c) a restriction direction.
- (6) “Prescribed” means prescribed by regulations made by the appropriate authority. 5

Transfers out of England and Wales

161 Transfer of patients from England and Wales

- (1) Subsection (2) applies if the clinical supervisor of a relevant patient determines (whether following a request by the patient or otherwise) that it would be in the patient’s interests to transfer him to a relevant territory. 10
- (2) As soon as practicable after making the determination, the clinical supervisor must make such arrangements as he considers appropriate for –
 - (a) his assessment (if an assessment of him is to be carried out),
 - (b) his medical treatment or the preparation of a report on his mental condition (or both), and 15
 - (c) if the patient is to be resident in a hospital, conveying the patient to his destination,in the relevant territory in question.
- (3) As soon as practicable after making arrangements under subsection (2), the clinical supervisor must, if he remains of the view that the transfer is in the patient’s interests, give notice to that effect, together with notice of the arrangements, to the managers of the hospital responsible for the patient. 20
- (4) If the managers are notified under subsection (3), they must authorise the transfer of the patient to the relevant territory if they determine that – 25
 - (a) the transfer is in the patient’s interests, and
 - (b) the arrangements made under subsection (2) are appropriate,but, if the patient is a restricted patient, they must not do so unless subsection (5) is complied with first.
- (5) This subsection is complied with if the managers have obtained – 30
 - (a) the Secretary of State’s consent to the transfer, and
 - (b) his approval of the arrangements made under subsection (2).
- (6) The clinical supervisor must consult the persons mentioned in subsection (7) –
 - (a) before making a determination under subsection (1), and
 - (b) in making arrangements under subsection (2). 35
- (7) Those persons are –
 - (a) the patient, unless inappropriate or impracticable, and
 - (b) unless the patient is a restricted patient –
 - (i) if the patient is aged under 16, each person with parental responsibility for him, subject to subsection (8), 40
 - (ii) his nominated person (unless he falls within sub-paragraph (i)), if practicable, and
 - (iii) any carer of the patient (unless he falls within sub-paragraph (i) or (ii)), subject to subsection (9) and if practicable.

- (8) The clinical supervisor need not consult any particular person with parental responsibility for the patient if –
- (a) he thinks it would be inappropriate to do so, or
 - (b) it is impracticable to do so.
- (9) Section 12(2) and (4) to (6) applies to the requirement under subsection (6) to consult any carer of the patient (by virtue of subsection (7)(b)(iii)) as it applies to any provision of Part 2 requiring a person to consult any carer of a patient. 5
- (10) The transfer of a patient to a relevant territory is subject to any provision having effect in that territory requiring that conditions are met before a person may be transferred to that territory. 10
- (11) References in this section to a patient’s clinical supervisor are –
- (a) in the case of a patient who is a relevant patient by virtue of subsection (2)(a) or (b) of section 160, to the clinical supervisor appointed in respect of him under Part 2 or section 167(2)(b),
 - (b) in the case of a patient who is a relevant patient by virtue of subsection (2)(c) of that section, to the clinical supervisor appointed in respect of him under Schedule 8 or by virtue of section 131(9), 15
 - (c) in the case of a patient who is a relevant patient by virtue of subsection (2)(d) of section 160, to the clinical supervisor appointed in respect of him under Schedule 9. 20

162 Transfer authorised under section 161: supplementary

- (1) This section applies only to a relevant patient who is not a restricted patient.
- (2) If the transfer of the patient is authorised under section 161(4), the managers of the hospital responsible for the patient must notify the following persons of the transfer and the reasons for it – 25
- (a) the patient,
 - (b) if the patient is aged under 16, each person with parental responsibility for him, subject to subsection (13), and
 - (c) the patient’s nominated person (unless he falls within paragraph (b)).
- (3) The notice under subsection (2) must – 30
- (a) be in the prescribed form,
 - (b) specify a date, falling at least 7 days after the date on which the notice is given, as – 35
 - (i) the earliest date on which the transfer might take place, and
 - (ii) the date by which any notice under subsection (4) must be given, and
 - (c) give information about the right conferred by that subsection.
- (4) The patient may object to the authorisation by notifying his objections to the managers on or before the date specified under subsection (3)(b).
- (5) The right conferred by subsection (4) may be exercised on the patient’s behalf by his nominated person. 40
- (6) Subsection (7) applies if the managers are notified under subsection (4) and the notification is not withdrawn.
- (7) The transfer may not take place unless leave is given in accordance with section 163 on an application by the managers. 45

- (8) Otherwise, the transfer may take place within the period of 14 days beginning with the date specified under subsection (3)(b).
- (9) Subsection (10) applies to a patient if arrangements are made in relation to him by virtue of section 161(2)(c).
- (10) The managers must secure that the patient is conveyed to the relevant territory in question by a person authorised by them to do so. 5
- (11) An authorisation under subsection (10) must be in the prescribed form.
- (12) If subsection (10) does not apply to a patient, the managers must notify –
 - (a) the patient,
 - (b) if the patient is aged under 16, each person with parental responsibility for him, subject to subsection (13), and 10
 - (c) the patient’s nominated person (unless he falls within paragraph (b)), of the date on which the patient is to be transferred to the relevant territory in question.
- (13) The managers need not give notice under subsection (2) or (12) to any particular person with parental responsibility for the patient if – 15
 - (a) they think it would be inappropriate to do so, or
 - (b) it is impracticable to do so.

163 Application for leave under section 162(7)

- (1) This section applies to an application under section 162(7). 20
- (2) The application is to be made to –
 - (a) the Mental Health Tribunal for England, if –
 - (i) the patient is registered under section 22(1), 78(2) or 166(2)(b) with a hospital in England (in the case of a patient who is a relevant patient by virtue of subsection (2)(a) or (b) of section 160), or 25
 - (ii) the hospital at which he is being provided with treatment is in England (in the case of a patient who is a relevant patient by virtue of subsection (2)(c) or (d) of that section),
 - (b) the Mental Health Tribunal for Wales, if – 30
 - (i) the patient is registered under section 22(1), 78(2) or 166(2)(b) with a hospital in Wales (in the case of a patient who is a relevant patient by virtue of subsection (2)(a) or (b) of section 160), or
 - (ii) the hospital at which he is being provided with treatment is in Wales (in the case of a patient who is a relevant patient by virtue of subsection (2)(c) or (d) of that section). 35
- (3) The following provisions apply to the application as they apply to applications under or by virtue of Part 2 – 40
 - section 73,
 - section 74,
 - Schedule 7,(so far as applicable).

164 Transfer from England and Wales: absconding

- (1) Subsection (4) applies if –
- (a) arrangements have been made in relation to a patient by virtue of section 161(2)(c), and
 - (b) the patient falls within subsection (2) or (3). 5
- (2) A patient falls within this subsection if he absconds while being conveyed to a relevant territory in pursuance of section 162(10).
- (3) A patient falls within this subsection if he –
- (a) is being conveyed in a relevant territory under provision having effect there, 10
 - (b) absconds in that territory before he is transferred there, and
 - (c) returns to England and Wales.
- (4) Section 81 has effect as if –
- (a) the patient’s absconding were an act specified in subsection (2), and
 - (b) in subsection (3), for paragraph (b) there were substituted – 15
 - “(b) taken to the hospital with which he is registered or returned to the custody of a person authorised to convey him under section 162(10),”;
- and sections 82, 83 (subject to subsection (5) below), 84 and 85 have effect accordingly. 20
- (5) Section 83(2) has effect as if, after “Chapters 3 to 7”, there were inserted “or under section 169(2)”.
- (6) Subsection (4) (as it applies to a patient falling within subsection (3)) is without prejudice to the power under section 176.

Transfers into England and Wales 25

165 Transfer of persons to England and Wales: arrangements etc

- (1) This section applies to a person who, by virtue of provision having effect in a relevant territory, is in a position in that territory corresponding to that of a relevant patient in England and Wales.
- (2) Subsection (3) applies if – 30
- (a) the managers of a hospital in England or Wales receive a request for that hospital to become responsible for a person to whom this section applies, and
 - (b) the request is made in pursuance of provision having effect in a relevant territory. 35
- (3) The managers of that hospital must as soon as practicable –
- (a) consider the request, and
 - (b) inform the person who made it (the “request maker”) of their determination as to whether it is appropriate for that hospital to become responsible for that person (subject to subsection (4)). 40
- (4) If the person is in a position in a relevant territory corresponding to that of a restricted patient, the managers of the hospital may not under subsection (3)(b)

- determine that it is appropriate as mentioned there unless the Secretary of State has agreed that the hospital may become responsible for the person.
- (5) The following provisions of this section apply if the managers of the hospital –
- (a) inform the request maker of their determination that it is appropriate for that hospital to become responsible for the person in question (and accordingly that they agree to the request), and 5
 - (b) receive notice from the request maker that that hospital is to become responsible for that person.
- (6) If the person for whom the hospital is to become responsible falls within a description specified by the appropriate authority in regulations, the managers of that hospital must determine whether it is appropriate for the person to be detained in that hospital. 10
- (7) In a case where the managers determine, in accordance with subsection (6), that it is not appropriate for the person to be so detained, the person is to be a non-resident patient. 15
- (8) In any other case, the person is to be a resident patient.
- (9) As soon as practicable after being notified under subsection (5)(b), the managers of the hospital must make such arrangements in relation to the person as they consider appropriate for –
- (a) his assessment in England and Wales (unless, by virtue of provision having effect in a relevant territory, he is in a position in that territory corresponding to that of a restricted patient), 20
 - (b) his medical treatment in England and Wales or the preparation there of a report on his mental condition (or both), and
 - (c) if the person is to be a resident patient, conveying the person to his destination in England or Wales. 25
- (10) Subsections (11) and (12) apply if the person is, by virtue of provision having effect in the relevant territory, in a position in that territory corresponding to that of a relevant patient who is not a restricted patient.
- (11) If the person is to be a non-resident patient while an assessment of him is carried out, the arrangements made under subsection (9) must make provision as to the conditions to be imposed in respect of the person to –
- (a) secure that the assessment may be carried out, or
 - (b) protect his health or safety or other persons.
- (12) The conditions may include –
- (a) a condition that the person – 35
 - (i) attends at a specified place at specified times,
 - (ii) resides at a specified place,
 - (iii) makes himself available for assessment during specified periods, 40
 - (b) a condition that the person does not engage in specified conduct.
- In this subsection, “specified” means specified in the condition in question.
- (13) The transfer of a person to England and Wales is subject to any provision having effect in a relevant territory requiring that conditions are met before a person may be transferred from that territory. 45

166 Transfer of persons to England and Wales: notice and registration etc

- (1) This section applies if arrangements under section 165(9) have been made in relation to a person.
- (2) As soon as practicable after the arrangements have been made, the managers of the hospital in England or Wales which is to become responsible for the person must – 5
- (a) notify –
 - (i) the person, and
 - (ii) if he is aged under 16, each person with parental responsibility for him (subject to subsection (4)) and, if practicable, such other persons who know him (if any) as they consider it appropriate to notify, 10
 - of the arrangements, and
 - (b) register him with the hospital (unless, by virtue of provision having effect in a relevant territory, he is in a position in that territory corresponding to that of a restricted patient). 15
- (3) The notice under subsection (2)(a) must –
- (a) be in the prescribed form, and
 - (b) contain the prescribed information.
- (4) The managers need not notify any particular person with parental responsibility under subsection (2)(a) if – 20
- (a) they think it would be inappropriate to do so, or
 - (b) it is impracticable to do so.
- (5) Subsection (6) applies if the person is to be a resident patient.
- (6) The managers of the hospital which is to become responsible for the person must secure that, on his arrival in England and Wales, he is conveyed to the hospital in accordance with the arrangements under section 165(9)(c) by a person authorised by them to do so. 25
- (7) An authorisation under subsection (6) must be in the prescribed form.

167 Transfer of unrestricted patients to England and Wales: appointment of clinical supervisor etc 30

- (1) This section applies if, by virtue of arrangements made under section 165(9), a hospital in England or Wales is to become responsible for an unrestricted patient.
- (2) The managers of the hospital must, as soon as practicable after the arrangements have been made – 35
- (a) give the appropriate authority notice of when, in accordance with those arrangements, the hospital is to become responsible for the patient,
 - (b) appoint an approved clinician to be in charge of the assessment and medical treatment of the patient in accordance with Part 2 or 3 (as the case may require), and 40
 - (c) give the approved clinician any information the managers have about the patient.
- (3) On receiving notice under subsection (2)(a), the appropriate authority must appoint a person in respect of whom the condition specified in subsection (4) 45

is met to act as the approved mental health professional in respect of the patient.

- (4) The condition is that he does not fall within the description specified for the purposes of paragraph (b) of section 14(5).
- (5) The appropriate authority may at any time appoint a person in respect of whom the condition specified in subsection (4) is met to succeed the person appointed under subsection (3) or this subsection. 5
- (6) In subsection (1), “unrestricted patient” means a person who, by virtue of provision having effect in a relevant territory, is in a position in that territory corresponding in England and Wales to that of a relevant patient who is not a restricted patient. 10

168 Appointment of nominated person etc

- (1) This section applies where an unrestricted patient has been transferred to England and Wales.
- (2) The approved mental health professional appointed under section 167(3) or (5) (as the case may require) must, as soon as practicable after the patient has been so transferred –
 - (a) appoint a nominated person for the patient in accordance with Chapter 1 of Part 8 (subject to section 234), and
 - (b) notify – 20
 - (i) the patient,
 - (ii) if he is aged under 16, each person with parental responsibility for him, subject to subsection (3), and
 - (iii) his nominated person,of the help available from IMHA advocates under the arrangements under section 247. 25
- (3) The approved mental health professional need not notify any particular person with parental responsibility for the patient under subsection (2)(b) if –
 - (a) he thinks it would be inappropriate to do so, or
 - (b) it is impracticable to do so. 30
- (4) “Unrestricted patient” has the same meaning as in section 167(1).

169 Effect of registration under section 166

- (1) The registration under section 166(2)(b) of a person who is to be assessed as a resident patient is sufficient authority for the managers of the hospital with which he is registered to admit and detain him until – 35
 - (a) he becomes liable to assessment as a non-resident patient,
 - (b) he is registered under section 78(2) with another hospital, or
 - (c) his assessment period ends.
- (2) The registration under section 166(2)(b) of a person who is to be assessed as a non-resident patient is sufficient authority for the clinical supervisor to require the person to comply with the notified conditions. 40
- (3) Conditions are notified conditions if –

- (a) they are the conditions in respect of which provision is made by virtue of subsection (11) of section 165 in arrangements made under subsection (9) of that section, and
- (b) the arrangements have been notified to the person under section 166(2)(a). 5
- (4) The person is not required to comply with any notified conditions imposed under subsection (2) after –
- (a) he becomes liable to assessment as a resident patient, or
- (b) his assessment period ends.
- (5) Sections 10, 24 to 33 and Schedule 5 and Chapters 4 to 10 of Part 2 apply in relation to a person registered under section 166(2)(b) as they apply in relation to a patient registered under section 22(1); and, accordingly, a person registered under section 166(2)(b) is to be treated for the purposes of this Act as a patient who is liable to assessment under Chapter 3 of Part 2 (whether as a resident or non-resident patient). 10 15
- (6) But for the purposes of subsection (5) –
- (a) section 10(2) has effect as if for the words from “with whom arrangements” to the end there were substituted “appointed under section 167(3) or (5), as the case may require”,
- (b) section 24 has effect as if – 20
- (i) subsections (1) to (3) were omitted, and
- (ii) in subsection (9), for “subsections (1), (4) and (6)” there were substituted “section 167(2)(b) and subsections (4) and (6)”,
- (c) section 25 has effect as if –
- (i) for subsection (3) there were substituted – 25
- “(3) The assessment of the patient may commence as soon as he is registered under section 166(2)(b).”, and
- (ii) for subsection (6)(b)(v) there were substituted –
- “(v) at the end of the period of 28 days beginning with the day on which the patient was registered under section 166(2)(b).”, 30
- (d) section 26 has effect as if –
- (i) in subsection (2)(a), for “section 15(2)” there were substituted “section 165(6)”, and 35
- (ii) in subsection (4)(b), the words from “against” onwards were omitted,
- (e) each of the following has effect as if for “section 23(4)” there were substituted “section 169(2)” –
- (i) section 27(2), 40
- (ii) section 29(2)(a),
- (iii) section 30(2), and
- (iv) in section 53(5), the definition of “relevant requirement”,
- (f) section 29(2)(a)(ii) has effect as if the words from “against” onwards were omitted, 45
- (g) sections 30(13) and 34(5) have effect as if, in each case, for “section 22(1)” there were substituted “section 166(2)(b)”,
- (h) section 31(9) has effect as if for the definition of “initial period” there

- were substituted –
- ““initial period”, in relation to a patient, means the period of 5 days beginning with the day on which he was registered under section 166(2)(b);”,
- (i) section 44(1) has effect as if for the words from “admitted” onwards there were substituted “registered under section 166(2)(b)”, 5
- (j) section 83(2) has effect as if, after “Chapters 3 to 7”, there were inserted “or under section 169(2)”, and
- (k) paragraph 8(7) of Schedule 5 has effect as if, after “of this Part”, there were inserted “or under section 169(2)”. 10
- (7) Subsection (8) applies to a person if he is to be assessed as a resident patient.
- (8) If the person absconds while being conveyed to a hospital in England or Wales in pursuance of section 166(6), section 81 has effect as if –
- (a) his absconding were an act specified in subsection (2), and
- (b) in subsection (3), for paragraph (b) there were substituted – 15
- ““(b) taken to the hospital with which he is registered;”,
- and sections 82, 83 (read in accordance with subsection (6)(j) above), 84 and 85 have effect accordingly.
- 170 Transfer of restricted patients to England and Wales: introductory**
- (1) This section applies if, by virtue of arrangements made under section 165(9), a hospital in England or Wales is to become responsible for a person falling within subsection (2). 20
- (2) A person falls within this subsection if, by virtue of provision having effect in a relevant territory, he is in a position in that territory corresponding in England and Wales to that of a relevant patient who is a restricted patient. 25
- (3) The managers of the hospital must, as soon as practicable after the arrangements under section 165(9) have been made, give the Secretary of State notice of when, in accordance with those arrangements, the hospital is to become responsible for the person.
- 171 Transfer of restricted patients to England and Wales: supplementary** 30
- (1) This section applies to a person who is transferred to England and Wales from a relevant territory and to whom section 170 applies.
- (2) The person is to be treated on his arrival in England or Wales as if the relevant one of the following were in force in respect of him, together with (except in the case of a hospital direction) a restriction order or restriction direction, as appropriate – 35
- (a) a mental health order,
- (b) a hospital direction,
- (c) a transfer for report direction, or
- (d) a transfer for treatment direction, 40
- and as if the hospital or hospital unit specified in the order or direction were the one to which he is being transferred.
- (3) But if a person is to be treated as if a hospital direction, a transfer for report direction or a transfer for treatment direction were in force in respect of him, any release date for that purpose (if he has one) is not to be determined in 45

accordance with section 132, 134 or 136 (as appropriate), but instead is to be the date corresponding to that date (if there is one) determined in accordance with the law of the relevant territory where the person was sentenced; and references below in this section to his release date are to be construed accordingly. 5

- (4) Subsection (6) applies if –
- (a) a person is to be treated as if a hospital direction, or a transfer for treatment direction and a restriction direction, were in force in respect of him, and
 - (b) before his release date, if any, the Secretary of State is notified by his clinical supervisor that not all of the conditions specified in subsections (3) to (5) of section 130 or (as appropriate) subsections (5) to (7) of section 135 are met in his case. 10
- (5) Subsection (6) also applies if –
- (a) a person is to be treated as if a transfer for report direction were in force in respect of him, and 15
 - (b) before his release date, if any, the approved clinician responsible for preparing the report on the person's mental condition notifies the Secretary of State that he is not satisfied that there is reason to suspect that the person is suffering from mental disorder. 20
- (6) Where this subsection applies, the Secretary of State may make arrangements for the person to be returned by an authorised person to the relevant territory from which he was transferred, and meanwhile kept in custody.
- (7) But if the person has not been returned before his release date, he must then be released, and not returned or kept in custody. 25
- (8) A person is authorised for the purposes of subsection (6) if he falls within a description specified by the Secretary of State in regulations.
- (9) The Secretary of State may by order make further provision in relation to the transfer to England and Wales of persons to whom section 170 applies.

Transfers: general 30

172 Transfers: general provisions

- (1) This section applies for the purposes of sections 161 to 171.
- (2) A patient is transferred to a relevant territory if a hospital there (or persons managing a hospital there) becomes (or become) responsible for doing anything in relation to him which would, if it were done in relation to him in England and Wales, constitute assessing him or providing him with medical treatment in accordance with Part 2 or 3 (as the case may require). 35
- (3) If a patient who is a relevant patient by virtue of section 160(2)(a) is transferred as mentioned in subsection (2), he ceases to be liable to assessment under Chapter 3 of Part 2. 40
- (4) If a patient who is a relevant patient by virtue of section 160(2)(b) is transferred as mentioned in subsection (2), any order (or further order) under Chapter 6 of Part 2 which is in force in respect of him ceases to have effect.

- (5) If a patient who is a relevant patient by virtue of subsection (2)(c) or (d) of section 160 is transferred as mentioned in subsection (2) above—
- (a) any mental health order or hospital direction (in a subsection (2)(c) case), or
 - (b) any transfer for report direction or transfer for treatment direction (in a subsection (2)(d) case),
- which is in force in respect of him ceases to have effect. 5
- (6) A person is transferred to England and Wales if a hospital in England or Wales becomes responsible for him.
- (7) A hospital in England or Wales is, or becomes, responsible for a person if it is, or becomes, responsible for—
- (a) assessing him,
 - (b) preparing a report about his mental condition, or
 - (c) providing him with medical treatment,
- in accordance with Part 2 or 3 (as the case may require). 10 15

Offences

173 Assisting persons in other jurisdictions to absent themselves without leave etc

- (1) Any person in England and Wales who—
- (a) induces a person who is in a position in a relevant territory corresponding to that of a patient who is a relevant patient by virtue of section 160(2)(a) or (b) to do or make any act or omission—
 - (i) specified in provision having effect in that territory, and
 - (ii) corresponding to any of the acts or omissions specified in subsection (2) or (7) of section 81, or20 25
 - (b) knowingly assists such a person to do or make such an act or omission, is guilty of an offence.
- (2) Any person in England and Wales who—
- (a) induces a person who is in a position in a relevant territory corresponding to that of a person remanded under section 88, 93 or 95, or further remanded under section 89, to do or make any act or omission—
 - (i) specified in provision having effect in that territory, and
 - (ii) corresponding to any of the acts or omissions specified in section 111(1),30 35
 - (b) induces a person who is in a position in a relevant territory corresponding to that of a person committed for medical treatment under section 94 to do or make any act or omission—
 - (i) specified in provision having effect in that territory, and
 - (ii) corresponding to any of the acts or omissions specified in section 112(1), or40
 - (c) knowingly assists a person mentioned in paragraph (a) or (b) to do or make such an act or omission, is guilty of an offence.
- (3) Any person in England and Wales who— 45

- (a) induces a person to abscond while –
- (i) he is being taken, conveyed or removed to or detained in any place under or by virtue of provision having effect in a relevant territory corresponding to any of sections 120(3), 121(5), 131(2) and (8), 133(2), 135(3) and 137(2), or 5
 - (ii) he is being taken to or detained in a place of safety under or by virtue of provision having effect in a relevant territory corresponding to any of sections 227 to 229, or
- (b) knowingly assists a person so to abscond,
is guilty of an offence. 10
- (4) Any person in England and Wales who knowingly harbours a person to whom subsection (6) applies is guilty of an offence.
- (5) Any person in England and Wales who knowingly gives a person to whom subsection (6) applies any assistance with intent to prevent, hinder or interfere with his being – 15
- (a) taken or retaken into custody,
 - (b) returned to the custody of the person in whose custody he ought to be, or
 - (c) taken or returned to the hospital or other place where he ought to be, is guilty of an offence. 20
- (6) This subsection applies to –
- (a) a person falling within paragraph (a) of subsection (1) who has done or made any act or omission to which sub-paragraphs (i) and (ii) of that paragraph apply,
 - (b) a person falling within paragraph (a) of subsection (2) who has done or made any act or omission to which sub-paragraphs (i) and (ii) of that paragraph apply, 25
 - (c) a person falling within paragraph (b) of that subsection who has done or made any act or omission to which sub-paragraphs (i) and (ii) of that paragraph apply, 30
 - (d) a person who has absconded while –
 - (i) being taken, conveyed or removed to or detained in any place under or by virtue of provision having effect in a relevant territory corresponding to any of sections 120(3), 121(5), 131(2) and (8), 133(2), 135(3) and 137(2), 35
 - (ii) being taken to or detained in a place of safety under or by virtue of provision having effect in a relevant territory corresponding to any of sections 227 to 229.
- (7) A person guilty of an offence under this section is liable – 40
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both,
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine of any amount, or to both.
- (8) For the purposes of this section – 45
- (a) references to subsection (2) of section 81 include references to that subsection read in accordance with section 127(7) (including that provision as applied by section 139(7)) and sections 164(4)(a) and 169(8)(a), and

- (b) references to subsection (7) of section 81 include references to that subsection read in accordance with section 157(5).
- (9) Section 282 applies to an offence under this section committed by a body corporate as it applies to an offence under Part 11 committed by a body corporate. 5

Transfer of foreign patients

174 Transfer of foreign patients

- (1) This section applies to a patient –
 - (a) who does not have the right of abode in the United Kingdom under the Immigration Act 1971 (c. 77), and 10
 - (b) in respect of whom there is in force an order mentioned in subsection (2),
but this is subject to subsection (3).
- (2) The orders are –
 - (a) a mental health order stating that the patient is to be provided with treatment as a resident patient, 15
 - (b) an order under paragraph 8(8) of Schedule 8 or an order further to that order under Chapter 6 of Part 2 authorising the medical treatment of the patient, in either case stating that the patient is to be provided with medical treatment as a resident patient. 20
- (3) This section does not apply if the patient has been given leave of absence from the hospital (or, if applicable, the hospital unit) in which he would otherwise be detained, unless his leave is subject to the condition that he reside in another hospital, or (if his leave of absence was from a hospital unit) in a hospital unit in another hospital. 25
- (4) A patient’s clinical supervisor may apply to the relevant Mental Health Tribunal for an order under this section if –
 - (a) he determines that it would be in the patient’s interests to transfer him to a place outside the British Islands, and
 - (b) he is satisfied that proper arrangements have been made for his treatment there. 30
- (5) If the patient is a restricted patient, the clinical supervisor may not make such an application unless the Secretary of State has consented to his doing so.
- (6) Sections 73 and 74 and Schedule 7 apply to an application to the Tribunal under this section as they apply to an application under or by virtue of Part 2. 35
- (7) The Tribunal may, if it thinks fit, make an order for the patient’s transfer to the place referred to in subsection (4)(a) in accordance with such arrangements as it may specify in the order.
- (8) The managers of the hospital responsible for the patient must secure that the patient is conveyed to the place in question in accordance with those arrangements by a person authorised by them to do so. 40
- (9) An authorisation under subsection (8) must be in a form set out in regulations made by the Secretary of State.

- (10) If a restriction order is in force in respect of the patient, the making of an order under this section, and the taking of any action in pursuance of it, do not affect it or any associated mental health order.
- (11) Accordingly, the restriction order (and the mental health order) apply to the patient if he returns to England and Wales at any time before the restriction order ceases to have effect. 5
- (12) The relevant Mental Health Tribunal for the purposes of this section is –
- (a) the Mental Health Tribunal for England, if the patient’s responsible hospital is in England,
 - (b) the Mental Health Tribunal for Wales, if that hospital is in Wales. 10

Other jurisdictions

175 Transfer and return of patients: Northern Ireland

- (1) References in this section to regulations are to regulations made by the Department of Health, Social Services and Public Safety.
- (2) Regulations may make provision which – 15
- (a) is about the transfer of a patient to Northern Ireland from England and Wales in pursuance of an authorisation under section 161(4), and
 - (b) corresponds to provision made by sections 165 and 166 about the transfer of a person to England and Wales from a relevant territory.
- (3) Regulations may make provision which – 20
- (a) is about the transfer of a person to Northern Ireland from Scotland in accordance with regulations under section 289 or subsection (1)(a) of section 290 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), and
 - (b) corresponds to provision made by regulations under subsection (1)(c) of that section about the reception in Scotland of a person removed from a territory specified in that paragraph. 25
- (4) Regulations may make provision –
- (a) for arrangements for the transfer of a person from Northern Ireland to England and Wales or Scotland, and 30
 - (b) which corresponds to provision made by section 161 about the transfer of a person to a relevant territory from England and Wales.
- (5) Subsection (6) applies to –
- (a) any patient who may be taken or retaken into custody under section 81 or 231, or 35
 - (b) any person who may be taken or retaken into custody under provision having effect in a relevant territory (other than Northern Ireland) and corresponding to either of those sections.
- (6) Regulations may make provision under which a patient or person to whom this subsection applies, and who is in Northern Ireland, may be – 40
- (a) taken into custody in Northern Ireland, and
 - (b) returned to England and Wales or the other relevant territory in question (as the case may require),
- by a person who falls within a description specified in the regulations.

176 Return of persons to relevant territories

- (1) This section applies to any person who may be taken or retaken into custody in a relevant territory under provision having effect there and corresponding to section 81 or 231.
- (2) If a person to whom this section applies is in England and Wales, he may be – 5
 - (a) taken into custody there, and
 - (b) returned to the relevant territory in question, by an approved mental health professional or a constable.

PART 5

MEDICAL TREATMENT 10

Electroconvulsive therapy: general

177 ECT: general

- (1) In this Part “ECT” means electroconvulsive therapy.
- (2) In this Part “registration period” means the period which – 15
 - (a) begins when a patient not already registered (or deemed to be registered) under any of the provisions mentioned in subsection (3) comes to be registered (or deemed to be registered) under one of them, and
 - (b) ends when he is no longer registered (or deemed to be registered) under any of those provisions. 20
- (3) The provisions are –
 - (a) sections 22(1), 78(2), 97(3) and 166(2)(b), and
 - (b) Schedules 8 and 9.

178 ECT: patient aged 16 or over

- (1) A patient aged 16 or over to whom subsection (2) applies may not be given any ECT, except as provided in sections 179 to 184. 25
- (2) This subsection –
 - (a) begins to apply to a patient on the first appointment during his registration period of a clinical supervisor for him, and
 - (b) ceases to apply to a patient when his registration period ends. 30

179 ECT: patient capable of consenting

- (1) The prohibition in section 178(1) does not apply in relation to a course of ECT if a certificate to which subsection (2) applies is in force.
- (2) This subsection applies to a certificate given by the patient’s clinical supervisor which states that – 35
 - (a) the patient has consented to the course of ECT,
 - (b) the nature, purpose and likely effects of the course of ECT were explained to the patient before he consented, and

- (c) the patient was capable of understanding the nature, purpose and likely effects of the course of ECT both when they were explained to him and when he consented.
- (3) A certificate to which subsection (2) applies ceases to have effect –
- (a) on completion of the course of ECT, 5
 - (b) if the patient withdraws his consent to the course of ECT,
 - (c) if the patient ceases to be capable of understanding the nature, purpose and likely effects of the course of ECT and has no reasonable prospect of regaining that capacity,
 - (d) if subsection (4) applies in relation to the patient, 10
 - (e) in accordance with regulations under section 190, or
 - (f) when the patient’s registration period ends,
- (whichever is earliest).
- (4) This subsection applies in relation to the patient if he ceases to be capable of understanding the nature, purpose and likely effects of the course of ECT but does not otherwise fall within paragraph (c) of subsection (3) and –
- (a) a Mental Health Tribunal determines an application made by his clinical supervisor under section 180(2), or 15
 - (b) if earlier, the relevant period ends.
- (5) The “relevant period” is the period which –
- (a) begins when the patient ceases to be capable of understanding the nature, purpose and likely effects of the course of ECT, and 20
 - (b) ends as specified in regulations made by the appropriate authority.

180 ECT: patient not capable of consenting

- (1) The prohibition in section 178(1) does not apply in relation to a course of ECT if an authorisation to which subsection (2) applies is in force. 25
- (2) This subsection applies to an authorisation of the course of ECT given on an application made by the patient’s clinical supervisor –
- (a) in the case of a patient registered with a hospital in England, by the Mental Health Tribunal for England, 30
 - (b) in the case of a patient registered with a hospital in Wales, by the Mental Health Tribunal for Wales.
- (3) The Tribunal may give an authorisation to which subsection (2) applies only if it is satisfied that the patient is not capable of understanding the nature, purpose and likely effects of the course of ECT. 35
- (4) An authorisation to which subsection (2) applies may specify one or more of the following –
- (a) the period for which it is to have effect,
 - (b) how often ECT may be given during that period,
 - (c) the total number of occasions on which ECT may be given during that period. 40
- (5) An authorisation to which subsection (2) applies ceases to have effect –
- (a) on completion of the course of ECT,
 - (b) if the patient becomes capable of understanding the nature, purpose and likely effects of the course of ECT, 45

- (c) as specified in accordance with subsection (4)(a),
 - (d) in accordance with regulations under section 190, or
 - (e) when the patient’s registration period ends,
- (whichever is earliest).

181 Medical expert 5

- (1) On receiving an application under section 180, the Tribunal must appoint a member of the Expert Panel who is a registered medical practitioner (“the medical expert”) to prepare a report for the Tribunal which deals with the merits of the application.
- (2) For the purpose of preparing that report, the medical expert must – 10
 - (a) exercise the power conferred by subsection (3)(a), and
 - (b) consult a registered nurse and one other person (who is neither a registered nurse nor a registered medical practitioner), both of whom have been professionally concerned with the patient’s medical treatment. 15
- (3) The medical expert may at any reasonable time –
 - (a) visit, interview and examine the patient in respect of whom the application is made (in private if he considers it appropriate), and
 - (b) require the production of and inspect any records relating to him which are kept by his clinical supervisor. 20
- (4) In determining for the purposes of subsection (3)(a) whether it is appropriate to visit, interview or examine the patient in private, the medical expert must have regard to any wishes and feelings of the patient about the visit, interview or examination being in private.

182 Emergency ECT: conditions 25

- (1) In relation to the provision of a course of ECT to a patient under section 183 or 184, “the treatment conditions” means the conditions specified in subsections (2) to (4).
- (2) The first treatment condition is that the course of ECT is immediately necessary to save his life. 30
- (3) The second treatment condition is that the course of ECT (not being irreversible) is immediately necessary to prevent a serious deterioration in his condition.
- (4) The third treatment condition is that the course of ECT (not being irreversible or hazardous) is immediately necessary to alleviate serious suffering by him. 35
- (5) For the purposes of subsections (3) and (4), a course of ECT is –
 - (a) irreversible if it has unfavourable irreversible physical or psychological consequences,
 - (b) hazardous if it entails significant physical hazard.

183 Emergency ECT: patient capable of consenting 40

- (1) The appropriate authority may by regulations provide that, if a certificate to which subsection (2) applies is in force –

- (a) the prohibition in section 178(1) does not apply in relation to a course of ECT, and
 - (b) the patient’s consent is not required for the provision to him of the course of ECT.
- (2) This subsection applies to a certificate given by the patient’s clinical supervisor which states that—
- (a) the patient is capable of understanding the nature, purpose and likely effects of the course of ECT,
 - (b) the patient has been given a reasonable time to consent to the course of ECT but has not done so, and
 - (c) one or more of the treatment conditions is met in relation to the course of ECT.
- (3) Regulations under subsection (1) may include anything which could be included in regulations made in connection with this section under section 190.
- (4) A certificate to which subsection (2) applies ceases to have effect—
- (a) on completion of the course of ECT,
 - (b) if the patient ceases to be capable of understanding the nature, purpose and likely effects of the course of ECT and has no reasonable prospect of regaining that capacity,
 - (c) in accordance with regulations under subsection (1) or section 190, or
 - (d) when the patient’s registration period ends,
- (whichever is earliest).

184 Emergency ECT: patient not capable of consenting

- (1) The prohibition in section 178(1) does not apply in relation to a course of ECT if a certificate to which subsection (2) applies is in force.
- (2) This subsection applies to a certificate given by the patient’s clinical supervisor which states that—
- (a) the patient is not capable of understanding the nature, purpose and likely effects of the course of ECT,
 - (b) there is no reasonable prospect that the patient will become so capable, and
 - (c) one or more of the treatment conditions is met in relation to the course of ECT.
- (3) A certificate to which subsection (2) applies ceases to have effect—
- (a) on completion of the course of ECT,
 - (b) if the patient becomes capable of understanding the nature, purpose and likely effects of the course of ECT,
 - (c) in accordance with regulations under section 190, or
 - (d) when the patient’s registration period ends,
- (whichever is earliest).

Electroconvulsive therapy: patient aged under 16

185 ECT: patient aged under 16

- (1) A patient aged under 16 who is not a relevant patient may not be given any ECT.
- (2) A relevant patient aged under 16 may not be given any ECT, except as provided in section 186 or 188. 5
- (3) A patient is a “relevant patient” for the purposes of this section and sections 186 and 188 at any time when either subsection (4) or subsection (5) applies to him.
- (4) This subsection –
 - (a) begins to apply to a patient on the first appointment during his registration period of a clinical supervisor for him, and 10
 - (b) ceases to apply to a patient when his registration period ends.
- (5) This subsection applies to a patient if subsection (4) does not apply to him but an approved clinician is responsible for his assessment or for supervising his medical treatment. 15

186 Tribunal authorisation of ECT: patient aged under 16

- (1) The prohibition in section 185(2) does not apply in relation to a course of ECT if an authorisation to which subsection (2) or (3) applies is in force.
- (2) This subsection applies to an authorisation of the course of ECT given by the High Court. 20
- (3) This subsection applies to an authorisation of the course of ECT given by the appropriate Mental Health Tribunal on an application made –
 - (a) by the patient’s clinical supervisor, or
 - (b) if he does not have a clinical supervisor, by the approved clinician responsible for his assessment or for supervising his medical treatment. 25
- (4) The “appropriate Mental Health Tribunal” –
 - (a) if the patient is registered with a hospital in England, means the Mental Health Tribunal for England,
 - (b) if the patient is registered with a hospital in Wales, means the Mental Health Tribunal for Wales, and 30
 - (c) in any other case, has the meaning given by rules made by the Lord Chancellor under section 74.
- (5) An authorisation to which subsection (2) or (3) applies may specify one or more of the following –
 - (a) the period for which it is to have effect, 35
 - (b) how often ECT may be given during that period,
 - (c) the total number of occasions on which ECT may be given during that period.
- (6) An authorisation to which subsection (2) or (3) applies ceases to have effect –
 - (a) on completion of the course of ECT, 40
 - (b) on the patient attaining the age of 16,
 - (c) as specified in accordance with subsection (5)(a),

- (d) in accordance with regulations under section 190, or
- (e) on the patient ceasing to be a relevant patient,
(whichever is earliest).

187 Medical expert: patient aged under 16

- (1) On receiving an application under section 186(3), the Tribunal must appoint a member of the Expert Panel who is a registered medical practitioner (“the medical expert”) to prepare a report for the Tribunal which deals with the merits of the application. 5
- (2) For the purpose of preparing that report, the medical expert must –
 - (a) exercise the power conferred by subsection (4)(a), 10
 - (b) in such circumstances (if any) as he is required to do so by regulations made by the appropriate authority, consult another registered medical practitioner of a description specified in the regulations,
 - (c) consult a registered nurse and one other person (who is neither a registered nurse nor a registered medical practitioner), both of whom have been professionally concerned with the patient’s medical treatment, and 15
 - (d) consult each person with parental responsibility for the patient.
- (3) But the medical expert need not consult any particular person with parental responsibility for the patient if – 20
 - (a) the medical expert thinks it would be inappropriate to do so, or
 - (b) it is impracticable to do so.
- (4) The medical expert may at any reasonable time –
 - (a) visit, interview and examine the patient in respect of whom the application is made (in private if he considers it appropriate), and 25
 - (b) require the production of and inspect any records relating to him which are kept by his clinical supervisor (or, if he does not have a clinical supervisor, by the approved clinician responsible for his assessment or for supervising his medical treatment).
- (5) In determining for the purposes of subsection (4)(a) whether it is appropriate to visit, interview or examine the patient in private, the medical expert must have regard to any wishes and feelings of the patient about the visit, interview or examination being in private. 30

188 Emergency ECT: patient aged under 16

- (1) The prohibition in section 185(2) does not apply in relation to a course of ECT if a certificate to which subsection (2) applies is in force. 35
- (2) This subsection applies to a certificate –
 - (a) given by the patient’s clinical supervisor, or
 - (b) if he does not have a clinical supervisor, given by the approved clinician responsible for his assessment or for supervising his medical treatment, 40

which states that one or more of the treatment conditions is met in the patient’s case in relation to the course of ECT.
- (3) A certificate to which subsection (2) applies may be given only with the agreement of a registered medical practitioner of a description specified in 45

regulations made by the appropriate authority (or, if the regulations so require, two such registered medical practitioners).

- (4) A certificate to which subsection (2) applies ceases to have effect –
 - (a) on completion of the course of ECT,
 - (b) on the patient attaining the age of 16, 5
 - (c) in accordance with regulations under section 190, or
 - (d) on the patient ceasing to be a relevant patient,(whichever is earliest).
- (5) Section 182 applies in relation to the provision of a course of ECT under this section as it applies in relation to the provision of such a course under sections 183 and 184. 10

Electroconvulsive therapy: supplementary

189 ECT: Tribunal proceedings

- (1) The following provisions apply to applications to a Mental Health Tribunal under sections 180 and 186 as they apply to applications to the Tribunal under or by virtue of Part 2 –
 - section 73,
 - section 74 (subject to subsection (2)), and
 - Schedule 7,(so far as applicable). 15 20
- (2) Section 74 has effect as if –
 - (a) in subsection (2) before paragraph (a) there were inserted –
“(za) for the purposes of section 186(4)(c),”
 - (b) in paragraph (a) of that subsection the words from “in a case” to “hospital in Wales” were omitted, 25
 - (c) paragraphs (b) to (e) of that subsection were omitted, and
 - (d) subsection (7) were omitted.

190 ECT: further provision

- (1) The appropriate authority may by regulations make further provision in connection with sections 179 to 188. 30
- (2) The regulations may in particular provide for –
 - (a) further requirements which must be met before a course of ECT may be given to a patient,
 - (b) the form of the certificates to which sections 179(2), 183(2), 184(2) and 188(2) apply and the period for which they are to have effect, 35
 - (c) notification to be given to the patient, and such other descriptions of persons as may be specified in the regulations, that such certificates have or have not been given,
 - (d) the period which must elapse after the giving of such a certificate before a further such certificate may be given, 40
 - (e) the maximum number of occasions on which ECT may be given in any period during which such a certificate, or an authorisation to which section 180(2) or 186(2) or (3) applies, is in force,

- (f) further circumstances in which such certificates and authorisations are to cease to have effect.
- (3) Any certificate to which section 179(2), 183(2), 184(2) or 188(2) applies given by a patient’s clinical supervisor must be included in the records relating to the patient which the clinical supervisor keeps. 5
- (4) Any certificate to which section 188(2) applies given by the approved clinician responsible for a patient’s assessment or for supervising his medical treatment must be included in the records relating to the patient which the approved clinician keeps.

Type A medical treatment 10

191 Type A medical treatment

- (1) The following descriptions of medical treatment are referred to in this Part as “type A medical treatments” –
- (a) any surgical operation the primary purpose of which is the destruction of brain tissue or the destruction of the functioning of brain tissue, and 15
- (b) such other descriptions of medical treatment as may be specified as type A medical treatments in regulations made by the appropriate authority.
- (2) Except as mentioned in sections 193 and 194, a patient may not be given any such treatment (and this prohibition is referred to in this Part as “the prohibition on type A medical treatment”). 20
- (3) But (notwithstanding sections 193 and 194) a patient aged under 16 may not be given any type A medical treatment which falls within subsection (1)(a).
- (4) Regulations under subsection (1)(b) which specify any medical treatment as a type A medical treatment may include transitional provision relating to any course of such a treatment begun (but not completed) before the coming into force of the regulations. 25
- (5) Before making any regulations under subsection (1)(b) the appropriate authority must consult such persons as appear to it to be appropriate.

192 Type A medical treatment: notification 30

- (1) If a patient’s clinical supervisor considers that the conditions specified in section 193(3) or 194(4) are met in relation to a course of a type A medical treatment, he must so notify the appropriate authority.
- (2) If the clinical supervisor considers that the conditions specified in section 194(4) are met in relation to that course of treatment, he must also notify – 35
- (a) any nominated person of the patient, and
- (b) any other person of a description specified in regulations made by the appropriate authority.
- (3) On receiving a notification under subsection (1) the appropriate authority must appoint – 40
- (a) a member of the Expert Panel who is a registered medical practitioner, and

- (b) two other members of that Panel who are not registered medical practitioners.
- (4) The persons appointed under subsection (3) must determine whether the conditions specified in section 193(3) or 194(4) are met in the patient's case.
- (5) If a patient does not have a clinical supervisor, subsections (1) and (2) apply as if the references there to the clinical supervisor were to the approved clinician responsible for the patient's assessment or for supervising his medical treatment. 5

193 Type A medical treatment: patient capable of consenting

- (1) The prohibition on type A medical treatment does not apply in relation to a course of a type A medical treatment if all the certificates to which subsection (2) applies are in force. 10
- (2) This subsection applies to certificates given by each of the persons appointed under section 192(3), each of which states that all of the conditions specified in subsection (3) are met in the patient's case. 15
- (3) The conditions are that—
 - (a) the patient has consented to the course of treatment,
 - (b) the nature, purpose and likely effects of the course of treatment were explained to the patient before he consented,
 - (c) the patient was capable of understanding the nature, purpose and likely effects of the course of treatment both when they were explained to him and when he consented, and 20
 - (d) it is in his best interests that he be given the course of treatment.
- (4) Before providing a certificate to which subsection (2) applies, each of the persons appointed under section 192(3) must consult— 25
 - (a) a registered nurse and one other person (who is neither a registered nurse nor a registered medical practitioner), both of whom have recently been professionally concerned with the patient's medical treatment,
 - (b) any nominated person of the patient, if practicable, and 30
 - (c) any carer of the patient (unless he falls within paragraph (b)), subject to subsections (5) and (6) and if practicable.
- (5) They must not consult the carer without first ascertaining the patient's wishes and feelings about their doing so (unless inappropriate or impracticable).
- (6) If they consider that, having regard to the patient's wishes and feelings, it would be inappropriate to consult the carer, they must not do so. 35
- (7) A person required by subsection (4) to consult may do so jointly with one or both of the other persons so required.
- (8) A certificate to which subsection (2) applies ceases to have effect— 40
 - (a) on completion of the course of type A medical treatment,
 - (b) if the patient withdraws his consent to the course of type A medical treatment,
 - (c) if the patient ceases to be capable of understanding the nature, purpose and likely effects of the course of type A medical treatment and has no reasonable prospect of regaining that capacity, or 45

(d) in accordance with regulations under section 195,
(whichever is earliest).

194 Type A medical treatment: patient not capable of consenting

- (1) The prohibition on type A medical treatment does not apply in relation to a course of such a treatment if an authorisation to which subsection (2) applies is in force. 5
- (2) This subsection applies to an authorisation of the course of type A medical treatment given by the High Court.
- (3) An application for an authorisation to which subsection (2) applies may not be made unless each of the persons appointed under section 192(3) has certified in writing that all of the conditions specified in subsection (4) are met in the patient's case. 10
- (4) The conditions are that—
- (a) the patient is not capable of understanding the nature, purpose and likely effects of the course of the type A medical treatment, 15
 - (b) there is no reasonable prospect that the patient will become so capable,
 - (c) the patient is unlikely to resist the treatment, and
 - (d) it is in the patient's best interests that he be given the treatment.
- (5) Before giving a certificate under subsection (3), each of the persons appointed under section 192(3) must consult— 20
- (a) (unless inappropriate or impracticable) the patient,
 - (b) a registered nurse and one other person (who is neither a registered nurse nor a registered medical practitioner), both of whom have recently been professionally concerned with the patient's medical treatment, and 25
 - (c) any nominated person of the patient, if practicable.
- (6) Before giving such a certificate each of those persons must also (if practicable) consult any carer of the patient as to whether it appears to him that the patient's wishes and feelings about the proposed treatment can be ascertained and, if so, what those wishes and feelings are (but this is subject to subsections (7) and (8)). 30
- (7) Those persons must not consult the carer without first ascertaining the patient's wishes and feelings about their doing so (unless inappropriate or impracticable).
- (8) If they consider that, having regard to the patient's wishes and feelings, it would be inappropriate to consult the carer, they must not do so. 35
- (9) A person required by subsection (5) or (6) to consult may do so jointly with one or both of the other persons so required.
- (10) An authorisation to which subsection (2) applies ceases to have effect— 40
- (a) on completion of the course of type A medical treatment,
 - (b) if the patient becomes capable of understanding the nature, purpose and likely effects of the course of treatment, or
 - (c) in accordance with regulations under section 195,
(whichever is earliest).

195 Type A medical treatment: further provision

- (1) The appropriate authority may by regulations make further provision in connection with sections 192 to 194.
- (2) The regulations may in particular provide for –
 - (a) the form and content of notifications under section 192, 5
 - (b) the form of the certificates to be given under sections 193 and 194, the period for which they are to have effect, and to whom they are to be given,
 - (c) notification to be given to the patient, and such other descriptions of persons as may be specified in the regulations, that certificates have or have not been given, and 10
 - (d) the period for which an authorisation to which section 194(2) applies is to have effect.

Type B medical treatment

196 Type B medical treatment 15

- (1) In this Part “type B medical treatment” means such descriptions of medical treatment as may be specified as such in regulations made by the appropriate authority.
- (2) Regulations under subsection (1) may not specify –
 - (a) ECT, or 20
 - (b) any type A medical treatment.
- (3) Regulations under subsection (1) which specify any medical treatment as a type B medical treatment may include transitional provision relating to any course of such a treatment begun (but not completed) before the coming into force of the regulations. 25
- (4) Before making any regulations under subsection (1) which specify any medical treatment the appropriate authority must consult such persons as appear to it to be appropriate.

197 Regulation of type B medical treatment

- (1) Regulations made under section 196 may provide that a patient who falls within subsection (5) or (6) may not be given any type B medical treatment (and this prohibition is referred to in this section as “the prohibition on type B medical treatment”). 30
- (2) But the regulations may include provision as to the cases in which the prohibition on type B medical treatment does not apply in relation to the giving of a course of such a treatment to such a patient. 35
- (3) Those cases may include cases in which –
 - (a) a clinical supervisor has been appointed for the patient,
 - (b) the patient consents to a course of a type B medical treatment,
 - (c) the patient’s care plan provides for such a course of treatment to be given to him, 40
 - (d) a court or a Mental Health Tribunal authorises the giving of such a course of treatment to the patient,

- (e) it is immediately necessary to give such a course of treatment to the patient.
- (4) The regulations may also include provision as to –
- (a) the cases in which a patient’s consent is not required for him to be given a course of a type B medical treatment, 5
 - (b) the number of occasions on which such a course of treatment may be given to a patient during any period,
 - (c) requirements which must be complied with before such a course of treatment may be given to a patient,
 - (d) requirements which must be complied with during any such course of treatment. 10
- (5) A patient falls within this subsection if he is aged under 16.
- (6) A patient falls within this subsection if he is aged 16 or over and –
- (a) is registered with a hospital under section 22(1), 78(2) or 166(2)(b), or
 - (b) is deemed by section 97(3) or Schedule 8 or 9 to be registered with a hospital. 15

Other medical treatment

198 Application of sections 199 and 200

- (1) Sections 199 and 200 apply to any medical treatment which is not –
- (a) ECT, 20
 - (b) type A medical treatment, or
 - (c) type B medical treatment.
- (2) A patient is a compulsory patient for the purposes of sections 199 and 200 if subsection (3), (5) or (6) applies to him.
- (3) This subsection applies to a resident patient who is liable to be detained in a hospital under Part 2 or 3 and – 25
- (a) is detained in that hospital, or
 - (b) has been given leave of absence from that hospital subject to a condition that he resides at another hospital and is at that other hospital.
- (4) In subsection (3) “leave of absence” means leave of absence granted – 30
- (a) by a Mental Health Tribunal,
 - (b) under section 30, 62 or 127, or
 - (c) under Chapter 1 of Part 3.
- (5) This subsection applies to a non-resident patient who –
- (a) is subject to a condition requiring him to attend a hospital which is not suspended, and 35
 - (b) is at that hospital having complied with that condition or having been conveyed there under the power conferred by section 80.
- (6) This subsection applies to a non-resident patient who –
- (a) is subject to a condition requiring him to attend a hospital which is suspended subject to a condition that he attends another hospital, and 40
 - (b) is at that other hospital having complied with that condition or having been conveyed there under the power conferred by section 80.

- (7) References in subsections (5) and (6) to a condition requiring a patient to attend hospital which is suspended are to such a condition which has been suspended under section 30 or 62.

199 Compulsory treatment of Part 2 patients

- (1) The consent of a compulsory patient who – 5
 (a) is liable to assessment under Chapter 3 of Part 2, and
 (b) in respect of whom a care plan is in force,
is not required for the provision to him of any medical treatment to which this section applies and which is described in his care plan under section 31(3)(a).
- (2) The consent of a compulsory patient in respect of whom an order (or further order) authorising assessment under Chapter 6 of Part 2 is in force is not required for the provision to him of any medical treatment to which this section applies and which is described – 10
 (a) in the plan approved by the Tribunal under subsection (2)(a) of section 49, or 15
 (b) where a plan is approved by the Tribunal with modifications under subsection (2)(b) of that section, in the plan as modified by the order.
- (3) The consent of a compulsory patient in respect of whom an order (or further order) authorising medical treatment under Chapter 6 of Part 2 is in force is not required for the provision to him of any medical treatment to which this section applies and which is described – 20
 (a) in the plan approved by the Tribunal under subsection (2)(a) of section 46, or
 (b) where a plan is approved by the Tribunal with modifications under subsection (2)(b) of that section, in the plan as modified by the order. 25
- (4) The consent of a compulsory patient in respect of whom an order to which subsection (5) applies is in force is not required for the provision to him of any medical treatment to which this section applies and which is described – 30
 (a) in the plan approved by the Tribunal under subsection (2)(a) of section 59, or
 (b) where a plan is approved by the Tribunal with modifications under subsection (2)(b) of that section, in the plan as modified by the order.
- (5) This subsection applies to an order (or further order) authorising medical treatment or assessment – 35
 (a) made under Chapter 6 of Part 2, and
 (b) varied under section 59.

200 Compulsory treatment of Part 3 patients

- (1) The consent of a compulsory patient in respect of whom an order authorising medical treatment under section 92 is in force is not required for the provision to him of any medical treatment to which this section applies and which is described – 40
 (a) in the plan approved by the Tribunal under subsection (7)(a) of section 92, or
 (b) where a plan is approved by the Tribunal with modifications under subsection (7)(b) of that section, in the plan as modified by the order. 45

- (2) The consent of a compulsory patient who is a registered patient and in respect of whom a care plan is in force under section 99 is not required for the provision to him of any medical treatment to which this section applies and which is described in his care plan under section 99(3)(a). 5
- (3) The consent of a compulsory patient who is a registered patient is not required for the provision to him of any medical treatment to which this section applies and which is described – 5
- (a) in the plan approved by the Tribunal under subsection (4)(b) of section 100, or
- (b) where a plan is approved by the Tribunal with modifications under subsection (4)(c) of that section, in the plan as modified by the order. 10
- (4) The consent of a compulsory patient who is a registered patient is not required for the provision to him of any medical treatment to which this section applies and which is described –
- (a) in the plan approved by the court under subsection (3)(a) of section 101, or 15
- (b) where a plan is approved by the court with modifications under subsection (3)(b) of that section, in the plan as modified by the court.
- (5) The consent of a compulsory patient in respect of whom a mental health order is in force is not required for the provision to him of any medical treatment to which this section applies and which is described – 20
- (a) in the plan approved by the court under subsection (2)(a) of section 118, or
- (b) where a plan is approved by the court with modifications under subsection (2)(b) of that section, in the plan as modified by the order. 25
- (6) The consent of a compulsory patient who is subject to a transfer for treatment direction and in respect of whom a care plan is in force under paragraph 7 of Schedule 9 is not required for the provision to him of any medical treatment to which this section applies and which is described in the plan under subparagraph (3)(a) of that paragraph. 30
- (7) The consent of a compulsory patient who is subject to a hospital direction and in respect of whom a care plan is in force by virtue of corresponding provision made by virtue of section 131(9) is not required for the provision to him of any medical treatment to which this section applies and which is described in the plan under that corresponding provision. 35
- (8) In this section “registered patient” means a patient who is a registered patient by virtue of section 97(5).

Interpretation

201 Interpretation: Part 5

- (1) References in this Part to a patient’s clinical supervisor are to the clinical supervisor appointed in respect of him under or by virtue of this Act. 40
- (2) References in this Part to a course of medical treatment include, where appropriate in relation to any particular description of medical treatment, a single treatment.

PART 6

INFORMAL TREATMENT OF PATIENTS AGED UNDER 18

CHAPTER 1

PATIENTS AGED 16 OR 17

- 202 Informal treatment etc of patients aged 16 or 17** 5
- (1) This section applies to a patient who is aged 16 or 17 years.
 - (2) Subsection (3) applies if the patient is –
 - (a) capable of expressing his wishes, and
 - (b) requires treatment for mental disorder.
 - (3) Arrangements may be made by the patient – 10
 - (a) for him to be admitted to hospital and remain there and be treated for mental disorder, or
 - (b) otherwise for him to be treated for mental disorder,and he may be so admitted, so remain and be so treated, or be so treated, in pursuance of the arrangements, even though there are one or more persons who have parental responsibility for him. 15
 - (4) Subsection (5) applies if the patient refuses to consent to or resists –
 - (a) being admitted to hospital and remaining there and being treated for mental disorder, or
 - (b) otherwise being treated for mental disorder. 20
 - (5) The patient’s refusal to consent or resistance may not be overridden by the giving of consent by a person who has parental responsibility for him.
 - (6) References in this section to the patient being admitted to hospital and remaining there and being treated for mental disorder, or being treated for mental disorder, are references to his being admitted to hospital and remaining there and being so treated, or being so treated, otherwise than in accordance with Part 2. 25

CHAPTER 2

PATIENTS AGED UNDER 16

Child patients qualifying for safeguards 30

203 Interpretation: Chapter 2

- (1) Subsections (2) and (3) apply for the purposes of this Chapter.
- (2) References to a child are to a person under the age of 16.
- (3) References to the consenting parent, in relation to a patient who is a child, are to a person – 35
 - (a) with parental responsibility for the patient, and
 - (b) who has consented to any of the relevant procedures being carried out in respect of the patient.

- (4) For the purposes of subsection (3), the relevant procedures, in respect of a patient, are—
- (a) the assessment of him under section 207,
 - (b) the provision to him of medical treatment for mental disorder,
 - (c) his being taken and conveyed to hospital, and 5
 - (d) his admission and detention there.

204 Qualifying child patients

- (1) A patient for whom a clinical supervisor has been appointed under section 205(5) is a qualifying child patient for the purposes of this Chapter.
- (2) A patient ceases to be a qualifying child patient— 10
- (a) on attaining the age of 16, or
 - (b) in accordance with section 207(8), 214(12) or 218(8)(a).

205 Duty to determine whether child patient to be assessed for safeguards

- (1) The appropriate authority must, if requested to do so by any person, determine whether the conditions specified in section 207(2) to (7) appear to be met in the case of a patient who is a child. 15
- (2) Before making a determination under subsection (1), the appropriate authority must consult—
- (a) the patient’s consenting parent,
 - (b) each other person with parental responsibility for him (subject to subsection (9)), and 20
 - (c) any carer of the patient (unless he falls within paragraph (a) or (b)), subject to subsection (3) and if practicable.
- (3) Section 12(2) and (4) to (6) applies to the requirement under subsection (2)(c) as it applies to any provision of Part 2 requiring a person to consult any carer of a patient. 25
- (4) Subsections (5) to (8) apply if the appropriate authority determines that the conditions specified in section 207(2) to (7) appear to be met in the patient’s case.
- (5) The appropriate authority must, as soon as practicable after making the determination— 30
- (a) notify— 35
 - (i) the patient,
 - (ii) his consenting parent, and
 - (iii) each other person with parental responsibility for him (subject to subsection (9)),
of the determination and the reasons for it,
 - (b) appoint an approved clinician to be in charge of the assessment of the patient and his medical treatment in accordance with this Chapter,
 - (c) secure that the patient is assessed under section 207 by the approved clinician, and 40
 - (d) appoint an approved mental health professional in respect of whom the condition specified in subsection (6) is met to act in respect of the patient.

- (6) The condition is that he does not fall within the description specified for the purposes of paragraph (b) of section 14(5).
- (7) The appropriate authority may at any time appoint –
- (a) an approved clinician, or
 - (b) an approved mental health professional in respect of whom the condition specified in subsection (6) is met,
- to succeed the person of that description appointed under subsection (5) or this subsection. 5
- (8) The appropriate authority must, as soon as practicable after appointing an approved clinician under subsection (5) or (7), notify – 10
- (a) the patient,
 - (b) his consenting parent, and
 - (c) each other person with parental responsibility for him (subject to subsection (9)),
- of the appointment. 15
- (9) The appropriate authority need not consult any particular person with parental responsibility under subsection (2)(b), or notify such a person under subsection (5)(a) or (8)(c), if in any of those cases –
- (a) it thinks it would be inappropriate to do so, or
 - (b) it is impracticable to do so. 20
- (10) The approved clinician appointed in respect of the patient under subsection (5) or (7) (as the case may require) is referred to in this Chapter as the patient’s “clinical supervisor”.

206 Duty of hospital managers to request assessment of existing child patient

- (1) If – 25
- (a) treatment for mental disorder is being provided to a patient who is a child at a hospital otherwise than in accordance with Part 2 or 3, and
 - (b) it appears to the registered medical practitioner responsible for the treatment that the conditions specified in section 207(2) to (7) may be met in the patient’s case,
- the managers of the hospital must request the appropriate authority to determine under section 205(1) whether those conditions appear to be met. 30
- (2) If –
- (a) a patient who is a child is liable to assessment under Chapter 3 of Part 2 or there is in force an order or further order under Chapter 6 of that Part, or an order under paragraph 8 of Schedule 8, authorising the medical treatment or assessment of a patient who is a child, and 35
 - (b) it appears to the clinical supervisor appointed in respect of the patient under Part 2 or that Schedule that the conditions specified in section 207(2) to (7) may be met in the patient’s case,
- the managers of the hospital with which the patient is registered or of the responsible hospital within the meaning of that Schedule (as the case may require) must request the appropriate authority to determine under section 205(1) whether those conditions appear to be met. 40

207 Assessment for safeguards: child patients

- (1) The assessment of a patient under this section is for the purpose of determining whether the conditions specified in subsections (2) to (7) are met in the case of a patient who is a child.
- (2) The first condition is that the patient is suffering from mental disorder. 5
- (3) The second condition is that that mental disorder is of such a nature or degree as to warrant the provision of medical treatment to him.
- (4) The third condition is that it is necessary –
 - (a) for the protection of the patient from –
 - (i) suicide or serious self-harm, or 10
 - (ii) serious neglect by him of his health or safety, or
 - (b) for the protection of other persons, that medical treatment be provided to the patient.
- (5) The fourth condition is that –
 - (a) it is necessary for the patient to be resident at a hospital for the purpose of the provision of the treatment to him, and 15
 - (b) that is likely to continue to be the case for more than 7 days beginning with the day on which the question as to whether paragraph (a) applies fell to be determined.
- (6) The fifth condition is – 20
 - (a) in the case of a patient who is capable of expressing his wishes, that he does not wish the treatment to be provided, or
 - (b) in the case of a patient who is not so capable, that he resists the treatment.
- (7) The sixth condition is that the treatment can lawfully be provided to the patient without him being subject to the provisions of Part 2. 25
- (8) If the clinical supervisor determines that any of those conditions is not met in the patient’s case, the patient ceases to be a qualifying child patient.

208 Assessment of child patient: supplementary

- (1) The appropriate authority must secure that the assessment is made not later than the end of 7 days beginning with the day on which a clinical supervisor is appointed for the patient under section 205(5). 30
- (2) If because of exceptional circumstances it is impracticable to make the assessment within the 7 days, the appropriate authority must secure that it is made as soon as is practicable. 35
- (3) In carrying out the assessment the clinical supervisor must consult –
 - (a) the patient’s consenting parent,
 - (b) each other person with parental responsibility for him (subject to subsection (6)), and
 - (c) any carer of the patient (unless he falls within paragraph (a) or (b)), 40
subject to subsection (7) and if practicable.
- (4) The clinical supervisor must make a record of –
 - (a) his determination under section 207 and the reasons for it, and

- (b) if subsection (2) applies, the exceptional circumstances in question.
- (5) The clinical supervisor must also notify the following persons of his determination under section 207 –
 - (a) the patient,
 - (b) his consenting parent, 5
 - (c) each other person with parental responsibility for him (subject to subsection (6)), and
 - (d) any carer of the patient (unless he falls within paragraph (b) or (c)).
- (6) The clinical supervisor need not consult any particular person with parental responsibility for the patient under subsection (3)(b), or notify such a person under subsection (5)(c), if – 10
 - (a) he thinks it would be inappropriate to do so, or
 - (b) it is impracticable to do so.
- (7) Section 12(2) and (4) to (6) applies to the requirement under subsection (3)(c) as it applies to any provision of Part 2 requiring a person to consult any carer of a patient. 15

The safeguards

209 Advocacy and appointment of nominated person: qualifying child patients

- (1) The approved mental health professional appointed under section 205(5) or (7) (as the case may require) must, as soon as practicable after his appointment – 20
 - (a) notify the patient of the help available from IMHA advocates under the arrangements under section 247,
 - (b) appoint a nominated person for the patient in accordance with Chapter 1 of Part 8 (subject to section 234), and
 - (c) notify the nominated person of the help so available. 25
- (2) The appropriate authority must –
 - (a) as soon as practicable after the appointment of the nominated person, notify him of the appointment of the clinical supervisor under subsection (5) of section 205,
 - (b) as soon as practicable after appointing a clinical supervisor under subsection (7) of that section, notify the nominated person of the appointment, 30(unless, in either case, he falls within paragraph (b) or (c) of subsection (8) of that section).
- (3) As soon as practicable after the appointment of the nominated person, the clinical supervisor must – 35
 - (a) consult the patient’s nominated person in carrying out the assessment of the patient under section 207, if practicable (unless he falls within any of paragraphs (a) to (c) of section 208(3)), and
 - (b) notify him of the determination under section 207 and the reasons for it 40 (unless he falls within any of paragraphs (b) to (d) of section 208(5)).

210 Preparation of care plan for qualifying child patient

- (1) The managers of a hospital at which medical treatment is provided to a qualifying child patient must secure that –

-
- (a) a care plan is prepared for the patient by the clinical supervisor, and
 - (b) the plan is included in the patient’s records.
- (2) The managers must secure that the plan is prepared not later than the end of 7 days beginning with the day on which a clinical supervisor is appointed for the patient under section 205(5). 5
- (3) If because of exceptional circumstances it is impracticable to prepare the plan within 7 days, the managers must secure that it is prepared as soon as is practicable.
- (4) Any such exceptional circumstances must be recorded by the managers in the patient’s records. 10
- (5) In preparing a plan for the patient, the clinical supervisor must consult –
- (a) the patient, unless inappropriate or impracticable,
 - (b) the patient’s consenting parent,
 - (c) each other person with parental responsibility for him (subject to subsection (6)), 15
 - (d) the patient’s nominated person, if practicable (unless he falls within paragraph (b) or (c)), and
 - (e) any carer of the patient (unless he falls within any of paragraphs (b) to (d)), subject to subsection (9) and if practicable.
- (6) The clinical supervisor need not consult any particular person with parental responsibility for the patient if – 20
- (a) he thinks it would be inappropriate to do so, or
 - (b) it is impracticable to do so.
- (7) A plan must – 25
- (a) include the required information, and
 - (b) be prepared in the form prescribed by the appropriate authority in regulations.
- (8) In subsection (7)(a), the “required information” means – 30
- (a) a description of the medical treatment which is to be provided to the patient during the period for which the plan applies, and
 - (b) such other information relating to the care of the patient during that period as may be prescribed by the appropriate authority in regulations.
- (9) Section 12(2) and (4) to (6) applies to the requirement under subsection (5)(e) as it applies to any provision of Part 2 requiring a person to consult any carer of a patient. 35

211 Approval of care plan for qualifying child patient

- (1) The clinical supervisor must, as soon as practicable after preparing a care plan, send a copy of it for approval to a person (the “medical expert”) appointed by the appropriate authority for that purpose. 40
- (2) The medical expert must be a member of the Expert Panel who is a registered medical practitioner.
- (3) The medical expert must first –
 - (a) examine the patient,

-
- (b) satisfy himself that section 210(5) has been complied with, and
(c) discuss the treatment specified in the plan with the clinical supervisor.
- (4) If the medical expert is satisfied that the treatment specified in the plan is appropriate in the patient's case, taking into account the nature or degree of his mental disorder and all other circumstances of his case, he must approve the plan. 5
- (5) The medical expert may approve the plan with modifications agreed with the clinical supervisor, and subsections (1)(b) and (5) to (9) of section 210 apply to the modified plan as they apply to the original plan.
- (6) If the medical expert does not approve the plan under subsection (4) or (5) within the time prescribed by the appropriate authority in regulations, the clinical supervisor must apply to— 10
- (a) the Mental Health Tribunal for England, if the patient is resident at a hospital in England, or
(b) the Mental Health Tribunal for Wales, if the patient is resident at a hospital in Wales, 15
- for approval of the plan.
- (7) If on an application under subsection (6) the Tribunal in question is satisfied that the treatment specified in the plan is appropriate in the patient's case, taking into account the nature or degree of his mental disorder and all other circumstances of his case, it must approve the plan. 20
- (8) If on such an application the Tribunal in question is not so satisfied, it must refuse the application.
- (9) If the Tribunal refuses the application, it— 25
- (a) must notify the managers of the hospital at which the patient is resident, and
(b) may, if it determines that it is appropriate to do so, notify the relevant local authority,
- of that fact.
- (10) The relevant local authority, for the purposes of subsection (9)(b), is the local social services authority in whose area the patient is ordinarily resident at the time when the Tribunal refuses the application (and, for the purposes of determining where he is so resident, any period during which he is resident at a hospital under this Chapter is to be disregarded). 30
- (11) If a local social services authority is notified under subsection (9)(b), it must— 35
- (a) take such steps as are practicable to enable it to determine whether the patient's welfare is adequately safeguarded and promoted, and
(b) consider the extent to which (if at all) it should exercise any of its functions under the Children Act 1989 (c. 41) in relation to the patient.
- (12) A medical expert may, for the purpose of discharging functions under this section, at any reasonable time— 40
- (a) visit, interview and examine the patient (in private if he considers it appropriate), and
(b) require the production of and inspect any records relating to the patient which are kept by the clinical supervisor of the patient. 45
- (13) In determining for the purposes of subsection (12)(a) whether it is appropriate to visit, interview or examine the patient in private, the medical expert must

have regard to any wishes and feelings of the patient about the visit, interview or examination being in private.

212 Approved care plan: supplementary

- (1) The clinical supervisor must send a copy of the care plan to –
 - (a) the patient, 5
 - (b) the patient’s consenting parent,
 - (c) each other person with parental responsibility for him, subject to subsections (2) to (5), and
 - (d) the patient’s nominated person (unless he falls within paragraph (b) or (c)), subject to subsections (2) to (4) and (6), 10
 as soon as practicable after it is approved under section 211.
- (2) The clinical supervisor may not send a copy of the care plan to –
 - (a) any particular person with parental responsibility for the patient under paragraph (c) of subsection (1), or
 - (b) the patient’s nominated person under paragraph (d) of that subsection, 15
 without first ascertaining the patient’s wishes and feelings about his so sending such a copy (unless it is inappropriate or impracticable to do so).
- (3) The clinical supervisor must –
 - (a) make a determination about whether it would be appropriate to send a copy of the plan to the person in question, and 20
 - (b) have regard to the patient’s wishes and feelings in making that determination.
- (4) If the clinical supervisor determines that it would not be appropriate to send a copy of the plan to the person in question, he must not do so and, accordingly, the requirement under subsection (1)(c) or (d) (as the case may require) so to send such a copy ceases to have effect. 25
- (5) The clinical supervisor need not send a copy of the care plan to any particular person with parental responsibility for the patient under paragraph (c) of subsection (1) if it is impracticable to do so.

213 Amendment of care plan for qualifying child patient 30

- (1) The clinical supervisor may amend a qualifying child patient’s care plan at any time.
- (2) Sections 210(5) to (9), 211 and 212 apply to an amended care plan as they apply to a care plan.
- (3) If the clinical supervisor amends a qualifying child patient’s care plan, the managers of the hospital at which the patient is resident must secure that the amended plan is included in the patient’s records as soon as practicable after it is prepared. 35

214 Review: qualifying child patients

- (1) A care plan for a qualifying child patient must specify the date on or before which the patient’s clinical supervisor must carry out a review (the “review date”). 40

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- (2) The first review date must be not more than 3 months after the day on which the plan is approved under section 211.
- (3) Each subsequent review date must be not more than 3 months after the previous one.
- (4) If a care plan is amended under section 213, it must substitute for the next review date specified in the plan a date not more than 3 months after the day on which the amended plan is approved under section 211 (and subsection (3) applies to the amended plan). 5
- (5) The patient’s clinical supervisor must carry out a review if the patient’s consenting parent withdraws his consent to any of the relevant procedures (within the meaning of section 203(4)) being carried out in respect of the patient. 10
- (6) Any of the persons mentioned in subsection (7) may request a review at any time (subject to subsection (8)).
- (7) The persons are – 15
- (a) the patient,
 - (b) the patient’s consenting parent,
 - (c) any other person with parental responsibility for him, and
 - (d) the patient’s nominated person.
- (8) Not more than one request may be made under subsection (6) in any applicable period, whether by a person who has already made such a request in the period in question or any other person mentioned in subsection (7). 20
- (9) For the purposes of subsection (8) – 25
- (a) the first applicable period is the period beginning with the day on which the care plan is approved under section 211 and ending on the first review date, and
 - (b) thereafter, each period beginning with one review date and ending on the subsequent one is an applicable period.
- (10) When a request is made under subsection (6), the clinical supervisor may either – 30
- (a) carry out a review at that time, or
 - (b) refuse the request and notify the person who made the request of his reasons for doing so.
- (11) On each review the clinical supervisor must consider – 35
- (a) whether the conditions specified in section 207(2) to (7) are met in the patient’s case,
 - (b) the date to be substituted in the care plan as the next review date, and
 - (c) whether the care plan should be otherwise amended.
- (12) If the clinical supervisor determines under subsection (11)(a) that any of the conditions is not met in the patient’s case, the patient ceases to be a qualifying child patient. 40

215 Review: notifications

- (1) The patient’s clinical supervisor must notify each of the persons mentioned in subsection (2) of the determinations made on any review under section 214 and the reasons for them.
- (2) The persons are – 5
 - (a) the patient,
 - (b) the patient’s consenting parent,
 - (c) each other person with parental responsibility for him (subject to subsections (3) and (4)), and
 - (d) the patient’s nominated person (unless he falls within paragraph (b) or (c)). 10
- (3) Subsection (4) applies in relation to any person falling within paragraph (c) of subsection (2) unless he is the request maker.
- (4) The clinical supervisor need not notify that person under subsection (1) if – 15
 - (a) he thinks it would be inappropriate to do so, or
 - (b) it is impracticable to do so.
- (5) In this section and sections 216 and 217, “request maker” means the person who made the request under section 214(6) for the review in question.

216 Refusal of request for review under section 214(6)

- (1) If the clinical supervisor refuses a request under section 214(6) for a review, he must, if required to do so by the request maker, refer his decision to a member of the Expert Panel who is a registered medical practitioner (the “medical expert”). 20
- (2) If, on a reference under subsection (1), the medical expert decides that the review ought to be carried out, the clinical supervisor may either – 25
 - (a) carry out the review, or
 - (b) apply to –
 - (i) the Mental Health Tribunal for England, if the patient in question is resident at a hospital in England, or
 - (ii) the Mental Health Tribunal for Wales, if the patient in question is resident at a hospital in Wales. 30
- (3) Subsection (4) applies if – 35
 - (a) the clinical supervisor fails to make a reference under subsection (1),
 - (b) the medical expert agrees, on a reference under that subsection, with the decision not to carry out the review, or
 - (c) the clinical supervisor fails to act in accordance with subsection (2).
- (4) The request maker may apply to – 40
 - (a) the Mental Health Tribunal for England, if the patient in question is resident at a hospital in England, or
 - (b) the Mental Health Tribunal for Wales, if the patient in question is resident at a hospital in Wales.
- (5) On an application under subsection (2)(b) or (4), the Tribunal in question must determine either –
 - (a) that the clinical supervisor must carry out the review, or

- (b) that he is not required to carry out the review.

217 Disputes about outcome of review: qualifying child patients

- (1) The clinical supervisor must, if requested to do so by the request maker, refer to a person (the “medical expert”) appointed by the appropriate authority for that purpose any complaint made by the request maker as to the outcome of a review. 5
- (2) The medical expert must be a member of the Expert Panel who is a registered medical practitioner.
- (3) Subsection (4) applies if, on a reference under subsection (1)–
(a) the complaint is not resolved within the prescribed time, and 10
(b) the medical expert upholds the complaint.
- (4) The clinical supervisor must apply to –
(a) the Mental Health Tribunal for England, if the patient in question is resident at a hospital in England, or
(b) the Mental Health Tribunal for Wales, if the patient in question is resident at a hospital in Wales. 15
- (5) Subsection (6) applies if –
(a) the clinical supervisor fails to make a reference under subsection (1),
(b) the complaint is not, on a reference under that subsection, resolved within the prescribed time, and the medical expert dismisses the complaint, or 20
(c) the clinical supervisor fails to act in accordance with subsection (4).
- (6) The request maker may apply to –
(a) the Mental Health Tribunal for England, if the patient in question is resident at a hospital in England, or 25
(b) the Mental Health Tribunal for Wales, if the patient in question is resident at a hospital in Wales.
- (7) On an application under subsection (4) or (6), the Tribunal in question must, in respect of each matter specified in section 214(11) so far as relevant to the application, make a declaration either – 30
(a) that the determination of the clinical supervisor in respect of that matter is approved, or
(b) that the determination of the clinical supervisor in respect of that matter is not approved.
- (8) In this section, “prescribed” means prescribed by the appropriate authority in regulations. 35

218 Application to Tribunal for discharge of qualifying child patient

- (1) An application may be made to the appropriate Tribunal by –
(a) a qualifying child patient,
(b) his consenting parent, 40
(c) any other person with parental responsibility for him, or
(d) his nominated person,

- for an order requiring the managers of the hospital to discharge him from the hospital at which he is resident (subject to subsections (2) and (3)).
- (2) Subsection (3) applies to a patient who is a ward of court.
- (3) An application under subsection (1) may not be made by a person falling within any of paragraphs (b) to (d) of that subsection without the leave of the court on an application by that person. 5
- (4) An application under subsection (1) may be made at any time (subject to subsection (5)).
- (5) Not more than one application may be made in any 6 months (whether by a person who has already made an application in the 6 months or any other person mentioned in subsection (1)) unless – 10
- (a) the case is one in which subsection (3) applies, or
- (b) on an application to the appropriate Tribunal, leave is given for a further application to be made.
- (6) If the appropriate Tribunal is not satisfied on an application under subsection (1) that the patient is being lawfully detained in the hospital, it must make an order in pursuance of that subsection. 15
- (7) Otherwise the Tribunal must refuse the application.
- (8) If the Tribunal makes an order in pursuance of subsection (1) – 20
- (a) the patient ceases to be a qualifying child patient, and
- (b) the Tribunal must, if it determines that it is appropriate to do so, notify the relevant local authority of that fact.
- (9) The relevant local authority, for the purposes of subsection (8)(b), is the local social services authority in whose area the patient is ordinarily resident at the time the order is made (and, for the purposes of determining where he is so resident, any period during which he is detained in a hospital under this Chapter is to be disregarded). 25
- (10) If a local social services authority is notified under subsection (8)(b), it must – 30
- (a) take such steps as are practicable to enable it to determine whether the child’s welfare is adequately safeguarded and promoted, and
- (b) consider the extent to which (if at all) it should exercise any of its functions under the Children Act 1989 (c. 41) in relation to the child.
- (11) The appropriate Tribunal, for the purposes of this section, is – 35
- (a) the Mental Health Tribunal for England, if the patient in question is resident at a hospital in England, or
- (b) the Mental Health Tribunal for Wales, if the patient in question is resident at a hospital in Wales.

Miscellaneous

219 Tribunal proceedings under Chapter 2

- (1) The following provisions apply to applications under or by virtue of this Chapter as they apply to applications under or by virtue of Part 2 – 40
- section 73,
- section 74 (subject to subsection (2)), and

- Schedule 7,
(so far as applicable).
- (2) Section 74(2) has effect as if –
- (a) for paragraph (a) there were substituted –
 - “(a) for the transfer of proceedings in respect of a patient from the Mental Health Tribunal for England to the Mental Health Tribunal for Wales in a case where the patient ceases to be resident at a hospital in England and becomes resident at a hospital in Wales (and vice versa),” 5
 - (b) in paragraph (c), for sub-paragraphs (i) and (ii) there were substituted “section 218(5)(b)”. 10
- (3) On the making of an application to it under section 211, 217 or 218(1) in respect of a patient, the Tribunal in question –
- (a) must appoint a member of the Expert Panel who is a registered medical practitioner (the “medical expert”), and 15
 - (b) may appoint one or more other members of the Panel, to assist it in determining the application.
- (4) On the making of an application to it under section 216 in respect of a patient, the Tribunal in question –
- (a) may appoint one or more members of the Expert Panel, and 20
 - (b) may in particular appoint as “medical expert” a member of the Panel who is a registered medical practitioner, to assist it in determining the application.
- (5) A member of the Expert Panel appointed under subsection (3)(b), or under subsection (4) otherwise than as medical expert, may or may not be a registered medical practitioner. 25
- (6) A member of the Expert Panel appointed under subsection (3) or (4) may, for the purpose of discharging the functions conferred on him by virtue of that subsection, at any reasonable time –
- (a) visit, interview and examine the patient (in private if he considers it appropriate), and 30
 - (b) require the production of and inspect any records relating to the patient which are kept by the clinical supervisor of the patient.
- (7) In determining for the purposes of subsection (6)(a) whether it is appropriate to visit, interview or examine the patient in private, the member in question must have regard to any wishes and feelings of the patient about the visit, interview or examination being in private. 35
- (8) The medical expert (where one is appointed) must –
- (a) prepare a report for the Tribunal in question dealing with the merits of the application, and 40
 - (b) exercise the power conferred by subsection (6)(a) for the purposes of preparing the report.
- (9) The report must include comments on each of the matters dealt with in the application.

220 Power to make supplementary provision: Chapter 2

- (1) The appropriate authority may make regulations in connection with the making of determinations and the preparation, approval, amendment and review of care plans under this Chapter.
- (2) The regulations may, in particular – 5
- (a) require specified persons to notify other specified persons of specified matters within a specified time,
- (b) make provision as to the time by which any notification is to be given under this Chapter,
- (c) make provision as to the form in which any notification is to be given or any record made by virtue of this Chapter. 10

In this subsection, “specified” means specified in the regulations.

221 Ordinary residence: Chapter 2

- (1) Any question arising under this Chapter as to the ordinary residence of a child is to be determined by the Secretary of State or the National Assembly for Wales. 15
- (2) The Secretary of State and the Assembly must make and publish arrangements for determining which cases are to be dealt with by the Secretary of State and which are to be dealt with by the Assembly.
- (3) Those arrangements may include provision for the Secretary of State and the Assembly to agree, in relation to any question that has arisen, which of them is to deal with the case. 20

222 Adjustments between local social services authorities: Chapter 2

- (1) Regulations made by the appropriate authority may make provision as to the application of this Chapter in cases where, in relation to a child – 25
- (a) it is uncertain (without a determination by virtue of section 221) where the child is ordinarily resident, or
- (b) it appears to the local social services authority to which notice in relation to the child was given under section 211(9)(b) or 218(8)(b) that the child is ordinarily resident in the area of another local social services authority. 30
- (2) The regulations may, in particular, authorise or require a local social services authority –
- (a) to accept a notice given to it under section 211(9)(b) or 218(8)(b) notwithstanding that it may wish to dispute that it was the right authority to be notified, 35
- (b) to become the local social services authority responsible for the case of a child in place of the local social services authority previously responsible,
- (c) to recover expenditure incurred as the local social services authority responsible for the case of a child in the performance of functions under or by virtue of this Chapter from another local social services authority. 40

CHAPTER 3

GENERAL

223 Interpretation: Part 6

In this Part –

“hospital” means –

- (a) any hospital falling within paragraph (a) or (b) of section 2(3), and
- (b) any establishment which is an independent hospital within the meaning of the Care Standards Act 2000 (c. 14);

“the managers”, in relation to a hospital within paragraph (b), means the person registered or required to be registered under Part 2 of the Care Standards Act 2000 in respect of it.

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PART 7

POWERS OF ENTRY, CONVEYANCE AND DETENTION

General provisions

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224 Custody, conveyance and detention: general powers

- (1) A person required or authorised by or under this Act to take a person into custody, or to convey or detain him, has in any place, for the purposes of doing so, all the powers and privileges of a constable.
- (2) “Convey” here includes any other expression for removing a person from one place to another.

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225 Warrant to take or retake a patient

- (1) This section applies where a person is authorised by or under this Act to take a person (“the patient”) to a place, or to take him into custody or retake him.
- (2) In this section, “authorised person” means any person so authorised.
- (3) A justice of the peace may issue a warrant under this section if it appears to him, on information on oath laid by an authorised person or a constable, that there are reasonable grounds for believing –
 - (a) that the patient is on premises within the jurisdiction of the justice, and
 - (b) that admission to the premises has been refused or is likely to be refused.
- (4) A warrant under this section is a warrant authorising any constable to enter the premises specified in the warrant, if need be by force, and remove the patient.
- (5) The constable may be accompanied by any person who is a registered medical practitioner or an authorised person.
- (6) In relation to a warrant under this section, the Police and Criminal Evidence Act 1984 (c. 60) applies as if references to a constable in section 15 (search warrants: safeguards) included references to an authorised person.

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226 Powers of entry and inspection

- (1) An approved mental health professional may, at any reasonable time, enter and inspect any premises in which a person is living if he has reasonable grounds for believing that the person –
- (a) is suffering from mental disorder, and 5
 - (b) is not under proper care.
- (2) If the approved mental health professional is requested to produce a duly authenticated document showing that he is such a professional, the power conferred by subsection (1) is exercisable only after he has produced such a document. 10
- (3) This section does not apply to the following premises –
- (a) a health service hospital within the meaning of the National Health Service Act 1977 (c. 49), or
 - (b) accommodation provided by a local authority and used as a hospital by or on behalf of the appropriate authority under that Act. 15

*Removal to place of safety***227 Warrant to remove a person to a place of safety**

- (1) A justice of the peace may issue a warrant under this section if it appears to him, on information on oath laid by an approved mental health professional, that there are reasonable grounds for believing that a person believed to be suffering from mental disorder (“the patient”) – 20
- (a) has been, or is being, ill-treated, neglected or kept otherwise than under proper control, in a place within the jurisdiction of the justice, or
 - (b) is unable to care for himself, and is living alone in a place within that jurisdiction. 25
- (2) A warrant under this section is a warrant authorising any constable –
- (a) to enter, if need be by force, any premises specified in the warrant in which the patient is believed to be, and
 - (b) if thought fit, to remove the patient to a place of safety.
- (3) The constable must be accompanied by at least one approved mental health professional and at least one registered medical practitioner. 30
- (4) The patient –
- (a) may be detained at any place of safety with a view to the making of a request in respect of him under section 230(3) or of other arrangements for his care or treatment, and 35
 - (b) may be taken, by, or by a person acting on behalf of, a constable or approved mental health professional, from one place of safety to another,
- but this subsection does not authorise his detention beyond the end of 72 hours beginning with his arrival at the first place of safety to which he is removed. 40
- (5) In this section, “place of safety” means –
- (a) residential accommodation provided by a local authority under Part 3 of the National Assistance Act 1948 (c. 29),
 - (b) a hospital,

- (c) a police station,
 - (d) an establishment in respect of which a person is registered under Part 2 of the Care Standards Act 2000 (c. 14) (not falling within paragraph (b)),
 - (e) any other suitable place whose occupier is willing temporarily to receive the patient. 5
- (6) In relation to a warrant under this section, the Police and Criminal Evidence Act 1984 (c. 60) applies as if references to a constable in section 15 (search warrants: safeguards) included references to an approved mental health professional. 10

228 Urgent removal to a place of safety

- (1) This section applies where a constable, on information from an approved mental health professional, has reasonable grounds for believing that –
- (a) there is on any premises a person who is believed to be suffering from mental disorder (“the patient”), 15
 - (b) the patient is in urgent need of care or control to prevent him causing serious harm to himself or others, and
 - (c) the urgency makes the patient’s removal under a warrant impracticable.
- (2) The constable may enter the premises, if need be by force, and remove the patient to a place of safety. 20
- (3) The constable must be accompanied by at least one approved mental health professional.
- (4) The patient –
- (a) may be detained at the place of safety to which he is removed with a view to the making of a request in respect of him under section 230(3) or of other arrangements for his care or treatment, but 25
 - (b) may not be detained under this subsection beyond –
 - (i) the end of 6 hours beginning with his arrival there, or
 - (ii) if sooner, the refusal of an application for a warrant for his further detention. 30
- (5) A justice of the peace may issue a warrant for the patient’s further detention if it appears to him, on information on oath laid by an approved mental health professional, that there are reasonable grounds for believing that the patient –
- (a) has been, or is being, ill-treated, neglected or kept otherwise than under proper control, in a place within the jurisdiction of the justice, or 35
 - (b) is unable to care for himself, and is living alone in a place within that jurisdiction.
- (6) If a warrant for his further detention is issued, the patient –
- (a) may be detained at any place of safety with a view to the making of a request in respect of him under section 230(3) or of other arrangements for his care or treatment, and 40
 - (b) may be taken, by, or by a person acting on behalf of, a constable or approved mental health professional, from one place of safety to another, 45

but this subsection does not authorise his detention beyond the end of 72 hours beginning with his arrival at the place of safety to which he was removed under subsection (2).

- (7) In relation to a warrant under this section, the Police and Criminal Evidence Act 1984 (c. 60) applies as if references to a constable in section 15 (search warrants: safeguards) included references to an approved mental health professional. 5
- (8) In this section, “place of safety” has the same meaning as in section 227.

229 Removal to a place of safety from a public place

- (1) If a constable finds, in a place to which the public have access, a person who appears to him to be suffering from mental disorder and to be in immediate need of care or control (“the patient”), he may, if he thinks it necessary to do so in the interests of the patient or for the protection of others, remove the patient to a place of safety. 10
- (2) The patient – 15
- (a) may be detained at any place of safety with a view to the making of a request in respect of him under section 230(3) or of other arrangements for his care or treatment, and
- (b) may be taken, by, or by a person acting on behalf of, a constable or approved mental health professional, from one place of safety to another, 20
- but this subsection does not authorise his detention beyond the end of 72 hours beginning with his arrival at the first place of safety to which he is removed.
- (3) In this section, “place of safety” has the same meaning as in section 227.

230 Examination of persons removed to a place of safety 25

- (1) This section applies where, under any of sections 227 to 229, the patient –
- (a) is being removed by a constable to a place of safety,
- (b) has been removed by a constable to a place of safety and is being detained there,
- (c) is being taken to another place of safety by, or by a person acting on behalf of, a constable or approved mental health professional, or 30
- (d) has been taken to another place of safety by any such person and is being detained there.
- (2) In this section, “the authorised person” means the person by whom the patient is being or has been so removed or taken. 35
- (3) The authorised person, or a person authorised by him, may make a request to the appropriate authority for it to arrange for the patient to be examined under section 14.
- (4) Where such a request has been made –
- (a) the power to detain the patient under section 227(4), 228(4) or (6) or 229(2) for the period specified there, and 40
- (b) the power to take the patient from one place of safety to another, are exercisable for the purpose of carrying out the examination.

231 Retaking of patients absconding from a place of safety

- (1) This section applies to a patient who absconds while being taken to or detained in a place of safety under any of sections 227 to 229.
- (2) The patient may be retaken into custody –
 - (a) by the person in whose custody he was immediately before he absconded, or 5
 - (b) by any constable or approved mental health professional.
- (3) The patient may not be retaken under this section after the end of –
 - (a) the period of 72 hours beginning with the time when he absconds, or
 - (b) the period during which he is liable to be detained in the place of safety, 10
whichever ends first.

PART 8

PATIENT REPRESENTATION

CHAPTER 1

NOMINATED PERSONS

15

Appointment

232 Introductory

- (1) In this Chapter “appointer” means –
 - (a) (if a patient has no nominated person), the person required by any provision of this Act to appoint a nominated person for the patient, and 20
 - (b) (if a patient has a nominated person), the person who would be so required if there were no such nominated person.
- (2) A person is eligible to be appointed as nominated person for a patient if he is willing to be that patient’s nominated person and is not disqualified.
- (3) Such a person is referred to in this Chapter as an “eligible person”. 25
- (4) For the purposes of this Chapter a person is disqualified if –
 - (a) he is of a description specified in regulations made by the appropriate authority, or
 - (b) he appears to the appointer to be incapable of being a nominated person because of illness or mental disorder. 30
- (5) References in this Chapter to a person who is “suitable” are to a person who appears to the appointer to be suitable to be the patient’s nominated person having regard to all the circumstances, and in particular to that person’s relationship to or connection with the patient (and references to the most suitable person are to be read accordingly). 35
- (6) When required to make an appointment under section 233(2) or (6) or 234(3) or (7) the appointer need not consider for appointment any eligible person who does not appear to him to be related to or connected with the patient.

233 Appointment: general

- (1) This section applies if an appointer is required to appoint a nominated person for a patient (unless the patient is subject to a care order).
- (2) If the patient is aged under 16 the appointer must appoint –
 - (a) the most suitable eligible person, or 5
 - (b) if there is no suitable eligible person, the appropriate local social services authority.
- (3) Subsections (4) to (6) apply if the patient is aged 16 or over.
- (4) The appointer must give the patient a reasonable opportunity to select a nominated person unless it appears to the appointer that – 10
 - (a) the patient is not capable of making a selection, and
 - (b) there is no reasonable prospect that he will become capable of doing so within a reasonable time.
- (5) If the patient selects a suitable eligible person the appointer must appoint that person. 15
- (6) If the appointer is unable to make an appointment under subsection (5) he must appoint –
 - (a) the most suitable eligible person, or
 - (b) if there is no suitable eligible person, the appropriate local social services authority. 20
- (7) Before appointing a nominated person under subsection (2)(a), (5) or (6)(a) for a patient who is a ward of court the appointer must apply to the court for leave to appoint that person.
- (8) If the court refuses leave, the appointer must not appoint that person and must instead apply this section disregarding that person. 25
- (9) The “appropriate local social services authority” in relation to a patient is the local social services authority which appears to the appointer to be most suitable to be the patient’s nominated person.
- (10) This section is subject to sections 235 and 236.

234 Appointment: care order

- (1) This section applies if (disregarding subsection (2)) an approved mental health professional is required to appoint a nominated person for a patient who is subject to a care order. 30
- (2) The function of appointing a nominated person for the patient is to be exercised by the local authority in whose care the patient is (“the local authority”) instead of by the approved mental health professional; and the following have effect accordingly – 35
 - (a) sections 19, 168(2) and 209(1), and
 - (b) paragraph 3 of Schedule 8, paragraph 4 of Schedule 9 and paragraph 11 of Schedule 14. 40
- (3) If the patient is aged under 16 –
 - (a) the local authority must appoint the most suitable eligible person, or

- (b) if there is no suitable eligible person, the local authority must appoint itself.
- (4) Subsections (5) to (7) apply if the patient is aged 16 or over.
- (5) The local authority must give the patient a reasonable opportunity to select a nominated person unless it appears to the local authority that – 5
 - (a) the patient is not capable of making a selection, and
 - (b) there is no reasonable prospect that he will become capable of doing so within a reasonable time.
- (6) If the patient selects a suitable eligible person, the local authority must appoint that person. 10
- (7) If the local authority is unable to make an appointment under subsection (6) –
 - (a) the local authority must appoint the most suitable eligible person, or
 - (b) if there is no suitable eligible person, the local authority must appoint itself.
- (8) This section is subject to sections 235 and 236. 15

235 Consultation with patient

- (1) Before appointing a nominated person for a patient under a relevant provision the appointer must ascertain the patient’s wishes and feelings about the appointment of that person (unless inappropriate or impracticable).
- (2) If the appointer considers that, having regard to those wishes and feelings, it is inappropriate to appoint that person, the appointer must not do so, and must instead disregard that person when applying that relevant provision. 20
- (3) The following are relevant provisions for the purposes of subsections (1) and (2) – 25
 - (a) section 233(2)(a) and (6)(a), and
 - (b) section 234(3)(a) and (7)(a).

236 Consultation with other persons

- (1) Before appointing a nominated person for a patient under section 233(5) or 234(6), the appointer must (if practicable) consult – 30
 - (a) the patient’s carer, if any (or, if he has more than one carer, at least one of them), or
 - (b) if the patient has no carer, such other persons who know the patient (if any) as the appointer considers it appropriate to consult.
- (2) Before considering whom to appoint as nominated person for a patient under section 233(2)(a) or (6)(a) or section 234(3)(a) or (7)(a), the appointer must consult the following as to who might be suitable eligible persons – 35
 - (a) if practicable, those mentioned in subsection (1)(a) or (b), and
 - (b) if the patient is aged under 16, each person with parental responsibility for the patient.
- (3) But the appointer need not consult any particular person with parental responsibility for the patient if – 40
 - (a) the appointer thinks it would be inappropriate to do so, or
 - (b) it is impracticable to do so.

- (4) The appointer may not consult any person under subsection (1) or (2)(a) without first ascertaining the patient’s wishes and feelings about his consulting that person (unless it is inappropriate or impracticable to ascertain them).
- (5) If the appointer considers that, having regard to those wishes and feelings and any other relevant circumstances, it is inappropriate to consult that person, the appointer must not do so (and subsection (1) or (2)(a) has effect accordingly). 5

237 Appointment: supplementary

- (1) The appointment of a nominated person (other than an appointment mentioned in subsection (3)) takes effect when the person appointed notifies the appointer that he accepts his appointment. 10
- (2) The appropriate authority may make regulations in connection with such notifications.
- (3) The appointment of a nominated person under section 233(2)(b) or (6)(b) or 234(3)(b) or (7)(b) takes effect when the appointment is made.
- (4) If before an appointer has appointed a nominated person for a patient of a description mentioned in the first column of the Table that person ceases to be a patient of that description, the appointer need not make an appointment under the corresponding provision in the second column. 15

Table

<i>Description of patient</i>	<i>Provision for appointment of nominated person</i>	
cross-border patient	section 168(2)(a)	
Part 2 patient	section 19(5)(a)	
Part 3 patient	paragraph 3(2)(a) of Schedule 8 or paragraph 4(2)(a) of Schedule 9	
qualifying patient	child section 209(1)(b)	25

(In the first row of the Table, “cross-border patient” means a patient in respect of whom section 168 applies.)

- (5) Subsections (4) and (5) of section 22 of the Children Act 1989 (c. 41) do not apply in relation to the appointment of a nominated person by a local authority (within the meaning of that Act) under section 234 of this Act. 30

Role

238 Nominated person: general provisions

- (1) Subsection (2) applies if a person is required by any provision of this Act to consult a patient’s nominated person about any step that is to be taken in relation to that patient. 35
- (2) The matters about which the nominated person is consulted must include whether it appears to him that the patient’s wishes and feelings about that step

are known or can be ascertained and, if so, what appear to him to be those wishes and feelings.

- (3) A patient's nominated person may at any reasonable time visit the patient.

239 Restriction of role of nominated person

- (1) This section applies if under any provision of this Act there is, or is required to be, a nominated person for a patient. 5
- (2) Subsection (3) applies to any requirement under or by virtue of this Act that a person ("X") do any of the following –
- (a) consult the patient's nominated person about any matter,
 - (b) notify or inform him of any matter, 10
 - (c) provide him with information in relation to any matter,
 - (d) provide him with any document,
 - (e) take account of a representation made by him about any matter, or
 - (f) comply with a request made by him in relation to any matter.
- (3) If a patient who appears to the appointer to have capacity to do so notifies the appointer that he does not want X to do any one or more of the things mentioned in subsection (2), while that notification has effect the requirement in question does not apply and X must not do that thing. 15
- (4) Subsection (5) applies if a patient who appears to the appointer to have capacity to do so notifies the appointer that he does not want his nominated person to do any one or more of the things that he is entitled to do under or by virtue of this Act. 20
- (5) While such a notification has effect –
- (a) the patient's nominated person must not do that thing, and
 - (b) the requirements mentioned in subsection (2) do not apply in the patient's case so far as they relate to that thing. 25
- (6) A notification under subsection (3) or (4) –
- (a) may take any form,
 - (b) may relate to the entitlement, requirement or function in question either generally, or only in so far as it relates to any particular matter, and 30
 - (c) may be withdrawn by the patient at any time by notifying the appointer if he appears to the appointer to have capacity to withdraw it.
- (7) The appointer must inform the persons mentioned in subsection (8) of –
- (a) the contents of a notification under subsection (3) or (4), or 35
 - (b) of the fact that such a notification has been withdrawn,
- as soon as possible and (in any event) within the period of 5 days beginning with the day on which the appointer receives the notification or notification of its withdrawal.
- (8) Those persons are – 40
- (a) if the patient has a nominated person when the notification is given or withdrawn, that person,
 - (b) if the patient is aged under 16, each person with parental responsibility for him (unless he falls within paragraph (a)), subject to subsection (9),

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- (c) the clinical supervisor appointed in respect of the patient under or by virtue of this Act,
 - (d) any other person the appointer thinks ought to know of the notification or its withdrawal.
- (9) Subsection (8)(b) (read with subsection (7)) does not require the appointer to inform any particular person with parental responsibility for the patient if – 5
- (a) the appointer thinks it would be inappropriate to do so,
 - (b) it is impracticable to do so, or
 - (c) that person has already been informed under subsection (10).
- (10) As soon as possible after the appointment of a nominated person for the patient takes effect and (in any event) within the period of 5 days beginning with the day when the appointment takes effect, the appointer must inform the patient’s nominated person of the contents of any notification under subsection (3) or (4) which was in force on that day. 10
- (11) Any person informed under subsection (8) or (10) – 15
- (a) is bound by a notification under subsection (3) or (4) when he is informed of it, and
 - (b) ceases to be bound by it when informed of the fact that it has been withdrawn.

Termination of appointment 20

240 Review

- (1) This section applies if any of the following happens in relation to a patient for whom a nominated person (“the existing nominated person”) has been appointed – 25
- (a) the patient becomes, or ceases to be, subject to a care order,
 - (b) a care order to which the patient is subject is varied, or
 - (c) the patient attains the age of 16.
- (2) The appointer must consider whether the existing nominated person should remain the patient’s nominated person.
- (3) If the appointer’s conclusion is that he should, there is nothing more for the appointer to do under this section. 30
- (4) If the appointer’s conclusion is that he should not, the appointer must in accordance with this Chapter appoint another person to be the patient’s nominated person.
- (5) When the appointment of the new nominated person takes effect, the appointment of the existing nominated person ceases to have effect. 35
- (6) The appointer must within the specified period notify the existing nominated person that his appointment has ceased to have effect.
- (7) The appointer must within the specified period notify the following persons of the new appointment and of the fact that the old one has ceased to have effect – 40
- (a) the patient,
 - (b) the specified persons (if any), and

- (c) if the patient is aged under 16, each person with parental responsibility for the patient (if not otherwise notified by virtue of subsection (6) or this subsection).
- (8) But the appointer need not notify any particular person with parental responsibility for the patient if – 5
 - (a) the appointer thinks it would be inappropriate to do so, or
 - (b) it is impracticable to do so.
- (9) In subsections (6) and (7), “specified period” means the period specified in regulations made by the appropriate authority; and in subsection (7), “specified persons” means the persons so specified. 10

241 Revocation by appointer

- (1) The appointer must revoke the appointment of the patient’s nominated person if –
 - (a) it appears to the appointer that the nominated person is (or has come to be) disqualified, 15
 - (b) it appears to the appointer that the nominated person is not (or has ceased to be) suitable,
 - (c) the nominated person informs the appointer in writing that he is no longer willing to be the patient’s nominated person, or
 - (d) the appointer considers it appropriate to do so, having regard to the patient’s ascertainable wishes and feelings about the nominated person, 20(unless the nominated person was appointed under section 233(2)(b) or (6)(b) or section 234(3)(b) or (7)(b)).
- (2) The appointment of a local social services authority as nominated person for a patient under section 233(2)(b) or (6)(b) must be revoked by the appointer if – 25
 - (a) the patient requests the appointer to revoke the appointment, and
 - (b) it appears to the appointer that a nominated person could now be appointed for the patient under section 233(2)(a), (5) or (6)(a).
- (3) A local authority appointed as nominated person for a patient under section 234(3)(b) or (7)(b) must revoke the appointment if – 30
 - (a) the patient requests the local authority to revoke the appointment, and
 - (b) it appears to the local authority that a nominated person could now be appointed for the patient under section 234(3)(a), (6) or (7)(a).
- (4) Subsections (2) and (3) do not apply if the patient does not appear to the appointer (in a subsection (2) case) or to the local authority (in a subsection (3) case) to have capacity to make the request. 35
- (5) The person who revokes an appointment under this section must within the specified period notify the following persons of the revocation –
 - (a) the former nominated person, 40
 - (b) the patient,
 - (c) the specified persons (if any), and
 - (d) if the patient is aged under 16, each person with parental responsibility for the patient, if not otherwise notified by virtue of this subsection.
- (6) But the appointer need not notify any particular person with parental responsibility for the patient if – 45

- (a) the appointer thinks it would be inappropriate to do so, or
 - (b) it is impracticable to do so.
- (7) In subsection (5), “specified period” and “specified persons” mean the period or the persons specified in regulations made by the appropriate authority.

242 Cessation of appointment 5

- (1) The appointment of a nominated person for a patient ceases to have effect if the nominated person dies.
- (2) The appointment of a nominated person for a qualifying child patient ceases to have effect if that patient ceases to be a qualifying child patient (even if he then becomes a Part 2 patient or a Part 3 patient). 10
- (3) The appointment of a nominated person for a person to whom subsection (4) applies ceases to have effect if that person ceases to be a person to whom that subsection applies.
- (4) This subsection applies to a person who is either of the following – 15
 - (a) a Part 2 patient,
 - (b) a Part 3 patient.
- (5) If the appointment of a nominated person –
 - (a) ceases to have effect by virtue of subsection (1), or
 - (b) is revoked under section 241 or 244(2),
 the appointer must in accordance with this Chapter as soon as practicable appoint another person to be the patient’s nominated person. 20

Tribunal

243 Application to Tribunal: appointment

- (1) If an appointer does not appoint a nominated person within a reasonable time of becoming required to do so, the patient may apply to the Mental Health Tribunal for an order requiring the appointer to make an appointment. 25
- (2) The patient may apply to the Tribunal if a nominated person has been appointed under –
 - (a) section 233(2) or (6), or
 - (b) section 234(3) or (7). 30
- (3) On an application under subsection (2) the Tribunal may make –
 - (a) an order confirming the appointment,
 - (b) an order revoking the appointment and requiring the appointer to appoint another person in accordance with this Chapter to be the patient’s nominated person, or 35
 - (c) a review order.
- (4) An order under subsection (3)(b) or a review order may contain directions to the appointer.
- (5) A review order is an order requiring the appointer to apply this Chapter as if the existing nominated person had not been appointed; and if on doing so the appointer determines that some other person should be appointed the 40

appointer must revoke the appointment of the existing nominated person and appoint that other person.

244 Application to Tribunal: change in circumstances

- (1) A patient may, with leave of the Mental Health Tribunal, apply to the Tribunal for the revocation of the appointment of his nominated person. 5
- (2) On an application under subsection (1) the Tribunal may make an order revoking the appointment if it is satisfied that—
 - (a) there has been a material change in circumstances since the appointment was made, and
 - (b) the appointer is unwilling to revoke the appointment under section 241(1)(d). 10

245 Tribunal proceedings

- (1) The following provisions apply to applications to the Mental Health Tribunal under sections 243 and 244 as they apply to applications to the Tribunal under or by virtue of Part 2—
 - section 73,
 - section 74 (subject to subsection (2)), and
 - Schedule 7 (subject to subsection (3)),(so far as applicable). 15
- (2) Section 74 has effect as if—
 - (a) in paragraph (a) of subsection (2) the words from “in a case” to “hospital in Wales” were omitted,
 - (b) in paragraph (b) of that subsection for the words following “applying for” there were substituted “the leave of the Tribunal under section 244 and for determining such an application”, 25
 - (c) in paragraph (c) of that subsection for the words following “under” there were substituted “section 244”, and
 - (d) subsection (7) were omitted.
- (3) Schedule 7 has effect as if paragraph 1(b) were omitted. 20

Interpretation 30

246 Interpretation: Chapter 1

- (1) In sections 233 and 234 references to a patient’s age—
 - (a) if subsection (2) does not apply, are to his age when the appointer becomes required to appoint a nominated person for him,
 - (b) if subsection (2) applies, are to the age he will attain on his next birthday. 35
- (2) This subsection applies if the appointer considers it unlikely that the appointment of the patient’s nominated person will take effect before the patient’s next birthday.
- (3) If by virtue of subsection (1)(b) a patient’s age is treated as being 18, any care order to which he is subject is to be disregarded for the purposes of this Chapter. 40

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- (4) References in this Chapter to an application to the Mental Health Tribunal in relation to a qualifying child patient are to –
- (a) an application to the Mental Health Tribunal for England, if the patient in question is resident at a hospital in England,
 - (b) an application to the Mental Health Tribunal for Wales, if the patient in question is resident at a hospital in Wales. 5
- (5) References in this Chapter to an application to the Mental Health Tribunal in relation to any other patient are to –
- (a) an application to the Mental Health Tribunal for England, if the patient in question is, or is to be, registered or deemed to be registered with a hospital in England, 10
 - (b) an application to the Mental Health Tribunal for Wales, if the patient in question is, or is to be, registered or deemed to be registered with a hospital in Wales.
- (6) In this Chapter – 15
- “care order” has the same meaning as in the Children Act 1989 (c. 41),
 - “Part 2 patient” means a patient who is liable to assessment under Chapter 3 of Part 2, or in respect of whom there is in force an order (or further order) under Chapter 6 of that Part (otherwise than as applied by paragraph 11 of Schedule 9), or under paragraph 8 of Schedule 8 authorising his medical treatment, 20
 - “Part 3 patient” means a person in respect of whom there is in force –
 - (a) a mental health order but not a restriction order, or
 - (b) a transfer for treatment direction but not a restriction direction,
 - “qualifying child patient” has the meaning given by Chapter 2 of Part 6. 25

CHAPTER 2

INDEPENDENT MENTAL HEALTH ACT ADVOCATES

247 IMHA advocates

- (1) The appropriate authority must arrange, to such extent as it considers necessary to meet all reasonable requirements, for help from persons, to be known as IMHA advocates (or independent Mental Health Act advocates), to be available to qualifying patients and to their nominated persons. 30
- (2) In a case where the help is requested by a person who is a qualifying patient by virtue of paragraph (c) of section 248(2) or his nominated person, the help available under the arrangements must include help in understanding the effect of the provision made by sections 63 and 64. 35
- (3) In any other case, the help available under the arrangements must include –
- (a) help in obtaining information about and understanding –
 - (i) what medical treatment is being provided to the patient,
 - (ii) why it is being provided, 40
 - (iii) under what authority it is being provided,
 - (iv) the requirements of this Act which apply in connection with the patient’s treatment, and
 - (v) the rights which can be exercised by or in respect of him under this Act, and 45

- (b) help (by way of representation or otherwise) in exercising those rights.
- (4) An IMHA advocate authorised by a qualifying patient or his nominated person on his behalf may at any reasonable time, for the purpose of providing, in accordance with the arrangements, help requested by the patient or his nominated person – 5
- (a) meet with the patient, and
- (b) require the production of and inspect any records relating to the patient which are kept at the relevant hospital if the managers of that hospital consider it appropriate.
- (5) In determining for the purposes of subsection (4)(b) whether it is appropriate for an IMHA advocate to require the production of and inspect any records relating to a patient, the managers must have regard to any wishes and feelings of the patient about the production and inspection of the records. 10
- (6) The appropriate authority may by regulations provide that a person may act as an IMHA advocate – 15
- (a) only if requirements specified in the regulations are met in respect of him (which may include requirements for his approval by any person),
- (b) only if requirements specified in the regulations are met in respect of any person with whom arrangements are made for him to act as an IMHA advocate, 20
- (c) only in circumstances otherwise specified in the regulations.
- (7) In making arrangements under this section, the appropriate authority must have regard to the principle that the provision of help under the arrangements should, so far as practicable, be independent of any person responsible for the patient’s treatment. 25
- (8) If a qualifying patient who has capacity to do so notifies the appointer (within the meaning of Chapter 1) that he does not want help to be provided to his nominated person under arrangements under this section, while that notification has effect such help may not be provided to the nominated person.
- (9) Subsections (6) to (11) of section 239 apply in relation to such a notification as they apply in relation to a notification under subsection (3) of that section. 30
- (10) The appropriate authority may make payments to any person in pursuance of arrangements under this section.

248 Section 247: interpretation

- (1) Subsections (2) to (4) apply for the purposes of section 247. 35
- (2) The following are qualifying patients –
- (a) a patient who is liable to assessment under Chapter 3 of Part 2,
- (b) a patient in respect of whom an order or further order under Chapter 6 of that Part authorising his medical treatment or assessment is in force (other than a patient also falling within paragraph (h)(ii)), 40
- (c) a person in respect of whom a deferral order under section 63 is in force,
- (d) a person remanded under section 88, or further remanded under section 89, in respect of whom the provision of medical treatment is authorised under section 91(6) or 92(6),
- (e) a person remanded under section 93 or 95 or committed for medical treatment under section 94, 45

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- (f) a patient in respect of whom a mental health order is in force (unless the order states that medical treatment is to be provided to him as a resident patient and he has not yet been admitted to the hospital specified in the order),
- (g) a patient in respect of whom an order under paragraph 8 of Schedule 8 is in force, 5
- (h) a patient in respect of whom there is in force –
- (i) a hospital direction,
- (ii) a transfer for treatment direction, or
- (iii) a remand transfer direction, and 10
- (i) a patient who is a qualifying child patient for the purposes of Chapter 2 of Part 6.
- (3) References to a patient’s nominated person are to be disregarded in the case of a patient who –
- (a) falls within paragraph (d), (e) or (h)(i) or (iii) of subsection (2), or 15
- (b) falls within paragraph (f) or (h)(ii) of that subsection and is a restricted patient.
- (4) “Relevant hospital” means –
- (a) in the case of a patient who falls within paragraph (a) or (b) of subsection (2), the hospital with which the patient is registered under section 22(1), 78(2), or 166(2)(b) or deemed to be registered by virtue of paragraph 1(3) to (5) of Schedule 8 or paragraph 1(3) of Schedule 9, 20
- (b) in the case of a patient who falls within paragraph (c) of subsection (2), the relevant hospital for the purposes of sections 63 and 64,
- (c) in the case of a patient who falls within paragraph (d) or (e) of that subsection, the hospital to which he is remanded or committed under the section in question, 25
- (d) in the case of a patient who falls within paragraph (f) or (g) of that subsection, the responsible hospital (read in accordance with paragraph 1(4) and (5) of Schedule 8), 30
- (e) in the case of a patient who falls within paragraph (h)(i) or (iii) of that subsection, the hospital specified in the direction in question,
- (f) in the case of a patient who falls within paragraph (h)(ii) of that subsection, the responsible hospital (read in accordance with paragraph 1(3) of Schedule 9), 35
- (g) in the case of a patient who falls within paragraph (i) of that subsection, the hospital at which the patient is resident.
- (5) In subsection (3), “restricted patient” has the same meaning as in Chapter 4 of Part 3.

PART 9 40

APPEALS

Mental Health Appeal Tribunal

249 Right to appeal to Mental Health Appeal Tribunal

- (1) For the purposes of subsections (2) to (6), references to a right of appeal are to a right to appeal to the Mental Health Appeal Tribunal on any point of law 45

- arising from a determination made by the Mental Health Tribunal for England or the Mental Health Tribunal for Wales in respect of a patient.
- (2) The patient has a right of appeal.
 - (3) That right may be exercised on the patient’s behalf by his nominated person.
 - (4) If the patient is aged under 16, any person with parental responsibility for him has a right of appeal. 5
 - (5) The Secretary of State has a right of appeal.
 - (6) The National Assembly for Wales has a right of appeal, unless the patient is a restricted patient (within the meaning of Chapter 4 of Part 3).
 - (7) A person in relation to whom an order under section 63 is made has a right to appeal to the Mental Health Appeal Tribunal on any point of law arising from a determination made by the Mental Health Tribunal for England or the Mental Health Tribunal for Wales in respect of him. 10
 - (8) The right of appeal under subsection (2), (4), (6) or (7) may not be exercised unless the chairman of the Tribunal which made the determination in question or the Mental Health Appeal Tribunal gives leave. 15

250 Proceedings on appeal to Mental Health Appeal Tribunal

- (1) If, in determining an appeal, the Mental Health Appeal Tribunal finds that no error has been made on the point of law in question, it may dismiss the appeal.
- (2) Subsections (3) to (7) apply if the Appeal Tribunal finds that an error has been made on that point. 20
- (3) In a case in which the Appeal Tribunal considers that the error does not vitiate the determination in question, it may uphold the determination.
- (4) In any other case, the Appeal Tribunal may set aside the determination and remit the case for reconsideration by the Mental Health Tribunal for England or the Mental Health Tribunal for Wales in accordance with the relevant provision. 25
- (5) For the purposes of subsection (4), the relevant provision is the provision of this Act under which the determination in question was made.
- (6) Subsection (7) applies if the determination set aside under subsection (4) is a determination for the purposes of section 216(5) or of an application under section 243(2). 30
- (7) The Appeal Tribunal may make, in accordance with Chapter 2 of Part 6 or Chapter 1 of Part 8, the determination which it considers the Mental Health Tribunal for England or the Mental Health Tribunal for Wales (as the case may require) should have made, including any orders under section 243(3), instead of remitting the case for reconsideration to it in accordance with subsection (4). 35
- (8) If the Appeal Tribunal remits a case, it may –
 - (a) give directions as to the timing of the reconsideration of the case by the Tribunal in question, 40
 - (b) direct that the Tribunal reconsidering the case be differently constituted to that which made the determination in question, and

- (c) in such circumstances as may be specified in rules made by the Lord Chancellor, direct that the medical treatment of the patient –
 - (i) may not continue during the period between the setting aside and remission and the determination by the Tribunal in question on reconsideration of the case, or
 - (ii) may only continue during that period with such changes as are specified in the direction.

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(9) This section is subject to provision made in rules by virtue of section 252(2)(c).

251 Proceedings: supplementary

(1) In determining any appeal or application for leave, the Mental Health Appeal Tribunal may, if it is of the opinion that it is appropriate to do so, consider a point of law which is not raised by the application for the appeal or leave.

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(2) The Appeal Tribunal must record –

- (a) the determination made by it on an appeal or application for leave,
- (b) the reasons for that determination, and
- (c) any other matters specified in rules made by the Lord Chancellor.

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(3) The Appeal Tribunal may pay allowances in respect of expenses for travel and subsistence and loss of earnings to –

- (a) any person attending the Appeal Tribunal as an applicant or witness,
- (b) the patient who is the subject of the proceedings if he attends otherwise than as an applicant or witness,
- (c) any person who attends as the representative of an applicant (other than counsel or a solicitor).

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(4) References in this section and section 252 to an application for leave are to an application under section 249 or 253.

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252 Rules for appeals etc to Mental Health Appeal Tribunal

(1) The Lord Chancellor may make rules –

- (a) with respect to the making of appeals or applications for leave to the Mental Health Appeal Tribunal,
- (b) with respect to the proceedings for determining appeals or applications for leave to the Appeal Tribunal,
- (c) with respect to any matters incidental to or consequential on such proceedings, and
- (d) enabling the President of the Appeal Tribunal to designate the determinations made by the Appeal Tribunal which are to be binding on it, the Mental Health Tribunal for England and the Mental Health Tribunal for Wales in making future determinations.

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(2) The rules may, in particular, make provision –

- (a) as to the procedure for making an appeal to, or applying for the leave of, the Appeal Tribunal and for determining such an appeal or application,
- (b) as to the time within which such an appeal or application may be made,
- (c) enabling the Appeal Tribunal, in accordance with section 250, to set aside a determination made in respect of a patient by the Mental Health Tribunal for England but remit the case to the Mental Health Tribunal

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- for Wales instead of the Mental Health Tribunal for England, in a case where responsibility for assessing the patient or providing him with medical treatment is transferred under Chapter 10 of Part 2 or paragraph 17 of Schedule 8 or paragraph 16 of Schedule 9 from a hospital in England to a hospital in Wales (and vice versa), 5
- (d) as to any matter specified in Schedule 7, reading that Schedule with –
- (i) the modifications set out in section 158(2), where appropriate, and
 - (ii) the modifications set out in subsection (3).
- (3) The modifications mentioned in subsection (2)(d)(ii) are – 10
- (a) references to rules made under section 74 are to be read as references to rules made under this section (with the reference to subsection (2)(i) of that section being read as a reference to subsection (2)(d) of this section),
 - (b) references to the Tribunal are to be read as references to the Appeal Tribunal (and references to a chairman are accordingly to be disregarded), 15
 - (c) paragraphs 3 and 4 are to be disregarded, and
 - (d) references to an application under or by virtue of Part 2 are to be read as references to an appeal and an application for leave to appeal. 20
- (4) Rules made by virtue of subsection (2)(c) may make provision modifying the application of this Part and Parts 2 and 3.

Court of Appeal

253 Right to appeal to Court of Appeal

- (1) For the purposes of subsections (2) to (6), references to a right of appeal are to a right to appeal to the Court of Appeal on any point of law arising from a determination made by the Mental Health Appeal Tribunal in respect of a patient. 25
- (2) The patient has a right of appeal.
- (3) That right may be exercised on the patient's behalf by his nominated person. 30
- (4) If the patient is aged under 16, any person with parental responsibility for him has a right of appeal.
- (5) The Secretary of State has a right of appeal.
- (6) The National Assembly for Wales has a right of appeal, unless the patient is a restricted patient (within the meaning of Chapter 4 of Part 3). 35
- (7) A person in relation to whom an order under section 63 is made has a right to appeal to the Court of Appeal on any point of law arising from a determination made by the Mental Health Appeal Tribunal in respect of him.
- (8) The right of appeal under subsection (2), (4), (6) or (7) may not be exercised unless the Mental Health Appeal Tribunal or the Court of Appeal gives leave. 40

254 Proceedings on appeal to Court of Appeal

- (1) This section applies if, in determining an appeal, the Court of Appeal finds that an error has been made on the point of law in question.
- (2) If the Court of Appeal considers that the error vitiates the determination in question, it may set aside the determination and remit the case for reconsideration—
- (a) by whichever of the Mental Health Tribunal for England or the Mental Health Tribunal for Wales made the determination, or
 - (b) if responsibility for assessing the patient or providing him with medical treatment is transferred under Chapter 10 of Part 2 or paragraph 17 of Schedule 8 or paragraph 16 of Schedule 9 from a hospital in Wales to a hospital in England, by the Mental Health Tribunal for England instead of the Mental Health Tribunal for Wales (and vice versa),
- in accordance with the relevant provision.
- (3) For the purposes of subsection (2), the relevant provision is the provision of this Act under which the determination in question was made.
- (4) Subsection (5) applies if the determination set aside under subsection (2) is a determination for the purposes of section 216(5) or of an application under section 243(2) (including a determination made by the Mental Health Appeal Tribunal by virtue of section 250(6) and (7)).
- (5) The Court of Appeal may make, in accordance with Chapter 2 of Part 6 or Chapter 1 of Part 8, the determination which it considers the Mental Health Tribunal for England, the Mental Health Tribunal for Wales or the Mental Health Appeal Tribunal (as the case may require) should have made, including any orders under section 243(3), instead of remitting the case for reconsideration to the Mental Health Tribunal for England or the Mental Health Tribunal for Wales (as the case may require) in accordance with subsection (2).
- (6) If the Court of Appeal remits a case, it may—
- (a) give directions as to the timing of the reconsideration of the case by the Tribunal in question,
 - (b) direct that the Tribunal reconsidering the case be differently constituted to that which made the determination in respect of which the appeal to the Mental Health Appeal Tribunal was made,
 - (c) if the case is remitted by virtue of subsection (2)(b), give such directions modifying the application of this Part and Parts 2 and 3 as are necessary in consequence of the case having been remitted to the Mental Health Tribunal for England or the Mental Health Tribunal for Wales (as the case may require), and
 - (d) in such circumstances as are specified for the purposes of section 250(8)(c), direct that the medical treatment of the patient—
 - (i) may not continue during the period between the setting aside and remission and the determination by the Tribunal in question on reconsideration of the case, or
 - (ii) may only continue during that period with such changes as are specified in the direction.

General

255 Effect of making an appeal

- (1) Subsection (2) applies if –
 - (a) a patient is liable to assessment under Chapter 3 of Part 2 or paragraph 6 of Schedule 9 at the time when an appeal is made to the Mental Health Appeal Tribunal or the Court of Appeal, but 5
 - (b) he would (apart from subsection (2)) cease to be liable to assessment under that Chapter or paragraph before the Appeal Tribunal or Court has determined the appeal.
- (2) The patient is to be treated as continuing to be liable to assessment under that Chapter until the determination of the appeal (unless his assessment period has ended by virtue of any of sub-paragraphs (i) to (iv) of section 25(6)(b) or paragraph 6(6)(b)(ii) or 8(1) of Schedule 9). 10
- (3) Subsection (4) applies if –
 - (a) any of the following is in force in respect of a patient or person at the time when an appeal is made to the Mental Health Appeal Tribunal or the Court of Appeal – 15
 - (i) an order or further order under Chapter 6 of Part 2 authorising his medical treatment or assessment,
 - (ii) an order under section 63, 20
 - (iii) a mental health order,
 - (iv) an order under paragraph 8 of Schedule 8, but
 - (b) the order or further order would (apart from subsection (4)) cease to be in force before the Appeal Tribunal or Court has determined the appeal. 25
- (4) The order or further order is to be treated as continuing in force until the determination of the appeal (unless the order or further order has been discharged by virtue of Chapter 7 of Part 2 or Chapter 4 of Part 3 or ceased to be in force by virtue of section 172(4)).

PART 10 30

FUNCTIONS OF COMMISSION FOR HEALTHCARE AUDIT AND INSPECTION

General

256 Transfer of property etc to the CHAI

- (1) Schedule 10 (which makes provision for the transfer of property, rights and liabilities from the Mental Health Act Commission (in this Part referred to as “the MHAC”) to the CHAI) has effect. 35
- (2) In this Act “the CHAI” means the Commission for Healthcare Audit and Inspection.

257 Abolition of Mental Health Act Commission

The MHAC is abolished. 40

*Information and advice***258 Information and advice**

- (1) The CHAI is to keep the appropriate authority informed about the exercise of functions conferred under or by virtue of this Act on the persons specified in subsection (2). 5
- (2) The persons are—
- (a) the appropriate authority,
 - (b) the CHAI,
 - (c) the Mental Health Tribunal for England,
 - (d) the Mental Health Tribunal for Wales, 10
 - (e) the Mental Health Appeal Tribunal,
 - (f) the managers of hospitals and individuals employed by them or providing services to them,
 - (g) local social services authorities and individuals employed by them or providing services to them. 15
- (3) The CHAI may at any time give advice to the appropriate authority or any other person who exercises functions conferred under or by virtue of this Act on any matter connected with—
- (a) the exercise of that authority’s or person’s functions, or
 - (b) the exercise of the CHAI’s functions under or by virtue of this Act, 20
- whether at the request of that authority or person or on its own initiative.
- (4) Advice given under subsection (3) may include advice as to the contents of the code of practice required to be published from time to time under section 1.
- (5) functions which are excluded functions for the purposes of Schedule 1 by virtue of any of paragraphs (b) to (d) of paragraph 4 of that Schedule. 25
- (6) But the advice given under subsection (3) is not to include advice on any matter connected with the exercise of—
- (a) functions conferred under or by virtue of this Act on any of the following—
 - (i) the Mental Health Tribunal for England, 30
 - (ii) the Mental Health Tribunal for Wales,
 - (iii) the Mental Health Appeal Tribunal, or
 - (iv) any court, or
 - (b) functions which are excluded functions for the purposes of Schedule 1 by virtue of any of paragraphs (b) to (d) of paragraph 4 of that Schedule. 35

259 Gathering of information

- (1) The CHAI must gather prescribed information from managers of hospitals and from local social services authorities in relation to—
- (a) the exercise of functions, conferred under or by virtue of this Act on them or on any individual employed by them or providing services to them, in relation to relevant patients, and 40
 - (b) the relevant patients in respect of whom those functions have been exercised.
- (2) The CHAI must gather prescribed information from—

- (a) the Mental Health Tribunal for England,
 - (b) the Mental Health Tribunal for Wales, and
 - (c) the Mental Health Appeal Tribunal,in relation to the exercise of functions conferred on them under or by virtue of this Act. 5
- (3) The CHAI must publish the information gathered under subsections (1) and (2).
- (4) In this section, “prescribed” means –
 - (a) in relation to functions which are excluded functions for the purposes of Schedule 1 by virtue of any of paragraphs (b) to (d) of paragraph 4 of that Schedule, prescribed by regulations made by the Secretary of State, 10
 - (b) in relation to –
 - (i) any other functions, or
 - (ii) relevant patients,prescribed by regulations made by the appropriate authority. 15

Investigations etc

260 Review of and investigations into exercise of functions

- (1) The CHAI must keep under review the exercise of relevant functions in relation to relevant patients.
- (2) The CHAI must conduct an investigation into the exercise of relevant functions in relation to relevant patients if it considers it necessary or expedient to do so (whether at the request of another person or on its own initiative). 20
- (3) The CHAI may exclude matters from investigation and nothing in this section shall require it to undertake or continue any investigation if it does not consider it appropriate to do so. 25
- (4) Subsection (5) applies if an investigation is carried out under subsection (2) in relation to the exercise of functions conferred on the managers of a hospital or on any individual employed by them, or providing services to them.
- (5) In that case, the managers must, if regulations made by the appropriate authority so provide, publish a statement as to the action they propose to take as a result of the investigation. 30
- (6) In this section, “relevant functions” means functions conferred on any person under or by virtue of this Act other than –
 - (a) functions conferred on –
 - (i) the CHAI,
 - (ii) the Mental Health Tribunal for England,
 - (iii) the Mental Health Tribunal for Wales,
 - (iv) the Mental Health Appeal Tribunal, or
 - (v) any court, or35
 - (b) functions which are excluded functions for the purposes of Schedule 1 by virtue of any of paragraphs (b) to (d) of paragraph 4 of that Schedule. 40

261 Failings

- (1) This section applies where the CHAI conducts an investigation under section 260(2).
- (2) The CHAI must make a report to the appropriate authority if it is of the view that there are significant failings in relation to the exercise of functions, conferred under or by virtue of this Act on managers of hospitals or individuals employed by them or providing services to them, in relation to relevant patients. 5
- (3) A report made to the appropriate authority under subsection (2) may include a recommendation that, with a view to remedying the failings in question, the appropriate authority take special measures in relation to the managers of the hospital in question. 10
- (4) A report under this section must give the CHAI's reasons for its view and for any recommendation made.

262 Investigations into circumstances of deaths 15

- (1) Subsections (2) and (3) apply if a patient dies whilst he is a relevant patient.
- (2) The managers of the hospital which was the relevant hospital in relation to that patient immediately before his death must notify the CHAI of the death –
 - (a) in the case of a patient who is resident at the hospital at the time of his death, within 72 hours of it, 20
 - (b) in any other case, within 72 hours of becoming aware of it.
- (3) The CHAI may investigate the circumstances of the death.
- (4) If any investigation is carried out under subsection (3) into the circumstances of the death of a patient, the managers of the hospital which was the relevant hospital in relation to that patient immediately before his death must, if regulations made by the appropriate authority so provide, publish a statement as to the action they propose to take as a result of the investigation. 25

263 Investigations: supplementary

- (1) This section applies for the purposes of sections 260 and 262.
- (2) If an investigation is carried out under section 260(2) or 262(3) the CHAI must publish such report as it considers appropriate. 30
- (3) The Secretary of State may, after consulting –
 - (a) the National Assembly for Wales, and
 - (b) the CHAI,
 by regulations make provision as to the procedure to be followed in respect of the making of representations to the CHAI before the publication of a report under subsection (2). 35
- (4) In the case of an investigation under section 260(2), the CHAI must send a copy of any report published by it under subsection (2) –
 - (a) if the investigation (or any part of it) relates to functions exercised in relation to a restricted patient to –
 - (i) the Secretary of State, and 40

- (ii) if the relevant hospital in relation to the patient is in Wales, also the National Assembly for Wales,
 - (b) if the investigation (or any part of it) relates to any other functions, to the appropriate authority.
- (5) In the case of an investigation under section 262(3), the CHAI must send a copy of any report published by it under subsection (2) – 5
 - (a) if the investigation (or any part of it) relates to a patient who was a restricted patient, to –
 - (i) the Secretary of State, and
 - (ii) if the relevant hospital in relation to the patient is in Wales, also the National Assembly for Wales, 10
 - (b) if the investigation (or any part of it) relates to any other patient, to the appropriate authority.
- (6) The CHAI must make copies of a report published by it under subsection (2) available for inspection at its offices by any person at any reasonable time. 15
- (7) Any person who requests a copy of such a report is entitled to have one on payment of such reasonable fee (if any) as the CHAI considers appropriate.
- (8) The CHAI may charge a person such reasonable fee as it considers appropriate where it provides him, at his request, with any other information relevant to an investigation under section 260(2) or 262(3). 20
- (9) In this section, “restricted patient” has the same meaning as in Chapter 4 of Part 3.

Rectification

264 Rectification of documents found by the CHAI to be incorrect or defective

- (1) Subject to subsection (3), subsection (2) applies if, in exercising any function conferred under or by virtue of this Act, the CHAI finds any document required to be made under or by virtue of this Act to be in any minor respect incorrect or defective. 25
- (2) The CHAI may require the person by whom the document was made to amend it, or secure that it is amended. 30
- (3) Subsection (2) does not apply in relation to any application to or document made or approved by –
 - (a) the Mental Health Tribunal for England,
 - (b) the Mental Health Tribunal for Wales,
 - (c) the Mental Health Appeal Tribunal, or 35
 - (d) any court.
- (4) No amendment of a document under subsection (2) shall render lawful anything which was unlawful as a result of the unamended document being incorrect or defective.

*Conferring of additional functions***265 Additional functions**

- (1) The appropriate authority may by regulations provide that the CHAI is to have such additional functions as may be prescribed in the regulations for the purposes of, or in connection with, its reviewing the exercise of functions conferred on any person under or by virtue of this Act in relation to relevant patients (subject to subsection (2)). 5
- (2) Subsection (1) does not apply to the exercise of functions –
- (a) conferred on –
 - (i) the CHAI, 10
 - (ii) the Mental Health Tribunal for England,
 - (iii) the Mental Health Tribunal for Wales,
 - (iv) the Mental Health Appeal Tribunal, or
 - (v) any court, or
 - (b) which are excluded functions for the purposes of Schedule 1 by virtue of any of paragraphs (b) to (d) of paragraph 4 of that Schedule. 15
- (3) The Secretary of State may by regulations provide that the CHAI is to have such additional functions as may be prescribed in the regulations for the purposes of, or in connection with, its reviewing the exercise of functions falling within subsection (2)(b). 20

*Complaints***266 Complaints: general**

- (1) The appropriate authority may by regulations make provision about the handling and consideration of complaints made under the regulations –
- (a) by or in respect of a relevant patient, and 25
 - (b) with respect to or in connection with the exercise of any relevant functions by any person in relation to him.
- (2) Regulations under this section may provide for a complaint to be considered by one or more of the following –
- (a) the managers of the hospital which is or was the relevant hospital in relation to the patient, 30
 - (b) any qualifying local social services authority,
 - (c) the CHAI,
 - (d) an independent lay person,
 - (e) an independent panel established under the regulations, 35
 - (f) any other person.
- (3) Regulations under this section may provide for a complaint or any matter raised by a complaint –
- (a) to be referred to a Health Service Commissioner for him to consider whether to investigate the complaint or matter under the Health Service Commissioners Act 1993 (c. 46) (and to be treated by him as a complaint duly referred to him under section 10 of that Act), 40
 - (b) to be referred to the Commission for Local Administration in England or to the Commission for Local Administration in Wales for it to

- consider whether to investigate the complaint or matter under Part 3 of the Local Government Act 1974 (c. 7) (and to be treated as a complaint duly made under section 26 of that Act),
- (c) to be referred to any other person for him to consider whether to take any action otherwise than under the regulations. 5
- (4) A local social services authority is a qualifying local social services authority for the purposes of this section if it, or any individual employed by it or providing services to it, has exercised relevant functions in relation to the patient referred to in subsection (1).
- (5) “Relevant functions” has the same meaning as in section 260. 10

267 Complaints regulations: supplementary

- (1) Regulations under section 266 may, without prejudice to the generality of that section, make the following provision.
- (2) The regulations may make provision about— 15
- (a) the persons who may make a complaint,
 - (b) the complaints which may, or may not, be made under the regulations,
 - (c) the persons to whom complaints may be made,
 - (d) complaints which need not be considered,
 - (e) the period within which complaints must be made,
 - (f) the procedure to be followed in making, handling and considering a complaint, 20
 - (g) matters which are excluded from consideration,
 - (h) the making of a report or recommendations about a complaint,
 - (i) the action to be taken as a result of the complaint.
- (3) The regulations may require— 25
- (a) the making of a payment, in relation to the consideration of a complaint under the regulations, by any person in respect of whom the complaint is made,
 - (b) any such payment to be— 30
 - (i) made to such person as may be specified in regulations, and
 - (ii) of such amount as may be specified in, or calculated or determined under, the regulations,
 - (c) an independent panel to review the amount chargeable under paragraph (a) in any particular case and, if the panel thinks fit, to substitute a lesser amount. 35
- (4) The regulations may require any person who handles or considers complaints under the regulations to make information available to the public about the procedures to be followed under the regulations.
- (5) The regulations may also— 40
- (a) provide for different parts or aspects of a complaint to be treated differently, 40
 - (b) require the production of information or documents in order to enable a complaint to be properly considered,
 - (c) authorise the disclosure of information or documents relevant to a complaint to a person— 45
 - (i) who is considering a complaint under the regulations, or

- (ii) to whom a complaint has been referred,
and any such disclosure may be authorised notwithstanding any rule of common law that would otherwise prohibit or restrict the disclosure.
- (6) The regulations may make provision about complaints which raise both matters falling to be considered under the regulations and matters falling to be considered under other statutory complaints procedures, including in particular provision for – 5
- (a) enabling such a complaint to be made under the regulations, and
- (b) securing that matters falling to be considered under other statutory complaints procedures are treated as if they had been raised in a complaint made under the appropriate procedures, 10
- and in this subsection “statutory complaints procedures” means procedures established under or by virtue of any enactment.

268 Handling of complaints

In section 3 of the Health Service Commissioners Act 1993 (c. 46) (remit of Commissioners), in subsection (1E), after “2003” there is inserted “or section 266 of the Mental Health Act 2004”. 15

269 Complaints: data protection

In section 31 of the Data Protection Act 1998 (c. 29) (regulatory activity), in subsection (6), after “2003” there is inserted “or section 266 of the Mental Health Act 2004”. 20

Ancillary powers

270 Right of access

- (1) A person authorised to do so by the CHAI may, if the CHAI considers it necessary or expedient for the purpose of exercising any of the functions conferred on it under or by virtue of this Act, at any reasonable time – 25
- (a) visit and interview, and
- (b) if he is a registered medical practitioner, examine, any person who is or has been a relevant patient.
- (2) The power under subsection (1) may be exercised by the CHAI with or without notice. 30
- (3) A person authorised by virtue of subsection (1) to visit, interview or examine any person may –
- (a) do so in private (if he considers it appropriate), or
- (b) require any person to afford him such facilities and assistance with respect to any matter within the person’s control as are necessary to enable him to exercise his powers under this section. 35
- (4) In determining for the purposes of subsection (3)(a) whether it is appropriate to visit, interview or examine a person in private, the person authorised by virtue of subsection (1) must have regard to any wishes and feelings of the person in question about the visit, interview or examination being in private. 40

- (5) A person who proposes to exercise any power conferred by this section must if so required produce some duly authenticated document showing his authority to exercise the power.

271 Right of entry

- (1) A person authorised to do so by the CHAI may, if the CHAI considers it necessary or expedient for the purpose of exercising any of the functions conferred on it under or by virtue of this Act, at any reasonable time enter and inspect any premises to which subsection (2) applies. 5
- (2) This subsection applies to premises –
- (a) owned or controlled by – 10
 - (i) the managers of any hospital falling within paragraph (a) or (b) of section 2(3), or
 - (ii) the person registered or required to be registered under Part 2 of the Care Standards Act 2000 (c. 14) in respect of any establishment, and 15
 - (b) at which any relevant patient is, or has been, resident.
- (3) A person who proposes to exercise any power of entry or inspection conferred by this section must if so required produce some duly authenticated document showing his authority to exercise the power.

272 Right of entry: supplementary

- (1) A person authorised by virtue of section 271 to enter and inspect premises may, if he considers it necessary or expedient for the purposes of this Act –
- (a) inspect, take copies of and remove from the premises any documents or records (including personal records),
 - (b) inspect any other item and remove it from the premises, and 25
 - (c) interview in private –
 - (i) any person working at the premises,
 - (ii) any patient who is resident there (other than a relevant patient) and who consents to be interviewed.
- (2) The power in subsection (1)(a) includes – 30
- (a) power to require any person holding or accountable for documents or records kept on the premises to produce them, and
 - (b) in relation to records which are kept by means of a computer, power to require the records to be produced in a form in which they are legible and can be taken away. 35
- (3) A person authorised by virtue of subsection (1)(a) to inspect any records is entitled to have access to, and to check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question.
- (4) A person authorised by virtue of section 271 to enter and inspect any premises may – 40
- (a) require any person to afford him such facilities and assistance with respect to matters within the person’s control as are necessary to enable him to exercise his powers under section 271 or this section, and

- (b) take such measurements and photographs and make such recordings as he considers necessary to enable him to exercise those powers.
- (5) In this section and section 273, “personal records” includes medical records.

273 Power to require documents and information etc

- (1) The CHAI may at any time require any person specified in subsection (2) to provide it with any information, documents, records (including personal records) or other items which the CHAI considers it necessary or expedient to have for the purposes of enabling it to exercise any of the functions conferred on it under or by virtue of this Act. 5
- (2) Those persons are – 10
- (a) the managers of any hospital,
 - (b) any local social services authority,
 - (c) the Mental Health Tribunal for England,
 - (d) the Mental Health Tribunal for Wales,
 - (e) the Mental Health Appeal Tribunal, and 15
 - (f) any other prescribed person.
- (3) The power in subsection (1) to require the provision of records includes, in relation to records kept by means of a computer, power to require the provision of the records in legible form.
- (4) In subsection (2), “prescribed” means prescribed by regulations made by the appropriate authority. 20

274 Power to require explanation

- (1) The appropriate authority may by regulations make provision requiring prescribed persons to provide to the CHAI, or to persons authorised by it, an explanation of – 25
- (a) any information, documents, records or other items provided under section 273, and
 - (b) any matters which are the subject of the exercise of any functions of the CHAI conferred under or by virtue of this Act,
- in circumstances where the CHAI considers the explanation necessary or expedient for the purposes of this Act. 30
- (2) The regulations may require explanations to be provided at such times and places as may be prescribed.
- (3) In this section, “prescribed” means prescribed in the regulations.

Miscellaneous 35

275 Annual report

- (1) As soon as practicable after the end of each financial year the CHAI must make a report on the exercise of its functions under or by virtue of this Act during the year.
- (2) The CHAI must lay before Parliament a copy of each report made under this section. 40

- (3) The CHAI must send a copy of each report made under this section to the Secretary of State and the National Assembly for Wales.
- (4) In this section, “financial year” has the meaning given (in relation to the CHAI) in section 148 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43).

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276 Failure in discharge of functions: CHAI

- (1) If the appropriate authority considers that the CHAI is to a significant extent –
 - (a) failing to discharge any of its functions under this Act, or
 - (b) failing properly to discharge any of those functions,it may give a direction to the CHAI.
- (2) The CHAI must comply with any direction given to it under this section.
- (3) A direction given under this section –
 - (a) must be given in writing,
 - (b) may be varied or revoked by a further direction under this section.

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General

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277 Interpretation: Part 10

- (1) This section applies for the purposes of this Part.
- (2) “Hospital” (except in section 271) means –
 - (a) any hospital falling within paragraph (a) or (b) of section 2(3), and
 - (b) any establishment which is an independent hospital within the meaning of the Care Standards Act 2000 (c. 14).
- (3) “The managers”, in relation to a hospital within subsection (2)(b), means the person registered or required to be registered under Part 2 of the Care Standards Act 2000 in respect of it.
- (4) “Relevant patient” means –
 - (a) any patient who is subject to the provisions of Part 2,
 - (b) any patient who is subject to the provisions of Part 3,
 - (c) any patient who is a qualifying child patient for the purposes of Chapter 2 of Part 6, or
 - (d) any other patient who is subject to the provisions of Part 5.
- (5) The relevant hospital in relation to a patient is –
 - (a) in the case of a patient falling within subsection (4)(a), the hospital with which he is registered under section 22(1), 78(2) or 166(2)(b) or deemed to be registered by virtue of paragraph 1(3) to (5) of Schedule 8 or paragraph 1(3) of Schedule 9,
 - (b) in the case of a patient falling within subsection (4)(b) –
 - (i) if he is remanded under section 88, 93 or 95, or further remanded under section 89, or committed for medical treatment under section 94, the hospital to which he is remanded or committed under the section in question,
 - (ii) if a mental health order or an order under paragraph 8 of Schedule 8 is in force in respect of him, the responsible hospital

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- (read in accordance with paragraph 1(4) and (5) of that Schedule),
- (iii) if a transfer for report direction or remand transfer direction is in force in respect of him, the hospital specified in the direction,
 - (iv) if a transfer for treatment direction is in force in respect of him, the responsible hospital (read in accordance with paragraph 1(3) of Schedule 9),
- (c) in the case of a patient falling within subsection (4)(c), the hospital at which he is, or is to be, provided with medical treatment in accordance with Chapter 2 of Part 6,
 - (d) in the case of a patient falling within subsection (4)(d), the hospital at which the patient is, or is to be, provided with medical treatment in accordance with Part 5.

PART 11

OFFENCES

278 Obstruction

- (1) Any person who without reasonable cause—
 - (a) refuses to allow an authorised person to enter or inspect any premises,
 - (b) refuses to—
 - (i) allow the visiting, interviewing, meeting or examination of a patient, or the visiting, interviewing or examination of a patient in private, by an authorised person, or
 - (ii) give access to a patient to an authorised person,
 - (c) refuses to produce for the inspection of an authorised person any information, record, document or other item the production of which is duly required by him,
 - (d) refuses to provide to an authorised person an explanation which is duly required of him, or
 - (e) otherwise obstructs an authorised person in the discharge of any of his functions,
 is guilty of an offence.
- (2) References in subsection (1) to an authorised person are to a person who is authorised under or by virtue of this Act to take the action in question.
- (3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 4 on the standard scale, or to both.

279 Forgery, false statements etc

- (1) Any person who without lawful authority or excuse has in his custody or under his control any document which—
 - (a) purports to be a qualifying document, and
 - (b) is false and is known or believed by him to be false,
 is guilty of an offence.
- (2) In subsection (1), “false” has the same meaning as in Part 1 of the Forgery and Counterfeiting Act 1981 (c. 45).

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- (3) Any person who without lawful authority or excuse –
- (a) makes a document so closely resembling a qualifying document as to be calculated to deceive, or
 - (b) has a document in his custody or under his control knowing that it so closely resembles a qualifying document as to be calculated to deceive,
- is guilty of an offence. 5
- (4) Any person who –
- (a) wilfully makes a false entry or statement in a qualifying document, or
 - (b) with intent to deceive, makes use of any such entry or statement which he knows to be false,
- is guilty of an offence. 10
- (5) A person guilty of an offence under this section is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both,
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine of any amount, or to both. 15
- (6) In this section, “qualifying document” means –
- (a) an application to the Mental Health Tribunal for England, the Mental Health Tribunal for Wales or Mental Health Appeal Tribunal and any documents accompanying that application, 20
 - (b) a record of any determination or decision made for the purposes of this Act, and
 - (c) any other document required or authorised to be made for any of the purposes of this Act.
- 280 Ill-treatment or wilful neglect of patients 25**
- (1) For the purposes of this section, a qualifying worker is an individual who works in a hospital or care home under a contract of employment or other contract (whether with the hospital or home or otherwise).
- (2) Any qualifying worker who –
- (a) ill-treats or wilfully neglects a patient who is resident in the hospital or home in question and is for the time being receiving treatment for mental disorder there, or 30
 - (b) ill-treats or wilfully neglects, on the premises of which the hospital or home in question forms part, a patient who is not resident, but is receiving such treatment, there, 35
- is guilty of an offence.
- (3) Any person who ill-treats or wilfully neglects a mentally disordered person who is for the time being in his custody or care (whether by virtue of any legal or moral obligation or otherwise) is guilty of an offence.
- (4) Subsection (3) does not apply to ill-treatment or neglect by a person who is a qualifying worker if the circumstances are as specified in paragraph (a) or (b) of subsection (2). 40
- (5) A person guilty of an offence under this section is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both, 45

(b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine of any amount, or to both.	
(6) In subsection (1), “care home” has the same meaning as in the Care Standards Act 2000 (c. 14).	
(7) In that subsection, “hospital” means –	5
(a) any hospital falling within paragraph (a) or (b) of section 2(3), and	
(b) any establishment which is an independent hospital (within the meaning of the Care Standards Act 2000).	
281 Assisting patients to absent themselves without leave etc	
(1) Any person who –	10
(a) induces a patient to do or make any of the acts or omissions specified in subsection (2) or (7) of section 81, or	
(b) knowingly assists a patient to do or make any of those acts or omissions,	
is guilty of an offence.	15
(2) Any person who –	
(a) induces a person remanded under section 88, 93 or 95, or further remanded under 89, to do or make any of the acts or omissions specified in section 111(1) or a person committed for medical treatment under section 94 to do or make any of the acts or omissions specified in section 112(1),	20
(b) knowingly assists such a person to do or make any of those acts or omissions,	
is guilty of an offence.	
(3) Any person who –	25
(a) induces a person to abscond while he is being taken, conveyed or removed to or detained in any place under any of sections 120(3), 121(5), 131(2) and (8), 133(2), 135(3) and 137(2),	
(b) knowingly assists a person so to abscond,	
is guilty of an offence.	30
(4) Any person who –	
(a) induces a person to abscond while he is being taken to or detained in a place of safety under any of sections 227 to 229, or	
(b) knowingly assists a person so to abscond,	
is guilty of an offence.	35
(5) Any person who –	
(a) knowingly harbours any of the following –	
(i) a patient who has done or made any of the acts or omissions specified in subsection (2) or (7) of section 81,	
(ii) a person remanded under section 88, 93 or 95, or further remanded under 89, who has done or made any of the acts or omissions specified in section 111(1),	40
(iii) a person committed for medical treatment under section 94 who has done or made any of the acts or omissions specified in section 112(1),	45

- (iv) a person who has absconded while being taken, conveyed or removed to or detained in any place under any of sections 120(3), 121(5), 131(2) and (8), 133(2), 135(3) and 137(2), or
 - (v) a person who has absconded while being taken to or detained in a place of safety under any of sections 227 to 229, or 5
 - (b) knowingly gives such a patient or person any assistance with intent to prevent, hinder or interfere with his being –
 - (i) taken or retaken into custody,
 - (ii) returned to the custody of the person in whose custody he ought to be, or 10
 - (iii) taken or returned to the hospital or other place where he ought to be,
- is guilty of an offence.
- (6) A person guilty of an offence under this section is liable –
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both, 15
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine of any amount, or to both.
- (7) For the purposes of this section –
 - (a) references to subsection (2) of section 81 include references to that subsection read in accordance with section 127(7) (including that provision as applied by section 139(7)) and sections 164(4)(a) and 169(8)(a), and 20
 - (b) references to subsection (7) of section 81 include references to that subsection read in accordance with section 157(5). 25

282 Offence by body corporate etc

- (1) If an offence under this Part committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, that person as well as the body is guilty of the offence and liable to be proceeded against and punished accordingly. 30
- (2) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as it applies to a director of a body corporate. 35
- (3) Proceedings for an offence alleged to have been committed under this Part by an unincorporated body are to be brought in the name of that body (and not in that of any of its members) and, for the purposes of any such proceedings, any rules of court relating to the service of documents have effect as if that body were a corporation. 40
- (4) A fine imposed on an unincorporated body on its conviction of an offence under this Part is to be paid out of the funds of that body.
- (5) If an unincorporated body is charged with an offence under this Part, section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates' Courts Act 1980 (c. 43) (procedure on a charge against a corporation) have effect in like manner as in the case of a corporation so charged. 45

- (6) If an offence under this Part committed by an unincorporated body (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the body or any member of its governing body, he as well as the body is guilty of the offence and liable to be proceeded against and punished accordingly. 5
- (7) If an offence under this Part committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

PART 12

10

MISCELLANEOUS

CHAPTER 1

RECTIFICATION OF DOCUMENTS

283 Rectification of documents with consent of hospital managers

- (1) This section applies if, within the relevant period, any qualifying document made in relation to a patient is found to be in any minor respect incorrect or defective. 15
- (2) The document may be amended by the person by whom it was made (subject to subsection (3)).
- (3) The document may only be amended with the consent of the managers of the relevant hospital (unless the document was made by them). 20
- (4) The managers of the relevant hospital may amend a document not made by them if—
- (a) it is not practicable for the person who made it to amend it, and
 - (b) that person gives his consent to the managers making the amendment on his behalf. 25
- (5) The document must be amended under subsection (2) or (4) within the relevant period.
- (6) No amendment of a document under subsection (2) or (4) shall render lawful anything which was unlawful as a result of the unamended document being incorrect or defective. 30
- (7) A document is a qualifying document if—
- (a) it is required to be made under or by virtue of this Act, and
 - (b) it is not a document to which subsection (8) applies.
- (8) This subsection applies to any application to or document made or approved by—
- (a) the Mental Health Tribunal for England,
 - (b) the Mental Health Tribunal for Wales,
 - (c) the Mental Health Appeal Tribunal, or
 - (d) any court. 40

- (9) In this section, “relevant period”, in relation to a qualifying document, means the period of 14 days beginning with the day on which the document was made.
- (10) For the purposes of this section, the relevant hospital, in relation to a patient, is – 5
- (a) in the case of a patient who is subject to the provisions of Part 2, the hospital with which he is registered under section 22(1), 78(2) or 166(2)(b) or deemed to be registered by virtue of paragraph 1(3) to (5) of Schedule 8 or paragraph 1(3) of Schedule 9,
 - (b) in the case of a patient who is subject to the provisions of Part 3 – 10
 - (i) if he is remanded under section 88, 93 or 95, or further remanded under section 89, or committed for medical treatment under section 94, the hospital to which he is remanded or committed under the section in question,
 - (ii) if a mental health order or an order under paragraph 8 of Schedule 8 is in force in respect of him, the responsible hospital (read in accordance with paragraph 1(4) and (5) of that Schedule), 15
 - (iii) if a transfer for report direction or remand transfer direction is in force in respect of him, the hospital specified in the direction, 20
 - (iv) if a transfer for treatment direction is in force in respect of him, the responsible hospital (read in accordance with paragraph 1(3) of Schedule 9),
 - (c) in the case of a patient who is a qualifying child patient for the purposes of Chapter 2 of Part 6, the hospital at which he is, or is to be, provided with medical treatment in accordance with that Chapter, 25
 - (d) in the case of any other patient who is subject to the provisions of Part 5, the hospital at which the patient is, or is to be, provided with medical treatment in accordance with that Part.

CHAPTER 2 30

PROVISION OF INFORMATION

Information to patients

284 Duty of hospital managers to give information about treatment

- (1) This section applies to a patient who is – 35
- (a) a Part 2 patient,
 - (b) a Part 3 patient, or
 - (c) a qualifying child patient.
- (2) The steps specified in subsection (3) must be taken by the managers of the relevant hospital.
- (3) Those steps are such as are practicable to secure that – 40
- (a) each relevant person is informed of –
 - (i) the authority under which medical treatment is being provided to the patient,
 - (ii) the requirements of this Act which apply in connection with his treatment, 45

- (b) each relevant person is informed of the rights which can be exercised by or in respect of him under this Act, and
- (c) each relevant person is given an explanation of the information provided under paragraphs (a) and (b) to assist him, as far as practicable, in understanding that information, 5
(subject to subsection (4)).
- (4) The managers of the relevant hospital need not take the steps specified in subsection (3) in relation to any particular person who is a relevant person by virtue of section 285(3)(c) or (4)(b) if –
- (a) they think it would be inappropriate to do so, or 10
(b) it is impracticable to do so.
- (5) The steps must be taken –
- (a) in the case of a Part 2 patient, as soon as practicable after the time when the patient is registered under section 22(1), 78(2) or 166(2)(b) or deemed to be registered by virtue of paragraph 1(3) to (5) of Schedule 8 or paragraph 1(3) of Schedule 9, 15
- (b) in the case of a Part 3 patient –
- (i) if he is a Part 3 patient by virtue of section 285(10)(a), (b) or (e)(iii), as soon as practicable after the patient’s deemed registration (read in accordance with section 97), 20
- (ii) if he is a Part 3 patient by virtue of section 285(10)(c), (d) or (e)(ii), as soon as practicable after the patient’s deemed registration (read in accordance with paragraph 1(4) and (5) of Schedule 8 or (as the case may be) paragraph 1(3) of Schedule 9),
- (iii) if he is a Part 3 patient by virtue of section 285(10)(e)(i), as soon as practicable after the patient’s deemed registration in accordance with provision made by an order under section 131(9), 25
- (c) in the case of a qualifying child patient, as soon as practicable after he becomes such a patient, 30
(subject to subsection (8)).
- (6) If –
- (a) each relevant person has, in accordance with subsection (3), been informed and given an explanation of the matters specified in paragraphs (a) and (b) of that subsection (including information and explanation required to be given by virtue of this subsection), and 35
- (b) after that information and explanation were given there is a material change in one or more of those matters,
- the steps required by that subsection must be taken again as far as they relate to any matter so changed. 40
- (7) The steps required to be taken under subsection (6) must be taken as soon as practicable after the change in question (subject to subsection (8)).
- (8) If a nominated person has not been appointed at the time when the steps in question are required to be taken, the steps in respect of him must be taken as soon as practicable after his appointment. 45

285 Interpretation

- (1) Subsections (2) to (4) have effect for the purposes of section 284.

- (2) The relevant hospital, in relation to a patient, is –
- (a) in the case of a Part 2 patient, the hospital with which the patient is registered under section 22(1), 78(2) or 166(2)(b) or deemed to be registered by virtue of paragraph 1(3) to (5) of Schedule 8 or paragraph 1(3) of Schedule 9, 5
 - (b) in the case of a Part 3 patient –
 - (i) if he is such a patient by virtue of paragraph (a) or (b) of subsection (10), the hospital to which he is remanded or committed under the section in question,
 - (ii) if he is such a patient by virtue of paragraph (c) or (d) of that subsection, the responsible hospital (read in accordance with paragraph 1(4) and (5) of Schedule 8), 10
 - (iii) if he is such a patient by virtue of paragraph (e)(i) or (iii) of that subsection, the hospital specified in the direction in question,
 - (iv) if he is such a patient by virtue of paragraph (e)(ii) of that subsection, the responsible hospital (read in accordance with paragraph 1(3) of Schedule 9), 15
 - (c) in the case of a qualifying child patient, the hospital at which the patient is resident.
- (3) In the case of a qualifying child patient, the following are relevant persons – 20
- (a) the patient,
 - (b) his consenting parent (within the meaning of Chapter 2 of Part 6),
 - (c) each other person with parental responsibility for him, and
 - (d) the patient’s nominated person (unless he falls within paragraph (b) or (c)). 25
- (4) In any other case, the following are relevant persons –
- (a) the patient,
 - (b) if the patient is aged under 16, each person with parental responsibility for him, and
 - (c) the patient’s nominated person (unless he falls within paragraph (b)). 30
- (5) Subsections (6) to (11) apply for the purposes of section 284 and this section.
- (6) References to a patient’s nominated person are to be disregarded in the case of a Part 3 patient who –
- (a) is such a patient by virtue of paragraph (a), (b) or (e)(i) or (iii) of subsection (10), or 35
 - (b) is such a patient by virtue of paragraph (c) or (e)(ii) of that subsection and is a restricted patient.
- (7) “Hospital” means –
- (a) in relation to a qualifying child patient –
 - (i) any hospital falling within paragraph (a) or (b) of section 2(3), and 40
 - (ii) any establishment which is an independent hospital within the meaning of the Care Standards Act 2000 (c. 14),
 - (b) in relation to any other patient, any hospital within the meaning given by section 2(3). 45
- (8) “The managers”, in relation to a hospital within subsection (7)(a)(ii), means the person registered or required to be registered under Part 2 of the Care Standards Act 2000 in respect of it.

- (9) “Part 2 patient” means a patient –
- (a) who is liable to assessment under Chapter 3 of Part 2, or
 - (b) in respect of whom an order or further order under Chapter 6 of that Part is in force,
- (whether he is a resident or non-resident patient). 5
- (10) “Part 3 patient” means –
- (a) a person remanded under section 88, or further remanded under section 89, in respect of whom the provision of medical treatment is authorised under section 91(6) or 92(6),
 - (b) a person remanded under section 93 or 95 or committed for medical treatment under section 94, 10
 - (c) a patient in respect of whom a mental health order is in force (unless the order states that medical treatment is to be provided to him as a resident patient and he has not yet been admitted to the hospital specified in the order), 15
 - (d) a patient in respect of whom an order under paragraph 8 of Schedule 8 is in force, or
 - (e) a patient in respect of whom there is in force –
 - (i) a hospital direction,
 - (ii) a transfer for treatment direction, or 20
 - (iii) a remand transfer direction.
- (11) “Qualifying child patient” has the meaning given by Chapter 2 of Part 6.
- (12) In subsection (6), “restricted patient” has the same meaning as in Chapter 4 of Part 3.

Information sharing by public authorities etc 25

286 Information sharing on request

- (1) This section applies if a qualifying person requests another qualifying person (the “request recipient”) to provide specified information relating to a specified patient.
- (2) As soon as practicable after receiving the request, the request recipient must provide any relevant specified information – 30
- (a) relating to the specified patient, and
 - (b) held by the request recipient or under his control, to the person making the request (subject to section 288(1)).
- (3) Specified information is relevant if, in the view of the request recipient, it is capable of being used by the person making the request – 35
- (a) in connection with a relevant determination made by that person, or
 - (b) in the case of a patient –
 - (i) who is liable to assessment under Chapter 3 of Part 2,
 - (ii) in respect of whom an order or further order under Chapter 6 of that Part is in force, 40
 - (iii) who is subject to a mental health order but not a restriction order,
 - (iv) who is subject to an order under paragraph 8 of Schedule 8, or

- (v) who is subject to a transfer for treatment direction but not a restriction direction,
to take steps falling within subsection (5).
- (4) A determination is relevant for the purposes of subsection (3)(a) if it is –
- (a) in the case of a patient who is subject to Part 2, a determination as to whether all of the relevant conditions appear to be or are met in the case of the patient, 5
 - (b) in the case of a patient to whom Part 2 of Schedule 8 applies, a determination under paragraph 8(1) of that Schedule as to whether all of the relevant conditions are met in the case of the patient, 10
 - (c) in the case of a patient to whom Schedule 9 applies, a determination under paragraph 6(3)(a) of that Schedule as to whether the relevant conditions are met in the case of the patient, or
 - (d) in the case of a patient who is subject to Chapter 2 of Part 6, a determination as to whether the conditions specified in section 207(2) to (7) appear to be or are met in the case of the patient. 15
- (5) For the purposes of subsection (3)(b), the following steps fall within this subsection –
- (a) steps to protect –
 - (i) the health and safety of the patient, or 20
 - (ii) other persons,
against the risk by reference to which the examiners (within the meaning of Chapter 2 of Part 2), or the Mental Health Tribunal for England or the Mental Health Tribunal for Wales, determined for the purposes of that Part or paragraph 8 of Schedule 8 that the third of the relevant conditions is met in the patient’s case, or 25
 - (b) steps to remove or minimise the risk that, if the patient were no longer subject to Part 2 or an order or direction mentioned in subsection (3)(b)(iii), (iv) or (v) (as the case may require), the third of the relevant conditions would be met in his case in the future. 30
- (6) If the request recipient is the clinical supervisor of the patient, before providing the information he must, if practicable, consult the patient for the purposes of determining whether the limitation on the provision of the information in section 288(1) applies.
- (7) The person making the request must give reasons for the request (subject to section 288(2)). 35
- (8) A request recipient must give reasons to the person making the request if he does not provide any of the specified information in response to the request (subject to section 288(2)).
- (9) Each of the following is a qualifying person – 40
- (a) a public authority,
 - (b) in relation to a patient who is registered under section 22(1), 78(2) or 166(2)(b), or deemed to be registered by virtue of paragraph 1(3) to (5) of Schedule 8 or paragraph 1(3) of Schedule 9, with an establishment which is a hospital by virtue of section 2(3)(c) – 45
 - (i) his clinical supervisor, and
 - (ii) the managers of the hospital,

- (c) in relation to a patient subject to Chapter 2 of Part 6 who is resident at an independent hospital (within the meaning of the Care Standards Act 2000 (c. 14)) –
- (i) his clinical supervisor, and
 - (ii) the managers of the hospital (within the meaning of that Part). 5
- (10) In this section –
- (a) “public authority” includes any person certain of whose functions are functions of a public nature, but does not include –
 - (i) a court or tribunal, or
 - (ii) either House of Parliament or a person exercising functions in connection with proceedings in Parliament; 10
 - (b) references to a patient’s clinical supervisor are –
 - (i) if the patient is registered with a hospital under section 22(1), 78(2) or 166(2)(b), to the clinical supervisor appointed in respect of him under Part 2 or section 167(2), 15
 - (ii) if the patient is deemed to be registered with a hospital by virtue of paragraph 1(3) to (5) of Schedule 8, to the clinical supervisor appointed in respect of him under paragraph 4 of that Schedule,
 - (iii) if the patient is deemed to be registered with a hospital by virtue of paragraph 1(3) of Schedule 9, to the clinical supervisor appointed in respect of him under paragraph 5 of that Schedule, or 20
 - (iv) if the patient is subject to Chapter 2 of Part 6, to the clinical supervisor appointed in respect of him under that Chapter,
 - (c) “relevant conditions” has the same meaning as in Part 2; 25
 - (d) “specified”, in relation to information or a patient, means specified in the request.

287 Information sharing by clinical supervisor

- (1) Subsection (3) applies in relation to a patient who is subject to –
- (a) Part 2, 30
 - (b) a mental health order but not a restriction order,
 - (c) an order under paragraph 8 of Schedule 8, or
 - (d) a transfer for treatment direction but not a restriction direction,
- if the clinical supervisor of the patient determines that a change has occurred in relation to the patient which is such that it causes him to review any of the matters specified in subsection (2) (subject to subsections (5) and (6)). 35
- (2) Those matters are –
- (a) if the patient is liable to assessment under Chapter 3 of Part 2, or to be provided with medical treatment or assessed by virtue of an order (or further order) under Chapter 6 of that Part or paragraph 8 of Schedule 8, as a resident patient, whether he should continue to be so liable as a resident patient, 40
 - (b) if he is so liable as a non-resident patient, whether the conditions imposed on him under that Part or Schedule should be amended,
 - (c) whether all of the relevant conditions continue to be, or to appear to be, met in his case. 45
- (3) As soon as practicable after making a determination under subsection (1), the clinical supervisor must provide to any qualifying person any information

held by him or under his control which he considers may, if provided to that person, enable him to take steps falling within subsection (4).

- (4) For the purposes of subsection (3), the following steps fall within this subsection –
- (a) in relation to a patient whose case is reviewed by virtue of paragraph (a) or (b) of subsection (2), steps to protect –
 - (i) the health and safety of the patient, or
 - (ii) other persons,
against the risk by reference to which the examiners (within the meaning of Chapter 2 of Part 2), or the Mental Health Tribunal for England or the Mental Health Tribunal for Wales, determined for the purposes of that Part or paragraph 8 of Schedule 8 that the third of the relevant conditions is met in the patient’s case, 10
 - (b) in relation to a patient whose case is reviewed by virtue of paragraph (c) of subsection (2), steps to remove or minimise the risk that, if the patient were no longer subject to Part 2 or an order or direction mentioned in subsection (1)(b), (c) or (d), the third of the relevant conditions would be met in his case in the future. 15
- (5) Subsection (3) does not apply if the clinical supervisor determines that the taking of the steps in question would not affect the outcome of the review mentioned in subsection (1). 20
- (6) Subsection (3) is subject to section 288(1).
- (7) Before providing information under subsection (3), the clinical supervisor must, if practicable, consult the patient for the purposes of determining whether the limitation on the provision of the information in section 288(1) applies. 25
- (8) For the purposes of this section –
- (a) “qualifying person” is to be read in accordance with section 286 (disregarding section 286(9)(b)(i) and (c));
 - (b) references to a patient’s clinical supervisor are to be read in accordance with sub-paragraphs (i) to (iii) of section 286(10)(b); and
 - (c) “relevant conditions” has the same meaning as in Part 2. 30

288 Information sharing: limitation on duty

- (1) Nothing in section 286 or 287(3) authorises the provision of information if such provision would be prohibited or restricted under or by virtue of any enactment or by any rule of common law. 35
- (2) Nothing in section 286 authorises the provision of reasons for a request or for not providing information if such provision would be prohibited or restricted as mentioned in subsection (1).

CHAPTER 3

PATIENTS’ CORRESPONDENCE AND EXPENSES

Correspondence

289 Correspondence of patients

- | | |
|--|----|
| (1) A postal packet which is – | 5 |
| (a) addressed to any person by a patient detained in a hospital under this Act, and | |
| (b) delivered by the patient for dispatch, | |
| may be withheld from the postal operator concerned by the managers of the hospital if the condition specified in subsection (2) is met. | 10 |
| (2) That condition is – | |
| (a) that the person in question has requested that communications addressed to him by the patient should be withheld, or | |
| (b) in the case of a postal packet which is not addressed to an official communicant, that – | 15 |
| (i) the hospital is one at which high security psychiatric services are provided, and | |
| (ii) the managers of the hospital consider that the postal packet is likely to cause distress to the person in question or any other person who is not on the staff of the hospital or cause danger to any person. | 20 |
| (3) Any request for the purposes of subsection (2)(a) must be made to the patient’s clinical supervisor or the managers of the hospital in question. | |
| (4) A postal packet which – | |
| (a) is addressed to a patient detained under this Act in a hospital at which high security psychiatric services are provided, and | 25 |
| (b) is not sent by or on behalf of an official communicant, | |
| may be withheld from the patient by the managers of the hospital if, in their opinion, it is necessary to do so in the interests of the safety of the patient or for the protection of other persons. | 30 |
| (5) The managers of a hospital may inspect and open any postal packet for the purposes of determining – | |
| (a) whether it is a postal packet to which subsection (1) or (4) applies, and | |
| (b) if it is, whether it should be withheld under the subsection in question. | |
| (6) The power to withhold a postal packet under subsection (1) or (4) includes a power to withhold anything contained in that packet. | 35 |
| (7) In this section – | |
| “high security psychiatric services” has the same meaning as in the National Health Service Act 1977 (c. 49), and | |
| “postal operator” has the same meaning as in the Postal Services Act 2000 (c. 26). | 40 |
| (8) The following are official communicants for the purposes of this section – | |
| (a) those listed in Schedule 11, or | |

(b) those of a description specified by the appropriate authority in regulations.

(9) Any reference in this section to a patient's clinical supervisor is to the clinical supervisor appointed in respect of him under or by virtue of this Act.

290 Correspondence of patients: notification of withholding 5

(1) If a postal packet or anything contained in it is withheld under subsection (1) or (4) of section 289, the managers of the hospital must make a record of that fact.

(2) Subsection (3) applies if a postal packet or anything contained in it is withheld – 10

(a) under subsection (1) of section 289 by virtue of subsection (2)(b) of that section, or

(b) under subsection (4) of that section.

(3) Within the period of 7 days, the managers of the hospital must –

(a) notify the patient and his nominated person – 15

(i) of the fact that the postal packet or anything contained in it has been withheld, and

(ii) of the right of the patient and his nominated person to make an application under section 291 for a review of the decision to withhold, and 20

(b) in a case falling within subsection (2)(b), notify the person by whom the packet was sent (if known) of the fact mentioned in paragraph (a)(i).

291 Correspondence of patients: review of decision to withhold

(1) The CHAI must review any decision to withhold a postal packet or anything contained in it under subsection (1) or (4) of section 289 if an application for a review is made in accordance with subsections (2) and (3) below. 25

(2) An application under subsection (1) may be made –

(a) in the case of a decision under subsection (1) of section 289 (by virtue of subsection (2)(b) of that section), by the patient or his nominated person, 30

(b) in the case of a decision under subsection (4) of that section, by the patient, his nominated person or the person by whom the postal packet was sent.

(3) Any such application must be made within 6 months of the applicant being notified under section 290(3) that the postal packet has been withheld. 35

(4) On an application under subsection (1) the CHAI may direct that the postal packet which is the subject of the application or anything contained in it shall not be withheld.

(5) The managers in question must comply with any direction given under subsection (4). 40

292 Correspondence of patients: supplementary

(1) The functions of the managers of a hospital under sections 289 to 291 must be discharged on their behalf by a person on the staff of the hospital appointed by

them for that purpose and different persons may be appointed to discharge different functions.

- (2) The appropriate authority may make regulations—
- (a) with respect to the exercise of the powers conferred by section 289,
 - (b) specifying the form in which any request or notification under section 289 or 290 is to be made, 5
 - (c) with respect to the making and determination of applications under section 291(1), including provision for the production to the CHAI of any postal packet which is the subject of such an application, and
 - (d) providing for sections 289 to 291 to apply as if references to postal packets included references to communications by the means specified in the regulations, with such modifications as may be so specified. 10
- (3) In sections 289 to 291 and this section, “postal packet” has the same meaning as in the Postal Services Act 2000 (c. 26).

Expenses 15

293 Expense payments to patients resident in hospital

- (1) The appropriate authority may pay to any patient to which this section applies such amounts as it thinks fit in respect of the patient’s occasional personal expenses.
- (2) This section applies to a patient if he is receiving treatment for mental disorder as a resident patient— 20
- (a) in a health service hospital within the meaning of the National Health Service Act 1977 (c. 49), or
 - (b) in accommodation provided by a local authority and used as a hospital by or on behalf of the appropriate authority under that Act. 25
- (3) This section also applies to a patient if—
- (a) he is receiving treatment for mental disorder as a resident patient in an establishment falling within subsection (4), and
 - (b) he receives that treatment under an NHS arrangement.
- (4) An establishment falls within this subsection if it is an independent hospital (within the meaning of the Care Standards Act 2000 (c. 14)) in respect of which a person is registered under Part 2 of that Act. 30
- (5) It is immaterial for the purposes of subsection (2) or (3) whether the treatment is provided in pursuance of this Act.
- (6) The power conferred by subsection (1) is exercisable only if it appears to the appropriate authority that the patient would otherwise be without resources to meet the expenses in question. 35
- (7) In subsection (3), “NHS arrangement” means an arrangement or agreement between—
- (a) the establishment in question or a body responsible for it, and
 - (b) any of the following— 40
 - (i) a Primary Care Trust,
 - (ii) a Local Health Board,
 - (iii) a National Health Service trust, or

- (iv) an NHS foundation trust.

CHAPTER 4

MEMBERS OF PARLIAMENT ETC

294 Notification of Speaker in relation to Member of Parliament

- (1) If a notifiable event occurs in respect of a member of the House of Commons, the managers of the relevant hospital must notify the Speaker of the House of – 5
of –
(a) the event, and
(b) the date on which it occurred.
- (2) A notification under subsection (1) must – 10
(a) be given as soon as practicable after the relevant time, and
(b) in a case in relation to which paragraph 5 or 14 of Schedule 12 applies, include a statement that the member has absconded.
- (3) If a notifiable event has occurred in respect of a member of the House of Commons, the managers of the relevant hospital must comply with any request from the Speaker of the House for – 15
(a) any information or documents, or
(b) an explanation of any information or documents given to him by virtue of paragraph (a),
which he thinks might be relevant for the purposes of a determination under section 295(2). 20
- (4) For the purposes of this section and Schedule 12 –
(a) “managers”, in relation to a hospital in Scotland, has the same meaning as in the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13); 25
(b) “managers”, in relation to a hospital in Northern Ireland, means –
(i) if the hospital is vested in an authorised HSS trust (within the meaning of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)), that trust,
(ii) otherwise, the Board (within the meaning of that Order) managing that hospital. 30

295 Determination by Speaker following notification under section 294

- (1) This section applies if –
(a) the Speaker of the House of Commons is notified of a notifiable event in respect of a member of the House under section 294, 35
(b) the event is not excluded by virtue of subsection (6), and
(c) on the first anniversary of the occurrence of that event, the member is –
(i) a member of the House of Commons, and
(ii) liable to compulsory provision.
- (2) The Speaker must, having regard to the circumstances of the member’s liability to compulsory provision, determine the extent to which it is likely to affect his ability to attend the House. 40

-
- (3) If the Speaker determines that it is likely to affect to a significant extent his ability to attend the House, the Speaker must forthwith lay before the House a report to that effect.
- (4) As soon as a report under subsection (3) in respect of the member is laid before the House, the member’s seat becomes vacant. 5
- (5) If the Speaker does not lay a report under subsection (3), subsection (2) applies in relation to each subsequent anniversary of the notifiable event as it applies in relation to the first anniversary, until such time as – 10
- (a) a report under subsection (3) in respect of the member is laid before the House,
 - (b) the member otherwise ceases to be a member of the House, or
 - (c) the member is not liable to compulsory provision on an anniversary of the notifiable event.
- (6) If the Speaker is notified under section 294 of a notifiable event in respect of a member, any subsequent notifiable event in respect of that member is excluded for the purposes of subsection (1)(b) if it occurs within 12 months of – 15
- (a) the earlier notifiable event, or
 - (b) any anniversary of that earlier notifiable event in relation to which a determination is made under subsection (2).
- (7) In making a determination under subsection (2) in respect of a member, the Speaker must – 20
- (a) in a case within paragraph 6 of Schedule 12, consult a member of the Expert Panel who is a registered medical practitioner,
 - (b) in a case within paragraph 10 of that Schedule, consult an approved medical practitioner (within the meaning of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)), or 25
 - (c) in a case within paragraph 15 of that Schedule, consult a medical practitioner (within the meaning of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)),
- about the member’s case. 30
- (8) Any sums required for the payment of fees and expenses to medical practitioners acting in relation to a member of the House of Commons under subsection (7) are to be defrayed out of money provided by Parliament.
- 296 Interpretation: Chapter 4**
- Schedule 12 (which makes provision about the meaning of “notifiable event”, “relevant time”, “relevant hospital”, “compulsory provision” etc for the purposes of sections 294 and 295) has effect. 35
- 297 Devolution**
- (1) Sections 294 and 295 (and Schedule 12) apply in relation to a member of the Scottish Parliament, the Northern Ireland Assembly or the National Assembly for Wales as they apply in relation to a member of the House of Commons. 40
- (2) For this purpose –
- (a) a reference to the House of Commons is to be treated as a reference to the devolved body in question,

- (b) a reference to the Speaker of the House is to be treated as a reference to the presiding officer of the devolved body in question, and
- (c) section 295 has effect –
 - (i) in relation to a member of the Scottish Parliament, as if, in subsection (8), for “defrayed out of money provided by Parliament” there were substituted “an expense of the Scottish Parliamentary Corporate Body”, 5
 - (ii) in relation to a member of the Northern Ireland Assembly, as if, in that subsection, for “provided by Parliament” there were substituted “appropriated by Act of the Assembly”, and 10
 - (iii) in relation to a member of the National Assembly for Wales, as if, in that subsection, for “defrayed out of money provided by Parliament” there were substituted “paid by the National Assembly for Wales”.

CHAPTER 5 15

GENERAL

Civil proceedings

298 Protection for acts done in pursuance of this Act

- (1) In any civil proceedings against an individual in respect of any act purporting to be done under or in pursuance of this Act, or any regulations or rules made under it, it is a defence that the act was done in good faith and with reasonable care. 20
- (2) This section does not apply to –
 - (a) proceedings against the Secretary of State or against any other individual who is specified or of a description specified, 25
 - (b) proceedings against an individual in circumstances where the act in question was done by him –
 - (i) in his capacity as the operator of an independent hospital or care home, or
 - (ii) in his capacity as a director, manager or secretary of a body corporate which is the operator of an independent hospital or care home, or 30
 - (c) proceedings against an individual in such other circumstances as may be specified.
- (3) In this section – 35
 - “care home” has the same meaning as in the Care Standards Act 2000 (c. 14);
 - “civil proceedings” does not include –
 - (a) civil proceedings in respect of an action for negligence or for battery caused by the defendant’s negligence, or 40
 - (b) proceedings for judicial review;
 - “independent hospital” has the same meaning as in the Care Standards Act 2000;

- “operator”, in relation to an independent hospital or care home, means a person who carries on or manages the hospital or home whether alone or with others (whether in partnership or otherwise); and
 “specified” means specified by regulations made by the appropriate authority. 5
- (4) The reference in subsection (2)(b) to a director, manager or secretary of a body corporate includes a reference –
- (a) to any other similar officer of the body,
 - (b) if the affairs of the body are managed by its members, to any member of the body in connection with his functions of management, and 10
 - (c) if the body is a local authority, to any officer or member of the authority.
- (5) For the purposes of this section any reference to a person who carries on or manages an independent hospital or care home includes a person who carries it on or manages it otherwise than for profit. 15

Inquiries

299 Inquiries

- (1) The appropriate authority may cause an inquiry to be held in connection with any matter arising under this Act.
- (2) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (c. 70) apply to any inquiry held under this Act (subject to subsection (3)). 20
- (3) No local authority is to be ordered to pay costs under subsection (4) of that section in the case of any inquiry unless the authority is a party to the inquiry.

PART 13

GENERAL 25

300 Regulations, orders and rules

- (1) The following powers under this Act –
- (a) any power to make regulations or an order conferred on the Secretary of State or the National Assembly for Wales (including a power expressed to be conferred on the appropriate authority), or 30
 - (b) any power to make rules conferred on the Lord Chancellor,
- are exercisable by statutory instrument.
- (2) A statutory instrument made under this Act is to be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Subsection (2) does not apply to – 35
- (a) an order under section 306(1),
 - (b) any regulations or order specified in subsection (4), or
 - (c) a statutory instrument made by the National Assembly for Wales, unless made jointly with the Secretary of State.
- (4) None of the following – 40
- (a) regulations under section 15(2), 46(5), 165(6) or 183(1), or

- (b) an order under section 116(8), 130(10), 131(9), 134(3), 145(6) or 171(9), are or is to be made unless a draft of the regulations or order has been laid before, and approved by, a resolution of each House of Parliament.
- (5) Subsection (4) does not apply to regulations under section 15(2), 46(5), 165(6) or 183(1) which are made by the National Assembly for Wales, unless made jointly with the Secretary of State. 5
- (6) The power conferred on the Department of Health, Social Services and Public Safety to make regulations under section 175 is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573) (N.I. 12)). 10
- (7) A statutory rule containing regulations under section 175 is subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument; and section 5 of the Statutory Instruments Act 1946 (c. 36) applies accordingly.
- (8) A statutory instrument or statutory rule made under this Act may – 15
- (a) contain such incidental, supplemental, consequential, transitory, transitional or saving provision as the person making it considers appropriate; and
- (b) make different provision for different purposes.
- (9) A statutory instrument or statutory rule made under this Act may (as well as making provision in relation to all cases to which it extends) make provision in relation to all those cases subject to exceptions or in relation to any particular case or class of case. 20

301 General interpretation

- (1) In this Act – 25
- “carer”, in relation to a patient, means a person who –
- (a) provides or intends to provide a substantial amount of care to the patient on a regular basis or, if the patient is resident in a hospital (whether or not in pursuance of this Act) or in a care home, provided such care before he became so resident, 30
- (b) does or intends to do or did so otherwise than –
- (i) by virtue of a contract of employment or other contract with any person, or
- (ii) as a volunteer for a voluntary organisation, but this paragraph does not apply if the patient is aged under 16, and 35
- (c) has indicated that he wishes to be considered for the purposes of this Act as a carer of the patient;
- “local social services authority” means a council which is a local authority for the purposes of the Local Authority Social Services Act 1970 (c. 42); and 40
- “parental responsibility” has the meaning given by section 3 of the Children Act 1989 (c. 41).
- (2) In subsection (1) –
- “care home” has the same meaning as in the Care Standards Act 2000 (c. 14); 45
- “hospital” means –

-
- (a) any hospital falling within paragraph (a) or (b) of section 2(3), and
- (b) any establishment which is an independent hospital (within the meaning of the Care Standards Act 2000 (c. 14)); and
- “voluntary organisation” has the same meaning as in the National Assistance Act 1948 (c. 29). 5
- (3) In this Act, references to a patient’s nominated person are to the nominated person appointed for him in accordance with Chapter 1 of Part 8.
- 302 Index**
- Schedule 13 contains an index of defined expressions. 10
- 303 Expenses**
- There shall be paid out of money provided by Parliament—
- (a) any expenditure incurred by a Minister of the Crown under this Act,
- (b) any increase attributable to this Act in the sums payable out of money so provided under any other enactment. 15
- 304 Transitional provisions**
- Schedule 14, which contains transitional provisions and savings, has effect.
- 305 Supplementary and consequential provision, etc.**
- (1) The relevant person may by order make—
- (a) any supplementary, incidental or consequential provision, and 20
- (b) any transitory, transitional or saving provision,
- which he considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to any qualifying provision.
- (2) For the purposes of this section “relevant person”, in relation to any qualifying provision, means the person who is the relevant person in relation to that provision for the purposes of section 306. 25
- (3) An order under subsection (1) may, in particular, amend or repeal—
- (a) any Act passed before, or in the same Session as, this Act, and
- (b) subordinate legislation made before the passing of this Act.
- (4) The amendments that may be made under subsection (3) are in addition to those made under or by virtue of any other provision of this Act. 30
- (5) In this section—
- “qualifying provision” means any provision of Parts 1 to 12;
- “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30). 35
- 306 Commencement**
- (1) The following provisions shall come into force on such day as the relevant person may by order appoint—
- (a) Parts 1 to 12, and

- (b) section 304 and Schedule 14.
- (2) The relevant person is –
 - (a) in relation to Parts 3, 7 and 11, the Secretary of State,
 - (b) otherwise, the Secretary of State and the National Assembly for Wales acting jointly. 5
- (3) Different days may be appointed for different purposes.
- (4) Subsection (1) does not apply in relation to any provision of Parts 1 to 12 so far as it confers power to make an order, regulations or rules.

307 Short title and extent

- (1) This Act may be cited as the Mental Health Act 2004. 10
- (2) Section 175 and any provisions relating to its interpretation extend to Northern Ireland only.
- (3) Any provision of Schedule 14 has the same extent as the provision of the Mental Health Act 1983 (c. 20) to which it relates.
- (4) The amendment of any provision by this Act has the same extent as the provision being amended. 15
- (5) Subject to subsections (2) to (4) and except as provided in subsection (6), this Act extends to England and Wales only.
- (6) The following provisions and any provisions relating to the interpretation of those provisions also extend to Scotland and Northern Ireland – 20
 - sections 294 to 297 and Schedule 12,
 - this Part.
- (7) The Secretary of State may by order provide that this Act, in its application to the Isles of Scilly, is to have effect with such modifications as are specified in the order. 25

SCHEDULES

SCHEDULE 1

Section 1

FUNCTIONS EXCLUDED FROM REMIT OF CODE OF PRACTICE

- | | | |
|---|--|----|
| 1 | References in this Schedule to the code of practice are to the code of practice required to be published from time to time under section 1. | 5 |
| 2 | The code of practice may not include any general principle by virtue of subsection (2) of that section in so far as it relates to any decision connected with the discharge of an excluded function. | |
| 3 | The code of practice may not include any further guidance by virtue of subsection (5) of that section in so far as it relates to the discharge of an excluded function or a matter arising in connection with the discharge of an excluded function. | 10 |
| 4 | The following are excluded functions for the purposes of this Schedule – | |
| | (a) any function discharged by a court under Part 3 except the approval of a care plan under section 101(3) or 118, | 15 |
| | (b) any function of the Secretary of State to make regulations or an order (as the case may require) under any of the following provisions – | |
| | (i) section 100(3), | |
| | (ii) section 115(3)(c), | |
| | (iii) section 116(8), | 20 |
| | (iv) section 118(6)(a), | |
| | (v) section 130(10), | |
| | (vi) section 131(9), | |
| | (vii) section 134(3), | |
| | (viii) section 145(6), or | 25 |
| | (ix) section 171(9), | |
| | (c) the following functions of the Secretary of State in relation to a restricted patient (within the meaning of Chapter 4 of Part 3) – | |
| | (i) giving, refusing or withdrawing consent (as the case may require) under section 127(4) or 149(1) or (7) or paragraph 16 or 17 of Schedule 8 or paragraph 15 or 16 of Schedule 9, | 30 |
| | (ii) giving a direction under section 128(1), (3) or (6), | |
| | (iii) requiring particulars under section 128(8), | |
| | (iv) issuing a warrant under section 129(2) or (8), | |
| | (v) varying or revoking conditions, or adding new conditions, under section 129(3), or | 35 |
| | (vi) making a reference under section 145(1), (3), (4) or (5), | |
| | (d) any function of the Secretary of State in giving a direction under any of the following provisions – | |

- (i) section 133(2),
 - (ii) section 134(7),
 - (iii) section 135(3),
 - (iv) section 136(5),
 - (v) section 137(2), or
 - (vi) section 139(2).
- 5

SCHEDULE 2

Section 4

CONSTITUTION OF MENTAL HEALTH TRIBUNALS FOR ENGLAND AND WALES

- 1 A person appointed to be the President of the Mental Health Tribunal for England or the Mental Health Tribunal for Wales must have the qualifications specified by the Lord Chancellor in rules. 10
- 2 (1) The other members must fall within the following descriptions –
- (a) persons who have a 7 year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41)) (“legal members”), 15
 - (b) persons who have such knowledge or experience of the treatment of mentally disordered persons as the Lord Chancellor thinks fit (“clinical members”),
 - (c) persons (not falling within paragraph (a) or (b)) who have such knowledge or experience of the provision of mental health services as the Lord Chancellor thinks fit. 20
- (2) In appointing legal members, the Lord Chancellor must have regard to the requirement in paragraph 4(6).
- (3) The Lord Chancellor may appoint clinical members only after he has consulted – 25
- (a) if the appointment is to the Mental Health Tribunal for England, the Secretary of State,
 - (b) if the appointment is to the Mental Health Tribunal for Wales, the National Assembly for Wales.
- 3 The President and other members of the Mental Health Tribunal for England or the Mental Health Tribunal for Wales are to hold and vacate office in accordance with the terms of their appointment (subject to the Judicial Pensions and Retirement Act 1993 (c. 8)). 30
- 4 (1) The functions of the Mental Health Tribunal for England or the Mental Health Tribunal for Wales are to be discharged by panels consisting of one, two or three members chosen by the President of that Tribunal (and references to the Mental Health Tribunal for England or the Mental Health Tribunal for Wales in this Act are to be read accordingly). 35
- (2) The President may choose himself as the member, or one of the members, of the panel (and references to a legal member in this paragraph include the President). 40
- (3) The President must choose the panel so that –
- (a) in the case of a one member panel, it consists of a legal member,
 - (b) otherwise, it includes one legal member.
- (4) The legal member of the panel is to be the chairman. 45

- (5) If the panel has more than one member –
- (a) determinations are to be made by a majority of votes, and
 - (b) the chairman is to have the casting vote.
- (6) If the application to be determined by the panel is made by or in respect of a restricted patient (within the meaning of Chapter 4 of Part 3), the legal member must have the qualifications specified by the Lord Chancellor in rules. 5
- 5 If for any reason the President is absent or otherwise unable to discharge the functions conferred on him by this Schedule or rules under section 74, those functions may be discharged by a legal member appointed by him for the purpose. 10
- 6 The President must arrange such training for himself and the other members of the Tribunal in question as he considers to be appropriate.

SCHEDULE 3

Section 5

MENTAL HEALTH TRIBUNALS FOR ENGLAND AND WALES: TRANSFERS OF PROPERTY AND STAFF, ETC 15

Transfer scheme

- 1 (1) The Secretary of State may make a scheme for –
- (a) the transfer of property, rights and liabilities of each of the Mental Health Review Tribunals established by virtue of paragraph (a) of subsection (1A) of section 65 of the Mental Health Act 1983 (c. 20) to the Mental Health Tribunal for England, and 20
 - (b) the transfer of property, rights and liabilities of each of the Mental Health Review Tribunals established by virtue of paragraph (b) of that subsection to the Mental Health Tribunal for Wales. 25
- (2) The property, rights and liabilities which may be the subject of the scheme include –
- (a) any that would otherwise be incapable of being transferred or assigned, and
 - (b) rights and liabilities under a contract of employment. 30
- (3) The scheme may define the property, rights and liabilities to be transferred by specifying or describing them.
- (4) The scheme may include supplementary, incidental, transitional and consequential provision.

Transfer 35

- 2 The property, rights and liabilities which are the subject of a scheme under paragraph 1 are, by virtue of this paragraph, transferred on the day appointed by the scheme in accordance with the provisions of the scheme.

Employment

- 3 The transfer by paragraph 2 of the rights and liabilities relating to an individual's contract of employment does not break the continuity of his employment, and, accordingly –
- (a) he is not to be regarded for the purposes of Part 11 of the Employment Rights Act 1996 (c. 18) as having been dismissed by virtue of the transfer, and 5
 - (b) his period of employment with the transferor counts as a period of employment with the transferee for the purposes of that Act.
- 4 (1) Paragraph 2 does not operate to transfer the rights and liabilities under an individual's contract of employment if, before the transfer takes effect, he informs the transferor or the transferee that he objects to the transfer. 10
- (2) Where an individual does notify the transferor or the transferee as specified in sub-paragraph (1), his contract of employment with the transferor is terminated immediately before the date on which the transfer would occur; but he shall not, for any purpose, be regarded as having been dismissed by the transferor. 15
- (3) This paragraph is without prejudice to any right of an individual employed by the transferor to terminate his contract of employment if (apart from the change of employer) a substantial change is made to his detriment in his working conditions. 20

Transitional

- 5 (1) Anything done by or in relation to the transferor for the purposes of or in connection with anything transferred by paragraph 2 which is in effect immediately before it is transferred shall be treated as if done by or in relation to the transferee. 25
- (2) There may be continued by or in relation to the transferee anything (including legal proceedings) relating to anything so transferred which is in the process of being done by or in relation to the transferor immediately before it is transferred. 30
- (3) A reference to the transferor in any document relating to anything so transferred shall be taken (so far as necessary for the purposes of or in consequence of the transfer) as a reference to the transferee.
- (4) A transfer under paragraph 2 does not affect the validity of anything done by or in relation to the transferor before the transfer takes effect. 35

SCHEDULE 4

Section 8

CONSTITUTION OF MENTAL HEALTH APPEAL TRIBUNAL ETC

- 1 A person appointed to be the President must have the qualifications specified by the Lord Chancellor in rules.
- 2 (1) The other members must have a 10 year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41)). 40
- (2) In appointing those members, the Lord Chancellor must have regard to the requirement in paragraph 4(3).

- | | | |
|---|---|----|
| 3 | The President and other members of the Appeal Tribunal are to hold and vacate office in accordance with the terms of their appointment (subject to the Judicial Pensions and Retirement Act 1993 (c. 8)). | |
| 4 | (1) The functions of the Appeal Tribunal are to be discharged by panels consisting of a member chosen by the President (and references to the Appeal Tribunal in this Act are to be read accordingly). | 5 |
| | (2) The President may choose himself as the member of the panel. | |
| | (3) If the application to be determined by the panel is made by or in respect of a restricted patient (within the meaning of Chapter 4 of Part 3), the member must have the qualifications specified by the Lord Chancellor in rules. | 10 |
| 5 | If for any reason the President is absent or otherwise unable to discharge the functions conferred on him by this Schedule or rules under section 252, those functions may be discharged by a member of the Appeal Tribunal appointed by him for the purpose. | |
| 6 | The President must arrange such training for himself and the other members of the Appeal Tribunal as he considers to be appropriate. | 15 |

SCHEDULE 5

Section 13

RELATIONSHIP BETWEEN PARTS 2 AND 3 ETC

PART 1

RELATIONSHIP BETWEEN PARTS 2 AND 3 20*Disapplication of this Part*

- | | | |
|---|--|----|
| 1 | (1) None of the provisions of this Part applies to a person to whom any provision of Part 3 applies, except as expressly applied by a provision of Part 3. | |
| | (2) A patient or person who is subject to any of the provisions of this Part ceases to be so subject if he becomes a person to whom any provision of Part 3 applies; and, accordingly, none of the provisions of this Part applies to him, except as expressly applied by a provision of Part 3. | 25 |

Cases in which this Part re-applies

- | | | |
|---|---|----|
| 2 | (1) None of the provisions of this Part applies to a patient or person falling within paragraph 1(2) on the provisions of Part 3 ceasing to apply to him, except as provided by any of paragraphs 3 to 5. | 30 |
| | (2) References in sub-paragraph (3) and paragraphs 3 to 5 to a patient are to a patient falling within paragraph 1(2) to whom the provisions of Part 3 cease to apply. | 35 |
| | (3) In the following provisions of this Schedule references to the relevant time, in relation to a patient, are to the time at which the provisions of Part 3 cease to apply to him. | |
| 3 | (1) Sub-paragraph (2) applies to a patient if, apart from paragraph 1(2), he would be liable to assessment under Chapter 3 of this Part at the relevant time. | 40 |

- (2) The patient continues to be liable to assessment under that Chapter from the relevant time and the provisions of this Part apply to him as if he had never ceased to be so liable (subject to paragraphs 9, 11 and 12).
- 4 (1) Sub-paragraph (2) applies to a patient if, apart from paragraph 1(2), an order or further order authorising assessment under Chapter 6 of this Part would be in force in respect of him at the relevant time. 5
- (2) The order or further order continues in force in respect of the patient from the relevant time and the provisions of this Part apply to him as if the order or further order had never ceased to be in force (subject to paragraphs 9, 11 and 12). 10
- 5 (1) Sub-paragraphs (3) and (4) apply to a patient if –
- (a) immediately before he became a person to whom any provision of Part 3 applied –
 - (i) an order authorising medical treatment under Chapter 6 of this Part was in force in respect of him, or 15
 - (ii) a further order authorising medical treatment under that Chapter was in force in respect of him for a period which did not exceed 6 months, and
 - (b) the relevant time does not fall more than 6 months after the time at which he became such a person. 20
- (2) Sub-paragraphs (3) and (4) also apply to a patient if –
- (a) immediately before he became a person to whom any provision of Part 3 applied, a further order authorising medical treatment under Chapter 6 of this Part was in force in respect of him for a period which exceeded 6 months, and 25
 - (b) the relevant time does not fall –
 - (i) after the end of that period, or
 - (ii) if later, more than 6 months after the time at which he became such a person.
- (3) If, apart from paragraph 1(2), the order or further order would be in force in respect of the patient at the relevant time it continues in force in respect of him from that time. 30
- (4) If, apart from paragraph 1(2), the order or further order would have ceased to be in force in respect of the patient before the relevant time it is to be treated as continuing in force until the end of the period of 7 days beginning with the day on which the provisions of Part 3 ceased to apply to him. 35
- (5) The provisions of this Part apply to a patient to whom sub-paragraphs (3) and (4) apply as if the order or further order had never ceased to be in force (subject to paragraphs 9 to 12).
- 6 In calculating any period for the purpose of determining whether a patient would be liable to assessment under Chapter 3 of this Part or an order or further order authorising medical treatment or assessment under Chapter 6 of this Part would be in force for the purposes of paragraphs 3 to 5, paragraph 9 is to be disregarded. 40
- 7 A patient who falls within any of paragraphs 3 to 5 is referred to in the following provisions of this Schedule as a “resumed patient”. 45

Power to return resumed patient to hospital or other place

- 8 (1) Sub-paragraph (2) applies to a resumed patient if –
- (a) he is liable to assessment under Chapter 3 of this Part as a resident patient, or
 - (b) an order or further order authorising medical treatment or assessment under Chapter 6 of this Part is in force in respect of him and he is liable to provided with medical treatment or assessed as a resident patient. 5
- (2) The patient may be taken into custody and returned to the hospital with which he is registered under section 22(1) or 78(2) by the persons specified in sub-paragraph (3). 10
- (3) Those persons are –
- (a) an approved mental health professional,
 - (b) an officer on the staff of the hospital,
 - (c) a person authorised in writing by the managers of the hospital, or 15
 - (d) a constable.
- (4) Sub-paragraph (5) applies to a resumed patient if –
- (a) he is liable to assessment under Chapter 3 of this Part as a non-resident patient, or
 - (b) an order or further order authorising medical treatment or assessment under Chapter 6 of this Part is in force in respect of him and he is liable to provided with medical treatment or assessed as a non-resident patient. 20
- (5) The patient may be taken into custody and returned to the place in which he is required to reside under a residence condition by the persons specified in sub-paragraph (6). 25
- (6) Those persons are –
- (a) an approved mental health professional,
 - (b) an officer on the staff of the hospital with which the patient is registered under section 22(1) or 78(2), 30
 - (c) a person authorised in writing by the managers of that hospital, or
 - (d) a constable.
- (7) In this paragraph and paragraph 9(10), any reference to a residence condition, in relation to a non-resident patient, is to a condition imposed on him under or by virtue of any of Chapters 3 to 7 of this Part that he reside at a specified place. 35

Special provision for resumed patients

- 9 (1) Sub-paragraph (2) applies if a patient becomes a resumed patient on or before the last day on which he is liable to assessment under Chapter 3 of this Part. 40
- (2) Section 31(9) has effect as if for the words from “he was admitted” to “(as the case may be)” there were substituted “the patient became a resumed patient”.
- (3) Sub-paragraphs (4) and (5) apply if –
- (a) a patient becomes a resumed patient on the last day on which he is liable to assessment under Chapter 3 of this Part, or 45

- (b) he becomes such a patient within the period of 7 days ending with that day.
- (4) Section 25(6)(b)(v) has effect as if for the words from “28 days” onwards there were substituted “7 days beginning with the day on which the patient became a resumed patient”. 5
- (5) Section 44(1) has effect as if for the words from “28 days” onwards there were substituted “7 days beginning with the day on which the patient became a resumed patient”.
- (6) Sub-paragraph (7) applies if – 10
- (a) a patient becomes a resumed patient on the last day on which an order or further order authorising assessment or medical treatment is in force in respect of him under Chapter 6 of this Part, or
- (b) he becomes such a patient within the period of 7 days ending with that day.
- (7) The order or further order is to be treated as continuing in force until the end of the period of 7 days beginning with the day on which he becomes such a patient. 15
- (8) Sub-paragraphs (9) and (10) apply to a patient who –
- (a) becomes a resumed patient, and
- (b) is liable to assessment under Chapter 3 of this Part as a non-resident patient. 20
- (9) The duty under section 27(2) to determine whether it is appropriate for the patient to be detained in a hospital while the assessment is carried out may be discharged on his becoming a resumed patient.
- (10) If, under section 29(3), the clinical supervisor of the patient amends a residence condition imposed on him, the power conferred by paragraph 8(5) to return him to the place in which he was required to reside is to be read as a power to take him to the place specified in the amended condition. 25
- (11) If –
- (a) a patient becomes a resumed patient, 30
- (b) an order (or further order) authorising his medical treatment or assessment is in force under Chapter 6 of this Part, and
- (c) he is liable to be provided with medical treatment or assessed as a non-resident patient by virtue of that order,
- the determination under section 48(4)(b) or 51(6)(b) may be made on his becoming a resumed patient. 35

Examination etc of resumed patients

- 10 (1) Sub-paragraph (2) applies if –
- (a) an order or further order authorising medical treatment is in force in respect of a resumed patient under Chapter 6 of this Part, and 40
- (b) he became such a patient after the period of 28 days beginning with his becoming subject to a provision of Part 3.
- (2) The clinical supervisor of the patient must, within the period of 7 days beginning with his becoming a resumed patient, examine him for the purpose of determining whether the order or further order should be discharged under section 60 or an application should be made to the Mental Health Tribunal for England or Mental Health Tribunal for Wales under section 61. 45

- (3) Sub-paragraph (4) applies if –
- (a) immediately before the patient became subject to a provision of Part 3 an order or further order authorising medical treatment was in force in respect of him under Chapter 6 of this Part, and
 - (b) the order or further order ceased to be in force before he became a resumed patient. 5
- (4) The clinical supervisor must, within the period of 7 days beginning with his becoming a resumed patient, examine him for the purpose of determining whether an application should be made to the Mental Health Tribunal for England or Mental Health Tribunal for Wales under section 41. 10
- (5) In determining whether an order or further order authorising medical treatment is in force for the purposes of this paragraph, paragraph 5(4) is to be disregarded.

Resumed patients and absence without leave

- 11 (1) Sub-paragraph (2) applies to a resumed patient who fell within paragraph (a) or (b) of subsection (1) or of subsection (6) of section 81 at the time when he became subject to a provision of Part 3. 15
- (2) Any act or omission which resulted from the patient becoming subject to that provision is to be disregarded for the purposes of subsection (2) or (7) of that section (as the case may require). 20
- (3) If, before a resumed patient became subject to a provision of Part 3 –
- (a) he fell within paragraph (a) or (b) of subsection (1) of section 81 and had done or made any of the acts or omissions specified in subsection (2) of that section, or
 - (b) he fell within paragraph (a) or (b) of subsection (6) of that section and had done or made any of the acts or omissions specified in subsection (7) of that section, 25
- the powers under subsection (3) or (8) of that section (as the case may require) may not be exercised in respect of that act or omission after he becomes a resumed patient and, accordingly, that section and sections 82 to 85 do not apply. 30

Resumed patients and requirement to attend hospital

- 12 (1) Sub-paragraph (2) applies to a resumed patient –
- (a) who was liable to assessment under Chapter 3 of this Part as a non-resident patient or in respect of whom an order or further order authorising medical treatment or assessment under Chapter 6 of this Part was in force and he was liable to provided with medical treatment or assessed as a non-resident patient, and 35
 - (b) who fell within paragraph (a) of subsection (1) or of subsection (2) of section 80, 40
- at the time when he became subject to a provision of Part 3.
- (2) Any failure which resulted from the patient becoming subject to that provision is to be disregarded for the purposes of subsection (1)(b) or (2)(b) of that section (as the case may require).
- (3) If, before a resumed patient became subject to a provision of Part 3, he fell within subsection (1) or (2) of section 80, the power under subsection (3) of 45

that section may not be exercised in respect of the failure in question after he becomes a resumed patient.

PART 2

RELATIONSHIP BETWEEN PART 2 AND CRIMINAL PROCEEDINGS ETC

- 13 (1) None of the provisions of this Part applies to a person who falls within section 135(1) or 137(1). 5
- (2) A patient or person who is subject to any of the provisions of this Part ceases to be so subject if he becomes a person who falls within section 135(1) or 137(1); and, accordingly, none of the provisions of this Part applies to him.

SCHEDULE 6

Section 14 10

EXAMINATION AND DETENTION OF RESIDENT PATIENTS

- 1 This Schedule applies if—
- (a) a person falling within a description specified by the appropriate authority in regulations determines at any time that—
 - (i) all of the relevant conditions appear to be met in the case of a patient who is resident in a hospital, and 15
 - (ii) it is not practicable to determine whether this Schedule would apply in respect of him by virtue of paragraph (b) or (c) (as the case may be) at that time,
 - (b) any registered medical practitioner working in a qualifying hospital or qualifying unit of a hospital determines that those conditions appear to be met in the case of a patient who is resident in that hospital or unit, or 20
 - (c) the appropriate officers determine that those conditions appear to be met in the case of a patient who is resident in a hospital which is not a qualifying hospital or in a unit of a hospital which is not a qualifying unit. 25
- 2 The person or persons making the determination must, as soon as practicable—
- (a) make a record of the determination and the reasons for it, and 30
 - (b) make a request to the appropriate authority for the authority to arrange for the patient to be examined under section 14.
- 3 If this Schedule applies by virtue of paragraph 1(a), the managers of the hospital may detain the patient under this paragraph until—
- (a) the end of the period of 6 hours beginning with the time when the record required by paragraph 2 was made, 35
 - (b) the patient continues to be detained under paragraph 5, or
 - (c) it is established whether or not the patient is liable to assessment in accordance with section 16 or 17, 40
- (whichever occurs first).
- 4 (1) If the patient is detained under paragraph 3, a determination that his detention is to continue may be made—

- (a) if the patient is resident in a qualifying hospital or qualifying unit of a hospital, by any registered medical practitioner working in that hospital or unit, or
- (b) if the patient is resident in a hospital which is not a qualifying hospital or in a unit of a hospital which is not a qualifying unit, by the appropriate officers. 5
- (2) A determination under sub-paragraph (1) must be made before the end of the period of 6 hours beginning with the time when the record required by paragraph 2 was made.
- 5 If a determination under paragraph 4(1) is made, the managers of the hospital may detain the patient under this paragraph until – 10
- (a) the end of the period which remains after deducting the period for which the patient was detained under paragraph 3 from the period of 72 hours beginning with the time when the record required by paragraph 2 was made, or 15
- (b) it is established whether or not the patient is liable to assessment in accordance with section 16 or 17, (whichever occurs first).
- 6 If this Schedule applies by virtue of paragraph 1(b) or (c), the managers of the hospital may detain the patient under this paragraph until – 20
- (a) the end of the period of 72 hours beginning with the time when the record required by paragraph 2 was made, or
- (b) it is established whether or not the patient is liable to assessment in accordance with section 16 or 17, (whichever occurs first). 25
- 7 In this Schedule –
- (a) “appropriate officers” means –
- (i) any two registered medical practitioners, or
- (ii) any registered medical practitioner and approved mental health professional, and 30
- (b) references to a qualifying hospital or unit of a hospital are to a hospital or unit at which medical treatment is provided.
- 8 Any reference in this Schedule to a patient who is resident in a hospital or unit of a hospital does not include a patient who is resident there in pursuance of this Act. 35

SCHEDULE 7

Section 74

RULES FOR MENTAL HEALTH TRIBUNALS FOR ENGLAND AND WALES: SUPPLEMENTARY PROVISION

- 1 The following matters are those for which provision may be made in rules under section 74 by virtue of subsection (2)(i) of that section – 40
- (a) provision for enabling the Tribunal, or a chairman, to postpone or adjourn the determination of an application under or by virtue of this Part, in specified circumstances, for such period (“the relevant period”) as may be specified (not exceeding 12 months),

- (b) provision for authorising the continued assessment, detention or medical treatment of a patient, or the imposition of conditions on him, during the relevant period or the continuation in force of an order or further order under Chapter 6 or 7 during that period,
- (c) provision for requiring specified persons to take, during the relevant period, specified actions, 5
- (d) provision for requiring specified persons to notify other specified persons of specified matters,
- (e) provision as to the time within which any notification by virtue of paragraph (d) must be given, 10
- (f) provision for restricting the members qualified to discharge the functions of the Tribunal in respect of any specified application or specified class of application under or by virtue of this Part,
- (g) provision for enabling the Tribunal to determine an application under or by virtue of this Part without a formal hearing in specified circumstances, 15
- (h) provision as to the use in proceedings before the Tribunal of equipment enabling a person who is not present to see and hear the Tribunal and be seen and heard by it (whether by means of a live television link or otherwise), 20
- (i) provision for enabling, in specified circumstances, persons making an application under or by virtue of this Part and a patient in respect of whom such an application is made to be represented by specified persons for the purposes of the application,
- (j) provision for enabling the Tribunal to exclude members of the public, or any specified class of members of the public, from any proceedings of the Tribunal, or to prohibit the publication of reports of any such proceedings or the names of any persons concerned in such proceedings, 25
- (k) provision for regulating the methods by which information relevant to an application may be obtained by or provided to the Tribunal, and in particular for authorising the members of the Tribunal, or any one or more of them, to visit and interview any patient by or in respect of whom an application has been made (or to visit and interview such a patient in private), 30
- (l) provision for making available to persons making an application under or by virtue of this Part and patients in respect of whom such an application is made— 35
- (i) copies of any documents obtained by or provided to the Tribunal in connection with the application, and 40
- (ii) a statement of the substance of any oral information so obtained or provided,
- unless the Tribunal considers it undesirable in the interests of the patient or for other special reasons,
- (m) provision for requiring the Tribunal, if requested to do so in accordance with the rules, to provide such statements of the reasons for any determination on an application under or by virtue of this Part as may be specified unless the Tribunal considers it undesirable in the interests of the patient or for other special reasons, 45
- (n) provision for enabling the correction of any accidental errors in any determination by the Tribunal or record of such a determination, 50

- (o) provision for enabling the setting aside of a determination by the Tribunal where it appears just to do so on the ground that a document relating to the proceedings in which the determination was made—
- (i) was not sent to, or received at an appropriate time by, a party to the proceedings or his representative, or
 - (ii) was not received at an appropriate time by the Tribunal,
- (p) provision for conferring on the Tribunal such ancillary powers as the Lord Chancellor thinks necessary for the purposes of the exercise of its functions under or by virtue of this Act.
- 2 In paragraph 1, “specified” means specified in the rules.
- 3 Rules made by virtue of paragraph 1(a) may include provision for enabling the Tribunal, or a chairman, to adjourn the consideration of an application made under section 61 in respect of a patient if the Tribunal considers that further evidence is needed as to whether one or more of the relevant conditions is met.
- 4 Rules made by virtue of paragraph 1(c) may include, in a case—
- (a) which is adjourned in accordance with rules made by virtue of paragraph 3, and
 - (b) in which the further evidence needed is in respect of the fifth of the relevant conditions,
- provision for the Tribunal to direct the managers of the hospital with which the patient is registered to take all reasonable steps to ascertain whether medical treatment is available which is appropriate in the patient’s case as mentioned in that condition (whether at that hospital or another hospital).

SCHEDULE 8

Section 124

TREATMENT FOLLOWING THE MAKING OF A MENTAL HEALTH ORDER

PART 1

ALL CASES

- Introductory* 30
- 1 (1) This Schedule applies where a mental health order is made in respect of a person (“the patient”).
- (2) In this Schedule, “restricted patient” means a patient in respect of whom a restriction order is also made.
- (3) In this Schedule, “responsible hospital” and “deemed registration” are to be read in accordance with sub-paragraphs (4) and (5). 35
- (4) If the mental health order states that the patient is to be provided with medical treatment as a resident patient—
- (a) the responsible hospital is, subject to paragraph 13(5) (or, in the case of a restricted patient, paragraph 17(12) and section 127(2)), the hospital specified in the order (or, but only in the case of a restricted patient, the hospital containing the hospital unit so specified), and 40

- (b) his deemed registration is, subject to paragraph 13(5) or 17(12), the time when he is admitted to that hospital (or hospital unit) in pursuance of the order.
- (5) If the mental health order states that the patient is to be provided with medical treatment as a non-resident patient – 5
 - (a) the responsible hospital is, subject to paragraph 13(5), the hospital specified in the order as responsible for providing that treatment, and
 - (b) his deemed registration is, subject to paragraph 13(5), the time when the order is made. 10
- (6) References in this Schedule to the approved mental health professional are to the approved mental health professional with whom arrangements in respect of the patient are made under paragraph 2(1) or (3).
- (7) Where this Schedule applies a provision from elsewhere in this Act, a reference in this Act to the applied provision includes, where appropriate, a reference to it as applied by this Schedule (with any modifications provided for by this Schedule). 15

Approved mental health professional

- 2 (1) As soon as practicable after the patient’s deemed registration, the appropriate authority must arrange for an approved mental health professional in respect of whom the condition specified in sub-paragraph (2) is met to act in relation to the patient. 20
- (2) That condition is that he does not fall within the description of persons specified by the appropriate authority in regulations as being subject to a potential conflict of interest as regards acting in relation to a person of the patient’s description. 25
- (3) The appropriate authority may at any time arrange for an approved mental health professional in respect of whom the condition specified in sub-paragraph (2) is met to succeed a person with whom arrangements were made under sub-paragraph (1) or this sub-paragraph. 30

Advocacy and appointment of nominated person

- 3 (1) As soon as practicable after arrangements have been made under paragraph 2(1), the approved mental health professional must notify the patient of the help available from IMHA advocates under the arrangements under section 247. 35
- (2) As soon as practicable after those arrangements have been made, he must also (except in the case of a restricted patient) –
 - (a) appoint a nominated person for the patient in accordance with Chapter 1 of Part 8, and
 - (b) notify the nominated person of the help so available. 40

Clinical supervisor

- 4 (1) The managers of the responsible hospital must appoint an approved clinician to be in charge of the medical treatment of the patient in accordance with this Act.

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- (2) The appointment must be made as soon as practicable after the patient’s deemed registration.
- (3) As soon as practicable after the appointment, the approved mental health professional must notify the approved clinician of the contents of the mental health order and of the care plan to which it refers. 5
- (4) The managers of the responsible hospital may at any time appoint an approved clinician to succeed the approved clinician appointed under sub-paragraph (1) or this sub-paragraph.
- (5) The managers of the responsible hospital must, as soon as possible after appointing an approved clinician in respect of the patient under sub-paragraph (1) or (4), notify the following persons of the appointment— 10
- (a) the patient,
 - (b) if the patient is aged under 16, each person with parental responsibility for him (subject to paragraph 5(1)), and
 - (c) except in the case of a restricted patient, the patient’s nominated person. 15
- (6) The approved clinician appointed in respect of the patient under sub-paragraph (1) or (4) is referred to in this Schedule as the patient’s “clinical supervisor”.
- Consultation and notification requirements* 20
- 5 (1) Section 11 applies for the purposes of this Schedule as it applies for the purposes of Part 2.
- (2) Except in the case of a restricted patient, section 12 also so applies.
- PART 2
- MENTAL HEALTH ORDER ONLY 25
- Application of this Part of this Schedule*
- 6 This Part of this Schedule applies if a mental health order, but not a restriction order, has been made in respect of the patient.
- Discharge of order by clinical supervisor*
- 7 (1) If, at any time during the period for which the mental health order is in force, the clinical supervisor is not satisfied that all of the conditions mentioned in section 116(2) to (4) are met in the patient’s case, he must discharge the order at that time. 30
- (2) If he does so, he must as soon as practicable then notify the following persons— 35
- (a) if the patient is aged under 16, each person with parental responsibility for him (subject to paragraph 5(1)), and
 - (b) any carer of the patient (unless he falls within paragraph (a)).
- Duty to apply for Tribunal order*
- 8 (1) Sub-paragraph (2) applies if, while the mental health order is in force, the patient’s clinical supervisor determines that all of the relevant conditions are 40

- met in the patient’s case and are likely to continue to be met at the end of the period for which the order is in force.
- (2) The managers of the responsible hospital must secure that the patient’s clinical supervisor makes an application to the Mental Health Tribunal for an order authorising the medical treatment of the patient. 5
- (3) The application must be made within the period specified in rules made by the Lord Chancellor.
- (4) The Tribunal must determine the application before the mental health order ceases to be in force.
- (5) If on the application the Tribunal determines that not all of the relevant conditions are met in the patient’s case, it must make an order – 10
- (a) refusing the application, and
 - (b) discharging the mental health order.
- (6) Section 63 applies where the Tribunal makes an order under sub-paragraph (5) as it applies where the Tribunal makes a discharge order, and the rest of Chapter 8 of Part 2 applies accordingly, reading references to – 15
- (a) the hospital with which the patient is registered as references to the responsible hospital, and
 - (b) a discharge order as including references to an order under sub-paragraph (5). 20
- (7) If the Tribunal makes an order under sub-paragraph (5), the clinical supervisor must, as soon as practicable after the making of the order, notify the following persons of its making –
- (a) if the patient is aged under 16, each person with parental responsibility for him (subject to paragraph 5(1)), and 25
 - (b) any carer of the patient (unless he falls within paragraph (a)).
- (8) If on the application the Tribunal determines that all of the relevant conditions are met in the patient’s case, it must make an order authorising his medical treatment.
- (9) In this paragraph “relevant conditions” has the meaning given by section 9. 30
- (10) In this paragraph references to the Mental Health Tribunal are to –
- (a) the Mental Health Tribunal for England, if the responsible hospital is in England,
 - (b) the Mental Health Tribunal for Wales, if that hospital is in Wales.

Application for Tribunal order 35

- 9 (1) This paragraph applies in connection with an application under paragraph 8 for an order authorising the medical treatment of the patient.
- (2) The clinical supervisor of the patient must –
- (a) review the care plan which was approved by the court on the making of the mental health order, and 40
 - (b) amend it so that it complies with sub-paragraph (3).
- (3) The plan must –
- (a) include a description of the medical treatment which is to be provided to the patient while the order is in force,
 - (b) include the prescribed information, and 45
 - (c) be prepared in the prescribed form.

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- (4) The application must include the plan.
- (5) The application must –
- (a) state the reasons for the clinical supervisor’s determination under paragraph 8(1),
 - (b) describe the mental disorder for which medical treatment is to be provided in accordance with the plan, 5
 - (c) describe any medical treatment or other treatment which is to be provided to the patient for that disorder otherwise than in accordance with the plan,
 - (d) state whether it is proposed that the patient should be provided with medical treatment – 10
 - (i) as a resident patient, or
 - (ii) as a non-resident patient,
 and state the reasons for that proposal, and
 - (e) deal with any other prescribed matter. 15
- (6) Before making an application, the clinical supervisor must consult the following persons about the medical treatment to be specified in the plan –
- (a) the patient, unless inappropriate or impracticable,
 - (b) if the patient is aged under 16, each person with parental responsibility for him, 20
 - (c) the patient’s nominated person (unless he falls within paragraph (b)), if practicable, and
 - (d) any carer of the patient (unless he falls within paragraph (b) or (c)), if practicable,
- but paragraphs (b) and (d) are subject to paragraph 5. 25
- (7) In this paragraph “prescribed” means prescribed by regulations made by the appropriate authority.
- 10 (1) Sections 73 and 74 apply in relation to an application under paragraph 8 as they apply in relation to an application under or by virtue of Part 2.
- (2) Accordingly paragraph 1(b) of Schedule 7 applies to the mental health order as it applies to an order under Chapter 6 or 7 of Part 2. 30

Application of Part 2

- 11 (1) Chapters 4 and 6 to 9 of Part 2 apply in relation to an order under paragraph 8 authorising the medical treatment of the patient, and to its making, variation and discharge, and to the patient subject to it, as they apply in relation to such an order under Chapter 6 of Part 2 made on an application by virtue of section 41(2) and to the making, variation and discharge of such an order, and to the patient subject to it. 35
- (2) In those Chapters as they apply in relation to such an order under paragraph 8, and in relation to each succeeding further order authorising the medical treatment of the patient – 40
- (a) references to the hospital with which the patient is registered are to be read as references to the responsible hospital, and references to registration include deemed registration,
 - (b) references to the patient’s clinical supervisor are to be read in accordance with paragraph 4(6). 45
- 12 (1) In Chapter 6 of Part 2, the following do not apply –

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- (a) sections 38 to 40,
(b) section 43,
(c) section 44(1) to (3) and (5),
(d) sections 49 to 51.
- (2) Section 47(4)(a) has effect as if for “an order authorising medical treatment and at least two further orders” there were substituted “a mental health order, an order under paragraph 8 of Schedule 8 and at least one further order under Chapter 6 of Part 2”. 5
- 13 (1) Chapter 10 of Part 2 applies, with the following modifications, in relation to a patient in respect of whom there is in force – 10
- (a) a mental health order (but not a restriction order), or
(b) an order under paragraph 8 authorising the medical treatment of the patient,
as it applies in relation to a patient in respect of whom an order (or further order) under Chapter 6 of Part 2 authorising the medical treatment of the patient is in force. 15
- (2) References to the hospital with which the patient is registered are to be read as references to the responsible hospital, and references to registration include deemed registration.
- (3) References to the patient’s clinical supervisor are to be read in accordance with paragraph 4(6). 20
- (4) If by virtue of the mental health order or the order under paragraph 8 the patient is liable to be provided with medical treatment as a resident patient, sections 75 to 77 and 79 apply accordingly; and correspondingly for a patient liable to be provided with medical treatment as a non-resident patient. 25
- (5) If responsibility for providing the patient with medical treatment is transferred to another hospital by virtue of section 76 or 77 –
- (a) that other hospital is the responsible hospital for the purposes of this Schedule,
(b) the patient is deemed to be registered at the other hospital when responsibility for providing the patient with medical treatment is transferred, and 30
(c) upon his deemed registration there, paragraph 4 applies, and section 78 does not apply.
- (6) References in section 79 to registration under section 78(2) are to be read as references to deemed registration by virtue of sub-paragraph (5). 35
- (7) In section 82(3)(b) and (4), the references to a further order authorising medical treatment under Chapter 6 of Part 2 include references to an order under paragraph 8.
- (8) In section 83(2), the reference to a residence condition imposed under or by virtue of any of Chapters 3 to 7 of Part 2 includes a reference to such a condition imposed under a mental health order. 40
- (9) In section 85 –
- (a) in subsection (2), in relation to a patient in respect of whom a mental health order is in force, the reference to section 60 is to be read as being to paragraph 7, 45
(b) in subsection (4), in relation to a patient in respect of whom a mental health order was in force, the reference to section 41 is to be read as being to paragraph 8.

- 14 In provisions of Part 2 as applied by this Part of this Schedule, references (however expressed) to the assessment, detention or medical treatment of a patient, or the imposition of conditions on him, under any provision of Part 2 include references to those things under a provision of Part 3.

PART 3

5

MENTAL HEALTH ORDER WITH RESTRICTION ORDER

Application of this Part of this Schedule

- 15 This Part of this Schedule applies if both a mental health order and a restriction order have been made in respect of the patient.

Hospitals and hospital units

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- 16 (1) This paragraph applies if the patient's clinical supervisor determines (whether following a request by the patient or not) –
- (a) in the case of a patient whose mental health order specifies a hospital, that he should be transferred to a hospital unit within that hospital, or
 - (b) in the case of a patient whose mental health order specifies a hospital unit, that he should be transferred out of the unit to the hospital containing it.
- (2) The patient's clinical supervisor must seek the Secretary of State's consent to the transfer.
- (3) If the Secretary of State consents –
- (a) the patient's mental health order has effect from the time of his consent as if, instead of specifying the hospital or the hospital unit, it specified instead the hospital unit or the hospital (respectively), and
 - (b) Part 3 and this Schedule have effect accordingly.

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Transfer of responsibility for patients

- 17 (1) This paragraph applies if the patient's clinical supervisor determines (whether following a request by the patient or not) that responsibility for providing him with medical treatment should be transferred to another hospital.
- (2) The patient's clinical supervisor must, in that case, also determine whether or not the transfer should be to a hospital unit within the other hospital (whatever the patient's mental health order as currently in force specifies).
- (3) The patient's clinical supervisor must then seek the consent of the Secretary of State to the transfer.
- (4) The Secretary of State may –
- (a) consent,
 - (b) consent, but only to a transfer to a hospital unit within the other hospital (if the clinical supervisor had determined that the transfer should be to the hospital),
 - (c) consent, but only to a transfer to the other hospital (if the clinical supervisor had determined that the transfer should be to a hospital unit within the other hospital), or
 - (d) refuse consent.

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- (5) Sub-paragraphs (6) to (9) apply if the Secretary of State consents under sub-paragraph (4), but if he consented under paragraph (b) or (c) of that sub-paragraph, they apply only on that basis.
- (6) The proposed transfer may take place on such date as is agreed between the managers of the two hospitals, which must be as soon as practicable. 5
- (7) If the patient is not already required to reside at the other hospital (or at a hospital unit within the other hospital) in accordance with conditions imposed on the giving of leave of absence under section 62, or is not otherwise residing there, the clinical supervisor must, as soon as practicable after the Secretary of State has consented, make such arrangements as he considers appropriate for conveying the patient to the other hospital. 10
- (8) Sub-paragraph (7) does not apply during any period when the patient’s residence requirement is disapplied under section 129 or by virtue of section 147(5).
- (9) If arrangements are made in relation to the patient under sub-paragraph (7), the managers of the hospital from which the transfer is to be made must secure that the patient is conveyed to the other hospital by a person authorised by them to do so. 15
- (10) The clinical supervisor must notify the persons mentioned in sub-paragraph (11) of— 20
- (a) his determination under sub-paragraph (1), and
 - (b) once the Secretary of State has consented to it, the proposed transfer.
- (11) The persons are—
- (a) the patient, and
 - (b) if the patient is aged under 16, each person with parental responsibility for him (subject to paragraph 5(1)). 25
- (12) If responsibility for providing the patient with medical treatment is transferred to another hospital under this paragraph— 30
- (a) that other hospital is the responsible hospital for the purposes of this Schedule,
 - (b) the patient is deemed to be registered at the other hospital when responsibility for providing the patient with medical treatment is transferred, and
 - (c) upon his deemed registration there, paragraph 4 applies.

SCHEDULE 9

Section 141

35

TRANSFER FOR TREATMENT: FURTHER PROVISION

PART 1

ALL CASES

Introductory

- 1 (1) This Schedule applies where a transfer for treatment direction is in force in respect of a person (“the patient”). 40
- (2) In this Schedule, “restricted patient” means a patient in respect of whom a restriction direction is also in force.

- (3) In this Schedule –
- “assessment period”, in relation to the patient, has the meaning given by paragraph 6(6),
- “deemed registration” means –
- (a) the time when the patient is received into the responsible hospital in pursuance of the transfer for treatment direction, 5
 - (b) if the patient was already detained there pursuant to a transfer for report direction or an order under section 149(2) at the time the transfer for treatment direction was made, that time, or 10
 - (c) the time referred to in paragraph 11(11)(b) or 16(11)(b).
- “relevant conditions” has the meaning given by section 9, and
- “responsible hospital” means, subject to paragraphs 11(11) and 16(11), the hospital specified in the transfer for treatment direction (or, but only in the case of a restricted patient, the hospital containing the hospital unit so specified). 15
- (4) References in this Schedule to the approved mental health professional are to the approved mental health professional with whom arrangements in respect of the patient are made under paragraph 3(1) or (3).
- (5) Where this Schedule applies a provision from elsewhere in this Act, a reference in this Act to the applied provision includes, where appropriate, a reference to it as applied by this Schedule (with any modifications provided for by this Schedule). 20

Consultation and notification requirements

- 2 (1) Section 11 applies for the purposes of this Schedule as it applies for the purposes of Part 2. 25
- (2) Except in the case of a restricted patient, section 12 also so applies.

Approved mental health professional

- 3 (1) As soon as practicable after the patient’s deemed registration, the appropriate authority must arrange for an approved mental health professional in respect of whom the condition specified in sub-paragraph (2) is met to act in relation to the patient. 30
- (2) That condition is that he does not fall within the description of persons specified by the appropriate authority in regulations as being subject to a potential conflict of interest as regards acting in relation to a person of the patient’s description. 35
- (3) The appropriate authority may at any time arrange for an approved mental health professional in respect of whom the condition specified in sub-paragraph (2) is met to succeed a person with whom arrangements were made under sub-paragraph (1) or this sub-paragraph. 40

Advocacy and appointment of nominated person

- 4 (1) As soon as practicable after arrangements have been made under paragraph 3(1), the approved mental health professional must notify the patient of the help available from IMHA advocates under the arrangements under section 247. 45

- (2) As soon as practicable after those arrangements have been made, he must also (except in the case of a restricted patient) –
- (a) appoint a nominated person for the patient in accordance with Chapter 1 of Part 8, and
 - (b) notify the nominated person of the help so available. 5

Clinical supervisor

- 5 (1) The managers of the responsible hospital must appoint an approved clinician to be in charge of the assessment of the patient and his medical treatment in accordance with this Act.
- (2) The appointment must be made as soon as practicable after the patient’s deemed registration. 10
- (3) As soon as practicable after the appointment, the approved mental health professional must notify the approved clinician of the contents of the direction.
- (4) The managers of the responsible hospital may at any time appoint an approved clinician to succeed the approved clinician appointed under sub-paragraph (1) or this sub-paragraph. 15
- (5) The managers of the responsible hospital must, as soon as possible after appointing an approved clinician in respect of the patient under sub-paragraph (1) or (4), notify the following persons of the appointment – 20
- (a) the patient,
 - (b) if the patient is aged under 16, each person with parental responsibility for him (subject to paragraph 2(1)), and
 - (c) except in the case of a restricted patient, the patient’s nominated person. 25
- (6) The approved clinician appointed in respect of the patient under sub-paragraph (1) or (4) is referred to in this Schedule as the patient’s “clinical supervisor”.

Determinations to be made following direction

- 6 (1) The managers of the responsible hospital must secure that the patient is assessed, during his assessment period, by the clinical supervisor. 30
- (2) Liability to assessment under this paragraph is to assessment as a resident patient.
- (3) The assessment is for the purpose of determining – 35
- (a) whether the relevant conditions are met in the patient’s case, and
 - (b) if so –
- (i) what medical treatment should be provided to him during his assessment period in accordance with paragraph 7,
 - (ii) whether it is necessary to assess further what medical treatment should be provided to the patient before an order authorising his medical treatment is made under Chapter 6 of Part 2, and 40
 - (iii) what medical treatment should be provided to him in accordance with any order under that Chapter.
- (4) The assessment of the patient may commence as soon as the patient is admitted under section 140. 45

- (5) If the clinical supervisor determines under sub-paragraph (3)(a) that all of the relevant conditions are met in the patient’s case, he must keep under review the question of whether all of those conditions are met.
- (6) In this Schedule, “assessment period”, in relation to the patient, means the period – 5
- (a) beginning with the commencement of the assessment in accordance with sub-paragraph (4), and
 - (b) ending – 10
 - (i) on the transfer for treatment direction ceasing to have effect in accordance with section 136(2) or paragraph 8,
 - (ii) if the clinical supervisor makes an application under section 38, on the making of an order by the Tribunal under section 45,
 - (iii) at the end of the period of 28 days beginning with the day on which the patient was admitted under section 140, 15
 (whichever occurs first).

Care plan

- 7 (1) The managers of the responsible hospital must secure that, within the initial period – 20
- (a) a care plan is prepared for the patient by the clinical supervisor, and
 - (b) the plan is included in the patient’s records.
- (2) The plan must – 25
- (a) include the required information, and
 - (b) be prepared in the form prescribed by the appropriate authority in regulations.
- (3) In sub-paragraph (2)(a), the “required information”, in relation to the patient, means – 30
- (a) a description of the medical treatment which is to be provided to the patient during the period for which the care plan is in force, and
 - (b) such other information relating to the care of the patient during that period as may be prescribed by the appropriate authority in regulations.
- (4) In preparing a plan for the patient, the clinical supervisor must (unless the patient is a restricted patient) consult the following persons about the medical treatment to be specified in the plan – 35
- (a) the patient, unless inappropriate or impracticable,
 - (b) if the patient is aged under 16, each person with parental responsibility for him,
 - (c) the patient’s nominated person (unless he falls within paragraph (b)), if practicable, and 40
 - (d) any carer of the patient (unless he falls within paragraph (b) or (c)), if practicable.
- but paragraphs (b) and (d) are subject to paragraph 2.
- (5) As soon as practicable after the plan is in force, the clinical supervisor must send a copy of it to – 45
- (a) the patient,
 - (b) if the patient is aged under 16, each person with parental responsibility for him, subject to sub-paragraph (6),

- (c) except in the case of a restricted patient, the patient’s nominated person (unless he falls within paragraph (b)), subject to sub-paragraph (6).
- (6) Section 32 applies in relation to sending a copy of the care plan under sub-paragraph (5)(b) or (c) as it applies in relation to sending one under section 31(5)(b) or (c). 5
- (7) The clinical supervisor may amend the patient’s plan at any time during the period for which it is in force; but he must consider amending the plan on or before the patient’s review day.
- (8) If the clinical supervisor amends the patient’s plan – 10
 - (a) the managers must secure that the amended plan is included in the patient’s records as soon as practicable after it is prepared, and
 - (b) sub-paragraphs (2) to (7) and this sub-paragraph apply as if references to the plan were references to the amended plan.
- (9) A plan, or amended plan, is in force for the period – 15
 - (a) beginning with its inclusion in the patient’s records, and
 - (b) ending with –
 - (i) the inclusion of an amended, or further amended, plan in the patient’s records, or
 - (ii) the transfer for treatment direction ceasing to have effect in accordance with section 136(2) or paragraph 8, 20

(whichever is earlier).
- (10) In this paragraph –
 - “initial period” means the period of 5 days beginning with the day of the patient’s deemed registration; 25
 - “review day” means the day falling 10 days after that day;

and any reference to the patient’s records is to the records relating to the patient which are kept by the clinical supervisor.

Termination of transfer

- 8 (1) Sub-paragraph (4) applies if – 30
 - (a) before the end of the patient’s assessment period the clinical supervisor notifies the Secretary of State that not all of the relevant conditions are met in the patient’s case, or
 - (b) no application is made to the Mental Health Tribunal under section 38 before the end of the patient’s assessment period, or 35
 - (c) such an application is made but refused (under section 45(2)) and no appeal against the refusal is made.
- (2) Sub-paragraph (4) also applies if section 71(3) applies.
- (3) Sub-paragraph (4) also applies if the patient –
 - (a) ceases to be subject to an order under Chapter 6 of Part 2 authorising his medical treatment, or 40
 - (b) ceases to be subject to an order under that Chapter authorising his assessment without becoming subject to an order under that Chapter authorising his medical treatment.
- (4) In such a case – 45

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- (a) the managers of the responsible hospital must arrange for the patient to be remitted to any prison or other institution in which he might have been detained if he had not been removed to hospital,
 - (b) the transfer for treatment direction ceases to have effect on the patient's arrival there, and
 - (c) he may be dealt with there as if he had not been removed to hospital.

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PART 2

TRANSFER FOR TREATMENT DIRECTION ONLY

Application of this Part of this Schedule

- 9 This Part of this Schedule applies if a transfer for treatment direction, but not a restriction direction, has been given in respect of the patient.

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Leave of absence during assessment period

- 10 During the patient's assessment period, section 30 applies in relation to the patient as it applies in relation to a patient who is liable to assessment as a resident patient under Chapter 3 of Part 2 (taking references to the hospital with which the patient is registered as references to the responsible hospital).

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Application of Part 2

- 11 (1) Chapters 4, 6, 7, 9 and 10 of Part 2 apply in relation to the patient with the following modifications.
- (2) References to assessment under Chapter 3 of Part 2 are to be read as references to assessment under this Schedule.
- (3) Any liability of the patient to assessment is to assessment as a resident patient, and accordingly applied provisions of Part 2 which relate to assessment as a non-resident patient do not apply (and provisions which relate to assessment as a resident patient and as a non-resident patient apply with the appropriate modifications).
- (4) References to being detained in hospital under any provision of Part 2 include references to being detained in hospital under a provision of Part 3.
- (5) References to the hospital with which the patient is registered are to be read as references to the responsible hospital, and references to registration include deemed registration.
- (6) References to the patient's clinical supervisor are to be read in accordance with paragraph 5(6).
- (7) References to the care plan in force under section 31 are to be read as references to the care plan in force under paragraph 7.
- (8) In section 38 –
- (a) references to section 25(2)(a) are to be read as references to paragraph 6(3)(a), and
 - (b) references to section 25(2)(b)(ii) are to be read as references to paragraph 6(3)(b)(ii).
- (9) The period of 28 days referred to in section 44(1) begins with the day on which the patient was admitted under section 140.

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- (10) In section 72(3), the reference to paragraphs (i) to (iv) of section 25(6)(b) is to be read as a reference to sub-paragraphs (i) and (ii) of paragraph 6(6)(b).
- (11) If responsibility for providing the patient with medical treatment is transferred to another hospital by virtue of section 76 or 77 –
- (a) that other hospital is the responsible hospital for the purposes of this Schedule, 5
 - (b) the patient is deemed to be registered at the other hospital when responsibility for providing the patient with medical treatment is transferred, and
 - (c) upon his deemed registration there, paragraph 5 applies, 10
and section 78 does not apply.
- (12) References in section 79 to registration under section 78(2) are to be read as references to deemed registration by virtue of sub-paragraph (11).
- (13) In section 82(2), the reference to the patient’s assessment period is to be construed in accordance with paragraph 6(6). 15
- (14) Section 84 has effect as if –
- (a) for subsection (2) there were substituted –
 - “(2) The definition of “initial period” in paragraph 7(10) of Schedule 9 has effect as if it read –
 - ““initial period” means the period of 5 days beginning with the day the patient returned from being absent without leave;””, 20
 - (b) in subsection (4), for paragraph (a) there were substituted –
 - “(a) paragraph 6(6)(b)(iii) of Schedule 9 has effect as if it read –
 - “(iii) at the end of the period of 7 days beginning with the day on which the patient returned from being absent without leave;”, and””. 25

PART 3

TRANSFER FOR TREATMENT DIRECTION WITH RESTRICTION DIRECTION 30

Application of this Part of this Schedule

- 12 This Part of this Schedule applies if both a transfer for treatment direction and a restriction direction have been given in respect of the patient.

Application of Part 2

- 13 (1) Chapters 4 and 6 of Part 2 apply in relation to the patient with the modifications set out in this paragraph and paragraph 14. 35
- (2) References to assessment under Chapter 3 of Part 2 are to be read as references to assessment under this Schedule.
- (3) Any liability of the patient to assessment is to assessment as a resident patient, and accordingly applied provisions of Part 2 which relate to assessment as a non-resident patient do not apply (and provisions which relate to assessment as a resident patient and as a non-resident patient apply with the appropriate modifications). 40

-
- (4) References to being detained in hospital under any provision of Part 2 include references to being detained in hospital under a provision of Part 3.
- (5) References to the hospital with which the patient is registered are to be read as references to the responsible hospital, and references to registration include deemed registration. 5
- (6) References to the patient’s clinical supervisor are to be read in accordance with paragraph 5(6).
- (7) References to the care plan in force under section 31 are to be read as references to the care plan in force under paragraph 7.
- 14 (1) In section 38 – 10
- (a) references to section 25(2)(a) are to be read as references to paragraph 6(3)(a), and
- (b) references to section 25(2)(b)(ii) are to be read as references to paragraph 6(3)(b)(ii).
- (2) In each of sections 39, 40 and 43, subsection (6) does not apply. 15
- (3) In section 41, subsections (1) and (2) do not apply.
- (4) Section 42 does not apply.
- (5) The period of 28 days referred to in section 44(1) begins with the day on which the patient was admitted under section 140.
- (6) In section 45, subsections (3)(b) and (7) do not apply. 20
- (7) Section 46 has effect as if the following were substituted for it –
- “46 Order authorising medical treatment**
- (1) This section applies in relation to an order authorising the medical treatment of the patient.
- (2) The order must state that – 25
- (a) the care plan is approved by the Tribunal for the medical treatment of the patient, or
- (b) the care plan is approved by the Tribunal for that purpose, with such modifications as are –
- (i) agreed with the clinical supervisor of the patient, and 30
- (ii) specified by the Tribunal in the order,
- but no modifications may be so agreed and specified unless the patient has had an opportunity to make representations about the modifications, if practicable.
- (3) For the purposes of subsection (2), any reference to the care plan is to be read as a reference to the care plan included in the application under section 38 or 41.” 35
- (8) In section 47, subsections (1) to (4) do not apply.
- (9) Section 48 does not apply.
- (10) Section 49 has effect as if – 40
- (a) in subsection (2)(b), the references to the patient’s nominated person and to any carer of his were omitted,
- (b) subsection (3)(b) were omitted, and
- (c) subsections (4) to (7) were omitted.
- (11) In section 51, subsections (4) to (14) do not apply. 45

- (12) Section 52 has effect as if subsections (2)(c) and (4)(b) were omitted.
- (13) Section 53 does not apply.

Hospitals and hospital units

- 15 (1) This paragraph applies if the patient’s clinical supervisor determines (whether following a request by the patient or not) – 5
 - (a) in the case of a patient whose transfer for treatment direction specifies a hospital, that he should be transferred to a hospital unit within that hospital, or
 - (b) in the case of a patient whose transfer for treatment direction specifies a hospital unit, that he should be transferred out of the unit to the hospital containing it. 10
- (2) The patient’s clinical supervisor must seek the Secretary of State’s consent to the transfer.
- (3) If the Secretary of State consents – 15
 - (a) the patient’s transfer for treatment direction has effect from the time of his consent as if, instead of specifying the hospital or the hospital unit, it specified instead the hospital unit or the hospital (respectively), and
 - (b) Part 3 and this Schedule have effect accordingly.

Transfer of responsibility for patients 20

- 16 (1) This paragraph applies if the patient’s clinical supervisor determines (whether following a request by the patient or not) that responsibility for providing him with medical treatment should be transferred to another hospital.
- (2) The patient’s clinical supervisor must, in that case, also determine whether or not the transfer should be to a hospital unit within the other hospital (whatever the patient’s transfer for treatment direction as currently in force specifies). 25
- (3) The patient’s clinical supervisor must then seek the consent of the Secretary of State to the transfer. 30
- (4) The Secretary of State may –
 - (a) consent,
 - (b) consent, but only to a transfer to a hospital unit within the other hospital (if the clinical supervisor had determined that the transfer should be to the hospital), 35
 - (c) consent, but only to a transfer to the other hospital (if the clinical supervisor had determined that the transfer should be to a hospital unit within the other hospital), or
 - (d) refuse consent.
- (5) Sub-paragraphs (6) to (8) apply if the Secretary of State consents under sub-paragraph (4), but if he consented under paragraph (b) or (c) of that sub-paragraph, they apply only on that basis. 40
- (6) The proposed transfer may take place on such date as is agreed between the managers of the two hospitals, which must be as soon as practicable.
- (7) If the patient is not already required to reside at the other hospital (or at a hospital unit within the other hospital) in accordance with conditions 45

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- imposed on the giving of leave of absence under section 62, or is not otherwise residing there, the clinical supervisor must, as soon as practicable after the Secretary of State has consented, make such arrangements as he considers appropriate for conveying the patient to the other hospital.
- (8) If arrangements are made in relation to the patient under sub-paragraph (7), the managers of the hospital from which the transfer is to be made must secure that the patient is conveyed to the other hospital by a person authorised by them to do so. 5
- (9) The clinical supervisor must notify the persons mentioned in sub-paragraph (10) of – 10
- (a) his determination under sub-paragraph (1), and
 - (b) once the Secretary of State has consented to it, the proposed transfer.
- (10) The persons are –
- (a) the patient, and
 - (b) if the patient is aged under 16, each person with parental responsibility for him (subject to paragraph 2(1)). 15
- (11) If responsibility for providing the patient with medical treatment is transferred to another hospital under this paragraph –
- (a) that other hospital is the responsible hospital for the purposes of this Schedule, 20
 - (b) the patient is deemed to be registered at the other hospital when responsibility for providing the patient with medical treatment is transferred, and
 - (c) upon his deemed registration there, paragraph 5 applies.
- Adjustment of assessment period for patients absent without leave* 25
- 17 (1) Sub-paragraph (2) applies if a patient who is liable to assessment under this Schedule returns from absence without leave –
- (a) on the last day of the period referred to in paragraph 6(6)(b)(iii), or
 - (b) within the period of 7 days ending with that day.
- (2) In that case paragraph 6(6)(b)(iii) is to have effect as if it read – 30
- “(iii) at the end of the period of 7 days beginning with the day on which the patient returned from being absent without leave,”.
- (3) In this paragraph, references (however expressed) to a patient who is absent without leave are to a patient to whom section 81(3) applies (by virtue of section 139(7)). 35

SCHEDULE 10

Section 256

THE CHAI: TRANSFER OF PROPERTY AND STAFF ETC

Transfer scheme

- 1 (1) The Secretary of State may make one or more schemes for – 40
- (a) the transfer of property, rights and liabilities of the MHAC to the CHAI, and

- (b) the transfer of property, rights and liabilities of the Crown to the CHAI.
- (2) The property, rights and liabilities which may be the subject of a scheme include—
 - (a) any that would otherwise be incapable of being transferred or assigned, and 5
 - (b) rights and liabilities under a contract of employment.
- (3) A scheme under sub-paragraph (1) may define the property, rights and liabilities to be transferred by specifying or describing them (including describing them by reference to a specified part of the transferor's undertaking). 10
- (4) A scheme under this paragraph may include supplementary, incidental, transitional and consequential provision.

Transfer

- 2 The property, rights and liabilities which are the subject of a scheme under paragraph 1 are, by virtue of this paragraph, transferred on the day appointed by the scheme in accordance with the provisions of the scheme. 15

Employment

- 3 The transfer by paragraph 2 of the rights and liabilities relating to an individual's contract of employment does not break the continuity of his employment, and, accordingly—
 - (a) he is not to be regarded for the purposes of Part 11 of the Employment Rights Act 1996 (c. 18) as having been dismissed by virtue of the transfer, and
 - (b) his period of employment with the transferor counts as a period of employment with the CHAI for the purposes of that Act. 25
- 4 (1) Paragraph 2 does not operate to transfer the rights and liabilities under an individual's contract of employment if, before the transfer takes effect, he informs the transferor or CHAI that he objects to the transfer.
- (2) Where an individual does inform the transferor or CHAI as specified in sub-paragraph (1), his contract of employment with the transferor is terminated immediately before the date on which the transfer would occur; but he shall not, for any purpose, be regarded as having been dismissed by the transferor. 30
- (3) This paragraph is without prejudice to any right of an individual employed by the transferor to terminate his contract of employment if (apart from the change of employer) a substantial change is made to his detriment in his working conditions. 35
- 5 For the purposes of this Schedule, where a person holds any office or employment under the Crown on terms which do not constitute a contract of employment between that person and the Crown—
 - (a) he shall be regarded as employed by the Crown by virtue of a contract of employment,
 - (b) the terms of his employment shall be regarded as constituting the terms of that contract, and 45

- (c) in relation to such a person, the reference in paragraph 4(2) to dismissal by the transferor is to termination of his employment by the Crown.

Transitional

- 6 (1) Anything done by or in relation to the transferor for the purposes of or in connection with anything transferred by paragraph 2 which is in effect immediately before it is transferred shall be treated as if done by or in relation to the CHAI. 5
- (2) There may be continued by or in relation to the CHAI anything (including legal proceedings) relating to anything so transferred which is in the process of being done by or in relation to the transferor immediately before it is transferred. 10
- (3) A reference to the transferor in any document relating to anything so transferred shall be taken (so far as necessary for the purposes of or in consequence of the transfer) as a reference to the CHAI. 15
- (4) A transfer under paragraph 2 does not affect the validity of anything done by or in relation to the transferor before the transfer takes effect.

SCHEDULE 11

Section 289

LIST OF OFFICIAL COMMUNICANTS FOR PURPOSES OF SECTION 289

- 1 Any Minister of the Crown, the Scottish Ministers, the Assembly First Secretary or Assembly Secretaries of the National Assembly for Wales or any Northern Ireland Minister. 20
- 2 Any other Member of either House of Parliament or member of the Scottish Parliament, National Assembly for Wales or Northern Ireland Assembly.
- 3 The Master or any other officer of the Court of Protection or any of the Lord Chancellor's Visitors. 25
- 4 The Parliamentary Commissioner for Administration or the Welsh Administration Ombudsman.
- 5 The Health Service Commissioner for England, the Health Service Commissioner for Wales or a Local Commissioner within the meaning of Part 3 of the Local Government Act 1974 (c. 7). 30
- 6 The Commission for Healthcare Audit and Inspection.
- 7 The Mental Health Tribunal for England, the Mental Health Tribunal for Wales and the Mental Health Appeal Tribunal.
- 8 A Strategic Health Authority, Local Health Board, Special Health Authority, Primary Care Trust, National Health Service trust, NHS foundation trust, local social services authority, Community Health Council, Patient's Forum or local probation board established under section 4 of the Criminal Justice and Court Services Act 2000 (c. 43). 35
- 9 A provider of an advocacy and liaison service for the assistance of patients at the hospital in which the patient is detained and their families and carers 40

	if that service falls within a description specified by the appropriate authority in regulations.	
10	The managers of the hospital in which the patient is detained.	
11	The patient’s nominated person.	
12	Any person providing independent advocacy services to the patient in accordance with arrangements under section 19A of the National Health Service Act 1977 (c. 49).	5
13	Any IMHA advocate providing help to the patient or his nominated person in accordance with section 247.	
14	Any person considering a complaint by virtue of section 266.	10
15	Any legally qualified person instructed by the patient to act as his legal adviser.	
16	The European Commission of Human Rights or European Court of Human Rights.	

SCHEDULE 12

Section 296

15

MEMBER OF PARLIAMENT LIABLE TO COMPULSORY PROVISION: INTERPRETATION

PART 1

GENERAL

Introductory

1	This Schedule has effect for the purposes of sections 294 and 295.	20
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General interpretation

2	In this Schedule – “notifiable event” is to be read in accordance with paragraphs 3, 8 and 12 below; “relevant hospital” is to be read in accordance with paragraphs 4(b), 9(1)(b) and 13(1)(b) below; “relevant time” is to be read in accordance with paragraphs 4(a), 9(1)(a) and 13(1)(a) below.	25
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PART 2

ENGLAND AND WALES

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Notifiable event

3	A notifiable event occurs in England and Wales in respect of a member of the House of Commons if and when – (a) he becomes registered under section 22(1), 78(2) or 166(2)(b), (b) the provision of medical treatment to him is authorised under section 91(6) or 92(6),	35
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- (c) he is remanded to a hospital for medical treatment under section 93,
- (d) he is committed to a hospital for medical treatment under section 94,
- (e) a mental health order is made in respect of him,
- (f) he is sentenced to imprisonment for a term not exceeding one year and a hospital direction is given in respect of him, 5
- (g) a transfer for treatment direction is given in respect of him, or
- (h) a remand transfer direction is given in respect of him.

Relevant time and relevant hospital

- 4 In relation to a notifiable event in England and Wales which occurs in respect of a member of the House of Commons – 10
- (a) a reference to the relevant time is, subject to paragraph 5(1), to the time specified in respect of the notifiable event in question in the second column of the following table, and
 - (b) a reference to the relevant hospital is, subject to paragraph 5(2) and (3), to the hospital specified in respect of that event in the third column of the table. 15

<i>Provision listing notifiable event</i>	<i>Relevant time</i>	<i>Relevant hospital</i>	
Paragraph 3(a)	The occurrence of the notifiable event.	The hospital with which the member is registered under the provision in question.	20
Paragraph 3(b), (c) or (d)	The member's deemed registration by virtue of section 97(2) or (3).	The responsible hospital within the meaning of section 97(7).	
Paragraph 3(e)	The member's deemed registration within the meaning of Schedule 8.	The responsible hospital within the meaning of Schedule 8.	25
Paragraph 3(f)	The member's deemed registration by virtue of section 131(9).	The responsible hospital by virtue of section 131(9).	30
Paragraph 3(g)	The member's deemed registration within the meaning of Schedule 9.	The responsible hospital within the meaning of Schedule 9.	
Paragraph 3(h)	The member's deemed registration by virtue of section 97(2).	The responsible hospital within the meaning of section 97(7).	35

Absconding

- 5 (1) In the case of a notifiable event within paragraph 3(b) to (h), if the member absconds, a reference to the relevant time is to the time when the managers of the relevant hospital are notified of the fact that he has absconded. 40

- (2) In the case of a notifiable event within paragraph 3(b) to (d), if the member absconds, a reference to the relevant hospital is to the hospital to which he was remanded or committed.
- (3) In the case of a notifiable event within paragraph 3(h), if the member absconds, a reference to the relevant hospital is to the hospital specified in the remand transfer direction. 5
- (4) For the purposes of this paragraph, a reference to a member’s absconding is –
- (a) in a case within paragraph 3(b), to his absconding pending his admission to the hospital to which he was remanded, 10
 - (b) in a case within paragraph 3(c) or (d), to his absconding pending his admission to the hospital to which he was remanded or committed,
 - (c) in a case within paragraph 3(e), where the mental health order states that he is to be provided with medical treatment as a resident patient, to his absconding pending his admission to the hospital specified in the order, 15
 - (d) in a case within paragraph 3(f), to his absconding pending his admission to the hospital specified in the hospital direction,
 - (e) in a case within paragraph 3(g), to his absconding pending his admission to the hospital specified in the transfer for treatment direction, or 20
 - (f) in a case within paragraph 3(h), to his absconding pending his admission to the hospital specified in the remand transfer direction.

Liability to compulsory provision

- 6 For the purposes of section 295, a member of the House of Commons is liable to compulsory provision in England and Wales if – 25
- (a) he is liable to assessment under Chapter 3 of Part 2,
 - (b) he is liable to be provided with medical treatment or assessed by virtue of an order (or further order) under Chapter 6 of Part 2, or
 - (c) he is liable to be provided with medical treatment under Part 3. 30

PART 3

SCOTLAND

Interpretation

- 7 For the purposes of this Part of this Schedule –
- “the 1995 Scottish Act” means the Criminal Procedure (Scotland) Act 1995 (c. 46); 35
 - “the 2003 Scottish Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13);
 - “assessment order” means an order made, or treated for the purposes of the 1995 Scottish Act as made, under section 52D of that Act; 40
 - “compulsion order” has the meaning given by that Act;
 - “compulsory treatment order” has the meaning given by the 2003 Scottish Act;
 - “hospital direction” means a hospital direction within the meaning of the 1995 Scottish Act; 45
 - “interim compulsion order” has the meaning given by that Act;

“interim compulsory treatment order” has the meaning given by the 2003 Scottish Act;

“short-term detention certificate” has the meaning given by that Act;

“transfer for treatment direction” means a transfer for treatment direction within the meaning of that Act;

“treatment order” means an order made, or treated for the purposes of the 1995 Scottish Act as made, under section 52M of that Act.

5

Notifiable event

8 A notifiable event occurs in Scotland in respect of a member of the House of Commons if and when—

10

(a) a short-term detention certificate is granted in respect of him,

(b) a compulsory treatment order is made in respect of him,

(c) an interim compulsory treatment order is made in respect of him,

(d) an assessment order is made in respect of him,

(e) a treatment order is made in respect of him,

15

(f) a compulsion order is made in respect of him,

(g) an interim compulsion order is made in respect of him,

(h) a hospital direction is given in respect of him, or

(i) a transfer for treatment direction is given in respect of him,

and references in this Part of this Schedule to any such certificate, order or direction include references to a certificate, order or direction which is treated as granted, made or given by virtue of regulations under section 290(1)(c) of the 2003 Scottish Act.

20

Relevant time and relevant hospital

9 (1) In relation to a notifiable event which occurs in Scotland in respect of a member of the House of Commons—

25

(a) a reference to the relevant time is to the time specified in respect of the notifiable event in question in the second column of the following table, and

(b) a reference to the relevant hospital is to the hospital specified in respect of that event in the third column of the table.

30

(2) Sub-paragraph (3) applies to any reference in the third column of the table to a hospital specified in an order or direction in any case where the order or direction is treated as made or given in respect of the member by virtue of regulations under section 290(1)(c) of the 2003 Scottish Act.

35

(3) The reference is to be read as a reference to any hospital which is treated by virtue of those regulations as specified in the order or direction.

Provision listing notifiable event

Relevant time

Relevant hospital

Paragraph 8(a) The occurrence of the notifiable event. The hospital in which the member is detained under authority of the short-term detention certificate.

40

<i>Provision listing notifiable event</i>	<i>Relevant time</i>	<i>Relevant hospital</i>	
Paragraph 8(b)	The occurrence of the notifiable event.	The hospital specified (or taken for the purposes of the 2003 Scottish Act to be specified) in the compulsory treatment order.	5
Paragraph 8(c)	The occurrence of the notifiable event.	The hospital specified in the interim compulsory treatment order.	
Paragraph 8(d)	The occurrence of the notifiable event.	The hospital specified – (a) in the assessment order, or (b) if a direction is given in respect of the member under section 52F of the 1995 Scottish Act, in that direction.	10
Paragraph 8(e)	The occurrence of the notifiable event.	The hospital specified – (a) in the treatment order, or (b) if a direction is given in respect of the member under section 52P of the 1995 Scottish Act, in that direction.	15 20
Paragraph 8(f)	The occurrence of the notifiable event.	The hospital – (a) specified (or taken for the purposes of the 2003 Scottish Act to be specified) in the compulsion order, or (b) if a direction is given in respect of the member under section 57D of the 1995 Scottish Act, specified in that direction.	25 30
Paragraph 8(g)	The occurrence of the notifiable event.	The hospital specified – (a) in the interim compulsion order, or (b) if a direction is given in respect of the member under section 53A of the 1995 Scottish Act, in that direction.	35
Paragraph 8(h)	The occurrence of the notifiable event.	The hospital – (a) specified (or taken for the purposes of the 2003 Scottish Act to be specified) in the hospital direction, or (b) if a direction is given in respect of the member under section 59C of the 1995 Scottish Act, specified in that direction.	40 45

<i>Provision listing notifiable event</i>	<i>Relevant time</i>	<i>Relevant hospital</i>	
Paragraph 8(i)	The occurrence of the notifiable event.	The hospital specified (or taken for the purposes of the 2003 Scottish Act to be specified) in the transfer for treatment direction.	5

Liability to compulsory provision

10	For the purposes of section 295, a member of the House of Commons is liable to compulsory provision in Scotland if any of the following has effect in respect of him—		10
	(a) a short-term detention certificate or an extension certificate (within the meaning of the 2003 Scottish Act),		
	(b) a measure under section 68(2) of the 2003 Scottish Act,		
	(c) a compulsory treatment order or an interim compulsory treatment order,		15
	(d) an assessment order,		
	(e) a treatment order,		
	(f) a compulsion order or an interim compulsion order,		
	(g) a hospital direction, or		
	(h) a transfer for treatment direction.		20

PART 4

NORTHERN IRELAND

Interpretation

11	For the purposes of this Part of this Schedule—		
	“hospital order” has the meaning given by the Northern Ireland Order;		25
	“interim hospital order” has the meaning given by that Order;		
	“the Northern Ireland Order” means the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4));		
	“relevant regulations” means regulations under section 175(2) or (3) of this Act;		30
	“transfer direction” has the meaning given by the Northern Ireland Order.		

Notifiable event

12	A notifiable event occurs in Northern Ireland in respect of a member of the House of Commons if and when—		35
	(a) he is detained in hospital by virtue of Article 9 of the Northern Ireland Order (or treated by virtue of relevant regulations as so detained),		
	(b) he is detained in hospital by virtue of a report under Article 12(1) of that Order (or treated by virtue of relevant regulations as so detained),		40

- (c) he is remanded under Article 43 of that Order into the care of the Department of Health, Social Services and Public Safety for admission to hospital (or treated by virtue of relevant regulations as so remanded),
- (d) a hospital order is made (or treated by virtue of relevant regulations as made) in respect of him, 5
- (e) an interim hospital order is made (or treated by virtue of relevant regulations as made) in respect of him,
- (f) an order under Article 50A(2)(a) of the Northern Ireland Order is made (or treated by virtue of relevant regulations as made) in respect of him, or 10
- (g) a transfer direction is given (or treated by virtue of relevant regulations as given) in respect of him.

Relevant time and relevant hospital

- 13 (1) In relation to a notifiable event which occurs in Northern Ireland in respect of a member of the House of Commons – 15
- (a) a reference to the relevant time is, subject to paragraph 14(1), to the time specified in respect of the notifiable event in question in the second column of the following table, and
- (b) a reference to the relevant hospital is to the hospital specified in respect of that event in the third column of the table. 20
- (2) Sub-paragraph (3) applies to any reference in the third column of the table to a hospital designated in an order or direction in any case where the order or direction is treated as made or given in respect of the member by virtue of relevant regulations. 25
- (3) The reference is to be read as a reference to any hospital which is treated by virtue of those regulations as designated in the order or direction.

<i>Provision listing notifiable event</i>	<i>Relevant time</i>	<i>Relevant hospital</i>	
Paragraph 12(a)	The occurrence of the notifiable event.	The hospital in which the member is detained by virtue of Article 9 of the Northern Ireland Order.	30
Paragraph 12(b)	The occurrence of the notifiable event.	The hospital in which the member is detained for treatment by virtue of a report under Article 12(1) or 13(2), (3) or (5) of the Northern Ireland Order.	35
Paragraph 12(c)	The admission of the member to the hospital designated under Article 42(9)(a) of the Northern Ireland Order (by virtue of Article 43(5) of that Order).	The hospital – (a) designated under Article 42(9)(a) of the Northern Ireland Order (by virtue of Article 43(5) of that Order), or (b) to which the member is transferred under Article 28(1) of that Order (by virtue of Part 1 of Schedule 2 to the Order).	40 45

<i>Provision listing notifiable event</i>	<i>Relevant time</i>	<i>Relevant hospital</i>	
Paragraph 12(d)	The admission of the member to the hospital designated under Article 46(1) of the Northern Ireland Order.	The hospital –	
		(a) designated under Article 46(1) of the Northern Ireland Order, or	5
Paragraph 12(e)	The admission of the member to the hospital designated under Article 46(3)(a) of the Northern Ireland Order.	(b) to which the member is transferred under Article 28(1) of that Order (by virtue of Part 1 or 2 of Schedule 2 to the Order, as the case may require).	10
		The hospital –	
Paragraph 12(f)	The admission of the member to the hospital designated under Article 46(1) of the Northern Ireland Order (by virtue of Article 50A(3)(a) of that Order).	(a) designated under Article 46(3)(a) of the Northern Ireland Order, or	15
		(b) to which the member is transferred under Article 28(1) of that Order (by virtue of Part 1 of Schedule 2 to the Order).	20
Paragraph 12(g)	The admission of the member to the hospital designated under Article 46(1) of the Northern Ireland Order (by virtue of Article 53(3) of that Order).	The hospital –	
		(a) designated under Article 46(1) of the Northern Ireland Order (by virtue of Article 50A(3)(a) of that Order), or	25
Paragraph 12(h)	The admission of the member to the hospital designated under Article 46(1) of the Northern Ireland Order (by virtue of Article 53(3) of that Order).	(b) to which the member is transferred under Article 28(1) of that Order (by virtue of Part 1 or 2 of Schedule 2 to the Order, as the case may require).	30
		The hospital –	
Paragraph 12(i)	The admission of the member to the hospital designated under Article 46(1) of the Northern Ireland Order (by virtue of Article 53(3) of that Order).	(a) designated under Article 46(1) of the Northern Ireland Order (by virtue of Article 53(3) of that Order), or	35
		(b) to which the member is transferred under Article 28(1) of that Order (by virtue of Part 1 or 2 of Schedule 2 to the Order, as the case may require).	40
<i>Absconding</i>			
14	(1)	In the case of a notifiable event within paragraph 12(c) to (g), if the member absconds, a reference to the relevant time is to the time when the managers of the relevant hospital are notified of the fact that he has absconded.	45

- (2) For the purposes of this paragraph, a reference to a member’s absconding is, in a case within paragraph 12(c) to (g), to his absconding pending his admission to the relevant hospital.

Liability to compulsory provision

- | | | |
|----|--|----|
| 15 | For the purposes of section 295, a member of the House of Commons is liable to compulsory provision in Northern Ireland if – | 5 |
| | (a) he is liable to be detained in hospital under Part 2 of the Northern Ireland Order, or | |
| | (b) any of the following has effect (or is treated by virtue of relevant regulations as having effect) in respect of him – | 10 |
| | (i) a remand under Article 43 of the Northern Ireland Order, | |
| | (ii) a hospital order or an interim hospital order, | |
| | (iii) an order under Article 50A(2)(a) of the Northern Ireland Order, or | |
| | (iv) a transfer direction. | 15 |

SCHEDULE 13

Section 302

INDEX OF DEFINED EXPRESSIONS

- | | | |
|---|---|----|
| 1 | In this Act, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions of this Act listed in the right-hand column. | 20 |
|---|---|----|

<i>Expression</i>	<i>Provision</i>	
application to Mental Health Tribunal (in relation to Chapter 1 of Part 8)	section 246(4) and (5)	
appointer (in relation to Chapter 1 of Part 8)	section 232(1)	25
appropriate authority	section 2(2)	
approved clinician	section 3(1)	
approved mental health professional	section 3(4)	
the approved mental health professional (in relation to Part 2)	section 10(2)	30
assessment and related expressions (in relation to Chapters 2 and 3 of Part 2)	section 15(9)	
assessment period (in relation to Part 2)	sections 10(3) and 25(6)	
care order (in relation to Chapter 1 of Part 8)	section 246(6)	35
carer	section 301(1)	

<i>Expression</i>	<i>Provision</i>	
the CHAI	section 256(2)	
child (in relation to Part 3)	section 159(3)	
child (in relation to Chapter 2 of Part 6)	section 203(2)	
clinical supervisor (in relation to Part 2)	section 24(10)	5
clinical supervisor (in relation to Part 3)	sections 98(6) and 159(7)	
clinical supervisor (in relation to Part 5)	section 201(1)	
clinical supervisor (in relation to Chapter 2 of Part 6)	section 205(10)	
consenting parent (in relation to Chapter 2 of Part 6)	section 203(3)	10
course of medical treatment (in relation to Part 5)	section 201(2)	
disqualified (in relation to Chapter 1 of Part 8)	section 232(4)	15
ECT (in relation to Part 5)	section 177(1)	
eligible person (in relation to Chapter 1 of Part 8)	section 232(2) and (3)	
emergency patient (in relation to Chapters 2, 3 and 5 of Part 2)	section 17(2) and (7)	20
examination and related expressions (in relation to Chapter 2 of Part 2)	section 14(11)(a)	
examiners (in relation to Chapter 2 of Part 2)	section 14(11)(b)	
Expert Panel	section 7(1)	25
guardian (in relation to Part 3)	section 159(4)	
hospital (except in Parts 6, 10 and 12 and sections 161(2)(c), 172(2), 280(1) and 301(1))	section 2(3)	
hospital (in relation to Part 6)	section 223	30
hospital (in relation to Part 10, except section 271)	section 277(2)	
hospital direction	section 130(7)	
hospital unit (in relation to Part 3)	section 159(5)	
hospital with which a patient is or is to be registered (in relation to Chapters 4 to 10 of Part 2)	section 34(5) and (6)	35

<i>Expression</i>	<i>Provision</i>	
local social services authority	section 301(1)	
the managers	section 2(4) (and, in relation to Part 6 or 10 or sections 284 and 285, section 223, 277(3) or 285(8) respectively)	5
medical treatment	section 2(7)	
mental disorder and mentally disordered	section 2(5)	
the MHAC (in relation to Part 10)	section 256(1)	10
Mental Health Appeal Tribunal	section 8 and paragraph 4(1) of Schedule 4	
mental health order	section 116(9)	
Mental Health Tribunal (in relation to Chapter 1 of Part 3)	section 113(2) and (3)	15
Mental Health Tribunal (in relation to Chapter 4 of Part 3)	section 142(2)	
Mental Health Tribunal for England and Mental Health Tribunal for Wales	section 4 and paragraph 4(1) of Schedule 2	
nominated person	section 301(3)	20
offence punishable on summary conviction with imprisonment (in relation to Part 3)	section 159(10)	
order (or further order) authorising the assessment of a patient (in relation to Chapters 6 and 7 of Part 2)	section 38(8)(b)	25
order (or further order) authorising the medical treatment of a patient (in relation to Chapters 6 and 7 of Part 2)	section 38(8)(a)	
parental responsibility	section 301(1)	30
Part 2 patient (in relation to Chapter 1 of Part 8)	section 246(6)	
Part 3 patient (in relation to Chapter 1 of Part 8)	section 246(6)	
patient	section 2(6)	35
place of safety (in relation to Part 3)	section 159(6)	
prescribed (in relation to Chapter 6 of Part 2)	section 39(7)	

<i>Expression</i>	<i>Provision</i>	
prescribed (in relation to Part 4)	section 160(6)	
the prohibition on type A medical treatment (in relation to Part 5)	section 191(2)	
qualifying child patient (in relation to Chapter 2 of Part 6)	section 204	5
registered medical practitioner (in relation to Part 3, except in sections 103(3), 108(2), 138(3) and 143(2))	section 159(8) and (9)	
the registered medical practitioners (in relation to Chapter 2 of Part 2)	section 14(11)(c)	10
registration period (in relation to Part 5)	section 177(2) and (3)	
the relevant conditions (in relation to Part 2)	section 9	
relevant hospital (in relation to Part 10)	section 277(5)	15
relevant patient (in relation to Part 4)	section 160(2) and (3)	
relevant patient (in relation to Part 10)	section 277(4)	
relevant territory (in relation to Part 4)	section 160(4)	
remand transfer direction	section 137(2)	
remitting of a case (in relation to Chapter 9 of Part 2)	section 71(7)	20
responsible hospital (in relation to Chapter 1 of Part 3, except section 91(7))	section 97(7)	
restricted patient (in relation to Chapter 4 of Part 3)	section 142(1)	25
restricted patient (in relation to Part 4)	section 160(5)	
restriction direction	section 139(5)	
restriction order	section 125(3)	
sentence falls to be imposed under section 110(2) or 111(2) of the 2000 Act (in relation to Chapter 2 of Part 3)	section 159(11)	30
suitable (in relation to Chapter 1 of Part 8)	section 232(5)	
transfer for report direction	section 133(3)	
transfer for treatment direction	section 135(3)	35

<i>Expression</i>	<i>Provision</i>	
the Tribunal (in relation to Chapters 5 to 10 of Part 2)	section 34(1) to (4) and (6) (and paragraph 4(1) of Schedule 2)	
type A medical treatments (in relation to Part 5)	section 191(1)	5
type B medical treatment (in relation to Part 5)	section 196(1)	
young person (in relation to Part 3)	section 159(3)	
the 2000 Act (in relation to Part 3)	section 159(12)	10

SCHEDULE 14

Section 304

TRANSITIONAL PROVISIONS AND SAVINGS

PART 1

PATIENTS TO BE TREATED AS BEING LIABLE TO ASSESSMENT UNDER PART 2 OF THIS ACT
(NON-EMERGENCY PATIENTS) 15

Application

- 1 (1) This Part of this Schedule applies to any patient who, immediately before the commencement date, is liable to be detained in a hospital under section 2 of the 1983 Act (whether in pursuance of an application for admission for assessment under that section or an emergency application under section 4 of that Act if paragraphs (a) and (b) of subsection (4) of that section are satisfied). 20
- (2) This Part of this Schedule also applies to any patient who, immediately before the commencement date –
 - (a) is the subject of an application for admission for treatment under section 3 of that Act but has not yet been admitted to hospital in pursuance of that application, and 25
 - (b) does not fall within sub-paragraph (1).

Patient to be treated as being liable to assessment

- 2 (1) The patient shall be treated for the purposes of this Act as if he were liable to assessment as a resident patient under Chapter 3 of Part 2 of this Act in accordance with the following provisions of this Part of this Schedule (but shall be treated as if he were so liable otherwise than in accordance with section 17). 30
- (2) Accordingly in this Act (apart from in sections 16 and 17) – 35
 - (a) any reference to any patient who is or becomes liable to assessment shall be taken to include any patient treated as being or becoming liable to assessment by virtue of sub-paragraph (1) (and the reference

in paragraph 6 of Schedule 12 to a member of the House of Commons being liable to assessment is to be read accordingly), and

- (b) any reference to any patient liable to be detained in a hospital under this Act shall be taken to include any patient liable to be detained in a hospital by virtue of being treated as being or becoming liable to assessment by virtue of sub-paragraph (1). 5

Approved mental health professional etc

- 3 (1) As soon as practicable after the commencement date, the appropriate authority must appoint an approved mental health professional in respect of whom the condition specified in sub-paragraph (2) is met to act in respect of the patient. 10
- (2) The condition is that he does not fall within the description specified for the purposes of paragraph (b) of section 14(5).
- (3) The appropriate authority may at any time appoint an approved mental health professional in respect of whom the condition specified in sub-paragraph (2) is met to succeed the person appointed under sub-paragraph (1) or this sub-paragraph. 15
- (4) Section 10(2) has effect as for the words from “with whom arrangements” to the end there were substituted “appointed to act for the patient under paragraph 3(1) or (3) of Schedule 14, as the case may require”. 20
- (5) Subsection (2) of section 19 has effect as if it provided for the approved mental health professional to act as provided for in subsections (3) and (5) of that section as soon as practicable after the commencement date.
- (6) Subsection (4)(b) of that section has effect as if the reference to the determinations under Chapter 2 of Part 2 of this Act were a reference to the written recommendations of the two registered medical practitioners on which the application under section 2, 3 or 4 of the 1983 Act (as the case may be) was founded. 25
- (7) The following provisions shall be disregarded – 30
- (a) section 14 (except as applied by sub-paragraph (2)),
- (b) sections 15 to 18, and
- (c) section 20.
- (8) Section 21 has effect as if the two registered medical practitioners had examined the patient under Chapter 2 of Part 2 of this Act (and accordingly provision may be made in relation to things required to be done following the examination). 35

Assessment

- 4 (1) Subsection (1) of section 22 has effect as if it required the approved mental health professional to register the patient with the hospital in which the patient is liable to be detained on the commencement date. 40
- (2) Subsection (2) of that section has effect as if it provided for the approved mental health professional to effect the registration as soon as practicable after the commencement date.
- (3) Subsection (3) of that section shall be disregarded.
- (4) Section 24(3) shall be disregarded. 45
- (5) Subsection (3) of section 25 shall not apply to the patient.

- (6) Subsection (6) of that section has effect –
- (a) as if paragraph (a) were omitted,
 - (b) in paragraph (b)(v) –
 - (i) in the case of a patient to whom this Part of this Schedule applies by virtue of sub-paragraph (1) of paragraph 1, as if for the words from “admitted” to the end there were substituted the words “first detained in pursuance of the application under section 2 or 4 of the 1983 Act (as the case may be)”, 5
 - (ii) in the case of a patient to whom this Part of this Schedule applies by virtue of sub-paragraph (2) of that paragraph, as if the words from “or the imposition” to the end were omitted. 10
- (7) Subsection (2) of section 26 has effect as if the words from the beginning of paragraph (a) to “any other patient” were omitted.
- (8) Subsection (4)(b) of that section has effect as if the words from “against” to the end were omitted. 15
- (9) Section 29(2)(a)(ii) has effect as if the words from “against” to the end were omitted.
- (10) Section 31(1) has effect as if for “within the initial period” there were substituted “as soon as practicable after the commencement date”.
- (11) If – 20
- (a) this Part of this Schedule applies to a patient by virtue of paragraph 1(1), and
 - (b) 18 days or more have elapsed since he was first detained in pursuance of the application under section 2 or 4 of the 1983 Act (as the case may be), 25
- section 31(6) of this Act has effect as if the words from “but” to the end were omitted.
- (12) Subsection (9) of that section has effect as if –
- (a) in the definition of “review day” for “that day” there were substituted “the commencement date”, and 30
 - (b) the definition of “initial period” were omitted.

Further medical treatment and assessment

- 5 (1) Section 44(1) has effect –
- (a) in the case of a patient to whom this Part of this Schedule applies by virtue of paragraph 1(1), as if for the words from “admitted” to the end there were substituted the words “first detained in pursuance of the application under section 2 or 4 of the 1983 Act (as the case may be)”, 35
 - (b) in the case of a patient to whom this Part of this Schedule applies by virtue of paragraph 1(2), as if the words from “or the imposition” to the end were omitted. 40
- (2) In the case of a patient to whom this Part of this Schedule applies by virtue of paragraph 1(1), sub-paragraphs (3) and (4) below apply if –
- (a) before the commencement date, the patient has consented to treatment to which section 57 of the 1983 Act applies and certificates have been given in accordance with subsection (2)(a) and (b) of that section, and 45

- (b) immediately before the commencement date, the consent has not been withdrawn and the certificates are still in force.
- (3) The certificates shall be treated as if –
- (a) they are certificates to which subsection (2) of section 193 of this Act applies, and 5
- (b) they state that the conditions specified in subsection (3) of that section are met in the patient’s case.
- (4) The patient may be given the treatment for so long as it could have been given under section 57 of the 1983 Act (subject to section 193(8) of this Act).
- (5) Sub-paragraphs (6) to (8) apply in the case of a patient to whom this Part of this Schedule applies by virtue of paragraph 1(1) if, immediately before the commencement date, the provision of treatment specified in regulations for the purposes of subsection (1)(a) of section 58 of the 1983 Act is permitted by virtue of a certificate given under subsection (3) of that section. 10
- (6) If the certificate is given under subsection (3)(a) of that section, it shall be treated as if – 15
- (a) it is a certificate to which subsection (2) of section 179 applies, and
- (b) it certifies each of the matters mentioned in paragraphs (a) to (c) of that subsection.
- (7) If the certificate is given under subsection (3)(b) of section 58 of the 1983 Act, the provision of the treatment shall be treated as if it were authorised by the appropriate Tribunal under section 180(1). 20
- (8) The patient may be given the treatment for the period during which it could have been given by virtue of the certificate under –
- (a) section 58(3)(a) of the 1983 Act (subject to section 179(3) of this Act), 25
- or
- (b) section 58(3)(b) of the 1983 Act (subject to section 180(5) of this Act), as the case may require.

PART 2

PATIENTS TO BE TREATED AS BEING SUBJECT TO AN ORDER OR FURTHER ORDER
AUTHORISING MEDICAL TREATMENT 30*Application*

- 6 (1) This Part of this Schedule applies to any patient who –
- (a) has been admitted to a hospital in pursuance of an application for admission for treatment under section 3 of the 1983 Act, and 35
- (b) immediately before the commencement date is liable to be detained there in pursuance of that application,
- whether or not the authority for his detention has been renewed under section 20 of that Act since he was first so detained.
- (2) This Part of this Schedule also applies to any patient who immediately before the commencement date – 40
- (a) is liable to be detained in a hospital under section 2 of the 1983 Act in pursuance of an application for admission for assessment under that section, and

- (b) is the subject of an application for admission for treatment under section 3 of that Act but has not yet been admitted to a hospital in pursuance of that application.

Patient to be treated as being subject to an order or further order

- 7 (1) Subject to sub-paragraph (2), the patient shall be treated for the purposes of this Act as if an order authorising his medical treatment had been made in accordance with section 46 on the day on which the application under section 3 of the 1983 Act was made. 5
- (2) If—
- (a) this Part of this Schedule applies to a patient by virtue of paragraph 6(1), and 10
- (b) the authority for his detention has been renewed under section 20 of the 1983 Act,
- the patient shall be treated as if a further order authorising his medical treatment had been made in accordance with section 46 of this Act on the day on which the report under section 20(3) of the 1983 Act was duly furnished. 15
- (3) The patient shall be treated for the purposes of this Act as if, on the commencement date, he had been registered under section 22(1) of this Act with the hospital named in the application under section 3 of the 1983 Act. 20
- (4) Sub-paragraph (5) applies to an order which is treated as having been made in respect of a patient by virtue of sub-paragraph (1) or (2) above (and accordingly references in sub-paragraph (5) to an order include references to a further order).
- (5) The order is one— 25
- (a) by which the appropriate Tribunal approves for the purposes of section 46(2) of this Act the medical treatment which, immediately before the commencement date, is being provided to the patient by the responsible medical officer in accordance with section 58(1)(b) or 63 of the 1983 Act, 30
- (b) which states that the patient is to be provided with medical treatment as a resident patient until the order ceases to be in force,
- (c) which states that the clinical supervisor is authorised—
- (i) to discharge the order,
- (ii) to determine whether responsibility for providing the patient with medical treatment may be transferred from the hospital with which he is registered to another hospital, 35
- (iii) to determine whether the patient should be given leave of absence from the hospital with which he is registered in accordance with section 62, 40
- (d) which specifies the period for which it is to be in force as—
- (i) six months, or
- (ii) in a case falling within sub-paragraph (2), the period for which the detention was last renewed.
- (6) If, immediately before the commencement date, the medical treatment referred to in sub-paragraph (5)(a) is provided otherwise than in accordance with a certificate given under section 58(3)(b) of the 1983 Act, that treatment shall only be treated as approved for the period of three months beginning with the day on which it was first administered. 45

- (7) References in sub-paragraph (5)(c) to the hospital with which the patient is registered are to the hospital with which he is –
- (a) treated as being registered by virtue of sub-paragraph (3), or
 - (b) registered under section 78(2) (as it applies by virtue of this Part of this Schedule),
- as the case may be.

5

References

- 8 (1) Any reference in this Act to a hospital with which a patient is registered under section 22(1) of this Act shall be taken to include a hospital with which a patient is treated as being registered under that section by virtue of paragraph 7(3). 10
- (2) Any reference in this Act to a patient in respect of whom an order (or further order) authorising medical treatment is in force under Chapter 6 of Part 2 of this Act shall be taken to include a patient in respect of whom such an order (or further order) is treated as being in force by virtue of this Part of this Schedule. 15
- (3) Any reference in this Act to an order (or further order) authorising the medical treatment of a patient shall be taken to include such an order (or further order) which is treated as having been made by virtue of this Part of this Schedule. 20
- (4) Any reference in this Act to any provision made in an order (or further order) authorising the medical treatment of a patient shall be taken to include the provision treated as having been made in such an order (or further order) by virtue of paragraph 7(5).
- (5) Any reference in this Act to a patient who is liable to be detained in a hospital under this Act shall be taken to include any patient liable to be detained in a hospital by virtue of an order (or further order) authorising his medical treatment treated as having been made in respect of him by virtue of this Part of this Schedule. 25

Clinical supervisor and approved mental health professional 30

- 9 (1) The person who, immediately before the commencement date, is the patient's responsible medical officer within the meaning of section 34 of the 1983 Act shall be treated as if he were the approved clinician appointed as the patient's clinical supervisor under section 24(1) of this Act; and references in this Act to a patient's clinical supervisor are to be read accordingly. 35
- (2) As soon as practicable after the commencement date, the appropriate authority must appoint an approved mental health professional in respect of whom the condition specified in sub-paragraph (3) is met to act in respect of the patient. 40
- (3) The condition is that he does not fall within the description specified for the purposes of paragraph (b) of section 14(5).
- (4) The appropriate authority may at any time appoint an approved mental health professional in respect of whom the condition specified in sub-paragraph (3) is met to succeed the person appointed under sub-paragraph (2) or this sub-paragraph. 45

- (5) Section 10(2) of this Act has effect as if for the words “with whom arrangements” to the end there were substituted “appointed to act for the patient under paragraph 9(2) or (4) of Schedule 14, as the case may require”.

Medical treatment

- 10 (1) Sub-paragraphs (2) and (3) apply if— 5
- (a) before the commencement date, the patient has consented to treatment to which section 57 of the 1983 Act applies and certificates have been given in accordance with subsection (2)(a) and (b) of that section, and
 - (b) immediately before the commencement date, the consent has not been withdrawn and the certificates are still in force. 10
- (2) The certificates shall be treated as if—
- (a) they are certificates to which subsection (2) of section 193 of this Act applies, and
 - (b) they state that the conditions specified in subsection (3) of that section are met in the patient’s case. 15
- (3) The patient may be given the treatment for so long as it could have been given under section 57 of the 1983 Act (subject to section 193(8) of this Act).
- (4) Sub-paragraphs (5) to (7) apply if, immediately before the commencement date, the provision of treatment specified in regulations for the purposes of subsection (1)(a) of section 58 of the 1983 Act is permitted by virtue of a certificate given under subsection (3) of that section. 20
- (5) If the certificate is given under subsection (3)(a) of that section, it shall be treated as if—
- (a) it is a certificate to which subsection (2) of section 179 applies, and 25
 - (b) it certifies each of the matters mentioned in paragraphs (a) to (c) of that subsection.
- (6) If the certificate is given under section 58(3)(b) of the 1983 Act, the provision of the treatment shall be treated as if it were authorised by the appropriate Tribunal under section 180(1). 30
- (7) The order (or further order) which is treated as having been made in respect of the patient by virtue of sub-paragraph (1) or (2) of paragraph 7 shall be treated as one by which the appropriate Tribunal approved the treatment under subsection (2) of section 46 of this Act.

Nominated person 35

- 11 The approved mental health professional must appoint a nominated person for the patient in accordance with Chapter 1 of Part 8 of this Act as soon as practicable after the commencement date (subject to section 234).

PART 3

EMERGENCY PATIENTS 40

Application

- 12 (1) This Part of this Schedule applies to a patient if—

- (a) immediately before the commencement date, the patient is detained in hospital in pursuance of an emergency application under section 4 of the 1983 Act, and
- (b) paragraphs (a) and (b) of subsection (4) of that section are not yet satisfied. 5
- (2) Section 17 does not apply to a patient to whom this Part of this Schedule applies.

Patient to be treated as being liable to assessment in accordance with this Part of this Schedule

- 13 (1) The patient shall be treated for the purposes of this Act as if he were liable to assessment as a resident patient under Chapter 3 of Part 2 of this Act from the commencement date in accordance with the following provisions of this Part of this Schedule. 10
- (2) Accordingly references in Chapters 2 to 5 of Part 2 of this Act to an emergency patient shall be taken to include a patient to whom this Part of this Schedule applies. 15

Examination

- 14 (1) The patient shall be treated for the purposes of this Act as if he were a patient in respect of whom the appropriate authority had made arrangements for his examination by the persons specified in section 14(4).
- (2) The recommendation referred to in section 4(3) of the 1983 Act shall be treated as the determination of a registered medical practitioner on an examination under those arrangements (and accordingly for the purposes of section 21 of this Act that practitioner shall be treated as if he had examined the patient under Chapter 2 of Part 2 of this Act). 20
- (3) On the commencement date, the appropriate authority must appoint – 25
- (a) a registered medical practitioner (referred to in this Part of this Schedule as the “second practitioner”) in respect of whom the conditions specified in sub-paragraph (4) are met, and
- (b) an approved mental health professional in respect of whom the condition specified in sub-paragraph (4)(b) is met, 30
- and they shall be treated for the purposes of Part 2 of this Act as the other examiners under those arrangements.
- (4) Those conditions are that –
- (a) he falls within the description specified for the purposes of paragraph (a) of subsection (5) of section 14, and 35
- (b) he does not fall within the description specified for the purposes of paragraph (b) of that subsection.
- (5) The appropriate authority may at any time appoint –
- (a) a registered medical practitioner in respect of whom the conditions specified in sub-paragraph (4) are met, and 40
- (b) an approved mental health professional in respect of whom the condition specified in sub-paragraph (4)(b) is met,
- to succeed the person of that description appointed under sub-paragraph (3) or this sub-paragraph (and references in this Part of this Schedule to the second practitioner apply to a registered medical practitioner appointed under this sub-paragraph as they apply to the person appointed under sub-paragraph (3)). 45

- (6) Section 10(2) has effect as if for the words from “with whom arrangements” to the end there were substituted “appointed under paragraph 14(3) or (5) of Schedule 14, as the case may require”.
- (7) Paragraph 13(1) does not affect the requirement under section 15(1) that a patient be examined by the approved mental health professional and the second practitioner (subject to his ceasing to be liable to assessment by virtue of section 18(4) or 23(2)).

5

Determinations

- 15 (1) Before making a determination under section 15(1), the approved mental health professional and the second practitioner must consult any carer of the patient, if practicable. 10
- (2) Section 12(2) to (6) applies to the requirement under sub-paragraph (1) as it applies to any provision of Part 2 requiring a person to consult any carer of a patient.
- (3) If, on examining the patient, both the approved mental health professional and the second practitioner determine that all of the relevant conditions are met in the patient’s case, the patient shall continue to be treated as if he were liable to assessment as a resident patient from the time when the last of those determinations is made. 15
- (4) Sub-paragraph (5) applies if, on examining the patient, either the approved mental health professional or the second practitioner determines (or both of them determine) that not all of the relevant conditions are met in the patient’s case. 20
- (5) In such a case –
- (a) the other examiner may not carry out an examination of the patient (if either of them has yet to do so), and 25
- (b) the patient shall cease to be treated as being liable to assessment from the time when any such determination is made.
- (6) Subsection (1) of section 18 has effect as if the reference to each examiner were a reference to the approved mental health professional and the second practitioner. 30
- (7) Subsection (2) of that section has effect as if the reference to each of the registered medical practitioners were a reference to the second practitioner.
- (8) Subsection (3) of that section has effect as if the applicable period –
- (a) in relation to the examination of the patient by the approved mental health professional in accordance with this Part of this Schedule, were the period of 24 hours beginning with the appointment of such a person under paragraph 14(3), and 35
- (b) in relation to the examination of the patient by the second practitioner in accordance with this Part of this Schedule, were the period – 40
- (i) beginning with the appointment of such a person under paragraph 14(3), and
- (ii) ending at the end of the period of 72 hours beginning with the time at which the patient was admitted to hospital in pursuance of the emergency application under section 4 of the 1983 Act, 45

and section 18(4) of this Act is to be read accordingly.

References

- 16 In this Act (apart from in sections 16 and 17) –
- (a) any reference to any patient liable to assessment shall be taken to include any patient treated as being liable to assessment by virtue of paragraph 13(1) or 15(3), as the case may require (and the reference in paragraph 6 of Schedule 12 to a member of the House of Commons being liable to assessment is to be read accordingly), and 5
 - (b) any reference to any patient liable to be detained in a hospital under this Act shall be taken to include any patient liable to be detained in a hospital by virtue of being treated as being liable to assessment as mentioned in paragraph (a). 10

Notifications etc

- 17 (1) Subsection (2) of section 19 has effect as if it provided for the approved mental health professional to act as provided for in subsections (3) and (5) of that section as soon as practicable after his appointment. 15
- (2) Subsection (4)(b) of that section has effect as if the reference to the determinations under Chapter 2 of Part 2 of this Act were a reference to –
- (a) the recommendation referred to in subsection (3) of section 4 of the 1983 Act on which the emergency application under that section was founded, and 20
 - (b) the determinations of the approved mental health professional and the second practitioner under section 15(1) (by virtue of paragraph 14(3)).
- (3) Subsections (2) and (3) of section 20 have effect as if for the references to section 17(5) there were substituted references to paragraph 15(3). 25
- (4) Subsections (5) and (6) of that section have effect as if for the references to section 17(6) there were substituted references to paragraph 15(5)(b).

Assessment

- 18 (1) Subsection (1) of section 22 has effect as if it required the approved mental health professional to register the patient with the hospital in which the patient was liable to be detained immediately before the commencement date in pursuance of the emergency application under section 4 of the 1983 Act. 30
- (2) Subsection (2) of that section has effect as if it provided for the approved mental health professional to effect the registration as soon as practicable after the commencement date. 35
- (3) Subsection (3) of that section shall be disregarded.
- (4) Subsection (4) of that section has effect as if the reference to section 17(6) were a reference to paragraph 15(5)(b).
- (5) Section 24(3) shall be disregarded. 40
- (6) Subsection (3) of section 25 shall not apply to the patient.
- (7) Subsection (6) of that section has effect –
- (a) as if paragraph (a) were omitted, and

- (b) in paragraph (b)(v), as if for the words from “admitted” to the end there were substituted the words “first detained in pursuance of the emergency application under section 4 of the 1983 Act”.
- (8) Subsection (2) of section 26 has effect as if the words from the beginning of paragraph (a) to “any other patient” were omitted. 5
- (9) Subsection (4)(b) of that section has effect as if for the reference to examiners (within the meaning of Chapter 2 of Part 2 of this Act) there were substituted a reference to the approved mental health professional and the second practitioner.
- (10) Section 29(2)(a)(ii) has effect as if for the reference to examiners (within the meaning of Chapter 2 of Part 2 of this Act) there were substituted a reference to the approved mental health professional and the second practitioner. 10
- (11) Subsection (1) of section 31 has effect as if for “within the initial period” there were substituted “as soon as practicable after the commencement date”.
- (12) Subsection (9) of that section has effect as if – 15
 - (a) in the definition of “review day” for “that day” there were substituted “the commencement date”, and
 - (b) the definition of “initial period” were omitted.

Further medical treatment and assessment

- 19 Section 44(1) has effect as if for the words from “admitted” to the end there were substituted the words “first detained in pursuance of the application under section 4 of the 1983 Act”. 20

PART 4

PATIENTS ALREADY IN HOSPITAL

- 20 (1) This paragraph applies to any patient in respect of whom a registered medical practitioner has made a report under section 5(2) of the 1983 Act. 25
- (2) The registered medical practitioner shall be treated for the purposes of this Act as if –
 - (a) he were a registered medical practitioner working in a qualifying hospital or qualifying unit of a hospital within the meaning of Schedule 6, and 30
 - (b) he had made a determination under paragraph 1(b) of that Schedule in respect of the patient,and that Schedule applies accordingly with the following modifications.
- (3) The report shall be treated as a record of that determination and the reasons for it under paragraph 2(a) of that Schedule. 35
- (4) Paragraph 6(a) of that Schedule has effect as if for the words from “record” to the end there were substituted “report in writing was furnished to the managers in accordance with section 5(2) of the Mental Health Act 1983”.

PART 5

PATIENTS SUBJECT TO GUARDIANSHIP

- 21 (1) This paragraph applies to any patient who, immediately before the commencement date, is subject to guardianship under the 1983 Act by virtue of a guardianship application made under section 7 of that Act. 5
- (2) The patient shall be treated as if –
- (a) an application had been made in respect of him to a Mental Health Review Tribunal by virtue of section 66(1)(c) of that Act, and
- (b) the Tribunal in question had directed, in accordance with section 72(4) of that Act, that the patient be discharged. 10
- (3) Any application for guardianship made under section 7 of that Act which has not been disposed of on the commencement date shall be treated as having been refused by the local social services authority.

PART 6

LEAVE OF ABSENCE AND PATIENTS ABSENT WITHOUT LEAVE 15

Leave of absence

- 22 (1) This paragraph applies to a patient who –
- (a) immediately before the commencement date is liable to be detained in a hospital under section 2 of the 1983 Act (whether in pursuance of an application for admission for assessment under that section or an emergency application under section 4 of that Act if paragraphs (a) and (b) of subsection (4) of that section are satisfied), and 20
- (b) has been granted leave to be absent from that hospital under section 17 of that Act for a period falling (in whole or in part) after that date.
- (2) This paragraph also applies to a patient who – 25
- (a) immediately before the commencement date is liable to be detained in a hospital under section 3 of the 1983 Act in pursuance of an application for admission for treatment under that section, and
- (b) has been granted leave to be absent from that hospital under section 17 of that Act for a period falling (in whole or in part) after that date. 30
- (3) A patient to whom this paragraph applies by virtue of sub-paragraph (1) shall be treated as if his clinical supervisor had given him leave to be absent from the hospital under section 30 of this Act.
- (4) A patient to whom this paragraph applies by virtue of sub-paragraph (2) shall be treated as if his clinical supervisor had given him leave to be absent from the hospital under section 62 of this Act. 35
- (5) For the purposes of sections 30(4) and 62(6) of this Act, leave shall be treated as having been given for the occasions or period specified under section 17 of the 1983 Act (subject to sub-paragraph (6)).
- (6) If leave was granted under section 17 of the 1983 Act for an indefinite period, leave shall be treated for the purposes of sections 30(4) and 62(6) of this Act as having been given – 40
- (a) in the case of a patient to whom this paragraph applies by virtue of sub-paragraph (1), (who is treated by virtue of Part 1 of this Schedule as being liable to assessment under Chapter 3 of Part 2 of this Act), 45

- for the patient’s assessment period (determined in accordance with Part 1 of this Schedule), and
- (b) in the case of a patient to whom this paragraph applies by virtue of sub-paragraph (2), (who is treated by virtue of Part 2 of this Schedule as being subject to an order (or further order) authorising his medical treatment made in accordance with section 46), for the period during which that order is treated as being in force (determined in accordance with that Part). 5
- (7) If leave was granted under section 17 of the 1983 Act subject to conditions, those conditions shall be treated as if they had been imposed under section 30(1) or 62(3) of this Act (as the case may be). 10
- (8) If when leave was granted under section 17 of the 1983 Act a direction was given under subsection (3) of that section that the patient remain in custody during his absence, that direction shall be treated as if it had been given under section 30(6) or 62(8) of this Act (as the case may be). 15
- (9) References in Part 2 of this Act to a patient who has been given leave to be absent under section 30 or 62 shall be taken to include a patient who is treated as if he had been given leave to be absent under those sections by virtue of sub-paragraph (3) or (4) (as the case may be).
- (10) References in Part 2 of this Act to leave given under section 30 or 62 shall be taken to include leave treated as having been given by virtue of sub-paragraph (3) or (4) (as the case may be). 20

Patients absent without leave

- 23 (1) This paragraph applies to a patient who, immediately before the commencement date— 25
- (a) is liable to be detained in a hospital under the 1983 Act, and
- (b) is absent without leave for the purposes of section 18 of that Act.
- (2) The patient shall be treated as a patient to whom subsection (3) of section 81 of this Act applies.
- (3) In that subsection, subject to sub-paragraph (4), references to the hospital shall be read as references to the hospital in which the patient was liable to be detained immediately before the commencement date. 30
- (4) If, immediately before the commencement date—
- (a) the patient has absented himself without permission from any place where he is required to reside in accordance with conditions imposed on the grant of leave of absence under section 17 of the 1983 Act, and 35
- (b) that place is a hospital other than the one in which the patient is liable to be detained,
- the references in subsection (4)(b) and (c) of section 81 of this Act to the hospital with which the patient is registered shall be read as including a reference to that hospital (and subsection (5) of that section shall be disregarded). 40
- (5) Section 84(4)(a) has effect as if the reference to section 25(6)(b)(v) were a reference to that provision as modified by this Schedule. 45
- (6) Section 85(3) has effect as if, in paragraph (a), for the words from the beginning to “leave” there were substituted “on the commencement date, the patient was absent without leave and”.

PART 7

RESTRICTIONS ON DISCHARGE BY NEAREST RELATIVE

- 24 (1) A relevant notice shall be of no effect if it is given at any time during the period of 72 hours ending immediately before the beginning of the commencement date; and accordingly no order for discharge may be made in pursuance of such a notice. 5
- (2) For the purposes of this paragraph—
- (a) a relevant notice is a notice given in accordance with section 25(1) of the 1983 Act by the nearest relative of a patient that he intends to make an order for discharge in respect of the patient, 10
- (b) an order for discharge is an order for the discharge of a patient made in accordance with section 23 of that Act.

PART 8

MENTAL HEALTH REVIEW TRIBUNALS

Pending applications to Mental Health Review Tribunals 15

- 25 (1) This paragraph applies if, immediately before the commencement date, an application duly made by or in respect of a patient to a Mental Health Review Tribunal under section 66 of the 1983 Act remains to be determined.
- (2) If the application was made by the patient by virtue of paragraph (a) of section 66(1) of the 1983 Act, it shall be treated as an application to the appropriate Tribunal for an order in pursuance of section 35(1) of this Act discharging the patient's liability to assessment (the patient being treated as liable to assessment by virtue of Part 1 of this Schedule). 20
- (3) If the application was made by the patient by virtue of any of paragraphs (b), (d), (f) and (fb) of section 66(1) of the 1983 Act, it shall be treated as an application to the appropriate Tribunal for an order in pursuance of section 54 of this Act discharging the order (or further order) authorising medical treatment which is in force in respect of the patient (which is treated as having been made in respect of the patient by virtue of Part 2 of this Schedule). 25
- (4) If the application was made by virtue of paragraph (fa) of section 66(1) of the 1983 Act— 30
- (a) by a patient who is treated, by virtue of Part 1 of this Schedule, as being liable to assessment under Chapter 3 of Part 2 of this Act, the application shall be treated as an application to the appropriate Tribunal for an order in pursuance of section 35(1) of this Act discharging the patient's liability to assessment, 35
- (b) by a patient who is treated, by virtue of Part 2 of this Schedule, as if an order (or further order) authorising his medical treatment had been made in accordance with section 46 of this Act, the application shall be treated as an application to the appropriate Tribunal for an order in pursuance of section 54 of this Act discharging that order (or further order). 40
- (5) Subject to paragraph 32, any other application shall be treated as not having been made. 45

- (6) Chapter 9 of Part 2 applies for the purposes of an application mentioned in sub-paragraphs (2) to (4) as it applies for the purposes of an application made by a patient under or by virtue of Part 2 of this Act.
- (7) Any transitional question arising in consequence of an application being treated as an application to the appropriate Tribunal by virtue of this paragraph shall be determined by that Tribunal. 5
- (8) The appropriate Tribunal may, in making any such determination, give such directions as it may think just, in accordance with any transitional provisions in the rules made under section 74 in relation to the application and proceedings for determining the application. 10
- (9) Subsection (7) of section 35 has effect as if the reference to the making of an application under that section included a reference to a relevant application.
- (10) Subsection (9) of section 54 has effect as if the reference to the making of an application under that section included a reference to a relevant application.
- (11) References to a relevant application are – 15
 - (a) for the purposes of sub-paragraph (9), to an application which is treated by virtue of this paragraph as having been made to the appropriate Tribunal for an order in pursuance of section 35(1) discharging a patient’s liability to assessment (the patient being liable to assessment by virtue of Part 1 of this Schedule), 20
 - (b) for the purposes of sub-paragraph (10), to an application which is treated by virtue of this paragraph as having been made to the appropriate Tribunal for an order in pursuance of section 54 discharging the order (or further order) authorising medical treatment which is in force in respect of a patient (which is treated as having been made in respect of the patient by virtue of Part 2 of this Schedule). 25

Pending references to Mental Health Review Tribunals

- 26 (1) This paragraph applies if, immediately before the commencement date, a reference made to a Mental Health Review Tribunal under section 67 of the 1983 Act remains to be determined. 30
- (2) If the reference was in respect of a patient who is treated, by virtue of Part 1 of this Schedule, as being liable to assessment under Chapter 3 of Part 2 of this Act, the reference shall be treated as an application to the appropriate Tribunal for an order in pursuance of section 35(1) of this Act discharging the patient’s liability to assessment. 35
- (3) If the reference was in respect of a patient who is treated, by virtue of Part 2 of this Schedule, as if an order (or further order) authorising his medical treatment had been made in accordance with section 46 of this Act, the reference shall be treated as an application to the appropriate Tribunal for an order in pursuance of section 54 of this Act discharging that order. 40
- (4) Any transitional question arising in consequence of a reference being treated as an application to the appropriate Tribunal by virtue of this paragraph shall be determined by that Tribunal.
- (5) The appropriate Tribunal may, in making any such determination, give such directions as it may think just, in accordance with any transitional provisions in the rules made under section 74 in relation to the application and proceedings for determining the application. 45

Pending references by managers to Mental Health Review Tribunals

- 27 (1) This paragraph applies if, immediately before the commencement date, a reference to a Mental Health Review Tribunal under section 68 of the 1983 Act remains to be determined.
- (2) The reference shall be treated as not having been made. 5

Powers of Mental Health Review Tribunals: discharge of patient on future date

- 28 (1) This paragraph applies if –
- (a) before the commencement date, a Mental Health Review Tribunal has given a direction under subsection (1) of section 72 of the 1983 Act (by virtue of subsection (3) of that section) for the discharge of a patient, and 10
- (b) the date specified in the direction for the discharge of the patient falls after the commencement date.
- (2) The date specified in the direction shall be taken instead to be the commencement date. 15

PART 9

CROSS-BORDER TRANSFERS

Removal of patient from England and Wales

- 29 (1) This paragraph applies if, immediately before the commencement date –
- (a) an authorisation has been given under section 80, 81 or 83 of the 1983 Act for the removal of a patient to Scotland, Northern Ireland, any of the Channel Islands or the Isle of Man, but 20
- (b) the patient has not yet been removed to the country in question in accordance with that authorisation.
- (2) The authorisation shall cease to have effect on the commencement date. 25

Removal of patient from Northern Ireland to England and Wales

- 30 (1) This paragraph applies if, immediately before the commencement date –
- (a) an authorisation has been given under section 82 of the 1983 Act for the removal of a patient to England and Wales, but
- (b) the patient has not yet been removed to England and Wales in accordance with that authorisation. 30
- (2) The authorisation shall cease to have effect on the commencement date.

PART 10

AFTER-CARE

After-care: general 35

- 31 (1) This paragraph applies to any person who, immediately before the commencement date, is a person for whom there is a duty to provide after-care services under subsection (2) of section 117 of the 1983 Act.

- (2) The repeal by this Act of the following provisions shall not affect their application in relation to such a person –
- (a) that section, section 32 (and any regulations under it) and any other provisions of that Act which operate in relation to that section, and
 - (b) in the case of a patient who, immediately before the commencement date, is a supervised patient, sections 25A to 25J, but this is subject to sub-paragraph (3). 5
- (3) In the case of a patient who, immediately before the commencement date, is a supervised patient, the provisions mentioned in sub-paragraph (2) have effect in accordance with sub-paragraphs (4) to (9) for so long as he remains a supervised patient. 10
- (4) Nothing in sub-paragraph (2) shall permit any further supervision application to be made in respect of the patient under Part 2 of the 1983 Act.
- (5) If –
- (a) subsection (2) of section 25E of the 1983 Act applies in relation to the patient, and 15
 - (b) the responsible after-care bodies consider under subsection (4)(b) of that section that it might be appropriate for him to be admitted to a hospital for treatment, they shall not inform an approved social worker under that provision but instead they shall request the appropriate authority to determine whether the relevant conditions appear to be met in the patient’s case in accordance with section 14 of this Act. 20
- (6) Subject to sections 25H and 25I of the 1983 Act the patient –
- (a) shall be subject to after-care under supervision for the period referred to in subsection (1)(b) of section 25G of that Act, and 25
 - (b) may not be made so subject for any further periods under that section.
- (7) Section 25H(5) of that Act has effect as if –
- (a) in paragraph (a), for the words from “in pursuance of” to the end there were substituted “on becoming liable to assessment under Chapter 3 of Part 2 of the Mental Health Act 2004”, and 30
 - (b) paragraph (b) were omitted.
- (8) Section 25I of the 1983 Act has effect as if –
- (a) in subsection (1)(b), for the words from “in pursuance of” to the end, there were substituted “by virtue of being liable to assessment under Chapter 3 of Part 2 of the Mental Health Act 2004”, and 35
 - (b) subsections (4) and (5) were omitted.
- (9) Section 117(2A)(a) of the 1983 Act has effect as if for the words from “a registered medical practitioner” to “mental disorder” there were substituted “an approved clinician for the purposes of the Mental Health Act 2004”. 40
- (10) For the purposes of this paragraph and paragraph 32, a supervised patient is a patient who is subject to after-care under supervision (or, if he has not yet left hospital, is to be so subject after he leaves hospital) in pursuance of a supervision application made and accepted under Part 2 of the 1983 Act. 45

Pending applications to Mental Health Review Tribunals: supervised patients

- 32 (1) This paragraph applies if, immediately before the commencement date, an application duly made by a supervised patient to a Mental Health Review

Tribunal by virtue of paragraph (ga) or (gc) of section 66(1) of the 1983 Act remains to be determined.

- (2) The application shall be treated as an application to the appropriate Tribunal.
- (3) Subsection (4A) of section 72 of the 1983 Act shall apply in relation to an application which is treated by virtue of sub-paragraph (2) as an application to the appropriate Tribunal as it applies in relation to an application made to a Mental Health Review Tribunal; and accordingly the repeal by this Act of that subsection, and sections 25A(4) and 25G(4), shall not affect the application of those provisions in relation to such an application.
- (4) The repeal by this Act of section 76 shall not affect its application in relation to an application which is treated by virtue of sub-paragraph (2) as an application to the appropriate Tribunal.

PART 11

MISCELLANEOUS

Mental Health Act Commission

- 33 (1) This paragraph applies if—
 - (a) before the commencement date, the Mental Health Act Commission (in this paragraph and paragraph 34 referred to as the “MHAC”) has made arrangements for a person authorised by it—
 - (i) to visit and interview patients, or
 - (ii) to investigate any complaint,
 for the purpose of performing functions conferred under section 120(1) of the 1983 Act (by virtue of section 121(2)(b) of that Act), and
 - (b) immediately before the commencement date, those visits and interviews or investigations have either not taken place or have not been completed.
- (2) The CHAI may carry out or complete those visits and interviews or investigations and, to the extent necessary, may exercise any of the powers which would have been exercisable by the MHAC under the 1983 Act for the purpose of doing so.
- 34 (1) The appropriate authority may make regulations in connection with the preparation of a report on the activities of the MHAC during the period between its last report under section 121(10) of the 1983 Act and its abolition under this Act.
- (2) The regulations may, in particular, provide for any such report to be included—
 - (a) in a final report by the MHAC, or
 - (b) in the first annual report by the CHAI under section 275 of this Act.

Transfers to and from special hospitals

- 35 (1) This paragraph applies if, immediately before the commencement date—
 - (a) directions have been given for the transfer or removal of a patient under section 123 of the 1983 Act, but
 - (b) the patient has not yet been transferred or removed in accordance with those directions.

- (2) The directions shall cease to have effect on the commencement date.

Inquiries

- 36 (1) This paragraph applies if –
- (a) before the commencement date, an inquiry has been caused to be held under section 125 of the 1983 Act, and 5
 - (b) that inquiry has not been concluded before that date.
- (2) The repeal of that section by this Act shall not affect its application in relation to such an inquiry.

Correspondence of patients

- 37 (1) This paragraph applies if, before the commencement date – 10
- (a) a postal packet or anything contained in it has been withheld under section 134 of the 1983 Act, and
 - (b) either –
 - (i) no notice of the withholding has been given in accordance with subsection (6) of that section, or 15
 - (ii) less than six months has passed since notice was given in accordance with that subsection.
- (2) Section 289 of this Act has effect as if references to a patient detained in a hospital under this Act included references to a patient detained in a hospital under the 1983 Act. 20
- (3) If the postal packet or anything contained in it was withheld under section 134(1) of the 1983 Act, it shall be treated for the purposes of this Act as if it had been withheld under section 289(1) of this Act and accordingly sections 290 and 291 of this Act have effect in accordance with sub-paragraph (4).
- (4) If, before the commencement date, a person has made a request, under section 134(1)(a) of the 1983 Act, for communications addressed to him by the patient to be withheld, that request shall, for the purposes of any communications addressed to him by the patient after that date, be treated as a request by that person for the purposes of subsection (2)(a) of section 289 and shall be treated as if it had been made in accordance with subsection (3) of that section. 25 30
- (5) If the postal packet or anything contained in it was withheld under section 134(2) of the 1983 Act, it shall be treated for the purposes of this Act as if it had been withheld under section 289(4) of this Act and accordingly sections 290 and 291 of this Act have effect in accordance with sub-paragraphs (6) and (7). 35
- (6) In a case falling within sub-paragraph (1)(b)(ii) –
- (a) paragraphs (a)(i) and (b) of subsection (3) of section 290 shall not apply, and
 - (b) paragraph (a)(ii) of that subsection has effect as if the managers of the hospital were required to take the action in question as soon as practicable after the commencement date. 40
- (7) In such a case, section 291(3) has effect as if the reference to the patient being notified under section 290(3) that the postal packet has been withheld were a reference to the patient being notified in accordance with section 134(6) of the 1983 Act that the postal packet was withheld. 45

Protection for acts done

- 38 The repeal of section 139 of the 1983 Act by this Act shall not affect its application in relation to liability for acts purporting to be done in pursuance of the 1983 Act or any regulations and rules made under that Act.

Members of Parliament

5

- 39 (1) This paragraph applies if before the commencement date –
- (a) the Speaker of the House of Commons has been notified –
 - (i) under subsection (1) of section 141 of the 1983 Act that a member of the House of Commons is authorised to be detained on the ground that he is suffering from mental illness, or 10
 - (ii) by two members of the House of Commons that they are credibly informed that such an authorisation has been given, but
 - (b) no report has been made under subsection (4) of that section that the member is suffering from mental illness and is authorised to be detained as such. 15
- (2) This paragraph also applies if before the commencement date –
- (a) a report has been made under subsection (4) of that section to the effect that a member of the House of Commons is suffering from mental illness and is authorised to be detained as such, but 20
 - (b) no report has been made under subsection (5) of that section.
- (3) Sections 294 and 295 have effect as if a notifiable event had occurred in respect of the member and a notification under subsection (1) of section 294 had been given to the Speaker in accordance with subsection (2) of that section (subject to the following provisions of this paragraph). 25
- (4) For the purposes of section 294(3), the reference to the relevant hospital is –
- (a) in the case of a member who is treated, by virtue of Part 1 of this Schedule, as being liable to assessment under Chapter 3 of Part 2 of this Act, a reference to the hospital with which he is registered – 30
 - (i) by virtue of paragraph 4(1), or
 - (ii) under section 78(2) (as it applies by virtue of Part 1 of this Schedule),
 as the case may be,
 - (b) in the case of a member who is treated, by virtue of Part 2 of this Schedule, as if an order or further order authorising his medical treatment had been made in accordance with section 46, a reference to the hospital with which he is – 35
 - (i) treated as being registered by virtue of paragraph 7(3), or
 - (ii) registered under section 78(2) (as it applies by virtue of Part 2 of this Schedule), 40
 as the case may be,
 - (c) in the case of a member who is treated, by virtue of Part 3 of this Schedule, as being liable to assessment under Chapter 3 of Part 2 of this Act, a reference to the hospital with which he is registered – 45
 - (i) by virtue of paragraph 18(1), or
 - (ii) under section 78(2) (as it applies by virtue of Part 3 of this Schedule),

- as the case may be.
- (5) Section 295 has effect as if –
- (a) the reference in subsection (1)(c) to the first anniversary of the occurrence of the notifiable event were a reference to the first anniversary of the day on which the Speaker was notified – 5
 - (i) under section 141(1) of the 1983 Act that the member was authorised to be detained, or
 - (ii) by two members of the House of Commons that they were credibly informed that such an authorisation had been given,
 - (b) the references in subsection (5) to anniversaries of the notifiable event were references to anniversaries of the day on which the Speaker was notified as mentioned in paragraph (a) above, and 10
 - (c) the reference in paragraph (a) of subsection (6) to the earlier notifiable event were a reference to the day on which the Speaker was notified as mentioned in paragraph (a) above (and in paragraph (b) of that subsection “that earlier notifiable event” is to be construed accordingly). 15
- 40 (1) Paragraph 39 applies in relation to a member of the Scottish Parliament, the Northern Ireland Assembly or the National Assembly for Wales as it applies in relation to a member of the House of Commons. 20
- (2) For this purpose –
- (a) a reference to the House of Commons is to be treated as a reference to the devolved body in question, and
 - (b) a reference to the Speaker of the House is to be treated as a reference to the presiding officer of the devolved body in question. 25

PART 12

INTERPRETATION

- 41 (1) This paragraph applies for the purposes of this Schedule.
- (2) “The 1983 Act” means the Mental Health Act 1983 (c. 20).
- (3) “The appropriate Tribunal” means – 30
- (a) the Mental Health Tribunal for England, in the case of a patient who is registered with a hospital in England, or
 - (b) the Mental Health Tribunal for Wales, in the case of a patient who is registered with a hospital in Wales.
- (4) “The commencement date” means the day on which Part 2 of this Act comes into force. 35
- (5) For the purposes of sub-paragraph (3) –
- (a) if the patient is, by virtue of Part 1 of this Schedule, treated as being liable to assessment under Chapter 3 of Part 2 of this Act, references to the hospital with which he is registered are references to the hospital with which he is registered – 40
 - (i) by virtue of paragraph 4(1), or
 - (ii) under section 78(2) (as it applies by virtue of Part 1 of this Schedule),as the case may be, 45
 - (b) if the patient is, by virtue of Part 2 of this Schedule, treated as if an order or further order authorising his medical treatment had been

made in accordance with section 46, references to the hospital with which he is registered are references to the hospital with which he is –

- (i) treated as being registered by virtue of paragraph 7(3), or
 - (ii) registered under section 78(2) (as it applies by virtue of Part 2 of this Schedule),
- as the case may be.



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