

## SCHEDULES

### SCHEDULE 3

#### CONSEQUENTIAL AMENDMENTS

##### PART I

###### *The Mental Health Act 1959*

- 1 In sections 27(1), 29(1) and (2), 30(1)(b) and .32(1) for the word " observation " there shah\* be substituted the word " assessment " .
- 2 In section 33—
- (a) after subsection (2) there shall be inserted—
- “(2A) A guardianship application shall be founded on the written recommendations in the prescribed form of two medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in paragraphs (a) and (b) of subsection (2) of this section 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 the said paragraph (a); and
- (b) a statement of the reasons for that opinion so far as it relates to the conditions set out in the said paragraph (b).
- (2B) 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 sixteen years.”;
- (b) for subsection (5) there shall be substituted—
- “(5) Subsection (4) of section 26 and sections 27 and 28 of this Act shall apply in relation to a guardianship application as they apply in relation to an application for admission for treatment, but subject to the following modifications, that is to say—
- (a) in subsection (4) of section 26 the reference to subsection (2) of that section shall be construed as a reference to subsection (2) of this section;
- (b) in section 27 the words in subsection (1) " shall be addressed to the managers of the hospital to which the admission is sought, and" and subsection (1A) shall be omitted ;

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- (c) in section 28 subsections (3), (3A) and (5) shall be omitted and for paragraph (e) of subsection (4) there shall be substituted—

“(e) the person named as guardian in the application”.

3 In section 41(2)(a) for the word " observation " there shall be substituted the word " assessment " .

4 In section 42(3) for the words " the interests of the patient " there shall be substituted the words " the interests of the welfare of the patient " .

5 In sections 47(3) and 52(4) for the word " observation " there shall be substituted the word " assessment " .

6 In section 59—

(a) in subsection (1), in paragraph (a) of the definition of " the responsible medical officer ", for the word " observation " there shall be substituted the word " assessment " ;

(b) in subsection (3) for the word " subnormal " and for the word " subnormality " , in both places, there shall be substituted respectively the words " mentally impaired " and " mental impairment " and after the words " section thirty-eight " there shall be inserted the words " or 43(5A) " .

7 In section 60(2) for the words " severe subnormality " there shall be substituted the words " severe mental impairment " .

8 In section 65—

(a) in subsections (2) and (3) for the words " an order restricting discharge " there shall be substituted the words " a restriction order " ;

(b) at the end of subsection (3)(a) there shall be inserted the words " or Schedule 1 to the Mental Health (Amendment) Act 1982 " ;

(c) in subsection (4) for the words " an order restricting the discharge of the patient " there shall be substituted the words " a restriction order in respect of the patient " ;

(d) in subsection (5) for the words " an order restricting the discharge of a patient " , " an order restricting his discharge " and " the order restricting his discharge " there shall be substituted respectively the words " a restriction order in respect of a patient " , " a restriction order " and " the restriction order " .

9 In section 66—

(a) in subsection (1) for the words " an order restricting the discharge of a patient " and " the order restricting the discharge of the patient " there shall be substituted respectively the words " in the case of any patient a restriction order " and " the restriction order " ;

(b) in subsection (2) for the words " an order restricting the discharge of a patient is in force " and " the order restricting his discharge " there shall be substituted respectively the words " a restriction order is in force in respect of a patient " and " the restriction order " ;

(c) in subsection (3) for the words " an order restricting the discharge of a patient " and " the order restricting his discharge " , in both places, there shall be substituted respectively the words " a restriction order in respect of a patient " and " the restriction order " ;

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- (d) in subsection (4) for the words " an order restricting the discharge of a patient" there shall be substituted the words " a restriction order in respect of a patient ";
  - (e) in subsection (5) for the words " an order restricting discharge " there shall be substituted the words " a restriction order ".
- 10 In section 67—
  - (a) in subsections (1)(b), (3)(a) and (4) for the words " an order restricting his discharge" there shall be substituted the words " a restriction order ";
  - (b) after subsection (3) there shall be inserted—

“(3A) The Crown Court shall have the like power to make orders under sections 29, 30 and 31 of the Mental Health (Amendment) Act 1982 in the case of a person committed to the court under this section as the Crown Court has under those sections in the case of an accused person within the meaning of section 29 or 30 or of a person convicted before that court as mentioned in section 31.”;
  - (c) in subsection (5) for the words " an order restricting discharge " there shall be substituted the words " a restriction order ".
- 11 In section 68(2) for the words "an order restricting his discharge " there shall be substituted the words " a restriction order ".
- 12 In section 71(4) for the words " an order restricting his discharge " there shall be substituted the words " a restriction order ".
- 13 In section 72(1)(a) for the words " subnormality or severe sub-normality " there shall be substituted the words " mental impairment or severe mental impairment ".
- 14 In section 73(1) for the words " severe subnormality " there shall be substituted the words " severe mental impairment ".
- 15 In section 74—
  - (a) in subsection (1) for the words " paragraphs (a) to (d)" there shall be substituted the words " paragraph (a) or (d) ";
  - (b) in subsection (2) for the words " a direction restricting discharge " and " an order restricting the discharge of the patient" there shall be substituted respectively the words " a restriction direction " and " a restriction order ".
- 16 In section 75—
  - (a) in subsection (1) for the words " direction restricting discharge ", in both places, there shall be substituted the words " restriction direction ";
  - (b) in subsection (2) for the words "direction restricting the discharge " there shall be substituted the words " restriction direction in the case ".
- 17 In section 76—
  - (a) in subsection (1) for the words "paragraphs (a) to (c)" there shall be substituted the words " paragraph (a) " and after the words " this Part of this Act" there shall be inserted the words " or the Mental Health (Amendment) Act 1982 ";
  - (b) in subsection (2)(b) for the words " an order restricting discharge " there shall be substituted the words " a restriction order ";
  - (c) in subsection (3) for the words " severe subnormality " there shall be substituted the words " severe mental impairment ".

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- 18 In section 80(4) for the words " an order restricting the discharge of a patient subject to a hospital order" there shall be substituted the words " a restriction order " .
- 19 In section 81—
- (a) in subsection (2)(a) for the words " an order or direction under any enactment in this Act restricting his discharge " there shall be substituted the words " a restriction order or restriction direction under any enactment in this Act " ;
  - (b) in subsection (3) for the word " observation " there shall be substituted the word " assessment " ;
  - (c) in subsection (5) for the words from "an order or direction restricting discharge " onwards there shall be substituted the words " a restriction order or restriction direction of limited duration, the order or direction restricting his discharge to which he is subject by virtue of subsection (2)(a) of this section shall expire on the date on which the restriction order or restriction direction would have expired if he had not been so removed. "
- 20 In section 85—
- (a) in subsection (2)(d) for the words " an order or direction under any enactment in this Act restricting his discharge " there shall be substituted the words " a restriction order or restriction direction under any enactment in this Act " ;
  - (b) in subsection (3) for the word " observation " there shall be substituted the word " assessment " ;
  - (c) in subsection (6) for the words from " an order or direction restricting discharge" onwards there shall be substituted the words " a restriction order or restriction direction of limited duration, the order or direction restricting his discharge to which he is subject by virtue of subsection (2)(c) of this section shall expire on the date on which the restriction order or restriction direction would have expired if he had not been so removed. "
- 21 In section 87—
- (a) in subsection (2)(a) for the words " an order or direction under the corresponding enactment in force in England and Wales " there shall be substituted the words " a restriction order or restriction direction " ;
  - (b) in subsection (3)(a) for the word " observation " there shall be substituted the word " assessment " ;
  - (c) in subsection (5) for the words from " that order or direction " onwards, there shall be substituted the words " the restriction order or restriction direction to which he is subject by virtue of subsection (2)(a) of this section shall expire on the date on which the first-mentioned order or direction would have expired if he had not been so removed. "
- 22 In subsection (2)(a) of section 123 for the words " sub-normality or severe subnormality" there shall be substituted the words " mental impairment or severe mental impairment " and for subsection (4) of that section there shall be substituted—
- “(4) This section applies in relation to references to a Mental Health Review Tribunal as it applies in relation to applications made to such a tribunal by or in respect of a patient.”

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- 23 In section 140(2) for the words "an order under Part V of this Act restricting his discharge " there shall be substituted the words " a restriction order under Part V of this Act ".
- 24 In section 147(1) after the definition of "patient" there shall be inserted—  
    " 'restriction direction' has the meaning assigned to it by section 74 of this Act;  
    ' restriction order' has the meaning assigned to it by section 65 of this Act; ”.
- 25 In Schedule 3—
- (a) for the entry in the third column relating to section 37 there shall be substituted an entry in the same terms as that in the second column ;
  - (b) for the entry in the second and third columns relating to section 40 there shall be substituted respectively " Subsection (3A) shall be omitted "and " Subsections (2), (3) and (3A), and in subsection (1) the words ' subject to the provisions of this section ', shall be omitted " ;
  - (c) at the end of the entry in the second column relating to section 43 there shall be added the words " and in subsection (5A) for the words " the application for admission for treatment or, as the case may be, in the guardianship application, that application " there shall be substituted the words " the relevant order or direction under Part V of this Act, that order or direction ";
  - (d) for the entry in the second column relating to section 45 there shall be substituted " None ";
  - (e) for the entry in the second column relating to section 47 there shall be substituted " In paragraph (a) of subsection (2) the reference to an application for admission for assessment, and in that paragraph and paragraph (c) of that subsection the references to the nearest relative, shall be omitted " and for the second entry in the third column relating to that section there shall be substituted " In paragraph (a) of subsection (2) the reference to an application for admission for assessment and the reference to the nearest relative shall be omitted and paragraph (c) of that subsection shall be omitted. "
- 26 In Schedule 6—
- (a) in paragraph 12(3) for the words from the beginning to " that sub-paragraph " there shall be substituted the words " Any such patient as is mentioned in paragraph 9(3)(b) of this Schedule " ;
  - (b) in paragraph 15(3) and (6) for the words " a direction restricting his discharge " there shall be substituted the words " a restriction direction ";
  - (c) in paragraph 17 for the words "a direction restricting the discharge of " there shall be substituted the words " a restriction direction in respect of " and for the word " sub-normality", in both places, there shall be substituted the words " mental impairment ".

*The Army Act 1955*

- 27 In section 116(7)—
- (a) for the words " detention in a hospital under observation (with or without other medical treatment)" there shall be substituted the words " detention in a hospital for assessment (or for assessment followed by medical treatment) ";

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- (b) for the words " admission for observation " there shall be substituted the words " admission for assessment ".

*The Air Force Act 1955*

28 In section 116(7)—

- (a) for the words "detention in a hospital under observation (with or without other medical treatment)" there shall be substituted the words " detention in a hospital for assessment (or for assessment followed by medical treatment) ";
- (b) for the words " admission for observation " there shall be substituted the words " admission for assessment ".

*The Sexual Offences Act 1956*

29 In section 45 for the words from " severe subnormality " onwards there shall be substituted the words " a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning. "

*The Naval Discipline Act 1957*

30 In section 71(6)—

- (a) for the words " detention in a hospital under observation (with or without other medical treatment)" there shall be substituted the words " detention in a hospital for assessment (or for assessment followed by medical treatment) ";
- (b) for the words " admission for observation " there shall be substituted the words " admission for assessment ".

*The Mental Health (Scotland) Act 1960*

31 In section 73—

- (a) in subsection (2)(a) for the words " an order or direction under the corresponding enactment in force in England and Wales " there shall be substituted the words " a restriction order or restriction direction under the corresponding enactment in force in England and Wales ";
- (b) in subsection (4) for the words from " that order or direction " onwards there shall be substituted the words " the restriction order or restriction direction to which he is subject by virtue of subsection (2)(a) of this section shall expire on the date on which the first-mentioned order or direction would have expired if he had not been so removed. "

*The Administration of Justice Act 1960*

32 In section 5—

- (a) after subsection (4) there shall be inserted—
- “(4A) Where an order is made under the said sub\* section (1) in the case of a defendant who, but for the decision of the court below, would be liable to be detained in pursuance of an interim hospital order under section 31 of the Mental Health (Amendment) Act 1982, the

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order may, if the court thinks fit, be one authorising his continued detention in a hospital or mental nursing home and in that event—

- (a) subsection (3) of this section shall not apply to the order;
  - (b) Part V of the said Act of 1959 shall apply as if he had been ordered under this section to be detained in custody so long as any appeal under section 1 of this Act is pending and were detained in pursuance of a transfer direction together with a restriction direction ; and
  - (c) if the defendant is detained by virtue of this subsection and the appeal by the prosecutor succeeds, subsection (2) of the said section 31 (power of court to make hospital order in the absence of an offender who is subject to an interim hospital order) shall apply as if the defendant were still subject to an interim hospital order.”;
- (b) in subsection (5) for the words "subsection (3) or subsection (4)" there shall be substituted the words " subsection (3), (4) or (4A) ".

*The Criminal Procedure (Insanity) Act 1964*

- 33 In paragraph 2(1) of Schedule 1 for the words "an order restricting discharge " there shall be substituted the words " a restriction order ".

*The Sexual Offences Act 1967*

- 34 In section 1—
- (a) in subsection (3) for the words " severe subnormality ", in both places, there shall be substituted the words " severe mental handicap " and the words " within the meaning of the Mental Health Act 1959 " shall be omitted ;
  - (b) after subsection (3) there shall be inserted—  
  
“(3A) In subsection (3) of this section ' severe mental handicap' means a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning.”

*The Criminal Justice Act 1967*

- 35 In section 72—
- (a) in subsection (1)(b) after the words " the Mental Health Act 1959" there shall be inserted the words " or section 31(8) of the Mental Health (Amendment) Act 1982 ";
  - (b) in subsection (4) at the end of the definition of " convicted mental patient" there shall be inserted the words " or a person liable to be detained under section 31 of the Mental Health (Amendment) Act 1982 ".

*The Criminal Appeal Act 1968*

- 36 In section 8 after subsection (3) there shall be inserted—
- “(3A) If the person ordered to be retried was, immediately before the determination of his appeal, liable to be detained in pursuance of a remand under section 30 of the Mental Health (Amendment) Act 1982 or an interim hospital order under section 31 of that Act, the Court of Appeal may, if they think fit, order

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that he shall continue to be detained in a hospital or mental nursing home, and in that event Part V of the Mental Health Act 1959 shall apply as if he had been ordered under this section to be kept in custody pending his retrial and were detained in pursuance of a transfer direction together with a restriction direction.”

37 In section 11 after subsection (4) there shall be inserted—

“(5) The fact that an appeal is pending against an interim hospital order under the Mental Health (Amendment) Act 1982 shall not affect the power of the court below to renew or terminate the order or to deal with the appellant on its termination ; and where the Court of Appeal quash such an order but do not pass any sentence or make any other order in its place the Court may direct the appellant to be kept in custody or released on bail pending his being dealt with by the court below.

(6) Where the Court of Appeal make an interim hospital order by virtue of subsection (3) of this section—

- (a) the power of renewing or terminating it and of dealing with the appellant on its termination shall be exercisable by the court below and not by the Court of Appeal; and
- (b) the court below shall be treated for the purposes of section 31(8) of the said Act of 1982 (absconding offenders) as the court that made the order.”

38 In section 14(2)—

- (a) for the words " detention in a hospital under observation (with or without other medical treatment)" there shall be substituted the words " detention in a hospital for assessment (or for assessment followed by medical treatment) ";
- (b) for the words " admitted for observation" there shall be substituted the words " admitted for assessment ".

39 In section 37—

(a) after subsection (4) there shall be inserted—

“(4A) Where an order is made under this section in the case of a defendant who, but for the decision of the Court of Appeal, would be liable to be detained in pursuance of a remand under section 30 of the Mental Health (Amendment) Act 1982 or an interim hospital order under section 31 of that Act, the order may, if the Court of Appeal thinks fit, be one authorising his continued detention in a hospital or mental nursing home and in that event—

- (a) subsection (3) of this section shall not apply to the order;
- (b) Part V of the said Act of 1959 shall apply to him as if he had been ordered under this section to be detained in custody so long as an appeal to the House of Lords is pending and were detained in pursuance of a transfer direction together with a restriction direction ; and
- (c) if the defendant, having been subject to an interim hospital order, is detained by virtue of this subsection and the appeal by the prosecutor succeeds, subsection (2) of the said section 31 (power of court to make hospital order in the absence of an offender who is subject to an interim



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hospital order) shall apply as if the defendant were still subject to an interim hospital order.”;

(b) in subsection (5) for the words "subsection (3) or (4)" there shall be substituted the words " subsection (3), (4) or (4A) ".

40 In section 50(1) for the words " an order restricting discharge " there shall be substituted the words " a restriction order, and an interim hospital order under the Mental Health (Amendment) Act 1982 ".

41 In Schedule 1—

(a) in paragraph 2 for the words " an order restricting discharge " there shall be substituted the words " a restriction order ";

(b) in paragraph 3 for the word " observation" there shall be substituted the word " assessment ".

42 In Schedule 3, in paragraph 2, for the words " a direction restricting discharge " there shall be substituted the words " a restriction direction ".

*The Courts-Martial (Appeals) Act 1968*

43 In section 23—

(a) in subsection (2)(a) for the words " detention in a hospital under observation (with or without other medical treatment) " there shall be substituted the words " detention in a hospital for assessment (or for assessment followed by medical treatment) ";

(b) in subsection (3) for the words " admission for observation " there shall be substituted the words " admission for assessment ".

*The Children and Young Persons Act 1969*

44 In section 2(10) for the words " the court may make an interim order in respect of him " there shall be substituted the words " the court may make—

(a) an interim order ; or

(b) an interim hospital order within the meaning of section 31 of the Mental Health (Amendment) Act 1982,

in respect of him ; but an order shall not be made in respect of the relevant infant in pursuance of paragraph (b) of this subsection unless the conditions which, under the said section 31, are required to be satisfied for the making of an interim hospital order in respect of a person convicted as mentioned in that section are satisfied in his case so far as they are applicable.

*The Local Authority Social Services Act 1970*

45 At the end of Schedule 1 there shall be inserted—

“Mental Health (Amendment) Act 1982  
(c.51)

Section 17

Social report on patient admitted on application of nearest relative.

Section 51

After-care of detained patients.

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Section 61

Appointment of approved social workers.”

*The Costs in Criminal Cases Act 1973*

46 In section 3(7) after " 1959" there shall be inserted the words " , an interim hospital order under section 31 of the Mental Health (Amendment) Act 1982 ".

47 In section 18(1)(c) for the words " an order restricting his discharge " there shall be substituted the words " a restriction order ".

*The Juries Act 1974*

48 In Schedule 1, for Group D there shall be substituted—

“GROUP D

*Mentally disordered persons*

A person who suffers or has suffered from mental illness, psychopathic disorder, mental handicap or severe mental handicap and on account of that condition either—

- (a) is resident in a hospital or other similar institution ; or
- (b) regularly attends for treatment by a medical practitioner.

A person for the time being in guardianship under section 33 of the Mental Health Act 1959.

A person who, under Part VIII of that Act, has been determined by a judge to be incapable, by reason of mental disorder, of managing and administering his property and affairs.

(In this Group—

- (a) ' mental handicap' means a state of arrested or incomplete development of mind (not amounting to severe mental handicap) which includes significant impairment of intelligence and social functioning;
- (b) ' severe mental handicap ' means a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning;
- (c) other expressions are to be construed in accordance with the said Act of 1959.)”.

*The Rehabilitation of Offenders Act 1974*

49 In section 5(7) for the words " an order restricting discharge " there shall be substituted the words " a restriction order ".

*The Criminal Procedure (Scotland) Act 1975*

50 In section 13—

- (a) in subsection (1)(b) after the words " the Mental Health Act 1959" there shall be inserted the words " , section 31(8) of the Mental Health (Amendment) Act 1982 ";

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- (b) in subsection (4) at the end of the definition of " convicted mental patient" there shall be inserted the words " or a person liable to be detained under section 31 of the Mental Health (Amendment) Act 1982 ".

51 In section 322—

- (a) in subsection (1)(b) after the words " the Mental Health Act 1959 " there shall be inserted the words " , section 31(8) of the Mental Health (Amendment) Act 1982 ";
- (b) in subsection (4) at the end of the definition of " convicted mental patient" there shall be inserted the words " or a person liable to be detained under section 31 of the Mental Health (Amendment) Act 1982 ".

*The Nursing Homes Act 1975*

52 In section 3(2)(c) after the words "the Mental Health Act 1959" there shall be inserted the words " or the Mental Health (Amendment) Act 1982 ".

53 In section 10(2) after the words " the Mental Health Act 1959 " there shall be inserted the words " or the Mental Health (Amendment) Act 1982 ".

*The Adoption Act 1976*

54 In section 32(3)(c) for the words " the said Act of 1959 " there shall be substituted the words " the Mental Health Act 1959 or the Mental Health (Amendment) Act 1982 ".

*The National Health Service Act 1977*

55 In section 4 after the words " the Mental Health Act 1959 " there shall be inserted the words " or the Mental Health (Amendment) Act 1982 ".

56 In section 105(1) for the word " observation " there shall be substituted the word " assessment ".

*The Foster Children Act 1980*

57 In section 2(5) after the words "the Mental Health Act 1959" there shall be inserted the words " or the Mental Health (Amendment) Act 1982 ".

*The Limitation Act 1980*

58 In section 38(4)—

- (a) in paragraph (a) after the words " the Mental Health Act 1959 " there shall be inserted the words " or section 30 or 31 of the Mental Health (Amendment) Act 1982 ";
- (b) in paragraph (b) for the words from " within " to " guardian ship under that Act" there shall be substituted the words " within the meaning of the said Act of 1959 without being liable to be detained as aforesaid, being treatment which follows without any interval a period during which he was liable to be detained or subject to guardianship as aforesaid ".

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*The Contempt of Court Act 1981*

- 59 In section 14(4)—
- (a) after " 1959 " there shall be inserted the words " or an interim hospital order under section 31 of the Mental Health (Amendment) Act 1982 ";
  - (b) for the words " severe subnormality " there shall be substituted the words " severe mental impairment ".

- 60 After section 14(4) there shall be inserted—
- “(4A) Each of the superior courts shall have the like power to make an order under section 29 of the said Act of 1982 (remand for report on accused's mental condition) where there is reason to suspect that a person who could be committed to prison for contempt of court is suffering from mental illness or severe mental impairment as the Crown Court has under that section in the case of an accused person within the meaning of that section.”

*The Supreme Court Act 1981*

- 61 In section 48—
- (a) in subsection (6)(a) for the words " an order restricting discharge" there shall be substituted the words " a restriction order, and an interim hospital order under the Mental Health (Amendment) Act 1982 ";
  - (b) after subsection (6) there shall be inserted—
    - “(7) The fact that an appeal is pending against an interim hospital order under the said Act of 1982 shall not affect the power of the magistrates' court that made it to renew or terminate the order or to deal with the appellant on its termination; and where the Crown Court quashes such an order but does not pass any sentence or make any other order in its place the Court may direct the appellant to be kept in custody or released on bail pending his being dealt with by that magistrates' court.
    - (8) Where the Crown Court makes an interim hospital order by virtue of subsection (2)—
      - (a) the power of renewing or terminating the order and of dealing with the appellant on its termination shall be exercisable by the magistrates' court whose decision is appealed against and not by the Crown Court; and
      - (b) that magistrates' court shall be treated for the purposes of section 31(8) of the said Act of 1982 (absconding offenders) as the court that made the order.”

*The Armed Forces Act 1981*

- 62 In section 13(1), (2)(a) and (6)(c) for the word " observation " there shall be substituted the word " assessment ".