

MENTAL HEALTH

MENTAL HEALTH ACT 1998

(Chapter 3)

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AN ACT

to re-enact with amendments the law relating to mentally disordered persons.

PART 1

APPLICATION OF ACT

1 Application of Act: mental disorder

(1) The provisions of this Act have effect with respect to the reception, care and treatment of mentally disordered patients, the management of their property and other related matters.

(2) In this Act-

'mental disorder' means mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind, and **'mentally disordered'** shall be construed accordingly;

'severe mental impairment' means a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned, and **'severely mentally impaired'** shall be construed accordingly;

'mental impairment' means a state of arrested or incomplete development of mind (not amounting to severe mental impairment) which includes significant impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned, and **'mentally impaired'** shall be construed

accordingly;

'psychopathic disorder' means a persistent disorder or disability of mind (whether or not including significant impairment of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the person concerned; and other expressions have the meanings given by section 138.

(3) Nothing in subsection (2) shall be construed as implying that a person may be dealt with under this Act as suffering from mental disorder, or from any form of mental disorder described in this section, by reason only of promiscuity or other immoral conduct, sexual deviancy or dependence on alcohol or drugs, not being associated with abnormally aggressive or seriously irresponsible conduct on his part.

PART 2

COMPULSORY ADMISSION TO HOSPITAL AND GUARDIANSHIP

Procedure for hospital admission

A2 Department to maintain hospitals for the purposes of this Part

(1) The Department shall make arrangements for the provision, to such extent as it considers necessary to meet all reasonable requirements arising under this Part, of-

- (a) hospital accommodation; and
- (b) medical, nursing, dental and other services required at or for the purposes of accommodation referred to in paragraph (a).

(2) The provisions of-

- (a) Part 3 of the NHS Act 2001 (provision of hospital and specialist services); and
- (b) Part 4 of that Act (general provisions) other than sections 40, 44 and 45,

apply for the purposes of subsection (1) as they apply for the purposes of that Act, references in those provisions to 'the Department' and 'the managers of the hospital' being read as references to the Department of Social Care.

[S A2 inserted by SD155/10 Schs 6 and 11.]

2 Admission for assessment

(1) A patient may be admitted to a hospital and detained there for the period allowed by subsection (4) in pursuance of an application (an **'application for admission for assessment'**) made in accordance with subsections (2) and (3).

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

- (a) he is suffering from mental disorder of a nature or degree which warrants the detention of the patient in a hospital for assessment (or for assessment followed by medical treatment) for at least a limited period; and
- (b) he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons.

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

(4) Subject to section 40(4), a patient admitted to hospital in pursuance of an application for admission for assessment may be detained for a period not exceeding 28 days beginning with the day on which he is admitted, but shall not be detained after the expiration of that period unless before it has expired he has become liable to be detained by virtue of a subsequent application, order or direction under the following provisions of this Act.

3 Admission for treatment

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

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

- (a) he is suffering from mental illness, severe mental impairment, psychopathic disorder or mental impairment and his mental disorder is of a nature or degree which makes it appropriate for him to receive medical treatment in a hospital; and
- (b) in the case of psychopathic disorder or mental impairment, such treatment is likely to alleviate or prevent a deterioration of his condition; and
- (c) it is necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment and it cannot be provided unless he is detained under this section.

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

- (a) such particulars as may be prescribed of the grounds for that opinion so far as it relates to the conditions set out in subsection (2)(a) and (b); and
- (b) a statement of the reasons for that opinion so far as it relates to the conditions set out in subsection (2)(c), specifying whether other methods of dealing with the patient are available and, if so, why they are not appropriate.

4 Admission for assessment in cases of emergency

(1) In any case of urgent necessity, an application for admission for assessment (an '**emergency application**') may be made in respect of a patient in accordance with the following provisions of this section.

(2) An emergency application may be made either by an approved social worker or by the nearest relative of the patient; and every such application shall include a statement that it is of urgent necessity for the patient to be admitted and detained under section 2, and that compliance with the provisions of this Part relating to applications under that section would involve undesirable delay.

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

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

- (a) the second medical recommendation required by section 2 is given and received by the managers within that period; and
- (b) that recommendation and the recommendation referred to in subsection (3) together comply with all the requirements of section 12 (other than the requirement as to the time of signature of the second recommendation).

(5) In relation to an emergency application, section 11 has effect as if in subsection (5) for 'the period of 14 days ending with the date of the application' there were substituted 'the previous 24 hours'.

5 Application in respect of patient already in hospital

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

(2) If, in the case of a patient who is an in-patient in a hospital, it appears to the

registered medical practitioner in charge of the treatment of the patient that an application ought to be made under this Part for the admission of the patient to hospital, he may furnish to the managers a report in writing to that effect; and in any such case the patient may be detained in the hospital for a period of 72 hours from the time when the report is so furnished.

(3) The registered medical practitioner in charge of the treatment of a patient in a hospital may nominate one (but not more than one) other registered medical practitioner on the staff of that hospital to act for him under subsection (2) in his absence.

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

- (a) that the patient is suffering from mental disorder to such a degree that it is necessary for his health or safety or for the protection of others for him to be immediately restrained from leaving the hospital; and
- (b) that it is not practicable to secure the immediate attendance of a practitioner for the purpose of furnishing a report under subsection (2),

the nurse may record that fact in writing; and in that event the patient may be detained in the hospital for a period of 6 hours from the time when that fact is so recorded or until the earlier arrival at the place where the patient is detained of a practitioner having power to furnish a report under that subsection.

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

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

(7) In subsection (4) 'prescribed' means prescribed by an order made by the Department of Health.

[Subs (7) amended by SD155/10 Schs 4 and 11.]

6 Effect of application for admission

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

- (a) in the case of an application other than an emergency application, the period of 14 days beginning with the date on which the patient was last examined by a registered medical practitioner before giving a medical recommendation for the purposes of the application;
- (b) in the case of an emergency application, the period of 24 hours beginning at the time when the patient was examined by the practitioner giving the medical recommendation which is referred to in section 4(3), or at the time when the application is made, whichever is the earlier.

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

(3) Any application for the admission of a patient under this Part which appears to be duly made and to be founded on the necessary medical recommendations may be acted upon without further proof of the signature or qualification of the person by whom the application or any such medical recommendation is made or given or of any matter of fact or opinion stated in it.

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

Guardianship

7 Application for guardianship

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

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

- (a) he is suffering from mental disorder, being mental illness, severe mental impairment, psychopathic disorder or mental impairment and his mental disorder is of a nature or degree which warrants his reception into guardianship under this section; and
- (b) it is necessary in the interests of the welfare of the patient or for the protection of other persons that the patient should be so received.

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

- (a) such particulars as may be prescribed of the grounds for that opinion so far as it relates to the conditions set out in subsection (2)(a); and
- (b) a statement of the reasons for that opinion so far as it relates to the conditions set out in subsection (2)(b).

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

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

8 Effect of guardianship application etc

(1) Where a guardianship application, duly made under the provisions of this Part and forwarded to the Department within the period allowed by subsection (2) is accepted by the Department, the application, subject to regulations made by the Department, confers on the person named in the application as guardian, to the exclusion of any other person-

- (a) the power to require the patient to reside at a place specified by the Department or the person named as guardian, as the case may be;
- (b) the power to require the patient to attend at places and times so specified for the purpose of medical treatment, occupation, education or training;
- (c) the power to require access to the patient to be given, at any place where the patient is residing, to any registered medical practitioner, approved social worker or other person so specified.

(1A) Before making regulations under subsection (1) the Department must consult the Department of Health.

[Subs (1A) inserted by SD155/10 Schs 6 and 11.]

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

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

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

(4) If within the period of 14 days beginning with the day on which a guardianship application has been accepted by the Department the application, or any medical recommendation given for the purposes of the application, is found to be in any respect incorrect or defective, the application or recommendation may, within that period and with the consent of the Department, be amended by the person by whom it was signed; and upon such amendment being made the application or recommendation has effect and shall be deemed to have had effect as if it had been originally made as so amended.

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

9 Regulations as to guardianship

(1) Subject to the provisions of this Part, the Department, after consulting the Department of Health, may make regulations-

- (a) for regulating the exercise by the guardians of patients received into guardianship under this Part of their powers as such; and
- (b) for imposing on such guardians, and the Department in the case of patients under the guardianship of persons other than the Department, such duties as it considers necessary or expedient in the interests of the patients.

[Subs (1) amended by SD155/10 Schs 6 and 11.]

(2) Regulations under this section may in particular make provision for requiring the patients to be visited, on such occasions or at such intervals as may be prescribed by the regulations, on behalf of the Department, and shall provide for the appointment, in the case of every patient subject to the guardianship of a person other than the Department, of a registered medical practitioner to act as the nominated medical attendant of the patient.

10 Transfer of guardianship in case of death etc of guardian

(1) If any person (other than the Department) who is the guardian of a patient received into guardianship under this Part-

- (a) dies; or
- (b) gives notice in writing to the Department that he desires to relinquish the functions of guardian,

the guardianship of the patient thereupon vests in the Department, but without prejudice to any power to transfer the patient into the guardianship of another person in pursuance of regulations under section 19.

(2) If any such person, not having given notice under subsection (1)(b), is incapacitated by illness or any other cause from performing the functions of guardian of the patient, those functions may, during his incapacity, be performed on his behalf by the Department or by any other person approved for the purposes by the Department.

(3) If it appears to the High Court, upon application made by an approved social worker, that any person (other than the Department) having the guardianship of a patient received into guardianship under this Part has performed his functions negligently or in a manner contrary to the interests of the welfare of the patient, the Court may order that the guardianship of the patient be transferred to the Department or to any other person approved for the purpose by the Department.

(4) Where the guardianship of a patient is transferred to the Department or another person by or under this section, section 19(2)(c) applies as if the patient had been transferred into the guardianship of the Department or that person in pursuance of regulations under section 19.

General provisions as to applications and recommendations

11 General provisions as to applications

(1) Subject to the provisions of this section, an application for admission for assessment, an application for admission for treatment and a guardianship application may be made either by the nearest relative of the patient or by an approved social worker; and every such application shall specify the qualification of the applicant to make the application.

(2) Every application for admission shall be addressed to the managers of the hospital to which admission is sought and every guardianship application shall be forwarded to the Department.

(3) Before or within a reasonable time after an application for the admission of a patient for assessment is made by an approved social worker, that social worker shall take such steps as are practicable to inform the person (if any) appearing to be the nearest relative of the patient that the application is to be or has been made and of the power of the nearest relative under section 25(2)(a).

(4) Neither an application for admission for treatment nor a guardianship application shall be made by an approved social worker if the nearest relative of the patient has notified that social worker, or the Department, that he objects to the application being made and, without prejudice to that, no such application shall be made by such a social worker except after consultation with the person (if any) appearing to be the nearest relative of the patient unless it appears to that social worker that in the circumstances such consultation is not reasonably practicable or would involve unreasonable delay.

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

(6) An application for admission for treatment or a guardianship application, and any recommendation given for the purposes of such an application, may describe the patient as suffering from more than one of the following forms of mental disorder, namely mental illness, severe mental impairment, psychopathic disorder or mental impairment; but the application is of no effect unless the patient is described in each of the recommendations as suffering from the same form of mental disorder, whether or not he is also described in either of those recommendations as suffering from another form.

(7) Each of the applications mentioned in subsection (1) is sufficient if the recommendations on which it is founded are given either as separate recommendations, each signed by a registered medical practitioner, or as a joint recommendation signed by 2 such practitioners.

12 General provisions as to medical recommendations

(1) The recommendations required for the purposes of an application for the admission of a patient under this Part (**'medical recommendations'**) shall be signed on or before the date of the application, and shall be given by practitioners who have personally examined the patient either together or separately, but where they have examined the patient separately not more than 5 days must have elapsed between the days on which the separate examinations took place.

(2) Of the medical recommendations given for the purposes of any such application, one shall be given by a practitioner approved for the purposes of this section by the Department, after consulting the Department of Health, as having special experience in the diagnosis or treatment of mental disorder; and unless that practitioner has previous acquaintance with the patient, the other such recommendation shall, if practicable, be given by a registered medical practitioner who has such previous acquaintance.

[Subs (2) amended by SD155/10 Schs 6 and 11.]

(3) Subject to subsection (4), where the application is for the admission of the patient to a hospital which is not a mental nursing home, one (but not more than one) of the medical recommendations may be given by a practitioner on the staff of that hospital, except where the patient is proposed to be accommodated under section 6 (accommodation for private patients)

of the National Health Service (Isle of Man) Act 1948 ('the NHS Act').

(4) Subsection (3) shall not preclude both the medical recommendations being given by practitioners on the staff of the hospital in question if-

- (a) compliance with that subsection would result in delay involving serious risk to the health or safety of the patient; and
- (b) one of the practitioners giving the recommendations works at the hospital for less than half of the time which he is bound by contract to devote to work in the health service; and
- (c) where one of those practitioners is a consultant, the other does not work (whether at the hospital or elsewhere) in a grade in which he is under that consultant's directions.

(5) A medical recommendation for the purposes of an application for the admission of a patient under this Part shall not be given by-

- (a) the applicant;
- (b) a partner of the applicant or of a practitioner by whom another medical recommendation is given for the purposes of the same application;
- (c) a person employed as an assistant by the applicant or by any such practitioner;
- (d) a person who receives or has an interest in the receipt of any payments made on account of the maintenance of the patient; or
- (e) except as provided by subsection (3) or (4), a practitioner on the staff of the hospital to which the patient is to be admitted,

or by the husband, wife, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister or sister-in-law of the patient, or of any person mentioned in paragraphs (a) to (e), or of a practitioner by whom another medical recommendation is given for the purposes of the same application.

(6) A general practitioner who is employed part-time in a hospital shall not for the purposes of this section be regarded as a practitioner on its staff.

(7) Subsections (1), (2) and (5) apply to applications for guardianship as they apply to applications for admission but with the substitution for subsection (5)(e) of the following-
'(e) the person named as guardian in the application.'

13 Approved social workers to make applications

(1) An approved social worker shall make an application for admission to hospital or a guardianship application in respect of a patient in any case where he is satisfied that such an application ought to be made and is of the opinion, having regard to any wishes expressed by relatives of the patient or any other relevant circumstances, that it is necessary or proper for the application to be made by him.

(2) Before making an application for the admission of a patient to hospital, an approved social worker shall interview the patient in a suitable manner and satisfy himself that detention in a hospital is in all the circumstances of the case the most appropriate way of providing the care and medical treatment of which the patient stands in need.

(3) The Department shall, if so required by the nearest relative of a patient, direct an approved social worker as soon as practicable to take the patient's case into consideration under subsection (1) with a view to making an application for his admission to hospital; and if in any such case that approved social worker decides not to make an application he shall inform the nearest relative of his reasons in writing.

(4) Nothing in this section shall be construed as authorising or requiring an application to be made by an approved social worker in contravention of the provisions of section 11(4), or as restricting the power of an approved social worker to make any application under this Act.

14 Social reports

Where a patient is admitted to a hospital in pursuance of an application (other than an emergency application) made under this Part by his nearest relative, the managers of the hospital shall as soon as practicable give notice of that fact to the Department; and the

Department shall as soon as practicable arrange for a social worker to interview the patient and provide the managers with a report on his social circumstances.

15 Rectification of applications and recommendations

(1) If within the period of 14 days beginning with the day on which a patient has been admitted to a hospital in pursuance of an application for admission for assessment or for treatment the application, or any medical recommendation given for the purposes of the application, is found to be in any respect incorrect or defective, the application or recommendation may, within that period and with the consent of the managers of the hospital, be amended by the person by whom it was signed; and upon such amendment being made the application or recommendation has effect and shall be deemed to have had effect as if it had been originally made as so amended.

(2) Without prejudice to subsection (1), if within the period mentioned in that subsection it appears to the managers of the hospital that one of the medical recommendations on which an application for the admission of a patient is founded is insufficient to warrant the detention of the patient in pursuance of the application, they may, within that period, give notice in writing to that effect to the applicant; and where any such notice is given in respect of a medical recommendation, that recommendation shall be disregarded, but the application is and shall be deemed always to have been sufficient if-

- (a) a fresh medical recommendation complying with the relevant provisions of this Part (other than the provisions relating to the time of signature and the interval between examinations) is furnished to the managers within that period; and
- (b) that recommendation, and the other recommendation on which the application is founded, together comply with those provisions.

(3) Where the medical recommendations upon which an application for admission is founded are, taken together, insufficient to warrant the detention of the patient in pursuance of the application, a notice under subsection (2) may be given in respect of either of those recommendations; but this subsection does not apply in a case where the application is of no effect by virtue of section 11(6).

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

Position of patients subject to detention or guardianship

16 Reclassification of patients

(1) If, in the case of a patient who is for the time being detained in a hospital in pursuance of an application for admission for treatment, or subject to guardianship in pursuance of a guardianship application, it appears to the appropriate medical officer that the patient is suffering from a form of mental disorder other than the form or forms specified in the application, he may furnish to the managers of the hospital, or to the guardian, as the case may be, a report to that effect; and where a report is so furnished, the application has effect as if that other form of mental disorder were specified in it.

(2) Where a report under subsection (1) in respect of a patient detained in a hospital is to the effect that he is suffering from psychopathic disorder or mental impairment but not from mental illness or severe mental impairment, the appropriate medical officer shall include in the report a statement of his opinion whether further medical treatment in hospital is likely to alleviate or prevent a deterioration of the patient's condition; and if he states that in his opinion such treatment is not likely to have that effect the authority of the managers to detain the patient shall cease.

(3) Before furnishing a report under subsection (1) the appropriate medical officer shall consult one or more other persons who have been professionally concerned with the patient's

medical treatment.

(4) Where a report is furnished under this section in respect of a patient, the managers or guardian shall cause the patient and the nearest relative to be informed.

(5) In this section 'appropriate medical officer' means-

- (a) in the case of a patient who is subject to the guardianship of a person other than the Department, the nominated medical attendant of the patient; and
- (b) in any other case, the responsible medical officer.

17 Leave of absence from hospital

(1) The responsible medical officer may grant to any patient who is for the time being liable to be detained in a hospital under this Part leave to be absent from the hospital subject to such conditions (if any) as that officer considers necessary in the interests of the patient or for the protection of other persons.

(2) Leave of absence may be granted to a patient under this section either indefinitely or on specified occasions or for any specified period; and where leave is so granted for a specified period, that period may be extended by further leave granted in the absence of the patient.

(3) Where it appears to the responsible medical officer that it is necessary so to do in the interests of the patient or for the protection of other persons, he may, upon granting leave of absence under this section, direct that the patient remain in custody during his absence; and where leave of absence is so granted the patient may be kept in the custody of any officer on the staff of the hospital, or of any other person authorised in writing by the managers of the hospital or, if the patient is required in accordance with conditions imposed on the grant of leave of absence to reside in another hospital, of any officer on the staff of that other hospital.

(4) In any case where a patient is absent from a hospital in pursuance of leave of absence granted under this section, and it appears to the responsible medical officer that it is necessary so to do in the interests of the patient's health or safety or for the protection of other persons, that officer may, subject to subsection (5), by notice in writing given to the patient or to the person for the time being in charge of the patient, revoke the leave of absence and recall the patient to the hospital.

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

18 Return and readmission of patients absent without leave

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

- (a) absents himself from the hospital without leave granted under section 17; or
- (b) fails to return to the hospital on any occasion on which, or at the expiration of any period for which, leave of absence was granted to him under that section, or upon being recalled under that section; or
- (c) absents himself without permission from any place where he is required to reside in accordance with conditions imposed on the grant of leave of absence under that section,

he may, subject to the provisions of this section, be taken into custody and returned to the hospital or place by any approved social worker, by any officer on the staff of the hospital, by any constable, or by any person authorised in writing by the managers of the hospital.

(2) Where the place referred to in subsection (1)(c) is a hospital other than the one in which the patient is for the time being liable to be detained, the references in that subsection to an officer on the staff of the hospital and the managers of the hospital shall respectively include references to an officer on the staff of the first-mentioned hospital and the managers of that hospital.

(3) Where a patient who is for the time being subject to guardianship under this Part absents himself without the leave of the guardian from the place at which he is required by the guardian to reside, he may, subject to the provisions of this section, be taken into custody and

returned to that place by any officer on the staff of the Department, by any constable, or by any person authorised in writing by the guardian or the Department.

(4) A patient shall not be taken into custody under this section after the later of-

- (a) the end of the period of 6 months beginning with the first day of his absence without leave; and
- (b) the end of the period for which (apart from section 21) he is liable to be detained or subject to guardianship;

and, in determining for the purposes of paragraph (b) or any other provision of this Act whether a person who is or has been absent without leave is at any time liable to be detained or subject to guardianship, a report furnished under section 20 or 23 before the first day of his absence without leave shall not be taken to have renewed the authority for his detention or guardianship unless the period of renewal began before that day.

(5) A patient shall not be taken into custody under this section if the period for which he is liable to be detained is that specified in section 2(4), 4(4) or 5(2) or (4) and that period has expired.

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

19 Regulations as to transfer of patients

(1) In such circumstances and subject to such conditions as may be prescribed by regulations made by the Department, after consulting the Department of Health,-

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

[Subs (1) amended by SD155/10 Schs 6 and 11.]

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

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

(3) Without prejudice to subsections (1) and (2), any patient who is for the time being liable to be detained under this Part in a hospital vested in the Department for the purposes of its functions under this Act or the Department of Health for the purposes of its functions under the NHS Act or any accommodation used under Part I of that Act by the managers of such a hospital, may at any time be removed to any other such hospital or accommodation; and

subsection (2)(a) applies in relation to a patient so removed as it applies in relation to a patient transferred in pursuance of regulations made under this section.

[Subs (3) amended by SD155/10 Schs 4 and 11.]

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

Duration of detention or guardianship and discharge

20 Duration of authority

(1) Subject to the following provisions of this Part, a patient admitted to hospital in pursuance of an application for admission for treatment, and a patient placed under guardianship in pursuance of a guardianship application, may be detained in a hospital or kept under guardianship for a period not exceeding 6 months beginning with the day on which he was so admitted, or the day on which the guardianship application was accepted, as the case may be, but shall not be so detained or kept for any longer period unless the authority for his detention or guardianship is renewed under this section.

(2) Authority for the detention or guardianship of a patient may, unless the patient has previously been discharged, be renewed-

- (a) from the expiration of the period referred to in subsection (1) for a further period of 6 months;
- (b) from the expiration of any period of renewal under paragraph (a) for a further period of one year,

and so on for periods of one year at a time.

(3) Within the period of 2 months ending on the day on which a patient who is liable to be detained in pursuance of an application for admission for treatment would cease under this section to be so liable in default of the renewal of the authority for his detention, the responsible medical officer shall-

- (a) examine the patient; and
- (b) if it appears to him that the conditions set out in subsection (4) are satisfied, furnish to the managers of the hospital where the patient is detained a report to that effect in the prescribed form;

and where such a report is furnished in respect of a patient the managers shall, unless they discharge the patient, cause him to be informed.

(4) The conditions referred to in subsection (3) are that-

- (a) the patient is suffering from mental illness, severe mental impairment, psychopathic disorder or mental impairment, and his mental disorder is of a nature or degree which makes it appropriate for him to receive medical treatment in a hospital; and
- (b) such treatment is likely to alleviate or prevent a deterioration of his condition; and
- (c) it is necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment and that it cannot be provided unless he continues to be detained;

but, in the case of mental illness or severe mental impairment, it is an alternative to the condition specified in paragraph (b) that the patient, if discharged, is unlikely to be able to care for himself, to obtain the care which he needs or to guard himself against serious exploitation.

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

(6) Within the period of 2 months ending with the day on which a patient who is subject to guardianship under this Part would cease under this section to be so liable in default of the renewal of the authority for his guardianship, the appropriate medical officer shall-

- (a) examine the patient; and
- (b) if it appears to him that the conditions set out in subsection (7) are satisfied, furnish to

the guardian and, where the guardian is a person other than the Department, to the Department a report to that effect in the prescribed form; and where such a report is furnished in respect of a patient, the Department shall, unless it discharges the patient, cause him to be informed.

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

- (a) the patient is suffering from mental illness, severe mental impairment, psychopathic disorder or mental impairment and his mental disorder is of a nature or degree which warrants his reception into guardianship; and
- (b) it is necessary in the interests of the welfare of the patient or for the protection of other persons that the patient should remain under guardianship.

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

(9) Where the form of mental disorder specified in a report furnished under subsection (3) or (6) is a form of disorder other than that specified in the application for admission for treatment or, as the case may be, in the guardianship application, that application has effect as if that other form of mental disorder were specified in it; and where on any occasion a report specifying such a form of mental disorder is furnished under either of those subsections, the appropriate medical officer need not on that occasion furnish a report under section 16.

(10) In this section 'appropriate medical officer' has the same meaning as in section 16(5).

21 Special provisions as to patients absent without leave

(1) Where a patient is absent without leave-

- (a) on the day on which (apart from this section) he would cease to be liable to be detained or subject to guardianship under this Part; or
 - (b) within the period of one week ending with that day,
- he does not cease to be so liable or subject until the relevant time.

(2) For the purposes of subsection (1) the relevant time-

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

22 Patients who are taken into custody or return within 28 days

(1) This section applies where a patient who is absent without leave is taken into custody under section 18, or returns himself to the hospital or place where he ought to be, not later than the end of the period of 28 days beginning with the first day of his absence without leave.

(2) Where the period for which the patient is liable to be detained or subject to guardianship is extended by section 21, any examination and report to be made and furnished under section 20(3) or (6) may be made and furnished within that period as so extended.

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

23 Patients who are taken into custody or return after more than 28 days

(1) This section applies where a patient who is absent without leave is taken into custody under section 18, or returns himself to the hospital or place where he ought to be, later than the end of the period of 28 days beginning with the first day of his absence without leave.

(2) It is the duty of the appropriate medical officer, within the period of one week beginning with the day on which the patient is returned or returns himself to the hospital or place where he ought to be-

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

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

(3) Where a patient is liable to be detained (as opposed to subject to guardianship), the appropriate medical officer shall, before furnishing a report under subsection (2), consult-

- (a) one or more other persons who have been professionally concerned with the patient's medical treatment; and
- (b) an approved social worker.

(4) Where the patient would (apart from any renewal of the authority for his detention or guardianship on or after the day on which he is returned or returns himself to the hospital or place where he ought to be) be liable to be detained or subject to guardianship after the end of the period of one week beginning with that day, he ceases to be so liable or subject at the end of that period unless a report is duly furnished with respect to him under subsection (2).

(5) Where the patient would (apart from section 21) have ceased to be liable to be detained or subject to guardianship on or before the day on which a report is duly furnished in respect of him under subsection (2), the report shall renew the authority for his detention or guardianship for the period prescribed in that case by section 20(2).

(6) Where the authority for the detention or guardianship of the patient is renewed by virtue of subsection (5)-

- (a) the renewal takes effect as from the day on which (apart from section 21 and that subsection) the authority would have expired; and
- (b) if (apart from this paragraph) the renewed authority would expire on or before the day on which the report is furnished, the report shall further renew the authority, as from the day on which it would expire, for the period prescribed in that case by section 20(2).

(7) Where the authority for the detention or guardianship of the patient would expire within the period of 2 months beginning with the day on which a report is duly furnished in respect of him under subsection (2), the report, if it so provides, has effect also as a report duly furnished under section 20(3) or (6); and the reference in this subsection to authority includes any authority renewed under subsection (5) by the report.

(8) Where the form of mental disorder specified in a report furnished under subsection (2) is a form of disorder other than that specified in the application for admission for treatment or guardianship application concerned (and the report does not have effect as a report furnished under section 20(3) or (6)), that application shall have effect as if that other form of mental disorder were specified in it.

(9) Where on any occasion a report specifying such a form of mental disorder is furnished under subsection (2) the appropriate medical officer need not on that occasion furnish a report under section 16.

(10) In this section-

'appropriate medical officer' has the same meaning as in section 16(5);

'the appropriate body' means-

- (a) in relation to a patient who is liable to be detained in a hospital, the managers of the hospital;
- (b) in relation to a patient who is subject to guardianship, the Department;

'the relevant conditions' means-

- (a) in relation to a patient who is liable to be detained in a hospital, the conditions set out in section 20(4);

- (b) in relation to a patient who is subject to guardianship, the conditions set out in section 20(7).

24 Special provisions as to patients sentenced to custody

(1) Where a patient who is liable to be detained by virtue of an application for admission for treatment or is subject to guardianship by virtue of a guardianship application is detained in custody in pursuance of any sentence or order passed or made by a court in the Island (including an order committing or remanding him in custody), and is so detained for a period exceeding, or for successive periods exceeding in the aggregate, 6 months, the application shall cease to have effect at the expiration of that period.

(2) Where any such patient is so detained in custody but the application does not cease to have effect under subsection (1) then-

- (a) if apart from this subsection the patient would have ceased to be liable to be so detained or subject to guardianship on or before the day on which he is discharged from custody, he does not cease and shall be deemed not to have ceased to be so liable or subject until the end of that day; and
- (b) in any case, sections 18, 21 and 22 apply in relation to the patient as if he had absented himself without leave on that day.

(3) In its application by virtue of subsection (2), section 18(4) has effect with the substitution, for the words 'later of' onwards, of the words 'end of the period of 28 days beginning with the first day of his absence without leave'.

25 Discharge of patients

(1) Subject to the provisions of this section and section 27, a patient who is for the time being liable to be detained or subject to guardianship under this Part ceases to be so liable or subject if an order in writing discharging him from detention or guardianship (an '**order for discharge**') is made in accordance with this section.

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

- (a) where the patient is liable to be detained in a hospital in pursuance of an application for admission for assessment or for treatment by the responsible medical officer, by the managers or by the nearest relative of the patient;
- (b) where the patient is subject to guardianship, by the responsible medical officer, by the Department or by the nearest relative of the patient.

(3) Where the patient is liable to be detained in a mental nursing home in pursuance of an application for admission for assessment or for treatment, an order for his discharge may, without prejudice to subsection (2), be made by the Department, after consulting the Department of Health,.

[Subs (3) amended by SD155/10 Schs 6 and 11.]

26 Visiting and examination of patients

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

(2) Any registered medical practitioner authorised for the purposes of subsection (1) to visit and examine a patient may require the production of and inspect any records relating to the detention or treatment of the patient in any hospital or to any after-care services provided for the patient under section 115.

(3) Where application is made by the Department to exercise, in respect of a patient liable to be detained in a mental nursing home, any power to make an order for his discharge, the following persons-

- (a) any registered medical practitioner authorised by the Department, after consulting the Department of Health, and

[Para (a) amended by SD155/10 Schs 6 and 11.]

(b) any other person (whether a registered medical practitioner or not) authorised under the Nursing and Residential Homes Act 1988 to inspect the home; may at any reasonable time visit the patient and interview him in private.

(4) Any person authorised for the purposes of subsection (3) to visit a patient may require the production of and inspect any documents constituting or alleged to constitute the authority for the detention of the patient under this Part; and any person so authorised who is a registered medical practitioner may examine the patient in private, and may require the production of and inspect any other records relating to the treatment of the patient in the home or to any after-care services provided for the patient under section 115.

27 Restrictions on discharge by nearest relative

(1) An order for the discharge of a patient who is liable to be detained in a hospital shall not be made by his nearest relative except after giving not less than 72 hours' notice in writing to the managers of the hospital.

(2) An order for the discharge of a patient who is subject to guardianship shall not be made by his nearest relative except after giving not less than 72 hours' notice in writing to the Department.

(3) If, within 72 hours after notice under subsection (1) or (2) has been given, the responsible medical officer furnishes to the managers of the hospital or to the Department, as the case may be, a report certifying that in the opinion of that officer the patient, if discharged, would be likely to act in a manner dangerous to other persons or to himself,-

(a) any order for the discharge of the patient made by that relative in pursuance of the notice is of no effect; and

(b) no further order for the discharge of the patient shall be made by that relative during the period of 6 months beginning with the date of the report.

(4) In any case where a report under subsection (3) is furnished in respect of a patient who is liable to be detained in pursuance of an application for admission for treatment or is subject to guardianship, the managers or the Department, as the case may be, shall cause the nearest relative of the patient to be informed.

After-care under supervision

28 Application for supervision

(1) Where a patient-

(a) is liable to be detained in a hospital in pursuance of an application for admission for treatment; and

(b) has attained the age of 16 years,

an application may be made for him to be supervised after he leaves hospital, for the period allowed by the following provisions of this Act, with a view to securing that he receives the after-care services provided for him under section 115.

(2) In this Act an application for a patient to be so supervised is referred to as a **'supervision application'**; and where a supervision application has been duly made and accepted under this Part in respect of a patient and he has left hospital, he is for the purposes of this Act **'subject to after-care under supervision'** (until he ceases to be so subject in accordance with the provisions of this Act).

(3) A supervision application shall be made in accordance with this section and sections 29 and 30.

(4) A supervision application may be made in respect of a patient only on the grounds that-

(a) he is suffering from mental disorder, being mental illness, severe mental impairment, psychopathic disorder or mental impairment;

(b) there would be a substantial risk of serious harm to the health and safety of the patient or the safety of other persons, or of the patient being seriously exploited, if he were not to receive the after-care services to be provided for him under section 115 after he

- leaves hospital; and
- (c) his being subject to after-care under supervision is likely to help to secure that he receives the after-care services to be so provided.

(5) A supervision application may be made only by the responsible medical officer, and shall be made to the Department.

(6) Where the Department accepts a supervision application in respect of a patient it shall-

- (a) inform the patient both orally and in writing-
 - (i) that the supervision application has been accepted; and
 - (ii) of the effect in his case of the provisions of this Act relating to a patient subject to after-care under supervision (including, in particular, what rights of applying to the Mental Health Review Tribunal are available);
- (b) inform any person whose name is stated in the supervision application in accordance with section 29(5)(e)(i) that the application has been accepted; and
- (c) inform in writing any person whose name is so stated in accordance with section 29(5)(e)(ii) that the application has been accepted.

(7) Where a patient in respect of whom a supervision application is made is granted leave of absence from a hospital under section 17 (whether before or after the application is made), references in-

- (a) this section and the following provisions of this Part, and
- (b) Part 5,

to his leaving hospital shall be construed as references to his period of leave expiring (otherwise than on his return to the hospital or transfer to another hospital).

29 Making of supervision application

(1) The responsible medical officer shall not make a supervision application unless-

- (a) subsection (2) is complied with; and
- (b) the responsible medical officer has considered the matters specified in subsection (4).

(2) This subsection is complied with if-

- (a) the following persons have been consulted about the making of the supervision application-
 - (i) the patient;
 - (ii) one or more persons who have been professionally concerned with the patient's medical treatment in hospital;
 - (iii) one or more persons who will be professionally concerned with the after-care services to be provided for the patient under section 115; and
 - (iv) any person who the responsible medical officer believes will play a substantial part in the care of the patient after he leaves hospital but will not be professionally concerned with any of the after-care services to be so provided;
- (b) such steps as are practicable have been taken to consult the person (if any) appearing to be the nearest relative of the patient about the making of the supervision application; and
- (c) the responsible medical officer has taken into account any views expressed by the persons consulted.

(3) Where the patient has requested that subsection (2)(b) should not apply, it shall not apply unless-

- (a) the patient has a propensity to violent or dangerous behaviour towards others; and

(b) the responsible medical officer considers that it is appropriate for steps such as are mentioned in subsection (2)(b) to be taken.

(4) The matters referred to in subsection (1)(b) are-

(a) the after-care services to be provided for the patient under section 115; and

(b) any requirements to be imposed on him under section 31.

(5) A supervision application shall state-

(a) that the patient is liable to be detained in a hospital in pursuance of an application for admission for treatment;

(b) the age of the patient or, if his exact age is not known to the applicant, that the patient is believed to have attained the age of 16 years;

(c) that in the opinion of the applicant (having regard in particular to the patient's history) all of the conditions set out in section 28(4) are complied with;

(d) the name of the person who is to be the community responsible medical officer, and of the person who is to be the supervisor, in relation to the patient after he leaves hospital; and

(e) the name of-

(i) any person who has been consulted under subsection (2)(a)(iv); and

(ii) any person who has been consulted under subsection (2)(b).

(6) A supervision application shall be accompanied by-

(a) the written recommendation in the prescribed form of a registered medical practitioner who will be professionally concerned with the patient's medical treatment after he leaves hospital or, if no such practitioner other than the responsible medical officer will be so concerned, of any registered medical practitioner; and

(b) the written recommendation in the prescribed form of an approved social worker.

(7) A recommendation under subsection (6)(a) shall include a statement that in the opinion of the medical practitioner (having regard in particular to the patient's history) all of the conditions set out in section 28(4) are complied with.

(8) A recommendation under subsection (6)(b) shall include a statement that in the opinion of the social worker (having regard in particular to the patient's history) all of the conditions set out in section 28(4)(b) and (c) are complied with.

(9) A supervision application shall also be accompanied by-

(a) a statement in writing by the person who is to be the community responsible medical officer in relation to the patient after he leaves hospital that he is to be in charge of the medical treatment provided for the patient as part of the after-care services provided for him under section 115; and

(b) a statement in writing by the person who is to be the supervisor in relation to the patient after he leaves hospital that he is to supervise the patient with a view to securing that he receives the after-care services so provided;

(c) details of the after-care services to be provided for the patient under section 115; and

(d) details of any requirements to be imposed on him under section 31.

(10) On making a supervision application in respect of a patient the responsible medical officer shall-

(a) inform the patient both orally and in writing;

(b) inform any person who has been consulted under subsection (2)(a)(iv); and

(c) inform in writing any person who has been consulted under subsection (2)(b),

of the matters specified in subsection (11).

(11) The matters referred to in subsection (10) are-

(a) that the application is being made;

(b) the after-care services to be provided for the patient under section 115;

- (c) any requirements to be imposed on him under section 31; and
- (d) the name of the person who is to be the community responsible medical officer, and of the person who is to be the supervisor, in relation to the patient after he leaves hospital.

30 Supervision applications: supplementary

(1) Subject to subsection (2), a supervision application, and the recommendation under section 29(6)(a) accompanying it, may describe the patient as suffering from more than one of the following forms of mental disorder, namely, mental illness, severe mental impairment, psychopathic disorder and mental impairment.

(2) A supervision application shall be of no effect unless the patient is described in the application and in the recommendation under section 29(6)(a) accompanying it as suffering from the same form of mental disorder, whether or not he is also described in the application or the recommendation as suffering from another form.

(3) A registered medical practitioner may at any reasonable time visit a patient and examine him in private for the purpose of deciding whether to make a recommendation under section 29(6)(a).

(4) An approved social worker may at any reasonable time visit and interview a patient for the purpose of deciding whether to make a recommendation under section 29(6)(b).

(5) For the purpose of deciding whether to make a recommendation under section 29(6) a registered medical practitioner or an approved social worker may require the production of and inspect any records relating to the detention or treatment of the patient in any hospital or to any after-care services provided for the patient under section 115.

(6) If, within a period of 14 days beginning with the day on which a supervision application has been accepted, the application, or any recommendation accompanying it, is found to be in any respect incorrect or defective, the application or recommendation may, within that period and with the consent of the Department, be amended by the person by whom it was made or given.

(7) Where an application or recommendation is amended in accordance with subsection (6) it shall have effect, and shall be deemed to have had effect, as if it had been originally made or given as so amended.

(8) A supervision application which appears to be duly made and to be accompanied by recommendations under section 29(6) may be acted upon without further proof of-

- (a) the signature or qualification of the person by whom the application or any such recommendation was made or given; or
- (b) any matter of fact or opinion stated in the application or recommendation.

(9) A recommendation under section 29(6) accompanying a supervision application in respect of a patient shall not be given by-

- (a) the responsible medical officer;
- (b) a person who receives or has an interest in the receipt of any payments made on account of the maintenance of the patient; or
- (c) a close relative of the patient, of any person mentioned in paragraph (a) or (b) or of a person by whom the other recommendation is given under section 29(6) for the purposes of the application.

(10) In subsection (9)(c) 'close relative' means husband, wife, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister or sister-in-law.

31 Requirements to secure receipt of after-care under supervision

(1) Where a patient is subject to after-care under supervision (or, if he has not yet left hospital, is to be so subject after he leaves hospital), the Department has power to impose any of the requirements specified in subsection (2) for the purpose of securing that the patient receives the after-care services provided for him under section 115.

(2) The requirements referred to in subsection (1) are-

- (a) that the patient reside at a specified place;
- (b) that the patient attend at specified places and times for the purpose of medical treatment, occupation, education or training; and
- (c) that access to the patient be given, at any place where the patient is residing, to the supervisor, any registered medical practitioner or any approved social worker, or to any other person authorised by the supervisor.

(3) A patient subject to after-care under supervision may be taken and conveyed by, or by any person authorised by, the supervisor to any place where the patient is required to reside or to attend for the purpose of medical treatment, occupation, education or training.

(4) A person who demands-

- (a) to be given access to a patient in whose case a requirement has been imposed under subsection (2)(c); or
- (b) to take and convey a patient in pursuance of subsection (3),

shall, if asked to do so, produce some duly authenticated document to show that he is a person entitled to be given access to, or to take and convey, the patient.

32 Review of after-care under supervision etc

(1) The after-care services provided (or to be provided) under section 115 for a patient who is (or is to be) subject to after-care under supervision, and any requirements imposed on him under section 31, shall be kept under review, and (where appropriate) modified, by the Department.

(2) This subsection applies in relation to a patient who is subject to after-care under supervision where he refuses or neglects-

- (a) to receive any or all of the after-care services provided for him under section 115; or
- (b) to comply with any or all of any requirements imposed on him under section 31.

(3) Where subsection (2) applies in relation to a patient, the Department shall review, and (where appropriate) modify,-

- (a) the after-care services provided for him under section 115; and
- (b) any requirements imposed on him under section 31.

(4) Where subsection (2) applies in relation to a patient, the Department shall also-

- (a) consider whether it might be appropriate for him to cease to be subject to after-care under supervision and, if it concludes that it might be, inform the community responsible medical officer; and
- (b) consider whether it might be appropriate for him to be admitted to a hospital for treatment and, if it concludes that it might be, inform an approved social worker.

(5) The Department shall not modify-

- (a) the after-care services provided (or to be provided) under section 115 for a patient subject to after-care under supervision; or
- (b) any requirements imposed on him under section 31,

unless subsection (6) is complied with.

(6) This subsection is complied with if-

- (a) the patient has been consulted about the modifications;
- (b) any person who the Department believes plays (or will play) a substantial part in the care of the patient but is not (or will not be) professionally concerned with the after-care services provided for the patient under section 115 has been consulted about the modifications;
- (c) such steps as are practicable have been taken to consult the person (if any) appearing to be the nearest relative of the patient about the modifications; and
- (d) the Department has taken into account any views expressed by the persons consulted.

(7) Where the patient has requested that subsection (6)(c) should not apply, it shall not apply unless-

- (a) the patient has a propensity to violent or dangerous behaviour towards others; and
- (b) the community responsible medical officer (or the person who is to be the community responsible medical officer) considers that it is appropriate for steps such as are mentioned in subsection (6)(c) to be taken.

(8) Where, after such consultation, the Department modifies the after-care services provided (or to be provided) for the patient under section 115 or any requirements imposed on him under section 31, it shall-

- (a) inform the patient both orally and in writing;
- (b) inform any person who has been consulted under subsection (6)(b); and
- (c) inform in writing any person who has been consulted under subsection (6)(c),

that the modifications have been made.

(9) Where-

- (a) a person other than the person named in the supervision application becomes the community responsible medical officer when the patient leaves hospital, or
- (b) when the patient is subject to after-care under supervision, one person ceases to be, and another person becomes, the community responsible medical officer,

the Department shall comply with subsection (11).

(10) Where-

- (a) a person other than the person named in the supervision application becomes the supervisor when the patient leaves hospital, or
- (b) when the patient is subject to after-care under supervision, one person ceases to be, and another person becomes, the supervisor,

the Department shall comply with subsection (11).

(11) The Department complies with this subsection if it-

- (a) informs the patient both orally and in writing;
- (b) informs any person who it believes plays a substantial part in the care of the patient but is not professionally concerned with the after-care services provided for the patient under section 115; and
- (c) unless the patient otherwise requests, takes such steps as are practicable to inform the person (if any) appearing to be the nearest relative of the patient,

of the name of the person who becomes the community responsible medical officer or the supervisor.

(12) Before making any decision under subsection (1), (3) or (4) the Department must consult the Department of Health.

[Subs (12) added by SD155/10 Schs 6 and 11.]

33 Reclassification of patient subject to after-care under supervision

(1) If it appears to the community responsible medical officer that a patient subject to after-care under supervision is suffering from a form of mental disorder other than the form or forms specified in the supervision application made in respect of the patient, he may furnish a report to that effect to the Department.

(2) Where a report is so furnished the supervision application shall have effect as if that other form of mental disorder were specified in it.

(3) Unless no-one other than the community responsible medical officer is professionally concerned with the patient's medical treatment, he shall consult one or more persons who are so concerned before furnishing a report under subsection (1).

(4) Where a report is furnished under subsection (1) in respect of a patient, the Department shall-

- (a) inform the patient both orally and in writing; and
- (b) unless the patient otherwise requests, take such steps as are practicable to inform the person (if any) appearing to be the nearest relative of the patient,

that the report has been furnished.

34 Duration and renewal of after-care under supervision

(1) Subject to sections 35 and 36, a patient subject to after-care under supervision shall be so subject for the period-

- (a) beginning when he leaves hospital; and
- (b) ending with the period of 6 months beginning with the day on which the supervision application was accepted,

but shall not be so subject for any longer period except in accordance with the following provisions of this section.

(2) A patient already subject to after-care under supervision may be made so subject-

- (a) from the end of the period referred to in subsection (1), for a further period of 6 months; and
- (b) from the end of any period of renewal under paragraph (a), for a further period of one year,

and so on for periods of one year at a time.

(3) Within the period of 2 months ending on the day on which a patient who is subject to after-care under supervision would (in default of the operation of subsection (7)) cease to be so subject, it shall be the duty of the community responsible medical officer-

- (a) to examine the patient; and
- (b) if it appears to him that the conditions set out in subsection (4) are complied with, to furnish to the Department a report to that effect in the prescribed form.

(4) The conditions referred to in subsection (3) are that-

- (a) he is suffering from mental disorder, being mental illness, severe mental impairment, psychopathic disorder or mental impairment;
- (b) there would be a substantial risk of serious harm to the health and safety of the patient or the safety of other persons, or of the patient being seriously exploited, if he were not to receive the after-care services to be provided for him under section 115; and
- (c) his being subject to after-care under supervision is likely to help to secure that he receives the after-care services to be so provided.

(5) The community responsible medical officer shall not consider whether the conditions set out in subsection (4) are complied with unless-

- (a) the following persons have been consulted-
 - (i) the patient;
 - (ii) the supervisor;
 - (iii) unless no-one other than the community responsible medical officer is professionally concerned with the patient's medical treatment, one or more persons who are so concerned;
 - (iv) one or more persons who are professionally concerned with the after-care services (other than medical treatment) provided for the patient under section 115; and
 - (v) any person who the community responsible medical officer believes plays a substantial part in the care of the patient but is not professionally concerned with any of the after-care services so provided;
- (b) such steps as are practicable have been taken to consult the person (if any) appearing to be the nearest relative of the patient; and
- (c) the community responsible medical officer has taken into account any relevant views expressed by the persons consulted.

(6) Where the patient has requested that subsection (5)(b) shall not apply, it shall not apply unless-

- (a) the patient has a propensity to violent or dangerous behaviour towards others; and
- (b) the community responsible medical officer considers that it is appropriate for steps such as are mentioned in subsection (5)(b) to be taken.

(7) Where a report is duly furnished under subsection (3), the patient shall be thereby made subject to after-care under supervision for the further period prescribed in that case by subsection (2).

(8) Where a report is furnished under subsection (3), the Department shall-

- (a) inform the patient both orally and in writing-
 - (i) that the report has been furnished; and
 - (ii) of the effect in his case of the provisions of this Act relating to making a patient subject to after-care under supervision for a further period (including, in particular, what rights of applying to the Mental Health Review Tribunal are available);
- (b) inform any person who has been consulted under subsection (5)(a)(v) that the report has been furnished; and
- (c) inform in writing any person who has been consulted under subsection (5)(b) that the report has been furnished.

(9) Where the form of mental disorder specified in a report furnished under subsection (3) is a form of disorder other than the form or forms specified in the supervision application, that application shall have effect as if that other form of mental disorder were specified in it.

(10) Where on any occasion a report specifying such a form of mental disorder is furnished under subsection (3) the community responsible medical officer need not on that occasion furnish a report under section 33.

35 Ending of after-care under supervision

(1) The community responsible medical officer may at any time direct that a patient subject to after-care under supervision shall cease to be so subject.

(2) The community responsible medical officer shall not give a direction under subsection (1) unless-

- (a) the following persons have been consulted about the giving of the direction-
 - (i) the patient;
 - (ii) the supervisor;
 - (iii) unless no-one other than the community responsible medical officer is professionally concerned with the patient's medical treatment, one or more persons who are so concerned;
 - (iv) one or more persons who are professionally concerned with the after-care services (other than medical treatment) provided for the patient under section 115; and
 - (v) any person who the community responsible medical officer believes plays a substantial part in the care of the patient but is not professionally concerned with any of the after-care services so provided;
- (b) such steps as are practicable have been taken to consult the person (if any) appearing to be the nearest relative of the patient about the giving of the direction; and
- (c) the community responsible medical officer has taken into account any views expressed by the persons consulted.

(3) Where the patient has requested that subsection (2)(b) shall not apply, it shall not apply unless-

- (a) the patient has a propensity to violent or dangerous behaviour towards others; and
- (b) the community responsible medical officer considers that it is appropriate for steps

such as are mentioned in subsection (2)(b) to be taken.

(4) A patient subject to after-care under supervision shall cease to be so subject if he-

- (a) is admitted to hospital in pursuance of an application for admission for treatment; or
- (b) is received into guardianship.

(5) Where a patient (for any reason) ceases to be subject to after-care under supervision the Department shall-

- (a) inform the patient both orally and in writing;
- (b) inform any person who it believes plays a substantial part in the care of the patient but is not professionally concerned with the after-care services provided for the patient under section 115; and
- (c) take such steps as are practicable to inform the person (if any) appearing to be the nearest relative of the patient,

that the patient has ceased to be so subject.

(6) Where the patient has requested that subsection (5)(c) shall not apply, it shall not apply unless subsection (2)(b) applied in his case by virtue of subsection (3).

36 Patients in custody or admitted to hospital for assessment

(1) This section applies where a patient who is subject to after-care under supervision-

- (a) is detained in custody in pursuance of any sentence or order passed or made by a court in the Island (including an order committing or remanding him in custody); or
- (b) is detained in hospital in pursuance of an application for admission for assessment.

(2) At any time when the patient is detained as mentioned in subsection (1)(a) or (b) he is not required-

- (a) to receive any after-care services provided for him under section 115; or
- (b) to comply with any requirements imposed on him under section 31.

(3) If the patient is detained as mentioned in subsection (1)(a) for a period of (or successive periods amounting in the aggregate to) 6 months or less, or is detained as mentioned in subsection (1)(b), and (apart from this subsection)-

- (a) he would have ceased to be subject to after-care under supervision during the period for which he is so detained; or
- (b) he would cease to be so subject during the period of 28 days beginning with the day on which he ceases to be so detained,

he shall be deemed not to have ceased, and shall not cease, to be so subject until the end of that period of 28 days.

(4) Where the period for which the patient is subject to after-care under supervision is extended by subsection (3), any examination and report to be made and furnished in respect of the patient under section 34(3) may be made and furnished within the period as so extended.

(5) Where by virtue of subsection (4) the patient is made subject to after-care under supervision for a further period after the day on which (apart from subsection (3)) he would have ceased to be so subject, the further period shall be deemed to have commenced with that day.

Functions of relatives of patients

37 Definition of 'relative' and 'nearest relative'

(1) In this Part '**relative**' means any of the following persons-

- (a) husband or wife;
- (b) son or daughter;
- (c) father or mother;
- (d) brother or sister;
- (e) grandparent;
- (f) grandchild;
- (g) uncle or aunt;
- (h) nephew or niece.

(2) In deducing relationships for the purposes of this section, any relationship of the

half-blood shall be treated as a relationship of the whole blood, and an illegitimate person shall be treated as the legitimate child of-

- (a) his mother, and
- (b) if his father has parental responsibility for him, his father.

(3) In this Part, subject to the provisions of this section and to the following provisions of this Part, the '**nearest relative**' means the person first described in subsection (1) who is for the time being surviving, relatives of the whole blood being preferred to relatives of the same description of the half-blood and the elder or eldest of 2 or more relatives described in any paragraph of that subsection being preferred to the other or others of those relatives, regardless of sex.

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

- (a) by giving preference to that relative or those relatives over the other or others; and
- (b) as between 2 or more such relatives, in accordance with subsection (3).

(5) Where the person who, under subsection (3) or (4), would be the nearest relative of a patient-

- (a) in the case of a patient ordinarily resident in the Island, the United Kingdom or the Channel Islands, is not so resident; or
- (b) is the husband or wife of the patient, but is permanently separated from the patient, either by agreement or under an order of a court, or has deserted or has been deserted by the patient for a period which has not come to an end; or
- (c) is a person other than the husband, wife, father or mother of the patient, and is for the time being under 18 years of age;

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

(6) In this section 'husband' and 'wife' include a person who is living with the patient as the patient's husband or wife, as the case may be (or, if the patient is for the time being an in-patient in a hospital, was so living until the patient was admitted), and has been or had been so living for a period of not less than 6 months; but a person shall not be treated by virtue of this subsection as the nearest relative of a married patient unless the husband or wife of the patient is disregarded by virtue of subsection (5)(b).

(7) A person, other than a relative, with whom the patient ordinarily resides (or, if the patient is for the time being an in-patient in a hospital, last ordinarily resided before he was admitted), and with whom he has or had been ordinarily residing for a period of not less than 5 years, shall be treated for the purposes of this Part as if he were a relative but-

- (a) shall be treated for the purposes of subsection (3) as if mentioned last in subsection (1), and
- (b) shall not be treated by virtue of this subsection as the nearest relative of a married patient unless the husband or wife of the patient is disregarded by virtue of subsection (5)(b).

38 Children and young persons in care

Where a patient is a minor in the care of the Department by virtue of a care order within the meaning of the Children and Young Persons Act 2001, the Department shall be deemed to be the nearest relative of the patient in preference to any person except the patient's husband or wife (if any).

[S 38 substituted by Children and Young Persons Act 2001 Sch 12.]

39 Nearest relative of minor under guardianship etc.

(1) Where-

- (a) a guardian has been appointed for a person who has not attained the age of 18 years; or

(b) a residence order (as defined by section 9 of the Family Law Act 1991) is in force with respect to such a person, the guardian (or guardians, where more than one) or the person named in the residence order shall, to the exclusion of any other person, be deemed to be his nearest relative.

(2) Section 37(5) shall apply in relation to a person who is, or who is one of the persons, deemed to be the nearest relative of a patient by virtue of this section as it applies in relation to a person who would be the nearest relative under section 37(3).

(3) In this section-

'guardian' includes a guardian appointed by a court in any part of the United Kingdom or any of the Channel Islands, but does not include a guardian appointed under this Part or under any enactment relating to the care of mentally disordered persons and having effect in any part of the United Kingdom or any of the Channel Islands;

'residence order' has the same meaning as in section 9 of the Family Law Act 1991, and includes an order made by a court in any part of the United Kingdom or any of the Channel Islands specifying the person with whom a minor is to live.

40 Appointment by Court of acting nearest relative

(1) The High Court may, upon application made in accordance with the provisions of this section in respect of a patient, by order direct that the functions of the nearest relative of the patient under this Part and sections 74 and 77 shall, during the continuance in force of the order, be exercisable by the applicant, or by any other person specified in the application, being a person who, in the opinion of the Court, is a proper person to act as the patient's nearest relative and is willing to do so.

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

(a) the patient;

[Para (a) substituted by Mental Health (Amendment) Act 2006 s 4.]

(aa) any relative of the patient;

[Para (aa) inserted by Mental Health (Amendment) Act 2006 s 4.]

(b) any other person with whom the patient is residing (or, if the patient is then an in-patient in a hospital, was last residing before he was admitted); or

(c) an approved social worker;

but in relation to an application made by such a social worker, subsection (1) shall have effect as if for 'the applicant' there were substituted 'the Department'.

(3) An application for an order under this section may be made upon any of the following grounds-

(a) that the patient has no nearest relative within the meaning of this Act, or that it is not reasonably practicable to ascertain whether he has such a relative, or who that relative is;

(b) that the nearest relative of the patient is incapable of acting as such by reason of mental disorder or other illness;

(c) that the nearest relative of the patient unreasonably objects to the making of an application for admission for treatment or a guardianship application in respect of the patient;

(d) that the nearest relative of the patient has exercised without due regard to the welfare of the patient or the interests of the public his power to discharge the patient from hospital or guardianship under this Part, or is likely to do so; or

(e) that the patient objects to the nearest relative acting as such.

[Para (e) added by Mental Health (Amendment) Act 2006 s 4.]

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

- (a) in any case, until the application under this section has been finally disposed of; and
- (b) if an order is made in pursuance of the application under this section, for a further period of 7 days;

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

(5) An order made on the ground specified in subsection (3)(a) or (b) may specify a period for which it is to continue in force unless previously discharged under section 41.

(6) While an order made under this section is in force, the provisions of this Part (other than this section and section 41) and sections 74, 77, 128(4) and 129 shall apply in relation to the patient as if for any reference to the nearest relative of the patient there were substituted a reference to the person having the functions of that relative and (without prejudice to section 41) shall so apply notwithstanding that the person who was the patient's nearest relative when the order was made is no longer his nearest relative; but this subsection shall not apply to section 74 in the case mentioned in section 74(1)(m).

41 Discharge and variation of orders under s 40

(1) An order made under section 40 in respect of a patient may be discharged by the High Court upon application made-

- (a) in any case, by the patient;
[Para (a) substituted by Mental Health (Amendment) Act 2006 s 4.]
- (b) in any case, by the person having the functions of the nearest relative of the patient by virtue of the order;
[Para (b) substituted by Mental Health (Amendment) Act 2006 s 4.]
- (c) where the order was made on the ground specified in section 40(3)(a) or (b), or where the person who was the nearest relative of the patient when the order was made has ceased to be his or her nearest relative, by the nearest relative of the patient.

[Para (c) added by Mental Health (Amendment) Act 2006 s 4.]

(2) An order made under section 40 in respect of a patient may be varied by the High Court upon application made by-

- (a) the patient,
- (b) the person having the functions of the nearest relative by virtue of the order, or
- (c) an approved social worker,

by substituting for the person mentioned in paragraph (b) the Department or any other person who in the opinion of the Court is a proper person to exercise those functions, being a person who is willing to do so.

[Subs (2) substituted by Mental Health (Amendment) Act 2006 s 4.]

(3) If the person having the functions of the nearest relative of a patient by virtue of an order under section 40 dies-

- (a) subsections (1) and (2) shall apply as if for any reference to that person there were substituted a reference to any relative of the patient, and
- (b) until the order is discharged or varied under those provisions the functions of the nearest relative under this Part and sections 74 and 77 shall not be exercisable by any person.

(4) An order under section 40 shall, unless previously discharged under subsection (1), cease to have effect at the expiration of the period, if any, specified under section 40(5) or, where no such period is specified-

- (a) if the patient was on the date of the order liable to be detained in pursuance of an application for admission for treatment or by virtue of a hospital order (except an interim order) or transfer direction or was subject to guardianship under this Part or by virtue of a guardianship order, or becomes so liable or subject within the period of 3

months beginning with that date, when he ceases to be so liable or subject (otherwise than on being transferred in pursuance of regulations under section 19);

- (b) if the patient was not on the date of the order, and has not within the said period become, so liable or subject, at the expiration of that period.

(5) The discharge or variation under this section of an order made under section 40 shall not affect the validity of anything previously done in pursuance of the order.

Supplemental

42 Procedure on applications to court

Rules of court which relate to applications authorised by this Part to be made to the High Court may make provision-

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

43 Regulations for purposes of Part 2

(1) The Department, after consulting the Department of Health, may make regulations for prescribing anything which under this Part is required or authorised to be prescribed, and otherwise for carrying this Part into full effect.

[Subs (1) amended by SD155/10 Schs 6 and 11.]

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

- (a) for prescribing the form of any application, recommendation, report, order, notice or other document to be made or given under this Part;
- (b) for prescribing the manner in which any such application, recommendation, report, order, notice or other document may be proved, and for regulating the service of any such application, report, order or notice;
- (c) for requiring such persons as may be prescribed by the regulations to keep such registers or other records as may be so prescribed in respect of patients liable to be detained or subject to guardianship or to after-care under supervision under this Part, and to furnish or make available to those patients, and their relatives, such written statements of their rights and powers under this Act as may be so prescribed;
- (d) for the determination in accordance with the regulations of the age of any person whose exact age cannot be ascertained by reference to the registers kept under the Civil Registration Act 1984; and
- (e) for enabling the functions under this Part of the nearest relative of a patient to be performed, in such circumstances and subject to such conditions (if any) as may be prescribed by the regulations, by any person authorised in that behalf by that relative;

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

(3) Without prejudice to subsections (1) and (2), regulations under this section may determine the manner in which functions under this Part of the Department and the managers of hospitals are to be exercised, and such regulations may in particular specify the circumstances in which, and the conditions subject to which, any such functions may be performed by officers of or other persons acting on behalf of the Department or those managers.

44 Special provisions as to wards of court

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

(2) Where a minor who is a ward of court is liable to be detained in a hospital by virtue of an application for admission under this Part, any power exercisable under this Part or under section 74 in relation to the patient by his nearest relative shall be exercisable by or with the leave of the court.

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

(4) Where a supervision application has been made in respect of a minor who is a ward of court, the provisions of this Part relating to after-care under supervision have effect in relation to the minor subject to any order which the court may make in the exercise of its wardship jurisdiction.

45 Interpretation of Part 2

(1) In this Part-

'the community responsible medical officer', in relation to a patient subject to after-care under supervision, means the person who, in accordance with section 115(3), is in charge of the medical treatment provided for him;

'the nominated medical attendant', in relation to a patient who is subject to the guardianship of a person other than the Department, means the person appointed in pursuance of regulations made under section 9(2) to act as the medical attendant of the patient;

'the responsible medical officer' means (except in the phrase 'the community responsible medical officer')-

- (a) in relation to a patient who is liable to be detained by virtue of an application for admission for assessment or an application for admission for treatment or who is to be subject to after-care under supervision after leaving hospital, the registered medical practitioner in charge of the treatment of the patient;
- (b) in relation to a patient subject to guardianship, the medical officer authorised by the Department to act (either generally or in any particular case or for any particular purpose) as the responsible medical officer;

'the supervisor', in relation to a patient subject to after-care under supervision, means the person who, in accordance with section 115(3)(b), is supervising him.

(2) Nothing in this Act prevents the same person from acting as more than one of the following in relation to a patient-

- (a) the responsible medical officer;
- (b) the community responsible medical officer;
- (c) the supervisor.

(3) Except where otherwise expressly provided, this Part applies in relation to a mental nursing home, being a home in respect of which the particulars of registration are for the time being entered in the separate part of the register kept for the purposes of section 2(7)(b) of the Nursing and Residential Homes Act 1988, as it applies in relation to a hospital, and references in this Part to a hospital, and any reference in this Act to a hospital to which this Part applies, shall be construed accordingly.

PART 3

PATIENTS CONCERNED IN CRIMINAL PROCEEDINGS OR UNDER SENTENCE

46 Information as to hospitals etc

(1) Where a court is minded to make a hospital order, interim hospital order or hospital direction in respect of any person it may request the Department to furnish the court with such information as the Department has or can reasonably obtain with respect to the hospital or hospitals (if any) in the Island or elsewhere at which arrangements could be made for the admission of that person in pursuance of the order.

(2) Where a court is minded to make a guardianship order in respect of any person, it

may request the Department-

- (a) to inform the court whether it or any other person approved by it is willing to receive the patient into guardianship; and
 - (b) if so, to give such information as it reasonably can about how it or the other person could be expected to exercise in relation to the patient the powers conferred by section 47(2).
- (3) The Department shall comply with any request under this section.

Hospital and restriction orders

47 Effect of hospital orders etc

- (1) A hospital order shall be sufficient authority-
- (a) for a constable, an approved social worker or any other person directed to do so by the court to convey the patient to the hospital specified in the order within a period of 28 days; and
 - (b) for the managers of the hospital to admit him at any time within that period and thereafter detain him in accordance with the provisions of this Act.
- (2) A guardianship order shall confer on the person named in the order as guardian the same powers as a guardianship application made and accepted under Part 2.
- (3) Where an interim hospital order is made in respect of an offender-
- (a) a constable or any other person directed to do so by the court shall convey the offender to the hospital specified in the order within the period mentioned in section 54(6) of the Criminal Jurisdiction Act 1993 or paragraph 3(4) of Schedule 2A to the Summary Jurisdiction Act 1989; and
 - (b) the managers of the hospital shall admit him within that period and thereafter detain him in accordance with the provisions of the said section 54 or paragraph 3, as the case may be.
- (4) A patient who is admitted to a hospital in pursuance of a hospital order, or placed under guardianship by a guardianship order, shall, subject to the provisions of this subsection, be treated for the purposes of the provisions of this Act mentioned in Part 1 of Schedule 1 as if he had been so admitted or placed on the date of the order in pursuance of an application for admission for treatment or a guardianship application, as the case may be, duly made under Part 2, but subject to any modifications of those provisions specified in that Part of that Schedule.
- (5) Where a patient is admitted to a hospital in pursuance of a hospital order, or placed under guardianship by a guardianship order, any previous application, hospital order or guardianship order by virtue of which he was liable to be detained in a hospital or subject to guardianship shall cease to have effect; but if the first-mentioned order, or the conviction, special verdict or finding on which it was made, is quashed on appeal, this subsection shall not apply and section 24 shall have effect as if during any period for which the patient was liable to be detained or subject to guardianship under the order, he had been detained in custody as mentioned in that section.
- (6) If, while a person is detained in pursuance of a hospital order made by virtue of section 9(9) of the Criminal Jurisdiction Act 1993 (findings that defendant was under disability and that he did the act charged), the Department of Home Affairs, after consultation with the responsible medical officer, is satisfied that that person can properly be tried, that Department may by warrant direct that that person be kept in custody at such place as may be specified in the warrant pending his trial at the next available sitting of a court, and the order shall thereupon cease to have effect.

48 Restriction orders

- (1) This section applies where a Court of General Gaol Delivery has made an order (a 'restriction order') under section 54(10) of the Criminal Jurisdiction Act 1993 or paragraph 4(2)(a) of Schedule 2A to the Summary Jurisdiction Act 1989 that a person shall be subject to

the special restrictions set out in this section.

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

- (a) none of the provisions of Part 2 relating to the duration, renewal and expiration of authority for the detention of patients shall apply, and the patient shall continue to be liable to be detained by virtue of the relevant hospital order until he is duly discharged under Part 2 or absolutely discharged under section 49, 81, 82 or 83;
- (b) none of the provisions of Part 2 relating to after-care under supervision shall apply;
- (c) no application shall be made to the Mental Health Review Tribunal in respect of a patient under section 74 or 77(1);
- (d) the following powers shall be exercisable only with the consent of the Department of Home Affairs, namely-
 - (i) power to grant leave of absence to the patient under section 17;
 - (ii) power to transfer the patient in pursuance of regulations under section 19 or in pursuance of section 19(3); and
 - (iii) power to order the discharge of the patient under section 25;

and if leave of absence is granted under section 17, power to recall the patient under that section shall vest in the Department of Home Affairs as well as the responsible medical officer; and

- (e) the power of the Department to recall the patient under the said section 17 and power to take the patient into custody and return him under section 18 may be exercised at any time;

and in relation to any such patient section 47(4) shall have effect as if it referred to Part 2 of Schedule 1 instead of Part 1 of that Schedule.

(3) A hospital order shall not cease to have effect under section 47(5) if a restriction order in respect of the patient is in force at the material time.

(4) Where a restriction order in respect of a patient ceases to have effect while the relevant hospital order continues in force, the provisions of section 47 and Part 1 of Schedule 1 shall apply to the patient as if he had been admitted to the hospital in pursuance of a hospital order (without a restriction order) made on the date on which the restriction order ceased to have effect.

(5) While a person is subject to a restriction order the responsible medical officer shall, at such intervals (not exceeding one year) as the Department of Home Affairs may direct, examine and report to that Department on that person; and every report shall contain such particulars as that Department may require.

49 Powers of Department of Home Affairs in respect of restricted patients

(1) If the Department of Home Affairs is satisfied that in the case of any patient a restriction order is no longer required for the protection of the public from serious harm, it may direct that the patient cease to be subject to the special restrictions set out in section 48; and where that Department so directs, the restriction order shall cease to have effect, and section 48(4) shall apply accordingly.

(2) At any time while a restriction order is in force in respect of a patient, the Department of Home Affairs may, if it thinks fit, by warrant discharge the patient from hospital, either absolutely or subject to conditions; and where a person is absolutely discharged under this subsection, he shall thereupon cease to be liable to be detained by virtue of the relevant hospital order, and the restriction order shall cease to have effect accordingly.

(3) The Department of Home Affairs may at any time during the continuance in force of a restriction order in respect of a patient who has been conditionally discharged under subsection (2) by warrant recall the patient to such hospital as may be specified in the warrant.

- (4) Where a patient is recalled as mentioned in subsection (3)-
- (a) if the hospital specified in the warrant is not the hospital from which the patient was conditionally discharged, the hospital order and the restriction order shall have effect as if the hospital specified in the warrant were substituted for the hospital specified in the hospital order;
 - (b) in any case, the patient shall be treated for the purposes of section 18 as if he had absented himself without leave from the hospital specified in the warrant, and, if the restriction order was made for a specified period, that period shall not in any event expire until the patient returns to the hospital or is returned to the hospital under that section.

(5) If a restriction order in respect of a patient ceases to have effect after the patient has been conditionally discharged under this section, the patient shall, unless previously recalled under subsection (3), be deemed to be absolutely discharged on the date when the order ceases to have effect, and shall cease to be liable to be detained by virtue of the relevant hospital order accordingly.

(6) The Department of Home Affairs may, if satisfied that the attendance at any place in the Island of a patient who is subject to a restriction order is desirable in the interests of justice or for the purposes of any public inquiry, direct him to be taken to that place; and where a patient is directed under this subsection to be taken to any place he shall, unless that Department otherwise directs, be kept in custody while being so taken, while at that place and while being taken back to the hospital in which he is liable to be detained.

50 Treatment as in-patient under supervision and treatment order

(1) While the patient is under treatment as a resident patient in pursuance of a requirement of a supervision and treatment order, the supervisor shall carry out the supervision to such extent only as may be necessary for the purpose of the revocation or amendment of the order.

(2) Where the medical practitioner by whom or under whose direction the patient is being treated for his mental condition in pursuance of a supervision and treatment order is of the opinion that part of the treatment can be better or more conveniently given in or at an institution or place which-

- (a) is not specified in the order; and
- (b) is one in or at which the treatment of the patient will be given by or under the direction of a registered medical practitioner,

he may, with the consent of the patient, make arrangements for him to be treated accordingly.

(3) Such arrangements as are mentioned in subsection (2) may provide for the patient to receive part of his treatment as a resident patient in an institution or place notwithstanding that the institution or place is not one which could have been specified for that purpose in the supervision and treatment order.

(4) Where any such arrangements as are mentioned in subsection (2) are made for the treatment of a patient-

- (a) the medical practitioner by whom the arrangements are made shall give notice in writing to the supervisor, specifying the institution or place in or at which the treatment is to be carried out; and
- (b) the treatment provided for by the arrangements shall be deemed to be treatment to which he is required to submit in pursuance of the supervision and treatment order.

(5) In this section and section 51 'the supervisor', in relation to a supervision and treatment order, means the probation officer or officer of the Department assigned in accordance with the order.

51 Revocation or variation of supervision and treatment order

(1) Where a supervision and treatment order is in force in respect of any person and, on the application of the patient or the supervisor, it appears to a court of summary jurisdiction that,

having regard to circumstances which have arisen since the order was made, it would be in the interests of the health or welfare of the patient that the order should be revoked, the court may revoke the order.

(2) Subject to subsection (3), a court of summary jurisdiction may, on the application of the patient or the supervisor, by order vary a supervision and treatment order-

- (a) by cancelling any of the requirements of the order; or
- (b) by inserting in the order (either in addition to or in substitution for any such requirement) any requirement which the court could include if it were the court by which the order was made and were then making it.

(3) The power of a court of summary jurisdiction under sub-paragraph (2) does not include power to vary an order by extending the period specified in it beyond the end of 2 years from the date of the original order.

(4) Where the medical practitioner by whom or under whose direction the patient is being treated for his mental condition in pursuance of any requirement of a supervision and treatment order-

- (a) is of the opinion mentioned in subsection (5); or
 - (b) is for any reason unwilling to continue to treat or direct the treatment of the patient,
- he shall make a report in writing to that effect to the supervisor, who shall apply under subsection (2) to a court of summary jurisdiction for the variation or cancellation of the requirement.

(5) The opinion referred to in subsection (4) is-

- (a) that the treatment of the patient should be continued beyond the period specified in the supervision and treatment order;
- (b) that the patient needs different treatment, being treatment of a kind to which he could be required to submit in pursuance of such an order;
- (c) that the patient is not susceptible to treatment; or
- (d) that the patient does not require further treatment.

(6) On the making under subsection (1) or (2) of an order revoking or varying a supervision and treatment order, the clerk of the court shall forthwith give copies of the revoking or varying order to the supervisor.

(7) A supervisor to whom in accordance with subsection (6) copies of a revoking or varying order are given shall give a copy to the patient and to the person in charge of any institution in which the patient was or is required by the order to reside.

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[S 52 repealed by Mental Health (Amendment) Act 2006 s 3.]

Transfer to hospital of prisoners

53 Removal to hospital of persons serving sentences of custody

(1) If in the case of a person serving a sentence of custody the Department of Home Affairs is satisfied, by reports from at least 2 registered medical practitioners-

- (a) that the said person is suffering from mental illness, psychopathic disorder, severe mental impairment or mental impairment; and
- (b) that the mental disorder from which that person is suffering is of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment and, in the case of psychopathic disorder or mental impairment, that such treatment is likely to alleviate or prevent a deterioration of his condition;

that Department may, if it is of the opinion having regard to the public interest and all the circumstances that it is expedient so to do, by warrant give a direction (a '**transfer direction**') that that person be removed to and detained in such hospital as may be specified in the direction.

(2) A transfer direction shall cease to have effect at the expiration of the period of 14 days beginning with the date on which it is given unless within that period the person with

respect to whom it was given has been received into the hospital specified in the direction.

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

(4) A transfer direction shall specify the form or forms of mental disorder referred to in subsection (1)(a) from which, upon the reports taken into account under subsection (1), the patient is found by the Department of Home Affairs to be suffering; and no such direction shall be given unless the patient is described in each of those reports as suffering from the same form of disorder, whether or not he is also described in either of them as suffering from another form.

(5) References in this Part to a person serving a sentence of custody include references-

- (a) to a person committed to custody under section 87(2) of the Summary Jurisdiction Act 1989 (breach of binding-over order); and
- (b) to a person committed by a court to custody in default of payment of any sum adjudged to be paid on his conviction.

54 Removal to hospital of other prisoners

(1) If in the case of a person to whom this section applies the Department of Home Affairs is satisfied by the same reports as are required for the purposes of section 53 that that person is suffering from mental illness, psychopathic disorder, severe mental impairment or mental impairment of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment and that he is in urgent need of such treatment, that Department shall have the same power of giving a transfer direction in respect of him under that section as if he were serving a sentence of custody.

(2) This section applies to the following persons-

- (a) persons detained in an institution, not being persons serving a sentence of custody or persons falling within the following paragraphs;
- (b) persons remanded in custody by a court of summary jurisdiction;
- (c) civil prisoners, that is to say, persons committed by a court to prison for a limited term who are not persons falling to be dealt with under section 53;
- (d) persons detained under the Immigration Act 1971 (an Act of Parliament).

(3) Section 53(2) to (4) applies for the purposes of this section and of any transfer direction given by virtue of this section as it applies for the purposes of section 53 and of any transfer direction under that section.

55 Restriction on discharge of prisoners removed to hospital

(1) Where a transfer direction is given in respect of any person, the Department of Home Affairs, if it thinks fit, may by warrant give a further direction (a '**restriction direction**') that that person shall be subject to the special restrictions set out in section 48; and where that Department gives a transfer direction in respect of any such person as is described in section 54(2)(a) or (b), it shall also give a direction under this section applying those restrictions to him.

(2) Where the Department of Home Affairs makes a transfer direction with a restriction direction, the transfer direction may authorise the person concerned to be removed to and detained in a hospital unit specified in the direction.

(3) A restriction direction shall have the same effect as a restriction order.

(4) While a person is subject to a restriction direction the responsible medical officer shall at such intervals (not exceeding one year) as the Department of Home Affairs may direct examine and report to that Department on that person; and every report shall contain such particulars as that Department may require.

56 Effect of hospital and limitation directions

(1) A hospital direction shall be sufficient authority-

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

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

(2) With respect to any person-

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

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

(3) Where a person is subject to a hospital direction and a limitation direction the responsible medical officer shall at such intervals (not exceeding one year) as the Department of Home Affairs may direct examine and report to that Department on that person; and every report shall contain such particulars as that Department may require.

57 Further provisions as to prisoners under sentence

(1) This section applies where-

(a) either-

(i) a transfer direction and a restriction direction have been given in respect of a person serving a sentence of custody, or

(ii) a hospital direction and a limitation direction have been given in respect of a person sentenced to custody; and

(b) before the expiration of that person's sentence the Department of Home Affairs is notified by the responsible medical officer, any other registered medical practitioner or the Mental Health Review Tribunal that that person no longer requires treatment in hospital for mental disorder or that no effective treatment for his disorder can be given in the hospital to which he has been removed.

(2) The Department of Home Affairs may-

(a) by warrant direct that the person be remitted to any institution in which he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed; or

(b) exercise any power of releasing him on licence or discharging him under supervision which could have been exercisable if he had been remitted to such an institution as aforesaid,

and on his arrival in the institution or, as the case may be, his release or discharge as aforesaid, the transfer direction and the restriction direction, or the hospital direction and the limitation direction, as the case may be, shall cease to have effect.

(3) A restriction direction or limitation direction in the case of a person serving a sentence of custody shall cease to have effect on the expiration of the sentence.

(4) Subject to subsection (5), references in this section to the expiration of a person's sentence are references to the expiration of the period during which he would have been liable to be detained in an institution if the transfer direction or hospital direction had not been given.

(5) For the purposes of section 5(2) of the Custody Act 1995 (detainees unlawfully at large) a patient who-

(a) having been transferred in pursuance of a transfer direction from an institution, or

(b) having been removed to a hospital in pursuance of a hospital direction,

is at large in circumstances in which he is liable to be taken into custody under any provision of this Act, shall be treated as unlawfully at large.

58 Further provisions as to detained persons

(1) This section has effect where a transfer direction has been given in respect of any such person as is described in section 54(2)(a) ('the detainee').

(2) The transfer direction shall cease to have effect when the detainee's case is disposed of by the court having jurisdiction to try or otherwise deal with him, but without prejudice to any power of that court to make a hospital order or other order under this Part in his case.

(3) If the Department of Home Affairs is notified by the responsible medical officer, any other registered medical practitioner or the Mental Health Review Tribunal at any time before the detainee's case is disposed of by that court-

- (a) that the detainee no longer requires treatment in hospital for mental disorder; or
- (b) that no effective treatment for his disorder can be given at the hospital to which he has been removed,

that Department may by warrant direct that he be remitted to any place where he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed, and on his arrival at the place to which he is so remitted the transfer direction shall cease to have effect.

(4) If (no direction having been given under subsection (3)) the court having jurisdiction to try or otherwise deal with the detainee is satisfied on the written or oral evidence of the responsible medical officer-

- (a) that the detainee no longer requires treatment in hospital for mental disorder; or
- (b) that no effective treatment for his disorder can be given at the hospital to which he has been removed,

the court may order him to be remitted to any such place as is mentioned in subsection (3) or released on bail and on his arrival at that place or, as the case may be, his release on bail the transfer direction shall cease to have effect.

(5) If (no direction or order having been given or made under subsection (3) or (4)) it appears to the court having jurisdiction to try or otherwise deal with the detainee-

- (a) that it is impracticable or inappropriate to bring the detainee before the court; and
- (b) that the conditions set out in subsection (6) are satisfied,

the court may make an order (**'a hospital order'**) in his absence and, in the case of a person awaiting trial, without convicting him, authorising him to be admitted to, and his detention in, such hospital as may be specified in the order (with or without an order that he shall be subject to the special restrictions set out in section 48).

(6) A hospital order may be made in respect of a person under subsection (5) if the court-

- (a) is satisfied, on the written or oral evidence of at least 2 registered medical practitioners, that the detainee is suffering from mental illness or severe mental impairment of a nature or degree which makes it appropriate for the patient to be detained in a hospital for medical treatment; and
- (b) is of the opinion, after considering any depositions or other documents required to be sent to the proper officer of the court, that it is proper to make such an order.

(7) Where a person committed to a Court of General Gaol Delivery to be dealt with under paragraph 4 of Schedule 2A to the Summary Jurisdiction Act 1989 is admitted to a hospital in pursuance of an order under paragraph 5 of that Schedule, subsections (5) and (6) shall apply as if he were a person subject to a transfer direction.

59 Further provisions as to persons remanded

(1) This section has effect where a transfer direction has been given in respect of any such person as is described in section 54(2)(b) (**'the accused'**).

(2) Subject to subsection (5), the transfer direction shall cease to have effect on the expiration of the period of remand unless the accused is committed in custody to a Court of General Gaol Delivery for trial or to be otherwise dealt with.

(3) Subject to subsection (4), the power of further remanding the accused under section 84 of the Summary Jurisdiction Act 1989 may be exercised by the court without his being brought before the court; and if the court further remands the accused in custody (whether or not he is brought before the court) the period of remand shall, for the purposes of this section, be deemed not to have expired.

(4) The court shall not under subsection (3) further remand the accused in his absence

unless he has appeared before the court within the previous 6 months.

(5) If the court of summary jurisdiction is satisfied, on the written or oral evidence of the responsible medical officer-

- (a) that the accused no longer requires treatment in hospital for mental disorder; or
- (b) that no effective treatment for his disorder can be given in the hospital to which he has been removed,

the court may direct that the transfer direction shall cease to have effect notwithstanding that the period of remand has not expired or that the accused is committed to a Court of General Gaol Delivery as mentioned in subsection (2).

(6) If the accused is committed to a Court of General Gaol Delivery as mentioned in subsection (2) and the transfer direction has not ceased to have effect under subsection (5), section 58 applies as if the transfer direction given in his case were a direction given in respect of a person falling within that section.

(7) The court of summary jurisdiction may, in the absence of the accused, inquire into an offence alleged to have been committed by him and commit him for trial in accordance with section 6 of the Summary Jurisdiction Act 1989 if-

- (a) the court is satisfied, on the written or oral evidence of the responsible medical officer, that the accused is unfit to take part in the proceedings; and
- (b) where the court proceeds under subsection (1) of that section, the accused is represented by an advocate.

60 Further provisions as to civil prisoners and persons detained under the Immigration Act 1971

(1) Subject to subsection (2), a transfer direction given in respect of any such person as is described in section 54(2)(c) or (d) ceases to have effect on the expiration of the period during which he would, but for his removal to hospital, be liable to be detained in the place from which he was removed.

(2) Where a transfer direction and a restriction direction have been given in respect of any such person as is mentioned in subsection (1), then, if the Department of Home Affairs is notified by the responsible medical officer, any other registered medical practitioner or the Mental Health Review Tribunal at any time before the expiration of the period there mentioned-

- (a) that that person no longer requires treatment in hospital for mental disorder; or
- (b) that no effective treatment for his disorder can be given in the hospital to which he has been removed,

that Department may by warrant direct that he be remitted to any place where he might have been detained if he had not been removed to hospital, and on his arrival at the place to which he is so remitted the transfer direction and the restriction direction shall cease to have effect.

Supplemental

61 Requirements as to medical evidence

(1) At least one of the registered medical practitioners whose evidence is taken into account under section 58(6)(a) and whose reports are taken into account under sections 53(1) and 54(1) shall be a practitioner approved for the purposes of section 12 by the Department, after consulting the Department of Health, as having special experience in the diagnosis or treatment of mental disorder.

[Subs (1) amended by SD155/10 Schs 6 and 11.]

(2) For the purposes of any provision of this Part under which a court may act on the written evidence of-

- (a) a registered medical practitioner or a registered medical practitioner of any description; or
- (b) a person representing the managers of a hospital,

a report in writing purporting to be signed by a registered medical practitioner or a registered medical practitioner of such a description or by a person representing the managers of a

hospital may, subject to the provisions of this section, be received in evidence without proof of the signature of the practitioner or that person and without proof that he has the requisite qualifications or authority or is of the requisite description; but the court may require the signatory of any such report to be called to give oral evidence.

(3) Where, in pursuance of a direction of the court, any such report is tendered in evidence otherwise than by or on behalf of the person who is the subject of the report, then-

- (a) if that person is represented by an advocate, a copy of the report shall be given to his advocate;
- (b) if that person is not so represented, the substance of the report shall be disclosed to him or, where he is a child or young person, to his parent or guardian if present in court; and
- (c) except where the report relates only to arrangements for his admission to a hospital, that person may 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.

62 Powers of criminal courts

The amendments of the Criminal Jurisdiction Act 1993 and the Summary Jurisdiction Act 1989 specified in Schedule 2 have effect for the purpose of conferring additional powers on criminal courts with respect to mentally disordered persons.

63 Interpretation of Part 3

(1) In this Part-

'civil prisoner' has the meaning given by section 54(2)(c);

'guardian', in relation to a child or young person, has the same meaning as in the Children and Young Persons Act 1966;

'hospital unit' means any part of a hospital which is treated as a separate unit;

'institution' (except in section 50) has the same meaning as in the Custody Act 1995;

'place of safety'-

- (i) in relation to a person who is not a child or young person, means any police station, any institution, or any hospital the managers of which are willing temporarily to receive him, and
- (ii) in relation to a child or young person, has the same meaning as in the Children and Young Persons Act 1966;

'responsible medical officer', in relation to a person liable to be detained in a hospital within the meaning of Part 2, means the registered medical practitioner in charge of the treatment of the patient.

(2) Where a patient who is liable to be detained in a hospital in pursuance of an order or direction under this Part is treated by virtue of any provision of this Part as if he had been admitted to the hospital in pursuance of a subsequent order or direction under this Part or a subsequent application for admission for treatment under Part 2, he shall be treated as if the subsequent order, direction or application had described him as suffering from the form or forms of mental disorder specified in the earlier order or direction or, where he is treated as if he had been so admitted by virtue of a direction under section 49(1), such form of mental disorder as may be specified in the direction under that section.

(3) Where in pursuance of any statutory power a hospital order, hospital direction or transfer direction authorises a person to be detained in a hospital unit, any reference in any enactment (including one contained in this Act) to him being, or being liable to be, detained in a hospital shall be construed accordingly.

(4) Any reference to a hospital order, a guardianship order or a restriction order in section 47(2), (4) or (5), section 48(2) to (4), section 49 or section 77(1) shall be construed as including a reference to any order or direction under this Part having the same effect as the first-mentioned order; and the exceptions and modifications set out in Schedule 1 in respect of

the provisions of this Act described in that Schedule accordingly include those which are consequential on the provisions of this subsection.

(5) Section 45(3) applies for the purposes of this Part as it applies for the purposes of Part 2.

(6) References in this Part to persons serving a sentence of custody shall be construed in accordance with section 53(5).

(7) Section 107 of the Children and Young Persons Act 1966 (presumption and determination of age) applies for the purposes of this Part as it applies for the purposes of that Act.

PART 4 CONSENT TO TREATMENT

64 Patients to whom Part 4 applies

(1) This Part applies to any patient liable to be detained under this Act except-

- (a) a patient who is liable to be detained by virtue of an emergency application and in respect of whom the second medical recommendation referred to in section 4(4)(a) has not been given and received;
- (b) a patient who is liable to be detained by virtue of-
 - (i) section 5(2) or (4);
 - (ii) section 131 or 132;
 - (iii) paragraph 1 of Schedule 1A to the Criminal Jurisdiction Act 1993 or paragraph 1 of Schedule 2A to the Summary Jurisdiction Act 1989; or
 - (iv) a direction under section 54(6) of the said Act of 1993 or paragraph 2(4) of Schedule 2A to the said Act of 1989; and
- (c) a patient who has been conditionally discharged under section 49(2) or section 81 or 82 and has not been recalled to hospital.

(2) Section 65 and, so far as relevant to that section, sections 67, 68 and 70, apply also to any patient who is not liable to be detained under this Act.

65 Treatment requiring consent and a second opinion

(1) This section applies to the following forms of medical treatment for mental disorder-

- (a) any surgical operation for destroying brain tissue or for destroying the functioning of brain tissue; and
- (b) such other forms of treatment as may be specified for the purposes of this section by regulations made by the Department.

(2) Subject to section 70, a patient shall not be given any form of treatment to which this section applies unless he has consented to it and-

- (a) a registered medical practitioner nominated under section 120 and 2 other persons so nominated (not being registered medical practitioners) have certified in writing that the patient is capable of understanding the nature, purpose and likely effects of the treatment in question and has consented to it; and
- (b) the registered medical practitioner referred to in paragraph (a) has certified in writing that, having regard to the likelihood of the treatment alleviating or preventing a deterioration of the patient's condition, the treatment should be given.

(3) Before giving a certificate under subsection (2)(b) the registered medical practitioner concerned shall consult 2 other persons who have been professionally concerned with the patient's medical treatment, and of those persons one shall be a nurse and the other shall be neither a nurse nor a registered medical practitioner.

(4) Before making any regulations for the purpose of this section the Department shall consult the Department of Health and the Mental Health Commission and such bodies as

appear to it to be concerned.

[Subs (4) amended by SD155/10 Schs 6 and 11.]

66 Treatment requiring consent or a second opinion

- (1) This section applies to the following forms of medical treatment for mental disorder-
- (a) such forms of treatment as may be specified for the purposes of this section by regulations made by the Department;
 - (b) the administration of medicine to a patient by any means (not being a form of treatment specified under paragraph (a) or section 65) at any time during a period for which he is liable to be detained as a patient to whom this Part applies if 3 months or more have elapsed since the first occasion in that period when medicine was administered to him by any means for his mental disorder.
- (2) The Department may by order vary the length of the period mentioned in subsection (1)(b).
- (3) Subject to section 70, a patient shall not be given any form of treatment to which this section applies unless-
- (a) he has consented to that treatment and either the responsible medical officer or a registered medical practitioner nominated under section 120 has certified in writing that the patient is capable of understanding its nature, purpose and likely effects and has consented to it; or
 - (b) a registered medical practitioner so nominated (not being the responsible medical officer) has certified in writing that the patient is not capable of understanding the nature, purpose and likely effects of that treatment or has not consented to it but that, having regard to the likelihood of its alleviating or preventing a deterioration of his condition, the treatment should be given.
- (4) Before giving a certificate under subsection (3)(b) the registered medical practitioner concerned shall consult 2 other persons who have been professionally concerned with the patient's medical treatment, and of those persons one shall be a nurse and the other shall be neither a nurse nor a registered medical practitioner.
- (5) Before making any regulations for the purposes of this section the Department shall consult the Department of Health and the Mental Health Commission and such other bodies as appear to it to be concerned.

[Subs (5) amended by SD155/10 Schs 6 and 11.]

67 Plans of treatment

Any consent or certificate under section 65 or 66 may relate to a plan of treatment under which the patient is to be given (whether within a specified period or otherwise) one or more of the forms of treatment to which that section applies.

68 Withdrawal of consent

(1) Where the consent of a patient to any treatment has been given for the purposes of section 65 or 66, the patient may, subject to section 70, at any time before the completion of the treatment withdraw his consent, and those sections shall then apply as if the remainder of the treatment were a separate form of treatment.

(2) Without prejudice to the application of subsection (1) to any treatment given under the plan of treatment to which a patient has consented, a patient who has consented to such a plan may, subject to section 70, at any time withdraw his consent to further treatment, or to further treatment of any description, under the plan.

69 Review of treatment

(1) Where a patient is given treatment in accordance with section 65(2) or 66(3)(b) a report on the treatment and the patient's condition shall be given by the responsible medical officer to the Department-

- (a) on the next occasion on which the responsible medical officer furnishes a report under section 20(3) or 23(2) renewing the authority for the detention of the patient; and

(b) at any other time if so required by the Department.

(2) In relation to a patient who is subject to a restriction order, restriction direction or limitation direction, subsection (1) has effect as if-

(a) the references to the Department included references to the Department of Home Affairs; and

(b) subsection (1)(a) required the report to be made-

(i) in the case of treatment in the period of 6 months beginning with the date of the order or direction, at the end of that period;

(ii) in the case of treatment at any subsequent time, on the next occasion on which the responsible medical officer makes a report in respect of the patient under section 48(5), 55(4) or 56(3).

(3) Where the Department receives a report under subsection (1) it shall send copies of the report to the Mental Health Commission and shall take into account any advice on the report or its contents which the Commission may give to it.

[Subs (3) substituted by Mental Health (Amendment) Act 2001 s 1.]

(4) The Department may at any time give notice to the responsible medical officer directing that, subject to section 70, a certificate given in respect of a patient under section 65(2) or 66(3)(b) shall not apply to treatment given to him after a date specified in the notice and sections 65 and 66 shall then apply to any such treatment as if that certificate had not been given.

70 Urgent treatment

(1) Sections 65 and 66 shall not apply to any treatment-

(a) which is immediately necessary to save the patient's life; or

(b) which (not being irreversible) is immediately necessary to prevent a serious deterioration of his condition; or

(c) which (not being irreversible or hazardous) is immediately necessary to alleviate serious suffering by the patient; or

(d) which (not being irreversible or hazardous) is immediately necessary and represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or to others.

(2) Sections 68 and 69(4) shall not preclude the continuation of any treatment or of treatment under any plan pending compliance with section 65 or 66 if the responsible medical officer considers that the discontinuance of the treatment or of treatment under the plan would cause serious suffering to the patient.

(3) For the purposes of this section treatment is irreversible if it has unfavourable irreversible physical or psychological consequences and hazardous if it entails significant physical hazard.

71 Treatment not requiring consent

The consent of a patient shall not be required for any medical treatment given to him for the mental disorder from which he is suffering, not being treatment falling within section 65 or 66, if the treatment is given by or under the direction of the responsible medical officer.

72 Supplementary provisions for Part 4

(1) In this Part '**the responsible medical officer**' means the registered medical practitioner in charge of the treatment of the patient in question and '**hospital**' includes a mental nursing home.

(2) Any certificate for the purposes of this Part shall be in such form as may be prescribed by regulations made by the Department, after consulting the Department of Health,.

[Subs (2) amended by SD155/10 Schs 6 and 11.]

PART 5

MENTAL HEALTH REVIEW TRIBUNAL

Constitution etc.

73 Mental Health Review Tribunal

(1) There shall continue to be a tribunal known as the Mental Health Review Tribunal (**'the Tribunal'**) for the purpose of dealing with applications and references by and in respect of patients under the provisions of this Act.

(2) The provisions of Schedule 3 shall have effect with respect to the constitution of the Tribunal.

Applications and references concerning Part 2 patients

74 Applications to Tribunal

(1) Where-

- (a) a patient is admitted to a hospital in pursuance of an application for admission for assessment; or
- (b) a patient is admitted to a hospital in pursuance of an application for admission for treatment; or
- (c) a patient is received into guardianship in pursuance of a guardianship application; or
- (d) a report is furnished under section 16 in respect of a patient; or
- (e) a patient is transferred from guardianship to a hospital in pursuance of regulations made under section 19; or
- (f) a report is furnished under section 20 in respect of a patient and the patient is not discharged; or
- (g) a report is furnished under section 23(2) in respect of a patient and section 23(5), or section 23(5) and (6)(b), applies; or
- (h) a report is furnished under section 23(2) in respect of a patient and section 23(8) applies in the case of the report; or
- (i) a report is furnished under section 27 in respect of a patient who is detained in pursuance of an application for admission for treatment or is subject to guardianship; or
- (j) a supervision application is accepted in respect of a patient; or
- (k) a report is furnished under section 33 in respect of a patient; or
- (l) a report is furnished under section 34 in respect of a patient; or
- (m) an order is made under section 40 in respect of a patient who is or subsequently becomes liable to be detained or subject to guardianship under Part 2,

an application may be made to the Mental Health Review Tribunal within the relevant period-

- (i) by the patient (except in the cases mentioned in paragraphs (i) and (m)) or, in the cases mentioned in paragraphs (d), (j), (k) and (l), by his nearest relative if he has been (or was entitled to be) informed under this Act of the report or acceptance, and
- (ii) in the cases mentioned in paragraphs (i) and (m), by his nearest relative.

(2) In subsection (1) 'the relevant period' means-

- (a) in the case mentioned in paragraph (a), 14 days beginning with the day on which the patient is admitted as so mentioned;
- (b) in the case mentioned in paragraph (b), 6 months beginning with the day on which the patient is admitted as so mentioned;
- (c) in the cases mentioned in paragraphs (c) and (j), 6 months beginning with the day on which the application is accepted;
- (d) in the cases mentioned in paragraphs (d), (h), (i) and (k), 28 days beginning with the day on which the applicant is informed that the report has been furnished;
- (e) in the case mentioned in paragraph (e), 6 months beginning with the day on which the patient is transferred;
- (f) in the case mentioned in paragraph (f) or (g), the period or periods for which authority for the patient's detention or guardianship is renewed by virtue of the report;

- (g) in the case mentioned in paragraph (l), the further period for which the patient is made subject to after-care under supervision by virtue of the report;
- (h) in the case mentioned in paragraph (m), 12 months beginning with the date of the order, and in any subsequent period of 12 months during which the order continues in force.

(3) Section 43 applies for the purposes of this section as it applies for the purposes of Part 2.

75 References to Tribunal concerning Part 2 patient

(1) The Department may, if it thinks fit, at any time refer to the Tribunal the case of any patient who is liable to be detained or subject to guardianship or after-care under supervision under Part 2.

(2) For the purpose of furnishing information for the purposes of a reference under subsection (1) any registered medical practitioner authorised by or on behalf of the patient may, at any reasonable time, visit the patient and examine him in private and require the production of and inspect any records relating to the detention or treatment of the patient in any hospital or to any after-care services provided for the patient under section 115.

(3) Section 43 applies for the purposes of this section as it applies for the purposes of Part 2.

76 Duty of managers of hospitals to refer cases to Tribunal

(1) Where a patient who is admitted to a hospital in pursuance of an application for admission for treatment or a patient who is transferred from guardianship to hospital does not exercise his right to apply to the Tribunal under section 74(1) by virtue of his case falling within paragraph (b) or, as the case may be, paragraph (e) of that section, the managers of the hospital shall at the expiration of the period for making such an application refer the patient's case to the Tribunal unless an application or reference in respect of the patient has then been made under section 74(1) by virtue of his case falling within paragraph (d), (i) or (m) of that section or under section 75(1).

(2) If the authority for the detention of a patient in a hospital is renewed under section 20 or 23 and a period of 3 years (or, if the patient has not attained the age of 16 years, one year) has elapsed since his case was last considered by the Tribunal, whether on his own application or otherwise, the managers of the hospital shall refer his case to the Tribunal.

(3) For the purpose of furnishing information for the purposes of any reference under this section, any registered medical practitioner authorised by or on behalf of the patient may at any reasonable time visit and examine the patient in private and require the production of and inspect any records relating to the detention or treatment of the patient in any hospital or to any after-care services provided for the patient under section 115.

(4) The Department may by order vary the length of the periods mentioned in subsection (2).

(5) For the purposes of subsection (1) a person who applies to the Tribunal but subsequently withdraws his application shall be treated as not having exercised his right to apply, and where a person withdraws his application on a date after the expiration of the period mentioned in that subsection, the managers shall refer the patient's case as soon as possible after that date.

Applications and references concerning Part 3 patients

77 Applications to Tribunal concerning patients subject to hospital and guardianship orders

(1) Without prejudice to any provision of section 74(1) as applied by section 47(4), an application to a Mental Health Review Tribunal may also be made-

- (a) in respect of a patient admitted to a hospital in pursuance of a hospital order, by the nearest relative of the patient in the period between the expiration of 6 months and the

expiration of 12 months beginning with the date of the order and in any subsequent period of 12 months; and

- (b) in respect of a patient placed under guardianship by a guardianship order-
 - (i) by the patient, within the period of 6 months beginning with the date of the order;
 - (ii) by the nearest relative of the patient, within the period of 12 months beginning with the date of the order and in any subsequent period of 12 months.

(2) Where a person detained in a hospital-

- (a) is treated as subject to a hospital order or transfer direction by virtue of section 48(4) or 89(2) or section 36(5) of the Criminal Jurisdiction Act 1993, or
- (b) is subject to a direction having the same effect as a hospital order by virtue of section 52(2), 53(3), 54(3) or 56(2),

then, without prejudice to any provision of Part 2 as applied by section 47, that person may make an application to the Tribunal in the period of 6 months beginning with the date of the order or direction mentioned in paragraph (a) or, as the case may be, the date of the direction mentioned in paragraph (b).

78 Applications to Tribunal concerning restricted patients

A patient who is a restricted patient within the meaning of section 87 and is detained in a hospital may apply to the Tribunal-

- (a) in the period between the expiration of 6 months and the expiration of 12 months beginning with the date of the relevant hospital order, transfer direction or limitation direction; and
- (b) in any subsequent period of 12 months.

79 References concerning restricted patients

(1) The Department of Home Affairs may at any time refer the case of a restricted patient to the Tribunal.

(2) The Department of Home Affairs shall refer to the Tribunal the case of any restricted patient detained in a hospital whose case has not been considered by the Tribunal, whether on his own application or otherwise, within the last 3 years.

(3) The Department of Home Affairs may by order vary the length of the period mentioned in subsection (2).

Discharge of patients

80 Powers of Tribunal

(1) Where application is made to the Tribunal by or in respect of a patient who is liable to be detained under this Act, the Tribunal may in any case direct that the patient be discharged, and-

- (a) the Tribunal shall direct the discharge of a patient liable to be detained under section 2 if they are not satisfied-
 - (i) that he is then suffering from mental disorder or from mental disorder of a nature or degree which warrants his detention in a hospital for assessment (or for assessment followed by medical treatment) for at least a limited period; or
 - (ii) that his detention as aforesaid is justified in the interests of his own health or safety or with a view to the protection of other persons;
- (b) the Tribunal shall direct the discharge of a patient liable to be detained otherwise than under section 2 if they are not satisfied-
 - (i) that he is then suffering from mental illness, psychopathic disorder, severe mental impairment or mental impairment or from any of those forms of disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment; or

- (ii) that it is necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment; or
- (iii) in the case of an application by virtue of section 77(1)(i), that the patient, if released, would be likely to act in a manner dangerous to other persons or to himself.

[Subs (1) substituted by Tribunals Act 2006 Sch 3.]

(2) In determining whether to direct the discharge of a patient detained otherwise than under section 2 in a case not falling within subsection (1)(b), the Tribunal shall have regard-

- (a) to the likelihood of medical treatment alleviating or preventing a deterioration of the patient's condition; and
- (b) in the case of a patient suffering from mental illness or severe mental impairment, to the likelihood of the patient, if discharged, being able to care for himself, to obtain the care he needs or to guard himself against serious exploitation.

(3) The Tribunal may under subsection (1) direct the discharge of a patient on a future date specified in the direction; and where the Tribunal do not direct the discharge of a patient under that subsection they may-

- (a) with a view to facilitating his discharge on a future date, recommend that he be granted leave of absence or transferred to another hospital or into guardianship; and
- (b) further consider his case in the event of any such recommendation not being complied with.

(4) Where, in the case of an application to the Tribunal by or in respect of a patient who is liable to be detained in pursuance of an application for admission for treatment or by virtue of an order or direction for his admission or removal to hospital under Part 3, the Tribunal do not direct the discharge of the patient under subsection (1), the Tribunal may-

- (a) recommend that the responsible medical officer consider whether to make a supervision application in respect of the patient; and
- (b) further consider the case in the event that no such application is made.

(5) Where application is made to the Tribunal by or in respect of a patient who is subject to guardianship under this Act, the Tribunal may in any case direct that the patient be discharged, and shall so direct if they are satisfied-

- (a) that he is not then suffering from mental illness, psychopathic disorder, severe mental impairment or mental impairment; or
- (b) that it is not necessary in the interests of the welfare of the patient, or for the protection of other persons, that the patient should remain under such guardianship.

(6) Where application is made to the Tribunal by or in respect of 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), the Tribunal may in any case direct that the patient shall cease to be so subject (or not become so subject), and shall so direct if they are satisfied-

- (a) in a case where the patient has not yet left hospital, that the conditions set out in section 28(4) are not complied with; or
- (b) in any other case, that the conditions set out in section 34(4) are not complied with.

(7) Where application is made to the Tribunal under any provision of this Act by or in respect of a patient and the Tribunal do not direct that the patient be discharged or, if he is (or is to be) subject to after-care under supervision, that he cease to be so subject (or not become so subject), the Tribunal may, if satisfied that the patient is suffering from a form of mental disorder other than the form specified in the application, order or direction relating to him, direct that that application, order or direction be amended in such a way as appears to the Tribunal to be appropriate.

(8) Subsections (1) to (7) apply in relation to references to the Tribunal as they apply in

relation to applications made to the Tribunal by or in respect of a patient.

(9) Subsection (1) does not apply in the case of a restricted patient except as provided in sections 81 and 82.

81 Power to discharge restricted patients

(1) Where an application to the Tribunal is made by a restricted patient who is subject to a restriction order, or where the case of such a patient is referred to the Tribunal, they shall direct the absolute discharge of the patient if-

- (a) they are not satisfied as to the matters mentioned in section 80(1)(b)(i) or (ii); and
- (b) they are satisfied that it is not appropriate for the patient to remain liable to be recalled to hospital for further treatment.

[Subs (1) substituted by Tribunals Act 2006 Sch 3.]

(2) Where in the case of any such patient as is mentioned in subsection (1), subsection (1)(a) applies but subsection (1)(b) does not apply, the Tribunal shall direct the conditional discharge of the patient.

[Subs (2) substituted by Tribunals Act 2006 Sch 3.]

(3) Where a patient is absolutely discharged under this section he shall thereupon cease to be liable to be detained by virtue of the relevant hospital order, and the restriction order shall cease to have effect accordingly.

(4) Where a patient is conditionally discharged under this section-

- (a) he may be recalled by the Department of Home Affairs under section 49(3) as if he had been conditionally discharged under section 49(2); and
- (b) the patient shall comply with such conditions (if any) as may be imposed at the time of discharge by the Tribunal or at any subsequent time by the Department of Home Affairs.

(5) The Department of Home Affairs may from time to time vary any condition imposed (whether by the Tribunal or by that Department) under subsection (4).

(6) Where a restriction order in respect of a patient ceases to have effect after he has been conditionally discharged under this section the patient shall, unless previously recalled, be deemed to be absolutely discharged on the date when the order ceases to have effect and shall cease to be liable to be detained by virtue of the relevant hospital order.

(7) The Tribunal may defer a direction for the conditional discharge of a patient until such arrangements as appear to the Tribunal to be necessary for that purpose have been made to their satisfaction; and where by virtue of any such deferment no direction has been given on an application or reference before the time when the patient's case comes before the Tribunal on a subsequent application or reference, the previous application or reference shall be treated as one on which no direction under this section can be given.

(8) This section is without prejudice to section 49.

82 Restricted patients subject to restriction directions

(1) Where an application to the Tribunal is made by a restricted patient who is subject to a restriction direction or limitation direction, or where the case of such a patient is referred to them, the Tribunal-

- (a) shall notify the Department of Home Affairs whether, in their opinion, the patient would, if subject to a restriction order, be entitled to be absolutely or conditionally discharged under section 81; and
- (b) if they notify that Department that the patient would be entitled to be conditionally discharged, may recommend that in the event of his not being discharged under this section he should continue to be detained in hospital.

(2) If in the case of a patient not falling within subsection (4)-

- (a) the Tribunal notify the Department of Home Affairs that the patient would be entitled to be absolutely or conditionally discharged; and
- (b) within the period of 90 days beginning with the date of that notification that Department

gives notice to the Tribunal that the patient may be so discharged, the Tribunal shall direct the absolute or, as the case may be, the conditional discharge of the patient.

(3) Where a patient continues to be liable to be detained in a hospital at the end of the period referred to in subsection (2)(b) because the Department of Home Affairs has not given the notice there mentioned, the managers of the hospital shall, unless the Tribunal have made a recommendation under subsection (1)(b), transfer the patient to a prison or other institution in which he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed.

(4) If, in the case of a patient who is subject to a transfer direction under section 54, the Tribunal notify the Department of Home Affairs that the patient would be entitled to be absolutely or conditionally discharged, that Department shall, unless the Tribunal have made a recommendation under subsection (1)(b), by warrant direct that the patient be remitted to a prison or other institution in which he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed.

(5) Where a patient is transferred or remitted under subsection (3) or (4) the relevant transfer direction and the restriction direction, or the relevant hospital direction and the limitation direction, as the case may be, shall cease to have effect on his arrival in the prison or other institution.

(6) Subsections (3) to (8) of section 81 have effect in relation to this section as they have effect in relation to that section, taking references to the relevant hospital order and the restriction order as references to the transfer direction and the restriction direction.

(7) This section is without prejudice to sections 57 to 60 in their application to patients who are not discharged under this section.

83 Applications and references concerning conditionally discharged restricted patients

(1) Where a restricted patient has been conditionally discharged under section 49(2), 81 or 82, and is subsequently recalled to hospital-

- (a) the Department of Home Affairs shall, within one month of the day on which the patient returns or is returned to hospital, refer his case to the Tribunal; and
- (b) section 78 applies to the patient as if the relevant hospital order, transfer direction or limitation direction had been made on that day.

(2) Where a restricted patient has been conditionally discharged as aforesaid but has not been recalled to hospital he may apply to the Tribunal-

- (a) in the period between the expiration of 12 months and the expiration of 2 years beginning with the date on which he was conditionally discharged; and
- (b) in any subsequent period of 2 years.

(3) Sections 81 and 82 do not apply to an application under subsection (2) but on any such application the Tribunal may-

- (a) vary any condition to which the patient is subject in connection with his discharge or impose any condition which might have been imposed in connection therewith; or
- (b) direct that the restriction order or restriction direction to which he is subject shall cease to have effect;

and if the Tribunal give a direction under paragraph (b) the patient shall cease to be liable to be detained by virtue of the relevant hospital order or transfer direction.

General

84 Visiting and examination of patients

(1) For the purpose of advising whether an application to the Tribunal should be made by or in respect of a patient who is liable to be detained or subject to guardianship or to after-care under supervision (or, if he has not left hospital, is to be subject to after-care under

supervision after he leaves hospital) under Part 2 or of furnishing information as to the condition of a patient for the purposes of such an application, any registered medical practitioner authorised by or on behalf of the patient or other person who is entitled to make or has made the application-

- (a) may at any reasonable time visit the patient and examine him in private, and
- (b) may require the production of and inspect any records relating to the detention or treatment of the patient in any hospital or to any after-care services provided for the patient under section 115.

(2) Section 43 applies for the purposes of this section as it applies for the purposes of Part 2.

85 General provisions concerning Tribunal applications

(1) No application shall be made to the Tribunal by or in respect of a patient except in such cases and at such times as are expressly provided by this Act.

(2) Where under this Act any person is authorised to make an application to the Tribunal within a specified period, not more than one such application shall be made by that person within that period but for that purpose there shall be disregarded any application which is withdrawn in accordance with rules made under section 86.

(3) An application to the Tribunal authorised to be made by or in respect of a patient under this Act shall be made by notice in writing addressed to the Tribunal.

86 Procedure of Tribunal

(1) The Deemsters may make rules with respect to the making of applications to the Tribunal and with respect to the proceedings of the Tribunal and matters incidental to or consequential on such proceedings.

(2) Rules made under this section may in particular make provision-

- (a) for enabling the Tribunal, or the chairman of the Tribunal, to postpone the consideration of any application by or in respect of a patient, or of any such application of any specified class, until the expiration of such period (not exceeding 12 months) as may be specified in the rules from the date on which an application by or in respect of the same patient was last considered and determined by the Tribunal under this Act;
- (b) for restricting the persons qualified to serve as members of the Tribunal for the consideration of any application, or of an application of any specified class;
- (c) for enabling the Tribunal to dispose of an application without a formal hearing where such a hearing is not requested by the applicant or it appears to the Tribunal that such a hearing would be detrimental to the health of the patient;
- (d) 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;
- (e) for regulating the circumstances in which, and the persons by whom, applicants and patients in respect of whom applications are made to the Tribunal may, if not desiring to conduct their own case, be represented for the purposes of those applications;
- (f) for regulating the methods by which information relevant to an application may be obtained by or furnished to the Tribunal, and in particular for authorising the members of the Tribunal, or any one or more of them, to visit and interview in private any patient by or in respect of whom an application has been made;
- (g) for making available to any applicant, and to any patient in respect of whom an application is made to the Tribunal, copies of any documents obtained by or furnished to the Tribunal in connection with the application, and a statement of the substance of any oral information so obtained or furnished except where the Tribunal considers it undesirable in the interests of the patient or for other special reasons;
- (h) for requiring the Tribunal, if so requested in accordance with the rules, to furnish such

statements of the reasons for any decision given by the Tribunal as may be prescribed by the rules, subject to any provision made by the rules for withholding such a statement from a patient or any other person in cases where the Tribunal considers that furnishing it would be undesirable in the interests of the patient or for other special reasons;

- (i) for conferring on the Tribunal such ancillary powers as the Deemsters think necessary for the purposes of the exercise of the Tribunal's functions under this Act;
- (j) for enabling any functions of the Tribunal which relate to matters preliminary or incidental to an application to be performed by the chairman of the Tribunal.

(3) Subsections (1) and (2) apply in relation to references to the Mental Health Review Tribunal as they apply in relation to applications to the Tribunal by or in respect of patients.

(4) Any functions conferred on the chairman of the Tribunal by rules under this section may, if for any reason he is unable to act, be exercised by another member of that Tribunal appointed by him for the purpose.

(5) The Tribunal may, and if so required by the High Court shall, state in the form of a special case for determination by the High Court any question of law which may arise before them.

(6) The Arbitration Act 1976 does not apply to any proceedings before the Tribunal except so far as any provisions of that Act may be applied, with or without modifications, by rules made under this section.

87 Interpretation of Part 5

(1) In this Part **'restricted patient'** means a patient who is subject to a restriction order, restriction direction or limitation direction and this Part, subject to the provisions of this section, has effect in relation to any person who-

- (a) is subject to a direction which by virtue of section 52(2) has the same effect as a hospital order and a restriction order; or
- (b) is treated as subject to a hospital order and a restriction order by virtue of an order under section 36(5) of the Criminal Jurisdiction Act 1993;
- (c) is treated as subject to a hospital order and a restriction order or to a transfer direction and a restriction direction by virtue of section 89(2),

as it has effect in relation to a restricted patient.

(2) In this Part **'the relevant hospital order'**, **'the relevant transfer direction'** and **'the relevant hospital direction'**, in relation to a restricted patient, mean the hospital order, transfer direction or hospital direction by virtue of which he is liable to be detained in a hospital; but-

- (a) in the case of a person within subsection (1)(a), references in this Part to the relevant hospital order or restriction order shall be construed as references to the direction there referred to;
- (b) in the case of a person within subsection (1)(b), references in this Part to the relevant hospital order or restriction order shall be construed as references to the order under the provisions there mentioned;
- (c) in the case of a person within subsection (1)(c), references in this Part to the relevant hospital order, the relevant transfer direction, the restriction order or the restriction direction or to a transfer direction under section 54 shall be construed as references to the hospital order, transfer direction, restriction order, restriction direction or transfer direction under that section to which that person is treated as subject by virtue of the provisions there mentioned in subsection (1)(c).

(3) In this Part, unless the context otherwise requires, **'hospital'** means a hospital, and **'the responsible medical officer'** means the responsible medical officer, within the meaning of Part 2.

PART 6

TRANSFER OF PATIENTS

[Part 6 substituted by Mental Health (Amendment) Act 2006 s 1.]

88 Introductory

(1) In this Part-

'appropriate authority', in relation to a relevant territory, means such authority exercising functions in that territory as may be prescribed;

'prescribed' means prescribed by regulations;

'regulations' means regulations made by the Department, after consulting the Department of Health;

[Definition of 'regulations' amended by SD155/10 Schs 6 and 11.]

'relevant territory' means such of the following territories as may be prescribed (either generally or in relation to any specified provision of this Part)-

- (a) England and Wales;
- (b) Scotland;
- (c) Northern Ireland;
- (d) the Bailiwick of Jersey;
- (e) the Bailiwick of Guernsey.

(2) References in this Part to a hospital, being a hospital in the Island, shall be construed as references to a hospital within the meaning of Part 2.

(3) Section 43 has effect as if references in that section to Part 2 included references to this Part, so far as this Part applies to patients removed to the Island thereunder.

[S 88 substituted by Mental Health (Amendment) Act 2006 s 1.]

89 Removal of certain patients to relevant territory

(1) This section applies to a patient who-

- (a) is for the time being liable to be detained under this Act;
- (b) is for the time being subject to guardianship by virtue of a guardianship application under section 7 or a guardianship order; or
- (c) in respect of whom a supervision and treatment order under section 54(1)(ca) of the Criminal Jurisdiction Act 1993 is for the time being in force,

other than a patient who is liable to be detained by virtue of paragraph 1 or 3 of Schedule 2A to the Summary Jurisdiction Act 1989 or section 54(4) of or Schedule 1A to the said Act of 1993 (interim hospital orders and remands to hospital).

(2) If it appears to the Department that-

- (a) suitable arrangements have been made for a patient's treatment, assessment, care, supervision or control in a relevant territory; and
- (b) it is in the interests of the patient to remove the patient to a relevant territory,

the Department may authorise the removal of the patient to that territory and may give any necessary directions for the patient's conveyance to the destination.

(3) Where-

- (a) a person is subject to a hospital order with a restriction order; and
- (b) the Department has authorised, or intends to authorise, the removal of that person to a relevant territory under subsection (2),

the Department of Home Affairs may direct that the person be kept in custody in such place of safety as that Department may direct until such removal.

(4) In the case of a patient who is subject to a restriction order, restriction direction or limitation direction-

- (a) subsection (2) has effect with the omission of paragraph (b); and
- (b) if the order or direction was of limited duration, that order or direction and

any related hospital order, transfer direction or hospital direction shall continue in force so as to apply to the patient if the patient returns to the Island at any time before the end of the period for which it would have continued in force.

(5) Except as provided by subsection (4)(b), where the patient is removed from the Island in pursuance of subsection (2), any application, order or direction by virtue of which the patient is liable to be detained or subject to guardianship or the patient's discharge is restricted, or any supervision and treatment order, as the case may be, shall cease to have effect.

[S 89 substituted by Mental Health (Amendment) Act 2006 s 1.]

90 Detained patient removed from relevant territory

(1) The Department, after consulting the Department of Health, may by regulations provide that a specified order, direction or other act authorising a patient to be detained or restricting a patient's discharge under the law of a relevant territory is to be treated for the purposes of this Act as equivalent to a specified application, order or direction under Part 2 or 3, or under the Summary Jurisdiction Act 1989 or the Criminal Jurisdiction Act 1993, by virtue of which a patient is liable to be detained or the patient's discharge is restricted, as the case may be.

[Subs (1) amended by SD155/10 Schs 6 and 11.]

(2) Subsections (3) to (5) apply to a patient authorised to be detained under the law of a relevant territory who is removed to the Island from that territory under a provision corresponding or similar to section 89.

(3) The patient shall be treated for the purposes of this Act as if-

- (a) the patient were suffering from such form of mental disorder, and
- (b) on the date of arrival in the Island the patient had been admitted to such hospital, in pursuance of such application, order or direction made or given on that date,

as is recorded in that patient's case in accordance with regulations; and references in this Act to the form or forms of mental disorder specified in the relevant application, order or direction shall be construed as including references to the form or forms of mental disorder so recorded.

(4) Where the patient was immediately before removal liable to be detained by virtue of an order, direction or other act made, given or done-

- (a) when a sentence of imprisonment, detention or custody was imposed by a court in the relevant territory, or
- (b) while the patient was serving such a sentence,

the patient shall be treated as if the sentence were a sentence of custody imposed by a court in the Island.

(5) Where the patient was immediately before removal subject to an order, direction or other act restricting the discharge of the patient, being an order, direction or act of limited duration, the order or direction to which the patient is subject by virtue of subsection (3) shall expire on the date on which the first-mentioned order, direction or act would have expired if the patient had not been removed.

[S 90 substituted by Mental Health (Amendment) Act 2006 s 1.]

91 Other patients removed from relevant territory

(1) The Department, after consulting the Department of Health, may by regulations specify any kind of care, supervision or control of patients under the law of a relevant territory (an 'equivalent regime') which is to be treated for the purposes of this section as equivalent to-

- (a) guardianship by virtue of a guardianship application under section 7 or a guardianship order; or
- (b) supervision and treatment by virtue of a supervision and treatment order under section 54(1)(ca) of the Criminal Jurisdiction Act 1993.

[Subs (1) amended by SD155/10 Schs 6 and 11.]

(2) A patient subject to an equivalent regime in a relevant territory who is removed to the Island under a provision corresponding or similar to section 89 shall be treated for the purposes of this Act as if-

- (a) the patient were suffering from such form of mental disorder as is recorded in that patient's case in accordance with regulations,

- (b) on the date of arrival at the place where the patient is to reside the patient had been so received in pursuance of a guardianship application, guardianship order or supervision and treatment order, as the case may be, and
- (c) the application had been accepted or the order had been made, as the case may be, on that date;

and references in this Act to the form or forms of mental disorder specified in the relevant application or order shall be construed as including references to the form or forms of mental disorder so recorded.

[S 91 substituted by Mental Health (Amendment) Act 2006 s 1.]

92 Transfer of responsibility for certain patients

(1) If it appears to the Department of Home Affairs, in the case of a patient who-

- (a) is subject to a restriction order or restriction direction;
- (b) has been conditionally discharged under section 49 or 81; and
- (c) intends to remove, or has removed, from the Island to a relevant territory,

that a transfer under this subsection would be in the interests of the patient, that Department may, with the consent of the appropriate authority, transfer responsibility for the patient to that authority.

(2) A patient responsibility for whom is transferred to the Department of Home Affairs by an appropriate authority, with the consent of that Department, under a provision corresponding or similar to subsection (1) shall be treated-

- (a) as if on the date of the transfer the patient had been conditionally discharged under section 49 or 81; and
- (b) as if the patient were subject to a restriction order or restriction direction.

(3) Where a patient referred to in subsection (2) was immediately before the transfer subject to an order or direction restricting the patient's discharge, being an order or direction of limited duration, the restriction order or restriction direction to which the patient is subject by virtue of subsection (2) shall expire on the date on which the first-mentioned order or direction would have expired if the transfer had not been made.

[S 92 substituted by Mental Health (Amendment) Act 2006 s 1.]

93 Patients subject to other regimes

(1) The Department, after consulting the Department of Health, may by regulations specify any form of care, supervision or control of patients under the law of a relevant territory which is to be treated for the purposes of this section as equivalent to after-care under supervision (an 'equivalent regime').

[Subs (1) amended by SD155/10 Schs 6 and 11.]

(2) A supervision application may be made in respect of a patient who-

- (a) is subject in a relevant territory to an equivalent regime; and
- (b) intends to remove, or has removed, from that territory in order to reside in the Island.

(3) The provisions of this Act relating to supervision applications, or patients subject to after-care under supervision, shall apply in relation to a patient in respect of whom a supervision application is or is to be made by virtue of this section, subject to such modifications as are prescribed.

(4) The Department, after consulting the Department of Health, may by regulations provide that, subject to such conditions as are prescribed, a patient who-

- (a) is subject to after-care under supervision; and
- (b) intends to remove, or has removed, from the Island in order to reside in a relevant territory,

shall cease to be so subject.

[S 93 substituted by Mental Health (Amendment) Act 2006 s 1. Subs (4) amended by SD155/10 Schs 6 and 11.]

94 Removal of foreign patients

(1) This section applies to any patient who is neither a British citizen nor a Commonwealth citizen having the right of abode in the Island by virtue of section 2(1)(b) of the Immigration Act 1971 (an Act of Parliament), as it has effect in the Island, being a patient who is receiving treatment for mental illness as an in-patient in a hospital in the Island and is detained pursuant to-

(a) an application for admission for treatment;
(b) a hospital order; or
(c) an order or direction under any enactment having the same effect as a hospital order, other than a patient who is liable to be detained by virtue of paragraph 1 or 3 of Schedule 2A to the Summary Jurisdiction Act 1989 or section 54(4) of or Schedule 1A to the said Act of 1993 (interim hospital orders and remands to hospital).

(2) If it appears to the Department that suitable arrangements have been made for the removal of a patient to whom this section applies to a country or territory outside the British Islands and for the patient's treatment, assessment, care, supervision or control there and that it is in the interests of the patient to remove the patient, the Department may, subject to subsection (3)-

(a) by warrant authorise the removal of the patient from the place where the patient is receiving treatment as mentioned in subsection (1); and
(b) give such directions as the Department thinks fit for the conveyance of the patient to the patient's destination in that country or territory and for the patient's detention in any place or on board any ship or aircraft until arrival at any specified port or place in any such country or territory.

(3) The Department shall not exercise its powers under subsection (2) in the case of any patient except with the approval of the Tribunal.

(4) Where the Department exercises its powers under subsection (2) in respect of a patient subject to a restriction order or restriction direction of limited duration, that order or direction and any related hospital order or transfer direction shall continue in force so as to apply to the patient if the patient returns to the Island at any time before the end of the period for which it would have continued in force.

(5) Except as provided by subsection (4), where a patient liable to be detained by virtue of an application, order or direction under Part 2 or 3 or under the Criminal Jurisdiction Act 1993 or the Summary Jurisdiction Act 1989 is removed from the Island in pursuance of arrangements referred to in subsection (2), the application, order or direction shall cease to have effect when the patient is duly received into a hospital or other institution in pursuance of those arrangements.

[S 94 substituted by Mental Health (Amendment) Act 2006 s 1.]

95 Powers of detention

(1) Any person who under any provision corresponding or similar to section 18 or 134 may be taken into custody in a relevant territory may be taken into custody in, and returned to the territory in question from, the Island by an approved social worker or a constable.

(2) A person shall not be returned to a relevant territory under subsection (1) unless the Department is satisfied that the return is appropriate in the circumstances and has authorised it.

(3) A person who is returned to a relevant territory under subsection (1) shall be conveyed in accordance with any necessary directions by the Department.

(4) A patient being conveyed to-

(a) a hospital or other institution under section 90(2); or
(b) a place referred to in section 91(2)(b),

shall be deemed to be in legal custody, and section 134 shall apply to the patient as if the patient were in legal custody by virtue of section 133.

(5) The reference to an approved social worker or a constable in subsection (1), and in section 134 as applied by subsection (4), includes a person of such a description, or holding

such an office or exercising such functions in a relevant territory, as may be prescribed.

[S 95 substituted by Mental Health (Amendment) Act 2006 s 1.]

96 and 97

[Ss 96 and 97 repealed by Mental Health (Amendment) Act 2006 s 1.]

PART 7

MANAGEMENT OF PROPERTY AND AFFAIRS OF PATIENTS

98 Exercise of judge's functions: 'the patient'

(1) The functions expressed to be conferred by this Part on the judge shall, subject to any directions of the President of the High Court, be exercisable by any judge of the High Court.

(2) The functions of the judge under this Part shall be exercisable where, after considering medical evidence, he is satisfied that a person is incapable, by reason of mental disorder, of managing and administering his property and affairs; and a person as to whom the judge is so satisfied is referred to in this Part as a 'patient'.

99 General functions of the judge with respect to property and affairs of patient

(1) The judge may, with respect to the property and affairs of a patient, do or secure the doing of all such things as appear necessary or expedient-

- (a) for the maintenance or other benefit of the patient,
- (b) for the maintenance or other benefit of members of the patient's family,
- (c) for making provision for other persons or purposes for whom or which the patient might be expected to provide if he were not mentally disordered, or
- (d) otherwise for administering the patient's affairs.

(2) In the exercise of the powers conferred by this section regard shall be had first of all to the requirements of the patient, and, subject thereto the judge shall, in administering a patient's affairs, have regard to the interests of creditors and also to the desirability of making provision for obligations of the patient notwithstanding that they may not be legally enforceable.

100 Powers of the judge as to patient's property and affairs

(1) Without prejudice to the generality of section 99, the judge shall have power to make such orders and give such directions and authorities as he thinks fit for the purposes of that section and in particular may for those purposes make orders or give directions or authorities for-

- (a) the control (with or without the transfer or vesting of property or the payment into or lodgement in the High Court of money or securities) and management of any property of the patient;
- (b) the sale, exchange, charging or other disposition of or dealing with any property of the patient;
- (c) the acquisition of any property in the name or on behalf of the patient;
- (d) the settlement of any property of the patient, or the gift of any property of the patient to any such persons or for any such purposes as are mentioned in section 99(1)(b) and (c);
- (e) the execution for the patient of a will making any provision (whether by way of disposing of property or exercising a power or otherwise) which could be made by a will executed by the patient if he were not mentally disordered;
- (f) the carrying on by a suitable person of any profession, trade or business of the patient;
- (g) the dissolution of a partnership of which the patient is a member;
- (h) the carrying out of any contract entered into by the patient;
- (i) the conduct of legal proceedings in the name of the patient or on his behalf;
- (j) the reimbursement out of the property of the patient, with or without interest, of money applied by any person either in payment of the patient's debts (whether legally enforceable or not) or for the maintenance or other benefit of the patient or members of his family or in making provision for other persons or purposes for whom or which he might be expected to provide if he were not mentally disordered;

(k) the exercise of any power (including a power to consent) vested in the patient, whether beneficially, or as guardian or trustee, or otherwise.

(2) If under subsection (1) provision is made for the settlement of any property of a patient, or the exercise of a power vested in a patient of appointing trustees or retiring from a trust, the judge may also make as respects the property settled or trust property such consequential vesting or other orders as the case may require, including (in the case of the exercise of such a power) any order which could have been made in such a case under Part IV of the Trustee Act 1961.

(3) Where under this section a settlement has been made of any property of a patient, and the judge is satisfied, at any time before the death of the patient, that any material fact was not disclosed when the settlement was made, or that there has been any substantial change in circumstances, he may by order vary the settlement in such manner as he thinks fit, and give any consequential directions.

(4) The power of the judge to make or give an order, direction or authority for the execution of a will for a patient-

(a) shall not be exercisable at any time when the patient is a minor, and

(b) shall not be exercised unless the judge has reason to believe that the patient is incapable of making a valid will for himself.

(5) Subject to rules of court, any power exercisable by the judge under subsection (1)(a), (b), (c) or (h) may be exercised by the Attorney General; but the powers exercisable by virtue of this subsection shall not extend to authorising the sale, exchange, charging or other disposition of or dealing with any land of the patient.

101 Supplementary provisions as to wills executed under s100

(1) Where under section 100(1) the judge makes or gives an order, direction or authority requiring or authorising a person (in this section referred to as 'the authorised person') to execute a will for a patient, any will executed in pursuance of that order, direction or authority shall be expressed to be signed by the patient acting by the authorised person, and shall be-

(a) signed by the authorised person with the name of the patient, and with his own name, in the presence of 2 or more witnesses present at the same time, and

(b) attested and subscribed by those witnesses in the presence of the authorised person, and

(c) sealed with the official seal of the High Court.

(2) Subject to the subsection (3), any such will executed in accordance with subsection (1) shall have the same effect for all purposes as if the patient were capable of making a valid will and the will had been executed by him in the manner required by the Wills Act 1985.

(3) So much of subsection (2) as provides for such a will to have effect as if the patient were capable of making a valid will-

(a) shall not have effect in relation to such a will in so far as it disposes of any immovable property, other than immovable property in the Island, and

(b) where at the time when such a will is executed the patient is domiciled in a country or territory outside the Island, shall not have effect in relation to that will in so far as it relates to any other property or matter, except any property or matter in respect of which, under the law of his domicile, any question of his testamentary capacity would fall to be determined in accordance with the law of the Island.

102 Judge's powers in cases of emergency

Where-

(a) it is represented to the judge, and he has reason to believe, that a person may be incapable, by reason of mental disorder, of managing and administering his property and affairs, and

(b) the judge is of the opinion that it is necessary to make immediate provision for any of the matters referred to in section 99,

then pending the determination of the question whether that person is so incapable the judge may exercise in relation to the property and affairs of that person any of the powers conferred on him in relation to the property and affairs of a patient by this Part so far as is requisite for enabling that provision to be made.

103 Power to appoint receiver

(1) The judge may by order appoint as receiver for a patient a person specified in the order or the holder for the time being of an office so specified.

(2) A person appointed as receiver for a patient shall do all such things in relation to the property and affairs of the patient as the judge, in the exercise of the powers conferred on him by sections 99 and 100, orders or directs him to do and may do any such thing in relation to the property and affairs of the patient as the judge, in the exercise of those powers, authorises him to do.

(3) A receiver appointed for any person shall be discharged by order of the judge on the judge being satisfied that that person has become capable of managing and administering his property and affairs, and may be discharged by order of the judge at any time if the judge considers it expedient to do so; and a receiver shall be discharged (without any order) on the death of the patient.

104 Vesting of stock in curator appointed outside Island

(1) Where the judge is satisfied-

- (a) that under the law prevailing in a place outside the Island a person has been appointed to exercise powers with respect to the property or affairs of any other person on the ground (however formulated) that that other person is incapable, by reason of mental disorder, of managing and administering his property and affairs, and
- (b) that having regard to the nature of the appointment and to the circumstances of the case it is expedient that the judge should exercise his powers under this section,

the judge may direct any stock standing in the name of the said other person or the right to receive the dividends from the stock to be transferred into the name of the person so appointed or otherwise dealt with as requested by that person, and may give such directions as the judge thinks fit for dealing with accrued dividends from the stock.

(2) In this section 'stock' includes shares and also any fund, annuity or security transferable in the books kept by any body corporate or unincorporated company or society, or by an instrument of transfer either alone or accompanied by the formalities, and 'dividends' shall be construed accordingly.

105 Preservation of interests in patient's property

(1) Where any property of a person has been disposed of under this Part, and under his will or his intestacy, or by any gift perfected or nomination taking effect on his death, any other person would have taken an interest in the property but for the disposal-

- (a) he shall take the same interest, if and so far as circumstances allow, in any property belonging to the estate of the deceased which represents the property disposed of; and
- (b) if the property disposed of was real property any property representing it shall so long as it remains part of his estate be treated as if it were real property.

(2) The judge, in ordering, directing or authorising under this Part any disposal of property which apart from this section would result in the conversion of personal property into real property, may direct that the property representing the property disposed of shall, so long as it remains the property of the patient or forms part of his estate, be treated as if it were personal property.

(3) References in subsections (1) and (2) to the disposal of property are references to-

- (a) the sale, exchange, charging or other dealing (otherwise than by will) with property other than money,
- (b) the removal of property from one place to another,

- (c) the application of money in acquiring property, or
- (d) the transfer of money from one account to another;

and references to property representing property disposed of shall be construed accordingly and as including the result of successive disposals.

(4) The judge may give such directions as appear to him necessary or expedient for the purpose of facilitating the operation of subsection (1), including the carrying of money to a separate account and the transfer of property other than money.

(5) Where the judge has ordered, directed or authorised the expenditure of money for the carrying out of permanent improvements on, or otherwise for the permanent benefit of, any property of the patient, he may order that the whole or any part of the money expended or to be expended shall be a charge upon the property, whether without interest or with interest at a specified rate; and an order under this subsection may provide for excluding or restricting the operation of subsection (1).

(6) A charge under subsection (5) may be made in favour of such person as may be just, and in particular, where the money charged is paid out of the patient's general estate, may be made in favour of a person as trustee for the patient; but no charge under that subsection shall confer any right of sale or foreclosure during the lifetime of the patient.

106 General powers of the judge with respect to proceedings

(1) For the purposes of any proceedings before him with respect to persons suffering or alleged to be suffering from mental disorder, the judge shall have the same powers as are vested in the High Court in respect of securing the attendance of witnesses and the production of documents.

(2) Subject to the provisions of this section, any act or omission in the course of such proceedings which, if occurring in the course of proceedings in the High Court would have been a contempt of the Court, shall be punishable by the judge in any manner in which it could have been punished by the High Court.

107 Appeals

Subject to and in accordance with rules of court, an appeal shall lie to the Staff of Government Division of the High Court from any decision of the judge.

108 Rules of procedure

(1) The power under section 25 of the High Court Act 1991 to make rules of court includes power to make rules for the purpose of any provision of this Part, and in this Part 'rules of court' shall be construed accordingly.

(2) Proceedings before the judge with respect to persons suffering or alleged to be suffering from mental disorder (in this section referred to as 'proceedings') shall be conducted in accordance with the provisions of rules of court.

(3) Rules of court may make provision as to-

- (a) the carrying out of preliminary or incidental inquiries;
- (b) the persons by whom and manner in which proceedings may be instituted and carried on;
- (c) the persons who are to be entitled to be notified of, to attend, or to take part in proceedings;
- (d) the evidence which may be authorised or required to be given in proceedings and the manner (whether on oath or otherwise and whether orally or in writing) in which it is to be given;
- (e) the administration of oaths and taking of affidavits for the purposes of proceedings; and
- (f) the enforcement of orders made and directions given in proceedings.

(4) Without prejudice to section 106(1), rules of court may make provision for authorising or requiring the attendance and examination of persons suffering or alleged to be suffering from mental disorder, the furnishing of information and the production of documents.

(5) Rules of court may make provision as to the termination of proceedings, whether on the death or recovery of the person to whom the proceedings relate or otherwise, and for the exercise, pending the termination of the proceedings, of powers exercisable under this Part in relation to the property or affairs of a patient.

(6) Rules of court may-

- (a) make provision as to the scale of costs, fees and percentages payable in relation to proceedings, and as to the manner in which and funds out of which such costs, fees and percentages are to be paid;
- (b) contain provision for charging any percentage upon the estate of the person to whom the proceedings relate and for the payment of costs, fees and percentages within such time after the death of the person to whom the proceedings relate or the termination of the proceedings as may be provided by the rules; and
- (c) provide for the remission of fees and percentages.

(7) A charge upon the estate of a person created by virtue of subsection (6) shall not cause any interest of that person in any property to fail or determine or to be prevented from recommencing.

(8) Rules of court may authorise the making of orders for the payment of costs to or by persons attending, as well as persons taking part in, proceedings.

109 Security and accounts

(1) Rules of court may make provision as to the giving of security by a receiver and as to the enforcement and discharge of the security.

(2) It shall be the duty of a receiver to render accounts in accordance with the requirements of rules of court as well after his discharge as during his receivership; and rules of court may make provision for the rendering of accounts by persons other than receivers who are ordered, directed or authorised under this Part to carry out any transaction.

110 Effect and proof of orders etc

Office copies of orders made, directions or authorities given or other instruments issued by the judge shall be admissible in all legal proceedings as evidence of the originals without any further proof.

111 Interpretation of Part 7 etc

(1) In this Part-

'**the judge**' shall be construed in accordance with section 98;

'**patient**' has the meaning given by section 98;

'**property**' includes any thing in action, and any interest in real or personal property;

'**rules of court**' has the meaning given by section 108(1);

'**will**' includes a codicil.

(2) The functions vested in the judge under this Part do not limit the inherent jurisdiction of the High Court in relation to persons suffering from mental disorder.

PART 8

MISCELLANEOUS FUNCTIONS OF DEPARTMENT

Approved social workers

112 Appointment of approved social workers

(1) The Department shall appoint a sufficient number of approved social workers for the purpose of discharging the functions conferred on them by this Act.

(2) No person shall be appointed by the Department as an approved social worker unless he is approved by the Department as having appropriate competence in dealing with persons who are suffering from mental disorder.

113 Powers of entry and inspection

An approved social worker of the Department authorised for the purpose by the Department may at all reasonable times after producing, if asked to do so, some duly

authenticated document showing that he is such a social worker and so authorised, enter and inspect any premises (not being a hospital) in which a mentally disordered patient is living, if he has reasonable cause to believe that the patient is not under proper care.

114 Welfare of certain hospital patients

(1) Where a patient to whom this section applies is admitted to a hospital or nursing home in the Island (whether for treatment for mental disorder or for any other reason) then, without prejudice to its duties in relation to the patient apart from the provisions of this section, the Department shall arrange for visits to be made to him on behalf of the Department, and shall take such other steps in relation to the patient while in the hospital or nursing home as would be expected to be taken by his parents.

(2) This section applies to-

- (a) a minor who is in the care of the Department by virtue of a care order within the meaning of the Children and Young Persons Act 2001;
[Para (a) substituted by Children and Young Persons Act 2001 Sch 12.]
- (b) a person who is subject to the guardianship of the Department under the provisions of this Act;
- (c) a person the functions of whose nearest relative under this Act are for the time being transferred to the Department.

115 After-care

(1) This section applies to persons who are-

- (a) detained under section 3,
- (b) admitted to a hospital in pursuance of a hospital order made under section 54(1) of the Criminal Jurisdiction Act 1993 or paragraph 2 of Schedule 2A to the Summary Jurisdiction Act 1989, or
- (c) transferred to a hospital in pursuance of a transfer direction made under section 53 or 54 or a hospital direction,

and then cease to be detained and (whether or not immediately after so ceasing) leave hospital.

(2) It shall be the duty of the Department, in co-operation with the Department of Health and relevant voluntary agencies, to provide, or to make arrangements for the provision of, after-care services for any person to whom this section applies until such time as the Department is satisfied that the person concerned is no longer in need of such services; but it shall not be so satisfied in the case of a patient who is subject to after-care under supervision at any time while he remains so subject.

[Subs (2) amended by SD155/10 Schs 3, 6 and 11.]

(3) It is the duty of the Department to secure that at all times while a patient is subject to after-care under supervision-

- (a) a person who is a registered medical practitioner approved for the purposes of section 12 as having special experience in the diagnosis or treatment of mental disorder is in charge of the medical treatment as part of the after-care services provided for him under this section; and

[Para (a) amended by SD155/10 Schs 6 and 11.]

- (b) a person professionally concerned with any of the after-care services so provided is supervising him with a view to securing that he receives the after-care services so provided.

(4) Section 43 shall apply for the purposes of this section as it applies for the purposes of Part 2.

Functions of the Department

116 Code of practice

(1) The Department shall issue a code of practice, or approve (with or without modifications) a code of practice issued by the Secretary of State under section 118 of the Mental Health Act 1983 (an Act of Parliament)-

- (a) for the guidance of registered medical practitioners, managers and staff of hospitals and mental nursing homes and approved social workers in relation to the admission of patients to hospitals and mental nursing homes under this Act and to guardianship and after-care under supervision under this Act; and
- (b) for the guidance of registered medical practitioners and members of other professions in relation to the medical treatment of patients suffering from mental disorder.

(2) The code shall, in particular, specify forms of medical treatment in addition to any specified by regulations made for the purposes of section 65 which in the opinion of the Department give rise to special concern and which should accordingly not be given by a registered medical practitioner unless-

- (a) the patient has consented to the treatment (or to a plan of treatment including that treatment), and
- (b) a certificate in writing as to the matters mentioned in section 65(2)(a) and (b) has been given by another registered medical practitioner, being a practitioner nominated under section 120.

(3) Before issuing or approving a code under this section the Department shall consult the Department of Health and the Mental Health Commission and such other bodies as appear to it to be concerned.

[Subs (3) amended by SD155/10 Schs 6 and 11.]

(4) The Department shall lay before Tynwald a code issued or approved under this section.

117 Examination of patients in mental nursing homes

A registered medical practitioner or other person nominated by the Department under section 120, for the purpose of exercising his functions under any provision of Part 4, and any person authorised in that behalf by the Mental Health Commission, for the purpose of any arrangements under section 118 or of any such review as is mentioned in section 119(3)(d), may at any reasonable time-

- (a) visit and interview and, in the case of a registered medical practitioner, examine in private any patient detained in a mental nursing home; and
- (b) require the production of and inspect any records relating to the treatment of the patient in that home.

[S 117 amended by the Mental Health (Amendment) Act 2001 s 1.]

118 General protection of detained patients

(1) The Department shall keep under review the exercise of the powers and the discharge of the duties conferred or imposed by this Act so far as relating to the detention of patients or to patients liable to be detained under this Act and shall make arrangements-

- (a) for persons authorised by the Mental Health Commission to visit and interview in private patients detained under this Act in hospitals and mental nursing homes; and
- (b) for the Mental Health Commission to investigate-
 - (i) any complaint made by a person in respect of a matter that occurred while he was detained under this Act in a hospital or mental nursing home and which he considers has not been satisfactorily dealt with by the managers of that hospital or mental nursing home; and
 - (ii) any other complaint as to the exercise of the powers or the discharge of the duties conferred or imposed by this Act in respect of a person who is or has been so detained.

[Subs (1) substituted by the Mental Health (Amendment) Act 2001 s 1.]

(2) The arrangements made under this section in respect of the investigation of complaints may exclude matters from investigation in specified circumstances and shall not require any person exercising functions under the arrangements to undertake or continue with

any investigation where he does not consider it appropriate to do so.

(3) The powers and duties referred to in subsection (1) do not include any power or duty conferred or imposed by Part 7.

119 Mental Health Commission

(1) There is established a body called the Mental Health Commission ('the Commission'), consisting of such persons as the Department may appoint.

(2) The members of the Commission may include persons nominated under section 120, and shall hold office in accordance with the terms of their appointment.

(3) The functions of the Commission shall be-

- (a) to advise the Department on the making of any nomination under section 120;
- (b) to submit to the Department proposals as to the content of the code of practice to be issued or approved under section 116(1);
- (c) to keep under review any code of practice so issued or approved;
- (d) in accordance with any directions of the Department, to keep under review the care and treatment, or any aspect of the care and treatment, in hospitals and mental nursing homes of patients who are not liable to be detained under this Act; and
- (e) such other functions as the Department may direct.

120 Nomination of independent persons

(1) The Department, after consulting the Department of Health, shall nominate-

- (a) one or more registered medical practitioners, and
- (b) such number of suitably qualified persons (not being registered medical practitioners) as it thinks fit,

for the purpose of exercising functions conferred on such practitioners and other persons by sections 65(2), 66(3), 116(2)(b) and 117.

[Subs (1) amended by the Mental Health (Amendment) Act 2001 s 1 and by SD155/10 Schs 6 and 11.]

(2) The Department shall not nominate under subsection (1) a person who is a member of, or employed by or in the service of, any Department or Statutory Board.

121 Provision of pocket-money for in-patients in hospital

(1) The Department may pay to persons who are receiving treatment as in-patients (whether liable to be detained or not) in hospitals wholly or mainly used for the treatment of persons suffering from mental disorder, such amounts as it thinks fit in respect of their occasional personal expenses where it appears to it that they would otherwise be without resources to meet those expenses.

(2) For the purposes of the NHS Act the making of payments under this section to persons for whom hospital and specialist services are provided under that Act shall be treated as included among those services.

PART 9 OFFENCES

122 Forgery, false statements etc

(1) Any person who, with intent to deceive, forges any document to which this subsection applies, or who uses, allows another person to use, or makes or has in his possession any such document, is guilty of an offence.

(2) Any person who uses, allows another person to use, or makes or has in his possession, any document so closely resembling a document to which this subsection applies as to be calculated to deceive is guilty of an offence.

(3) The documents to which subsections (1) and (2) apply are any documents purporting to be-

- (a) an application under Part 2;
- (b) a medical or other recommendation or report under this Act; and
- (c) any other document required or authorised to be made for any of the purposes of this

Act.

(4) Any person who-

- (a) wilfully makes a false entry or statement in any application, recommendation, report, record or other document required or authorised to be made for any of the purposes of this Act; 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.

(5) Any person guilty of an offence under this section is liable-

- (a) on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both;

[Para (a) amended by Mental Health (Amendment) Act 2006 s 2.]

- (b) on conviction on information, to custody for a term not exceeding 2 years or to a fine, or to both.

[Para (b) amended by Mental Health (Amendment) Act 2006 s 2.]

(6) In this section 'forge' has the same meaning as in the Forgery Act 1952.

123 Ill-treatment of patients

(1) It is an offence for any person who is an officer on the staff of or otherwise employed in, or who is one of the managers of, a hospital or mental nursing home-

- (a) to ill-treat or wilfully to neglect a patient for the time being receiving treatment for mental disorder as an in-patient in that hospital or home; or
- (b) to ill-treat or wilfully to neglect, on the premises of which the hospital or home forms part, a patient for the time being receiving such treatment there as an out-patient.

(2) It is an offence for any individual to ill-treat or wilfully to neglect a mentally disordered patient who is for the time being subject to his guardianship under this Act or otherwise in his custody or care (whether by virtue of any legal or moral obligation or otherwise).

(3) It is an offence for any individual to ill-treat or wilfully to neglect a mentally disordered patient who is for the time being subject to after-care under this Act.

(4) Any person guilty of an offence under this section is liable-

- (a) on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both;

[Para (a) amended by Mental Health (Amendment) Act 2006 s 2.]

- (b) on conviction on information, to custody for a term not exceeding 2 years or to a fine, or to both.

[Para (b) amended by Mental Health (Amendment) Act 2006 s 2.]

(5) No proceedings shall be instituted for an offence under this section except by or with the consent of the Attorney General.

124 Assisting patients to absent themselves without leave

(1) Where any person induces or knowingly assists another person who is liable to be detained in a hospital within the meaning of Part 2 or is subject to guardianship under this Act to absent himself without leave he is guilty of an offence.

(2) Where any person induces or knowingly assists another person who is in legal custody by virtue of section 133 to escape from such custody he is guilty of an offence.

(3) Where any person knowingly harbours a patient who is absent without leave or is otherwise at large and liable to be retaken under this Act or gives him any assistance with intent to prevent, hinder or interfere with his being taken into custody or returned to the hospital or other place where he ought to be he is guilty of an offence.

(4) Any person guilty of an offence under this section is liable-

- (a) on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both;

[Para (a) amended by Mental Health (Amendment) Act 2006 s 2.]

- (b) on conviction on information, to custody for a term not exceeding 2 years or to a fine, or to both.

[Para (b) amended by Mental Health (Amendment) Act 2006 s 2.]

124A Assisting patients in other jurisdictions to absent themselves without leave

(1) Where a person in a relevant territory is under or by virtue of a relevant provision-

- (a) liable to be detained in a hospital, or
- (b) subject to guardianship, or to measures of control similar to guardianship,

any person who in the Island induces or knowingly assists that person to absent himself without leave given under such provision is guilty of an offence.

(2) Where a person in a relevant territory is under or by virtue of a relevant provision required to comply with a condition imposed-

- (a) to secure that the mental health of that person may be assessed, or that the person may be treated for mental disorder, or
- (b) for that person's protection or the protection of other persons,

any person who in the Island induces or knowingly assists that person to breach that condition is guilty of an offence.

(3) Where a person in a relevant territory is in legal custody under or by virtue of a relevant provision, any person who in the Island induces or knowingly assists that person to escape from such custody is guilty of an offence.

(4) Subsection (5) applies to a person who-

- (a) is under or by virtue of a relevant provision liable to be detained in a hospital or taken into custody in a relevant territory;
- (b) is under or by virtue of a relevant provision-
 - (i) liable to be detained in a hospital,
 - (ii) subject to guardianship, or to measures of control similar to guardianship,

and is absent without leave given under that provision;

- (c) is in breach of a condition mentioned in subsection (2); or
- (d) has escaped from legal custody under or by virtue of a relevant provision.

(5) Any person who in the Island-

- (a) knowingly harbours a person to whom this subsection applies, or
- (b) gives such a person any assistance with intent to prevent, hinder or interfere with that person being taken or retaken into custody or taken or returned to the hospital or other place where that person ought to be,

is guilty of an offence.

(6) Any person guilty of an offence under this section is liable-

- (a) on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both;
- (b) on conviction on information, to custody for a term not exceeding 2 years or to a fine, or to both.

(7) In this section-

'relevant provision', in relation to a person who is or has been in a relevant territory, means provision having effect in that territory and corresponding or similar to any provision of this Act;

'relevant territory' has the same meaning as in Part 6.

[S 124A inserted by Mental Health (Amendment) Act 2006 s 2.]

125 Obstruction

(1) Any person who without reasonable cause-

- (a) refuses to allow the inspection of any premises by a person authorised in that behalf by or under this Act; or

- (b) refuses to allow the visiting, interviewing or examination of any person by a person so authorised or to give access to any person to a person so authorised; or
 - (c) refuses to produce for the inspection of any person so authorised any document or record the production of which is duly required by him; or
 - (d) otherwise obstructs any such person in the exercise of his functions,
- is guilty of an offence.

(2) Without prejudice to the generality of subsection (1), any person who insists on being present when required to withdraw by a person authorised by or under this Act to interview or examine a person in private is guilty of an offence.

(3) Any person guilty of an offence under this section is liable on summary conviction to custody for a term not exceeding 3 months or to a fine not exceeding £2,500 or to both.

[Subs (3) amended by Mental Health (Amendment) Act 2006 s 2.]

126 Prosecutions by the Department

The Department may institute proceedings for any offence under this Part, but without prejudice to any provision of this Part requiring the consent of the Attorney General for the institution of such proceedings.

PART 10 MISCELLANEOUS AND SUPPLEMENTARY

Miscellaneous provisions

127 Informal admission of patients

(1) Nothing in this Act shall be construed as preventing a patient who requires treatment for mental disorder from being admitted to any hospital or mental nursing home in pursuance of arrangements made in that behalf and without any application, order or direction rendering him liable to be detained under this Act, or from remaining in any hospital or mental nursing home in pursuance of such arrangements after he has ceased to be so liable to be detained.

(2) In the case of a minor who has attained the age of 16 years and is capable of expressing his own wishes, any such arrangements as are mentioned in subsection (1) may be made, carried out and determined even though there are one or more persons who have parental responsibility for him.

128 Duty of managers of hospitals to give information to detained patients

(1) The managers of a hospital or mental nursing home in which a patient is detained under this Act shall take such steps as are practicable to ensure that the patient understands-

- (a) under which of the provisions of this Act he is for the time being detained and the effect of that provision; and
- (b) what rights of applying to the Mental Health Review Tribunal are available to him in respect of his detention under that provision;

and those steps shall be taken as soon as practicable after the commencement of the patient's detention under the provision in question.

(2) The managers of a hospital or mental nursing home in which a patient is detained as aforesaid shall also take such steps as are practicable to ensure that the patient understands the effect, so far as relevant in his case, of sections 25, 27, 64 to 72, 75(1)(i), 116, 118 and 130; and those steps shall be taken as soon as practicable after the commencement of the patient's detention in the hospital or nursing home.

(3) The steps to be taken under subsections (1) and (2) shall include giving the requisite information both orally and in writing.

(4) The managers of a hospital or mental nursing home in which a patient is detained as aforesaid shall, except where the patient otherwise requests, take such steps as are practicable to furnish the person (if any) appearing to them to be his nearest relative with a copy of any information given to him in writing under subsections (1) and (2); and those steps shall be taken when the information is given to the patient or within a reasonable time thereafter.

129 Duty to inform nearest relatives

(1) Where a patient liable to be detained under this Act in a hospital or mental nursing home is to be discharged otherwise than by virtue of an order for discharge made by his nearest relative, the managers of the hospital or mental nursing home shall, subject to subsection (2), take such steps as are practicable to inform the person (if any) appearing to them to be the nearest relative of the patient; and that information shall, if practicable, be given at least 7 days before the date of discharge.

(2) This section shall not apply if the patient or his nearest relative has requested that information about the patient's discharge should not be given under this section.

130 Correspondence of patients

(1) A postal packet addressed to any person by a patient detained in a hospital under this Act and delivered by the patient for dispatch may be withheld from the Isle of Man Post Office if that person has requested that communications addressed to him by the patient should be withheld; and any request for the purposes of this subsection shall be made by a notice in writing given to the managers of the hospital, the registered medical practitioner in charge of the treatment of the patient or the Department.

(2) The managers of a hospital may inspect and open any postal packet for the purposes of determining-

- (a) whether it is one to which subsection (1) applies, and
- (b) if it is, whether or not it should be withheld under that subsection;

and the power to withhold a postal packet under subsection (1) includes power to withhold anything contained in it.

(3) Where a postal packet or anything contained in it is withheld under subsection (1) the managers of the hospital shall record that fact in writing.

(4) The functions of the managers of a hospital under this section shall be discharged on their behalf by a person on the staff of the hospital appointed by them for that purpose, and different persons may be appointed to discharge different functions.

(5) The Department may make regulations with respect to the exercise of the powers conferred by this section.

(6) In this section-

'hospital' has the same meaning as in Part 2;

'postal packet' has the same meaning as in the Post Office Act 1993;

and the provisions of this section shall have effect notwithstanding anything in section 35 of that Act.

131 Warrant to search for and remove patients

(1) If it appears to a justice of the peace, on information on oath laid by an approved social worker, that there is reasonable cause to suspect that a person believed to be suffering from mental disorder-

- (a) has been, or is being, ill-treated, neglected or kept otherwise than under proper control, in any place in the Island, or
- (b) being unable to care for himself, is living alone in any such place,

the justice may issue a warrant authorising any constable to enter, if need be by force, any premises specified in the warrant in which that person is believed to be, and, if thought fit, to remove him to a place of safety with a view to the making of an application in respect of him under Part 2, or of other arrangements for his treatment or care.

(2) If it appears to a justice of the peace, on information on oath laid by any constable or other person who is authorised by or under this Act to take a patient to any place, or to take into custody or retake a patient who is liable under this Act or under any of those provisions to be so taken or retaken-

- (a) that there is reasonable cause to believe that the patient is to be found on premises

- within the jurisdiction of the justice; and
- (b) that admission to the premises has been refused or that a refusal of such admission is apprehended,

the justice may issue a warrant authorising any constable to enter the premises, if need be by force, and remove the patient.

[Subs (2) amended by Mental Health (Amendment) Act 2006 s 2.]

(3) A patient who is removed to a place of safety in the execution of a warrant issued under this section may be detained there for a period not exceeding 72 hours.

(4) In the execution of a warrant issued under subsection (1), a constable shall be accompanied by an approved social worker and by a registered medical practitioner, and in the execution of a warrant issued under subsection (2) a constable may be accompanied-

- (a) by a registered medical practitioner;
- (b) by any person authorised by or under this Act or under a provision referred to in subsection (2) to take or retake the patient.

(5) It shall not be necessary in any information or warrant under subsection (1) to name the patient concerned.

(6) In this section 'place of safety' means residential accommodation provided by the Department under Part III of the National Assistance (Isle of Man) Act 1951, a hospital as defined by this Act, a police station, a mental nursing home or residential care home or any other suitable place the occupier of which is willing temporarily to receive the patient.

132 Mentally disordered persons found in public places

(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 constable may, if he thinks it necessary to do so in the interests of that person or for the protection of other persons, remove that person to a place of safety within the meaning of section 131.

(2) A person removed to a place of safety under this section may be detained there for a period not exceeding 72 hours for the purpose of enabling him to be examined by a registered medical practitioner and to be interviewed by an approved social worker and of making any necessary arrangements for his treatment or care.

133 Provision as to custody, conveyance and detention

(1) Any person required or authorised by or by virtue of this Act to be conveyed to any place or to be kept in custody or detained in a place of safety or at any place to which he is taken under section 49(6) shall, while being so conveyed, detained or kept, as the case may be, be deemed to be in legal custody.

(2) Any person required or authorised by or by virtue of this Act to take any person into custody, or to convey or detain any person shall, for the purposes of taking him into custody or conveying or detaining him, have all the powers, authorities, protection and privileges which a constable has.

(3) In this section 'convey' includes any other expression denoting removal from one place to another.

134 Retaking of patients escaping from custody

(1) If any person who is in legal custody by virtue of section 133 escapes, he may, subject to the provisions of this section, be retaken-

- (a) in any case, by the person who had his custody immediately before the escape, or by any constable or approved social worker;
- (b) if at the time of the escape he was liable to be detained in a hospital within the meaning of Part 2, or subject to guardianship under this Act, by any other person who could take him into custody under section 18 if he had absented himself without leave.

(2) A person to whom subsection (1)(b) applies shall not be retaken under this section after the expiration of the period within which he could be retaken under section 18 if he had

absented himself without leave on the day of the escape unless he is subject to a restriction order under Part 3 or an order or direction having the same effect as such an order; and section 18(4) applies with the necessary modifications accordingly.

(3) A person who escapes while being taken to or detained in a place of safety under section 131 or 132 shall not be retaken under this section after the expiration of the period of 72 hours beginning with the time when he escapes or the period during which he is liable to be so detained, whichever expires first.

(4) This section, so far as it relates to the escape of a person liable to be detained in a hospital within the meaning of Part 2, applies in relation to a person who escapes-

(a) while being taken to or from such a hospital in pursuance of regulations under section 19, or of any order, direction or authorisation-

(i) under Part 3 or 6 (except section 60, 88 or 89), or

(ii) under section 54(1) of the Criminal Jurisdiction Act 1993 or paragraph 2 of Schedule 2A to the Summary Jurisdiction Act 1989; or

(b) while being taken to or detained in a place of safety in pursuance of an order under Part 3 or under the said section 54 or Schedule 2A (other than under a provision mentioned in section 88(2)) pending his admission to such a hospital,

as if he were liable to be detained in that hospital and, if he had not previously been received in that hospital, as if he had been so received.

(5) In computing for the purposes of-

(a) section 47(1),

(b) section 54(6) of the Criminal Jurisdiction Act 1993, and

(c) paragraphs 2(4) and 3(4) of Schedule 2A to the Summary Jurisdiction Act 1989,

the period of 28 days mentioned in those provisions, no account shall be taken of any time during which the patient is at large and liable to be retaken by virtue of this section.

(6) Section 21 applies, with any necessary modifications, in relation to a patient who is at large and liable to be retaken by virtue of this section as it applies in relation to a patient who is absent without leave and references in that section to section 18 shall be construed accordingly.

135 Protection for acts done in pursuance of this Act

(1) No person shall be liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings to which he would have been liable apart from this section in respect of any act purporting to be done in pursuance of this Act or any regulations or rules made under this Act, or in, or in pursuance of anything done in, the discharge of functions conferred by any other enactment on the judge having jurisdiction under Part 7, unless the act was done in bad faith or without reasonable care.

(2) No civil proceedings shall be brought against any person in any court in respect of any such act without the leave of the High Court; and no criminal proceedings shall be brought against any person in any court in respect of any such act except by or with the consent of the Attorney General.

(3) This section does not apply to proceedings for an offence under section 123.

(4) This section does not apply to proceedings against the Department.

136 Pay, pensions etc of mentally disordered persons

(1) Where a periodic payment falls to be made to any person by way of pay or pension or otherwise in connection with the service or employment of that or any other person, and the payment falls to be made directly out of moneys provided by Tynwald, or other moneys administered by or under the control or supervision of a Department or Statutory Board, the authority by whom the sum in question is payable, if satisfied after considering medical evidence that the person to whom it is payable (referred to in this section as 'the patient') is incapable by reason of mental disorder of managing and administering his property and affairs, may, instead

of paying the sum to the patient, apply it in accordance with subsection (2).

(2) The authority may pay the sum or such part of it as they think fit to the institution or person having the care of the patient, to be applied for his benefit and may pay the remainder (if any) or such part of the remainder as they think fit-

- (a) to or for the benefit of persons who appear to the authority to be members of the patient's family or other persons for whom the patient might be expected to provide if he were not mentally disordered, or
- (b) in reimbursement, with or without interest, of money applied by any person either in payment of the patient's debts (whether legally enforceable or not) or for the maintenance or other benefit of the patient or such persons as are mentioned in paragraph (a).

Supplemental

137 Orders, rules and regulations

(1) Subordinate legislation made under this Act (other than an order under section 140(2)) shall not have effect unless it is approved by Tynwald.

(2) Any subordinate legislation made under any provision of this Act may, instead of or as well as making separate provision, provide that any statutory instrument made under a corresponding provision of the Mental Health Act 1983 (an Act of Parliament) shall have effect in the Island as part of the law of the Island, subject to such exceptions, adaptations and modifications as may be specified in the subordinate legislation.

(3) In this section 'subordinate legislation' means an order, rules or regulations made by the Council of Ministers or any Department.

138 Interpretation

(1) In this Act-

'absent without leave' has the meaning given by section 18(6) and related expressions shall be construed accordingly

'application for admission for assessment' has the meaning given in section 2;

'application for admission for treatment' has the meaning given in section 3;

'approved social worker' means an officer of the Department appointed to act as an approved social worker for the purposes of this Act;

'the Department' means the Department of Social Care;

[Definition of 'the Department' amended by SD155/10 Schs 6 and 11.]

'guardianship order' means an order under Schedule 1A to the Summary Jurisdiction Act 1989 or section 54 of the Criminal Jurisdiction Act 1993 placing the person to whom the order relates under the guardianship of the Department or of such other person approved by the Department as may be specified in the order;

'hospital', except in the expression 'hospital within the meaning of Part 2', means a hospital vested-

- (a) in the Department for the purposes of its functions under Part 2 of this Act (see section A2); or
- (b) in the Department of Health for the purposes of its functions under the NHS Act;

[Definition of 'hospital' substituted by SD155/10 Schs 6 and 11.]

'hospital direction' means a direction under section 54C of the Criminal Jurisdiction Act 1993 that an offender be removed to and detained in a hospital;

'hospital order' means an order under Schedule 1A to the Summary Jurisdiction Act 1989 or section 54 of the Criminal Jurisdiction Act 1993 (including an interim order) or under section 58(5) authorising the person to whom the order relates to be admitted to, and his detention in, such hospital as may be specified in the order;

'hospital within the meaning of Part 2' shall be construed in accordance with section 45(3);

[Definition of 'hospital within the meaning of Part 2' inserted by SD155/10 Schs 6 and 11.]

'interim hospital order' means an order under section 54(4) of the Criminal Jurisdiction Act 1993 or paragraph 3 of Schedule 2A to the Summary Jurisdiction Act 1989;

'limitation direction' means a direction under section 54C of the Criminal Jurisdiction Act 1993 that an offender be subject to the special restrictions set out in section 48;

'the managers' means-

- (a) the Department of Health in relation to-
 - (i) a hospital vested in that Department for the purposes of its functions under the NHS Act; and
 - (ii) any accommodation provided by that Department and used for hospital and specialist services under Part II of that Act;
- (b) the Department in relation to-
 - (i) a hospital vested in the Department for the purposes of its functions under this Act; and
 - (ii) any accommodation provided by the Department and used for hospital and specialist services in connection with a hospital falling within head (b)(i) of this definition; and
- (c) in relation to a mental nursing homes registered in pursuance of the Nursing and Residential Homes Act 1988, the person registered in respect of the home under that Act; and section 45(3) applies for the purposes of this definition;

[Definition of 'the managers' substituted by SD155/10 Schs 6 and 11.]

'medical treatment' includes nursing, and also includes care, habilitation and rehabilitation under medical supervision;

'mental disorder', 'severe mental impairment', 'mental impairment' and 'psychopathic disorder' have the meanings given in section 1;

'mental nursing home' has the same meaning as in the Nursing and Residential Homes Act 1988;

'the NHS Act' means the National Health Service Act 2001;

[Definition of 'the NHS Act' amended by National Health Service Act 2001 Sch 4.]

'nearest relative', in relation to a patient, has the meaning given in Part 2;

'patient' (except in Part 7) means a person suffering or appearing to be suffering from mental disorder;

'restriction direction' means a direction given under section 55(1);

'restriction order' means an order of a court under any enactment that a person shall be subject to the special restrictions set out in section 48;

'supervision and treatment order' means an order under section 54(1)(ca) of the Criminal Jurisdiction Act 1993;

'supervision application' has the meaning given by section 28;

'transfer direction' means a direction given under section 53(1).

(2) References in this Act to after-care under supervision, and to a patient being subject to after-care under supervision, shall be construed in accordance with section 28.

(3) In relation to a person who is liable to be detained or subject to guardianship by virtue of an order or direction under Part 3 or under the Criminal Jurisdiction Act 1993 or the Summary Jurisdiction Act 1989 (except under a provision mentioned in section 88(2)), any reference in this Act to any enactment contained in Part 2 or in section 74 or 75 shall be construed as a reference to that enactment as it applies to that person by virtue of Part 3.

139 Transitional provisions, amendments and repeals

(1) The transitional provisions in Schedule 4 shall have effect.

(2) The enactments specified in Schedule 5 are amended in accordance with that

Schedule.

(3) The enactments specified in Schedule 6 are repealed to the extent specified in column 3 of that Schedule.

140 Short title and commencement

(1) This Act may be cited as the Mental Health Act 1998.

(2) This Act shall come into operation on such day or days as the Department may by order appoint.

[ADO (ss 98 to 111, 116, 119, 120, 138(1), 140) 1/8/1998; (s 139(3) and Sch 6 in so far as they repeal Part VII of the Mental Health Act 1974) 1/8/1998 (SD387/98); (remainder of Act) 1/4/2000 (SD81/00).]

(3) An order under subsection (2) may make such transitional, consequential, incidental and supplemental provision (including provision to take account of the partial operation of this Act) as appears to the Department to be necessary or expedient for the purposes of the order.

Schedule 1

Application of Certain Provisions to Patients Subject to Hospital and Guardianship Orders

PART 1

PATIENTS NOT SUBJECT TO SPECIAL RESTRICTIONS

1. Sections 9, 10, 17, 21 to 23, 26(3) and (4), 30 to 39, 42, 43, 45, 75 and 84 apply in relation to the patient without modification.
2. Sections 16, 18, 19, 20, 24, 25, 28, 29 and 74 apply in relation to the patient with the modifications specified in paragraphs 3 to 10.
3. In section 16(1), for references to an application for admission or a guardianship application substitute references to the order or direction under Part 3 by virtue of which the patient is liable to be detained or subject to guardianship.
4. In section 18, omit subsection (5).
5. In section 19(2), for the words from 'as follows' onwards substitute 'as if the order or direction under Part 3 by virtue of which he was liable to be detained or subject to guardianship before being transferred were an order or direction for his admission or removal to the hospital to which he is transferred, or placing him under the guardianship of the authority or person into whose guardianship he is transferred, as the case may be'.
6. In section 20-
 - (a) in subsection (1), for the words from 'day on which he was' to 'as the case may be' substitute 'date of the relevant order or direction under Part 3'; and
 - (b) in subsection (9), for 'the application for admission for treatment or, as the case may be, in the guardianship application, that application' substitute 'the relevant order or direction under Part 3, that order or direction'.
7. In section 24, for references to an application for admission or a guardianship application substitute references to the order or direction under Part 3 by virtue of which the patient is liable to be detained or subject to guardianship.
8. In section 25(2)-
 - (a) in paragraph (a), omit 'for assessment or'; and
 - (b) in paragraphs (a) and (b), omit the references to the nearest relative.
9. In sections 28(1)(a) and 29(4)(a) for the words 'in pursuance of an application for admission for treatment' substitute 'by virtue of an order or direction for his admission or removal to hospital under Part 3'.
10. In section 74-
 - (a) in subsection (1), omit paragraphs (a), (b), (c), (i) and (m), the words in brackets in paragraph (i), and paragraph (ii); and
 - (b) in subsection (2), omit paragraphs (a), (b), (c) and (h) and the words '(i)' in paragraph (d).

PART 2
PATIENTS SUBJECT TO SPECIAL RESTRICTIONS

1. Sections 26(3) and (4), 43 and 84 apply in relation to the patient without modification.
2. Sections 17 to 19, 24, 25 and 45 apply in relation to the patient with the modifications specified in paragraphs 3 to 8.
3. In section 17-
 - (a) in subsection (1), after the word 'may' insert 'with the consent of the Department of Home Affairs';
 - (b) in subsection (4), after 'the responsible medical officer' and after 'that officer' insert 'or the Department of Home Affairs'; and
 - (c) in subsection (5), after 'recalled' insert 'by the responsible medical officer', and for the words from 'he has ceased' onwards substitute 'the expiration of the period of 12 months beginning with the first day of his absence on leave'.
4. In section 18 omit-
 - (a) in subsection (1) 'subject to the provisions of this section'; and
 - (b) subsections (3), (4) and (5).
5. In section 19-
 - (a) in subsection (1), after the word 'may' in paragraph (a) insert 'with the consent of the Department of Home Affairs', and omit the words from 'or into' onwards;
 - (b) in subsection (2), for the words from 'as follows' onwards substitute 'as if the order or direction under Part 3 by virtue of which he was liable to be detained before being transferred were an order or direction for his admission or removal to the hospital to which he is transferred'; and
 - (c) in subsection (3), after 'may at any time' insert ', with the consent of the Department of Home Affairs,'.
6. In section 24, subsections (1) and (2)(a) shall not apply.
7. In section 25-
 - (a) in subsection (1), omit references to guardianship, and after 'made' insert 'with the consent of the Department of Home Affairs and'; and
 - (b) in subsection (2)-
 - (i) in paragraph (a), omit 'for assessment or' and 'or by the nearest relative of the patient'; and
 - (ii) omit paragraph (b).
8. In section 45, omit in subsection (1) the definition of 'the nominated medical attendant' and subsection (3).

Schedule 2
Powers of Criminal Courts

PART 1

AMENDMENTS OF CRIMINAL JURISDICTION ACT 1993

[Part 1 amends the following Act-
Criminal Jurisdiction Act 1993 q.v.]

PART 2

AMENDMENTS OF SUMMARY JURISDICTION ACT 1989

[Part 2 amends the following Act-
Summary Jurisdiction Act 1989 q.v.]

Schedule 3
The Mental Health Review Tribunal

Constitution

1. (1) The Mental Health Review Tribunal ('the Tribunal') shall consist of-

- (a) the High Bailiff and 2 other persons, being barristers, solicitors or advocates of not less than 7 years' standing;
- (b) 5 persons, being registered medical practitioners appointed after consultation with the Isle of Man Medical Society; and
- (c) 4 persons having such experience in administration, such knowledge of social services or such other qualifications or experience as the Appointments Commission considers suitable.

(2) The members of the Tribunal (other than the High Bailiff) shall be appointed in accordance with the Tribunals Act 2006.

[Para 1 substituted by Tribunals Act 2006 Sch 3.]

Tenure of office of members

2. In appointing persons referred to in paragraph 1(b), the Appointments Commission shall appoint at least one person having such experience in psychiatric medicine as the Appointments Commission considers suitable.

[Para 2 substituted by Tribunals Act 2006 Sch 3.]

2A. If there is good cause to do so, Tynwald may by resolution remove from office a member (other than the High Bailiff) of the Mental Health Review Tribunal.

[Para 2A inserted by Mental Health (Amendment) Act 2006 s 6.]

Quorum

3. (1) Subject to sub-paragraph (2), the quorum necessary for any proceedings of the Tribunal is 3 members so long as one represents each of the categories of members in paragraph 1.

(2) The Tribunal will not be quorate unless a person to whom paragraph 2 applies is present.

[Para 3 substituted by Tribunals Act 2006 Sch 3.]

Chairman

4. The High Bailiff shall be chairman of the Tribunal, but if he is absent from a sitting of the Tribunal at the time appointed, the members present shall appoint one of their number (being one of the persons referred to in paragraph 1(a)) to act as chairman in his place.

[Para 4 amended by Tribunals Act 2006 Sch 3.]

Procedure

5. Subject to the provisions of this Act and to rules under section 86, the procedure of the Tribunal shall be such as the Tribunal may from time to time determine.

Schedule 4

Transitional Provisions

General

1. Where any period of time specified in an enactment repealed by this Act is current at the commencement of this Act, this Act shall have effect as if the corresponding provision of this Act had been in force when that period began to run.

2. Where, apart from this paragraph, anything done under or for the purposes of any enactment repealed by this Act would cease to have effect by virtue of that repeal, it shall have effect as if it had been done under or for the purposes of the corresponding provision of this Act.

Definition of mental disorder

3. (1) Where immediately before commencement a person is liable to be detained or subject to guardianship as suffering from any form of mental disorder, the authority for that person's detention or guardianship shall continue to have effect as if-

- (a) for references in this Act to mental impairment and severe mental impairment there were substituted references to subnormality and severe subnormality respectively (as defined in section 3(2) and (3) of the 1974 Act);
- (b) for the definition of 'psychopathic disorder' in section 1(2) there were substituted the definition in section 3(4) of the 1974 Act; and

(c) in section 1(3), the words 'sexual deviancy or dependence on alcohol or drugs' were omitted.

(2) Sub-paragraph (1) does not apply to any renewal of the authority for a person's detention or guardianship on or after commencement.

Admission to hospital

4. (1) Subject to sub-paragraphs (2) and (3), where immediately before commencement a person is liable to be detained in a hospital in pursuance of an application for admission for observation (including an emergency application) or an application for admission for treatment under Part IV of the 1974 Act, he shall continue to be liable to be so detained as if he had been admitted in pursuance of an application for admission for assessment or an application for admission for treatment under Part 2.

(2) Section 11(3) does not apply in relation to a patient admitted to hospital in pursuance of an application for admission for observation made under section 13 of the 1974 Act.

(3) Section 6(1)(b) applies in relation to an emergency application under section 17 of the 1974 Act with the substitution for '24 hours' of '3 days'.

(4) An admission of a patient to a hospital under Part IV of the 1974 Act shall be treated as valid, and be deemed always to have been valid, for all purposes notwithstanding any failure to comply with regulations under section 44(2)(d) of that Act.

Reception into guardianship

5. (1) Where immediately before commencement a person who has not attained the age of 16 years is subject to guardianship by virtue of a guardianship application under section 21 of the 1974 Act, the authority for his guardianship shall cease on commencement.

(2) Section 8 has effect in relation to a guardianship application under section 21 of the 1974 Act as well as in relation to a guardianship application under section 7.

Duration of detention or guardianship

6. (1) Subject to sub-paragraphs (2) and (3), in relation to a patient admitted to hospital in pursuance of an application for admission for treatment under section 14 of the 1974 Act, or placed under guardianship in pursuance of a guardianship application under section 21 of the 1974 Act-

(a) section 20(1) has effect with the substitution for '6 months' of 'one year';

(b) section 20(2) has effect with the substitution for 'one year' (in both places) of '2 years'.

(2) Sub-paragraph (1) does not apply after the renewal of the authority for a person's detention or guardianship on or after commencement.

(3) Where the authority for a person's detention or guardianship has been renewed for a period of 2 years of which less than 16 months has elapsed on commencement, that period shall expire at the end of 18 months from the date on which it began.

Discharge of patients

7. Section 25(2)(a) has effect in relation to a person detained in pursuance of an application for admission for observation under section 13 of the 1974 Act with the omission of the reference to the nearest relative of the patient.

Nearest relative

8. Where-

(a) at any time before commencement an application to the Tribunal has been made by a person who at that time was the patient's nearest relative, and

(b) the application has not been determined on commencement, and

(c) that person would by reason of commencement cease to be the patient's nearest relative,

that person shall nevertheless be treated for the purpose of the application as continuing to be his nearest relative.

Transfer directions

9. (1) Subject to sub-paragraph (2), sections 57 to 60 have effect in relation to a transfer

direction given before commencement as well as in relation to one given later.

(2) The repeal by this Act of section 65 of the 1974 Act does not affect subsection (4) of that section in its application to a transfer direction given before commencement.

Restriction orders and directions

10. (1) The condition for the giving of a direction under section 49(1) applies in relation to a restriction order made before commencement as well as one made later.

(2) Sections 48(6) and 55(3) have effect in relation to a restriction order or restriction direction made or given before commencement as well as in relation to one made or given later.

Removal of alien patients

11. Section 96(2) does not apply in relation to a patient removed from the Island before commencement.

Duty of managers to refer cases to Tribunal

12. (1) Section 76(1) does not apply to any patient admitted or transferred to hospital more than 6 months before commencement.

(2) Section 76(2) applies only in relation to a renewal of authority for detention after commencement.

Consent to treatment

13. Section 66(3) does not apply to any treatment given to a patient in the period of 6 months beginning with commencement if-

- (a) the detention of the patient began before the beginning of that period; and
- (b) that provision has not been complied with in respect of any treatment previously given to him in that period.

Duty of managers to give information to detained patients

14. In the case of a patient who is detained on commencement, the steps required by section 128 shall be taken as soon as practicable after commencement.

Time for applications to Tribunal by persons under 16

15. (1) This paragraph applies to a person who attains the age of 16 after, or who attained the age of 16 within 6 months before, commencement, and-

- (a) who was admitted to hospital before commencement in pursuance of an application for admission for treatment, or
- (b) in respect of whom a guardianship application was accepted before commencement, or
- (c) in respect of whom a hospital order was made before commencement.

(2) In relation to a person to whom this paragraph applies-

- (a) section 74(2) has effect with the addition, at the end of paragraphs (b) and (c), and
- (b) section 77(1)(b) has effect with the addition, at the end of sub-paragraph (i), of the words 'or with the day on which he attains the age of 16 years, whichever is the later'.

Rules of court

16. Section 84 of the 1974 Act continues to apply to proceedings under Part 7 until the first rules of court are made for the purpose of any provision of that Part.

Saving for certain provisions of 1974 Act

17. Notwithstanding the repeal of the 1974 Act by this Act-

- (a) any provision of Parts II and III of Schedule 3 to the 1974 Act remains in force so far as it applied to any patient or other person immediately before commencement;

[For the said Parts II and III see Addendum to this Act.]

- (b) any amendment effected by Schedule 4 to the 1974 Act of an enactment in force immediately before commencement remains in force, subject to any amendment or repeal of that enactment effected by Schedule 5 or 6 or by any enactment passed after this Act.

Interpretation

18. In this Schedule-

'the 1974 Act' means the Mental Health Act 1974;
'commencement' means the commencement of this Act.

Schedule 5

Consequential Amendments

[Sch 5 amended by National Health Service Act 2001 Sch 5, by Children and Young Persons Act 2001 Sch 13 and by Matrimonial Proceedings Act 2003 Sch 6, and amends the following Acts-

Trustee Act 1961 q.v.
Criminal Justice Act 1963 q.v.
Advocates Act 1976 q.v.
Jury Act 1980 q.v.
Criminal Law Act 1981 q.v.
Chronically Sick and Disabled Persons Act 1981 q.v.
Land Registration Act 1982 q.v.
Limitation Act 1984 q.v.
Wills Act 1985 q.v.
Powers of Attorney Act 1987 q.v.
Nursing and Residential Homes Act 1988 q.v.
Administration of Estates Act 1990 q.v.
Sexual Offences Act 1992 q.v.
Criminal Jurisdiction Act 1993 q.v.]

Schedule 6

Enactments Repealed

[Sch 6 repeals the following Acts wholly-

Mental Health Act 1974
Mental Health (Amendment) Act 1984
Mental Health (Amendment) Act 1986

and the following Acts in part-

The Governor's General Functions (Transfer) Act 1980
Civil Registration Act 1984
Wills Act 1985
Medical Act 1985
Treasury Act 1985
Health and Social Security Act 1986
Nursing and Residential Homes Act 1988
Summary Jurisdiction Act 1989
Family Law Act 1991
High Court Act 1991
Criminal Justice Act 1991
Transfer of Governor's Functions Act 1992
Statute Law Revision Act 1992
Criminal Jurisdiction Act 1993
Post Office Act 1993
National Health Service (Amendment) Act 1995.]

ADDENDUM

[In view of the provisions of para 17(a) of Sch 4 to this Act, Parts II and III of Sch 3 to the Mental Health Act 1974 are reproduced below for the convenience of users.]

PART II

PROVISIONS RELATING TO PARTS IV AND V

Patients other than transferred patients and short-period patients

2. (1) This paragraph applies to patients who, immediately before the commencement of this Act, were patients of any of the following classes, that is to say-
- (a) patients liable to be detained in a hospital or other place in pursuance of an order under section 10, 11 or 15 of the Mental Diseases Act 1924;
 - (b) temporary patients liable to be so detained under section 9 of the Mental Diseases Amendment Act 1932;
 - (c) patients liable to be so detained or subject to guardianship by virtue of section 55, 58, 60(2) or 66 of the said Act of 1924 or, being patients whose sentence or other period of

detention ordered by the court had expired before the commencement of this Act, by virtue of section 46 of that Act.

(2) A patient to whom this paragraph applies shall, notwithstanding the repeal or exclusion by this Act of any enactment by virtue of which he was, or was treated as, liable to be so detained or subject to guardianship, continue to be liable to be detained in any hospital or other place in which he might have been detained immediately before the commencement of this Act or, as the case may be, subject to guardianship until the expiration of the period of six months beginning with the commencement of this Act (in this Part of this Schedule referred to as 'the initial period').

(3) During the initial period, the responsible medical officer shall record, with respect to each such patient as aforesaid for whose treatment he is responsible, his opinion whether the patient is suffering from mental illness, severe subnormality, psychopathic disorder or subnormality and whether his mental disorder is of a nature or degree which warrants the detention of the patient in a hospital for medical treatment, or his retention under guardianship.

3. (1) Any patient who, by virtue of paragraph 2 above, is liable to be detained in a hospital or subject to guardianship during the initial period shall (subject to the following provisions of this paragraph) be treated as if he had been admitted to the hospital in pursuance of an application for admission for treatment under Part IV of this Act or, as the case may be, had been received into guardianship in pursuance of a guardianship application thereunder.

(2) Section 26 of this Act shall not apply in relation to the patient until the form or forms of mental disorder from which, in the opinion of the responsible medical officer, the patient is suffering have been recorded under paragraph 2 above and, on that being done, Part IV of this Act shall have effect as if the application had specified as the form or forms of mental disorder from which he is suffering the form or forms so recorded.

(3) If the patient is also a patient to whom paragraph 15 below applies, sections 27 and 28 of this Act shall apply in relation to him subject to the modifications mentioned in that paragraph, and if he is not, but no form or forms of mental disorder have been recorded in his case under paragraph (2) above, the said section 28 shall apply in relation to him as if for paragraphs (a) and (b) of subsection (3) of that section there were substituted the following sub-paragraphs-

'(a) in the case of a patient mentioned in sub-paragraph (1)(c) of paragraph 2 of Schedule 3 to this Act, six months;

(b) in the case of any other patient to whom that paragraph applies, twenty-eight days.'

(4) Sections 31 to 33 of this Act shall not apply in relation to the patient except in so far as provisions of the said section 31 are applied by the following provisions of this Part of this Schedule.

(5) If the patient was, immediately before the commencement of this Act, liable to be detained by virtue of section 46, 58 or 60(2) of the Mental Diseases Act 1924, the power of discharging him under section 35 of this Act shall not be exercisable by the nearest relative.

(6) In its application to a patient who was, immediately before the commencement of this Act, in the custody of a relative or friend under section 11 or 21 of the said Act of 1924, Part IV of this Act shall have effect as if-

(a) for references (except in section 35 of this Act) to the managers of the hospital in which the patient is detained there were substituted references to the person having the custody of the patient; and

(b) for references to those managers in the said section 35 there were substituted references to the managers of the hospital from which he was transferred to the custody of the relative or friend.

4. (1) A patient to whom paragraph 2 of this Schedule applies shall, unless previously discharged, continue to be liable to be detained in a hospital or, as the case may be, subject to guardianship after the expiration of the initial period if-

- (a) he satisfies the conditions specified in sub-paragraph (2) or (3) below; and
- (b) the authority for his detention or guardianship is renewed under the following provisions of this Part of this Schedule before the expiration of the initial period or his current period of treatment would expire after the expiration of the initial period.

(2) Any such patient shall be so liable or subject if it is recorded under the said paragraph 2 that, in the opinion of the responsible medical officer, he is suffering from mental illness or severe subnormality and his mental disorder is of a nature or degree which warrants the detention of the patient in a hospital for medical treatment or, as the case may be, his retention under guardianship.

(3) Any such patient shall be so liable or subject if it is so recorded that, in the opinion of the responsible medical officer, he is suffering from subnormality or psychopathic disorder, but not from mental illness or severe subnormality, and his mental disorder is of such a nature or degree as aforesaid and either-

- (a) he was, immediately before the commencement of this Act, liable to be detained or subject to guardianship in pursuance of an order under section 46 or 60(2) of the Mental Diseases Act 1924 or by virtue of an order made, or having effect as if made, under section 17 of the Criminal Justice Act 1963; or
- (b) he had not attained the age of twenty-one years when he was first detained or placed under guardianship and will not attain the age of twenty-five years before the expiration of the initial period; or
- (c) in the case of any other patient liable to be detained in a hospital, the responsible medical officer before the expiration of the initial period records his opinion under the following provisions of this Part of this Schedule that the patient is unfit for discharge.

5. (1) The period for which a patient may, by virtue of paragraph 4 above, be detained or kept under guardianship after the expiration of the initial period, without renewal of the authority for his detention or guardianship, shall be the remainder of his current period of treatment.

(2) Where the current period of treatment of a patient who may be detained or kept as aforesaid would continue after the expiration of the period of two years beginning with the commencement of this Act, the patient may, between the expiration of the said period of two years and the expiration of the current period of treatment, apply to the Mental Health Review Tribunal.

6. (1) An authority for the detention or guardianship of a patient to whom paragraph 2 above applies may, on the expiration of the relevant period, unless the patient has previously been discharged, be renewed for whichever of the following periods is applicable, that is to say-

- (a) where the period for which he has, at the expiration of the relevant period, already been detained or subject to guardianship on account of any description of mental disorder (whether before or after the appointed day) is not more than one year, a further period of one year;
- (b) where the period for which he has already been so detained or subject is more than one year, a further period of two years.

(2) Subsections (3) to (6) of section 31 of this Act shall apply in relation to the renewal of authority for the detention or guardianship of a patient under this paragraph as they apply in relation to the renewal of authority for the detention or guardianship of the patient under subsection (2) of that section.

(3) In this paragraph, 'the relevant period' means, in relation to a patient, the patient's current period of treatment or, if that period expires during the initial period, the initial period or any period subsequent to the said period for which authority for the detention or guardianship of the patient has previously been renewed under this paragraph.

7. (1) Any patient who, by virtue of paragraph 4 above, is liable to be detained in a hospital or subject to guardianship after the expiration of the initial period, shall (subject to the following provisions of this paragraph) be treated as if he had been admitted to the hospital in pursuance of an application for admission for treatment under Part IV of this Act or had been received into guardianship in pursuance of a guardianship application thereunder and had been so admitted or received as a patient suffering from the form or forms of mental disorder recorded under paragraph 2 above or, if a different form or forms have been specified in a report under section 26 of this Act as applied by that paragraph, the form or forms so specified, and the other provisions of this Act shall apply to him accordingly.

(2) Section 31 of this Act shall not apply in relation to the patient, but the provisions of paragraph 6 above shall apply instead.

(3) Section 32 of this Act shall not apply in relation to any such patient as is mentioned in sub-paragraph (3) of paragraph 4 above, but any such patient as is mentioned in paragraph (b) of that sub-paragraph shall cease to be liable to be detained on attaining the age of twenty-five years unless, during the period of two months ending on the date when he attains that age, the responsible medical officer records his opinion, under the following provisions of this Part of this Schedule, that the patient is unfit for discharge.

(4) If the patient was, immediately before the commencement of this Act, liable to be detained by virtue of section 46, 58 or 60(2) of the Mental Diseases Act 1924, the power of discharging him under section 35 of this Act shall not be exercisable by his nearest relative, but his nearest relative may make an application in respect of him to the Mental Health Review Tribunal during the period of twelve months beginning with the expiration of the initial period and in any subsequent period of twelve months.

8. (1) The responsible medical officer may record, for the purposes of paragraph 4(3)(c) or 7(3) above, his opinion that a patient detained in a hospital is unfit for discharge if it appears to the responsible medical officer-

- (a) that, if that patient were released from the hospital, he would be likely to act in a manner dangerous to other persons or to himself, or would be likely to resort to criminal activities; or
- (b) that that patient is incapable of caring for himself and that there is no suitable hospital or other establishment into which he can be admitted and where he would be likely to remain voluntarily;

and, where the responsible medical officer records his opinion as aforesaid, he shall also record the grounds for his opinion.

(2) Where the responsible medical officer records his opinion under this paragraph in respect of a patient, the managers of the hospital or other persons in charge of the establishment where he is for the time being detained or liable to be detained shall cause the patient to be informed, and the patient may, at any time before the expiration of the period of twenty-eight days beginning with the date on which he is so informed, apply to the Mental Health Review Tribunal.

(3) On any application under sub-paragraph (2) above, the Tribunal shall, if satisfied that none of the conditions set out in sub-paragraph (1)(a) and (b) above are fulfilled, direct that the patient be discharged, and subsection (1) of section 88 of this Act shall have effect in relation to the application as if paragraph (b) of that subsection were omitted.

9. Any person who, immediately before the commencement of this Act, was the guardian of any such patient as is mentioned in paragraph 2(l)(c) above shall be deemed for the purposes of this Act to have been named as the guardian of the patient in an application for his reception into guardianship under Part IV of this Act accepted on that person's behalf by the Department.

[Para 9 amended by Health and Social Security Act 1986 Sch 2.]

Transferred Patients

10. (1) This paragraph applies to patients who, immediately before the commencement of

this Act, were liable to be detained in a hospital or other place as patients of any of the following classes, that is to say-

- (a) patients liable to be kept in custody under section 16(4) of the Criminal Justice Act 1963 or under section 13(4) of the Criminal Code Amendment Act 1921;
- (b) patients liable to be kept in confinement under section 46 of the Mental Diseases Act 1924, not being patients whose sentence or other period of detention ordered by the court had expired before the commencement of this Act;
- (c) patients liable to be detained under section 60(2) of the said Act of 1924;
- (d) patients liable to be detained under section 17(l) of the said Act of 1963;

and any patient to whom this paragraph applies is in this Part of this Schedule referred to as a 'transferred patient'.

(2) A transferred patient who, immediately before the commencement of this Act, was liable to be detained in a hospital as being or having been required to be kept in custody during Her Majesty's pleasure or until the directions of Her Majesty are known shall be treated for the purposes of this Act as if he were liable to be detained in a place of safety in pursuance of a direction under section 59 of this Act.

(3) A transferred patient who, immediately before the commencement of this Act, was subject to a sentence of imprisonment (within the meaning of section 60 of this Act) who does not fall within sub-paragraph (2) above shall be treated for the purposes of this Act as if he were liable to be detained in a hospital within the meaning of Part V thereof by virtue of a transfer direction under the said section 60 and as if a direction restricting his discharge had been given under section 62 of this Act.

(4) Any person to whom this paragraph applies and who does not fall within paragraphs (2) or (3) above shall be treated for the purposes of this Act as if he were liable to be detained in pursuance of a transfer direction given under section 61 of this Act and as if a direction restricting his discharge had been given under section 62 of this Act, and he shall be so treated notwithstanding that he is not suffering from a form of mental disorder mentioned in the said section 61.

11. Sections 27 and 28 of this Act, in their application to a transferred patient who is also a patient to whom paragraph 15 of this Schedule applies, shall have effect subject to the modifications mentioned in that paragraph.

12. Upon a direction restricting the discharge of a transferred patient ceasing to have effect, the responsible medical officer shall record his opinion whether the patient is suffering from mental illness, severe subnormality, psychopathic disorder or subnormality, and references in this Act to the form or forms of mental disorder specified in the relevant application, order or direction shall be construed as including references to the form or forms of mental disorder so recorded.

Short-period patients

13. A person who, immediately before the commencement of this Act, was detained under an emergency certificate in pursuance of section 15 of the Mental Diseases Act 1924 may continue to be detained until the expiration of the period of three clear days mentioned in that section or, if, at the commencement of this Act, that period had expired and a petition for a reception order was pending, until the expiration of the period of twenty-eight days beginning with the commencement of this Act or until he becomes liable to be detained or subject to guardianship under this Act, whichever occurs first, and may be so detained in any place in which he might have been detained but for the repeal of that section.

14. A person who, immediately before the commencement of this Act-

- (a) was detained by virtue of section 60(2) of the said Act of 1924 in an institution for defectives; or
- (b) was detained under section 65 of that Act in a place of safety;

may continue to be detained as aforesaid until the expiration of the period of twenty-eight days

beginning with the commencement of this Act or until he becomes liable to be detained or subject to guardianship under this Act, whichever occurs first.

Patients on leave or absent without leave

15. (1) Sections 27 and 28 of this Act shall apply to a patient to whom paragraph 2 above applies or a transferred patient who, immediately before the commencement of this Act, was absent on trial or leave or in pursuance of a licence under any enactment repealed by this Act or any rules or regulations thereunder, as if he had been granted leave of absence under the said section 27 at the commencement of this Act for an indefinite period, and, accordingly, a patient to whom paragraph 2 above applies may be recalled under the said section 27 at any time within the initial period, and a transferred patient may be so recalled at any time within or after the initial period.

(2) Section 28 of this Act shall, subject to sub-paragraph (3) below, apply to a patient to whom paragraph 2 above applies, a transferred patient or a short-period patient who, immediately before the commencement of this Act, was absent, otherwise than as mentioned in sub-paragraph (1) above, from the hospital or other place where he was required to be by virtue of any such enactment, rules or regulations as if he had absented himself without leave or without permission from the hospital or other place as mentioned in subsection (1) of that section or, as the case may be, he were absent without his guardian's permission as mentioned in subsection (2) of that section.

(3) The period within which any patient to whom paragraph 2 above applies or a short-period patient may be retaken and returned under the said section 28 shall be whichever of the following periods is applicable instead of that specified in sub-section (3) of that section, that is to say-

- (a) in the case of a patient liable to be detained by virtue of any of the provisions of the Mental Diseases Act 1924 (not being a transferred patient), the initial period;
- (b) in the case of any other patient to whom paragraph 2 above applies or any other short-period patient, the period of twenty-eight days beginning with the commencement of this Act;

and a transferred patient may be retaken and returned under the said section 28 at any time.

Supplemental

16. Any opinion recorded by the responsible medical officer under this Part of this Schedule shall be recorded in such form as may be prescribed by regulations made by the Department, after consulting the Department of Health,.

[Para 16 amended by Health and Social Security Act 1986 Sch 2 and by SD155/10 Schs 6 and 11.]

17. (1) In this Part of this Schedule-

'current period of treatment' means, in relation to any patient, the period for which he would have been liable to be detained or subject to guardianship by virtue of any enactment repealed or replaced by any such enactment as aforesaid, being a period which began but has not expired before the commencement of this Act;

'initial period' has the meaning assigned to it by paragraph 2 above;

'the responsible medical officer' means-

- (a) in relation to a patient subject to guardianship, any medical officer authorised by the Department to act (either generally or in any particular case or for any particular purpose) as the responsible medical officer;

[Para (a) amended by Health and Social Security Act 1986 Sch 2.]

- (b) in relation to any other class of patient, the medical practitioner in charge of the treatment of the patient;

'transferred patient' has the meaning assigned to it by paragraph 10 above;

'short-period patient' means a patient to whom paragraph 13 or 14 above applies.

(2) Section 47(2) of this Act shall apply for the purposes of this Part of this Schedule as it applies for the purposes of Part IV of this Act.

(3) The sentence or other period of detention of a person who was liable to be detained or subject to guardianship immediately before the commencement of this Act, by virtue of an order under section 46 of the Mental Diseases Act 1924, shall be treated for the purposes of this Part of this Schedule as expiring at the end of the period for which that person would have been liable to be detained in a prison or other institution if the order had not been made.

PART III PROVISIONS RELATING TO PART VII

18. A person who, immediately before the commencement of this Act, was the committee of the estate of a person of unsound mind so found by inquisition shall thereafter be deemed to be a receiver for that person appointed under section 75 of this Act with such functions in relation to that person's property and affairs as were exercisable by him in relation thereto as committee of the estate, and references in any document to such a committee shall be construed accordingly.

19. A person who, immediately before the commencement of this Act, was the receiver appointed by the High Court to be a receiver of the property of any of the persons mentioned in section 3 of the Mental Diseases Act 1954 shall thereafter be deemed to be a receiver for that person appointed under section 75 of this Act with such functions in relation to that person's property and affairs as were exercisable by him in relation thereto as a receiver of the estate, and references in any document to such a receiver shall be construed accordingly.

20. Rules under Part VII of this Act may contain transitional provisions with respect to proceedings pending at the commencement of this Act and, notwithstanding anything in section 70 of this Act, such rules may provide for treating as sufficient for conferring jurisdiction under the said Part VII any evidence given in such proceedings, or in proceedings brought within one month after the commencement of this Act, being evidence which would have been sufficient to confer jurisdiction in respect of those proceedings under any enactment repealed by this Act.

21. Notwithstanding the repeal by this Act of the Mental Diseases Act 1948 and the Isle of Man Health Services Board Act 1948, the land and buildings vested in the Board and its successors by virtue of the Mental Diseases Act 1948 shall, to the extent that they are so vested at the commencement of this Act, continue to be so vested, and references in any enactment or other document to the Mental Hospital Board shall be construed as references to the Isle of Man Health Services Board.

MENTAL HEALTH (AMENDMENT) ACT 2001

(Chapter 24)

Arrangement of Sections

1. Transfer of functions.
2. Short title and commencement.

Received Royal Assent: 10 July 2001

Passed: 11 July 2001

AN ACT

to amend the Mental Health Act 1998.

1 (1) [Amends section 69 of the Mental Health Act 1998 by substituting subsection (3).]

(2) [Amends section 118 of the Mental Health Act 1998 by substituting subsection (1).]

(3) [Amends section 117 of the Mental Health Act 1998 by substituting the words 'and any person authorised in that behalf by the Mental Health Commission, for the purpose of any arrangements under section 118 or of any such review as is mentioned in section 119(3)(d),' for the words from 'or under' to 'section 119(3)(d),'.]

(4) [Amends section 120(1) of the Mental Health Act 1998 by substituting the expression

'sections 65(2), 66(3), 116(2)(b) and 117' for the expression 'sections 65(2), 66(3), 69(3), 116(2)(b), 117 and 118(1)'.]

2 Short title and commencement

This Act may be cited as the Mental Health (Amendment) Act 2001 and shall come into operation on such day as the Department of Health and Social Security may by order appoint.

[ADO 1/11/2002 (SD643/02).]

MENTAL HEALTH (AMENDMENT) ACT 2006

(Chapter 2)

Arrangement of Sections

1. Transfer of patients between the Island and other countries.
 2. Insertion and amendments.
 3. Orders for detention during Her Majesty's pleasure.
 - 4 and 5. Amendments.
 6. Amendment and insertion.
 7. Amendment.
 8. Short title and commencement.
- Schedule Transfer of patients.

Received Royal Assent: 25 April 2006

Announced to Tynwald: 25 April 2006

AN ACT

to amend the law relating to the transfer of patients between the Island and other countries; to abolish directions that persons be detained during Her Majesty's pleasure; to amend the constitution of the Mental Health Review Tribunal; to amend the law relating to the nearest relatives of patients; and for connected purposes.

1 Transfer of patients between the Island and other countries

For Part 6 (removal and return of patients) of the Mental Health Act 1998 there are substituted the provisions set out in the Schedule.

2 (1) [Amends the Mental Health Act 1998 by inserting section 124A.]

(2) [Amends sections 122(5), 123(4), 124(4) and 125(3) of the Mental Health Act 1998 by substituting the word 'custody' for the word 'imprisonment' wherever it occurs.]

(3) [Amends section 131(2) of the Mental Health Act 1998 by repealing the words 'or under section 88' up to the word 'Parliament' (where it occurs for the second time.)]

3 Orders for detention during Her Majesty's pleasure

(1) After the commencement of this section no order may be made under section 54(1)(a) of the Criminal Jurisdiction Act 1993 that a defendant or appellant be detained during Her Majesty's pleasure.

(2) [Amends section 54 of the Criminal Jurisdiction Act 1993 as follows: paragraph (a) repeals subsection (1)(a); paragraph (b) amends subsection (2) by substituting the words 'shall make a hospital order' for the words from 'shall make' to the end of the subsection; and paragraph (c) amends subsection (4) by repealing the words 'an order under subsection (1)(a) or'.]

(3) [Repeals section 52 of the Mental Health Act 1998.]

(4) Where immediately before the commencement of this section an order referred to in subsection (1) is in force in relation to any person, it shall have effect as a hospital order together with a restriction order, made under the said section 54 without limit of time on the date when the direction was given.

4 (1)(a) [Amends section 40(2) of the Mental Health Act 1998 by substituting

paragraphs (a) and (aa) for paragraph (a).]

(b) [Amends section 40(3) of the Mental Health Act 1998 by deleting the word 'or' at the end of paragraph (c) and by adding the word 'or' to paragraph (d) and paragraph (e) at the end.]

(2) [Paragraph (a) amends section 41(1) of the Mental Health Act 1998 by substituting paragraphs (a), (b) and (c) for paragraphs (a) and (b); and paragraph (b) substitutes subsection (2).]

5 (1) [Amends section 80 of the Mental Health Act 1998 by substituting subsection (1).]

(2) [Amends section 81 of the Mental Health Act 1998 by substituting subsections (1) and (2).]

[Spent - see amendments made by Tribunals Act 2006 Sch 3.]

6 (1) [Amends paragraph 1 of Schedule 3 to the Mental Health Act 1998 as follows: paragraph (a) substitutes in subparagraph (b) the expression '5 persons' for the expression '3 persons' ;and paragraph (b) substitutes in subparagraph (c) the expression '4 persons' for the expression '3 persons'.

[Spent - see amendments made by Tribunals Act 2006 Sch 3.]

(2) [Amends Schedule 3 to the Mental Health Act 1998 by inserting paragraph 2A.]

7 [Amends section 36 of the Limitation Act 1984 as follows: paragraph (a) amends subsection (3) by substituting '1998' for '1974'; and paragraph (b) inserts subsections (4A) and (4B).]

8 Short title and commencement

(1) This Act may be cited as the Mental Health (Amendment) Act 2006.

(2) Sections 1, 2 and 3 and the Schedule shall come into operation on such day or days as the Department of Health and Social Security may by order appoint.

[ADO (ss 1 to 3 and Sch) 1/7/2006 (SD443/06).]

[Editorial note: Ss 4 to 8 in force on passing, i.e. whole Act now operative.]

**Schedule
Transfer of Patients**

[Sch amends the following Act-
Mental Health Act 1998 q.v.]
