



# Mental Health Act 1983

## 1983 CHAPTER 20

### PART II

#### COMPULSORY ADMISSION TO HOSPITAL AND GUARDIANSHIP

##### Modifications etc. (not altering text)

- C1** Pt. II (ss. 2–34) modified by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), **ss. 17(2)**, 78(2)
- C2** Part II (ss. 2–34) modified (E.W.) (1.1.1992) by [Criminal Procedure \(Insanity and Unfitness to Plead\) Act 1991 \(c. 25, SIF 39:1\)](#), s. 5(1), **Sch. 1 para.3** (with saving in s. 8); S.I. 1991/2488, **art. 2**

#### *Procedure for hospital admission*

## **2 Admission for assessment.**

- (1) A patient may be admitted to a hospital and detained there for the period allowed by subsection (4) below in pursuance of an application (in this Act referred to as “an application for admission for assessment”) made in accordance with subsections (2) and (3) below.
- (2) An application for admission for assessment may be made in respect of a patient on the grounds that—
  - (a) he is suffering from mental disorder of a nature or degree which warrants the detention of the patient in a hospital for assessment (or for assessment followed by medical treatment) for at least a limited period; and
  - (b) he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons.
- (3) An application for admission for assessment shall be founded on the written recommendations in the prescribed form of two registered medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in subsection (2) above are complied with.

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

### **3 Admission for treatment.**

- (1) A patient may be admitted to a hospital and detained there for the period allowed by the following provisions of this Act in pursuance of an application (in this Act referred to as “an application for admission for treatment”) made in accordance with this section.
- (2) An application for admission for treatment may be made in respect of a patient on the grounds that—
- (a) 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 two registered medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in subsection (2) above are complied with; and each such recommendation shall include—
- (a) such particulars as may be prescribed of the grounds for that opinion so far as it relates to the conditions set out in paragraphs (a) and (b) of that subsection; and
  - (b) a statement of the reasons for that opinion so far as it relates to the conditions set out in paragraph (c) of that subsection, 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 may be made in respect of a patient in accordance with the following provisions of this section, and any application so made is in this Act referred to as “an emergency application”.
- (2) An emergency application may be made either by an approved 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 above, and that compliance with the provisions of this Part of this Act relating to applications under that section would involve undesirable delay.
- (3) An emergency application shall be sufficient in the first instance if founded on one of the medical recommendations required by section 2 above, given, if practicable,

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by a practitioner who has previous acquaintance with the patient and otherwise complying with the requirements of section 12 below so far as applicable to a single recommendation, and verifying the statement referred to in subsection (2) above.

- (4) An emergency application shall cease to have effect on the expiration of a period of 72 hours from the time when the patient is admitted to the hospital unless—
  - (a) the second medical recommendation required by section 2 above is given and received by the managers within that period; and
  - (b) that recommendation and the recommendation referred to in subsection (3) above together comply with all the requirements of section 12 below (other than the requirement as to the time of signature of the second recommendation).
- (5) In relation to an emergency application, section 11 below shall have effect as if in subsection (5) of that section for the words “the period of 14 days ending with the date of the application” there were substituted the words “the previous 24 hours”.

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

- (1) An application for the admission of a patient to a hospital may be made under this Part of this Act notwithstanding that the patient is already an in-patient in that hospital or, in the case of an application for admission for treatment that the patient is for the time being liable to be detained in the hospital in pursuance of an application for admission for assessment; and where an application is so made the patient shall be treated for the purposes of this Part of this Act as if he had been admitted to the hospital at the time when that application was received by the managers.
- (2) If, in the case of a patient who is an in-patient in a hospital, it appears to the registered medical practitioner in charge of the treatment of the patient that an application ought to be made under this Part of this Act for the admission of the patient to hospital, he may furnish to the managers a report in writing to that effect; and in any such case the patient may be detained in the hospital for a period of 72 hours from the time when the report is so furnished.
- (3) The registered medical practitioner 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) above 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) above,the nurse may record that fact in writing; and in that event the patient may be detained in the hospital for a period of six hours from the time when that fact is so recorded or until the 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) above shall be delivered by the nurse (or by a person authorised by the nurse in that behalf) to the managers of the hospital as soon as possible after it is made; and where a record is made under that subsection the period mentioned in subsection (2) above shall begin at the time when it is made.

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- (6) The reference in subsection (1) above to an in-patient does not include an in-patient who is liable to be detained in pursuance of an application under this Part of this Act and the references in subsections (2) and (4) above do not include an in-patient who is liable to be detained in a hospital under this Part of this Act.
- (7) In subsection (4) above “prescribed” means prescribed by an order made by the Secretary of State.

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

- (1) An application for the admission of a patient to a hospital under this Part of this Act, duly completed in accordance with the provisions of this Part of this Act, shall be sufficient authority for the applicant, or any person authorised by the applicant, to take the patient and convey him to the hospital at any time within the following period, that is to say—
  - (a) in the case of an application other than an emergency application, the period of 14 days beginning with the date on which the patient was last examined by a registered medical practitioner before giving a medical recommendation for the purposes of the application;
  - (b) in the case of an emergency application, the period of 24 hours beginning at the time when the patient was examined by the practitioner giving the medical recommendation which is referred to in section 4(3) above, or at the time when the application is made, whichever is the earlier.
- (2) Where a patient is admitted within the said period to the hospital specified in such an application as is mentioned in subsection (1) above, or, being within that hospital, is treated by virtue of section 5 above as if he had been so admitted, the application shall be sufficient authority for the managers to detain the patient in the hospital in accordance with the provisions of this Act.
- (3) Any application for the admission of a patient under this Part of this Act which appears to be duly made and to be founded on the necessary medical recommendations may be acted upon without further proof of the signature or qualification of the person by whom the application or any such medical recommendation is made or given or of any matter of fact or opinion stated in it.
- (4) Where a patient is admitted to a hospital in pursuance of an application for admission for treatment, any previous application under this part of this Act by virtue of which he was liable to be detained in a hospital or subject to guardianship shall cease to have effect.

### *Guardianship*

## **7 Application for guardianship.**

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

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- (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 two registered medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in subsection (2) above are complied with; and each such recommendation shall include—
- (a) such particulars as may be prescribed of the grounds for that opinion so far as it relates to the conditions set out in paragraph (a) of that subsection; and
  - (b) a statement of the reasons for that opinion so far as it relates to the conditions set out in paragraph (b) of that subsection.
- (4) A guardianship application shall state the age of the patient or, if his exact age is not known to the applicant, shall state (if it be the fact) that the patient is believed to have attained the age of 16 years.
- (5) The person named as guardian in a guardianship application may be either a local social services authority or any other person (including the applicant himself); but a guardianship application in which a person other than a local social services authority is named as guardian shall be of no effect unless it is accepted on behalf of that person by the local social services authority for the area in which he resides, and shall be accompanied by a statement in writing by that person that he is willing to act as guardian.

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

- (1) Where a guardianship application, duly made under the provisions of this Part of this Act and forwarded to the local social services authority within the period allowed by subsection (2) below is accepted by that authority, the application shall, subject to regulations made by the Secretary of State, confer on the authority or person named in the application as guardian, to the exclusion of any other person—
- (a) the power to require the patient to reside at a place specified by the authority or person named as guardian;
  - (b) the power to require the patient to attend at places and times so specified for the purpose of medical treatment, occupation, education or training;
  - (c) the power to require access to the patient to be given, at any place where the patient is residing, to any registered medical practitioner, approved social worker or other person so specified.
- (2) The period within which a guardianship application is required for the purposes of this section to be forwarded to the local social services authority is the period of 14 days beginning with the date on which the patient was last examined by a registered medical practitioner before giving a medical recommendation for the purposes of the application.
- (3) A guardianship application which appears to be duly made and to be founded on the necessary medical recommendations may be acted upon without further proof of the signature or qualification of the person by whom the application or any such medical

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recommendation is made or given, or of any matter of fact or opinion stated in the application.

- (4) If within the period of 14 days beginning with the day on which a guardianship application has been accepted by the local social services authority the application, or any medical recommendation given for the purposes of the application, is found to be in any respect incorrect or defective, the application or recommendation may, within that period and with the consent of that authority, be amended by the person by whom it was signed; and upon such amendment being made the application or recommendation shall have effect and shall be deemed to have had effect as if it had been originally made as so amended.
- (5) Where a patient is received into guardianship in pursuance of a guardianship application, any previous application under this Part of this Act by virtue of which he was subject to guardianship or liable to be detained in a hospital shall cease to have effect.

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

- (1) Subject to the provisions of this Part of this Act, the Secretary of State may make regulations—
  - (a) for regulating the exercise by the guardians of patients received into guardianship under this Part of this Act of their powers as such; and
  - (b) for imposing on such guardians, and upon local social services authorities in the case of patients under the guardianship of persons other than local social services authorities, such duties as he considers necessary or expedient in the interests of the patients.
- (2) Regulations under this section may in particular make provision for requiring the patients to be visited, on such occasions or at such intervals as may be prescribed by the regulations, on behalf of such local social services authorities as may be so prescribed, and shall provide for the appointment, in the case of every patient subject to the guardianship of a person other than a local social services authority, of a registered medical practitioner to act as the nominated medical attendant of the patient.

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

- (1) If any person (other than a local social services authority) who is the guardian of a patient received into guardianship under this Part of this Act—
  - (a) dies; or
  - (b) gives notice in writing to the local social services authority that he desires to relinquish the functions of guardian,
 the guardianship of the patient shall thereupon vest in the local social services authority, but without prejudice to any power to transfer the patient into the guardianship of another person in pursuance of regulations under section 19 below.
- (2) If any such person, not having given notice under subsection (1)(b) above, is incapacitated by illness or any other cause from performing the functions of guardian of the patient, those functions may, during his incapacity, be performed on his behalf by the local social services authority or by any other person approved for the purposes by that authority.

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- (3) If it appears to the county court, upon application made by an approved social worker, that any person other than a local social services authority having the guardianship of a patient received into guardianship under this Part of this Act has performed his functions negligently or in a manner contrary to the interests of the welfare of the patient, the court may order that the guardianship of the patient be transferred to the local social services authority or to any other person approved for the purpose by that authority.
- (4) Where the guardianship of a patient is transferred to a local social services authority or other person by or under this section, subsection (2)(c) of section 19 below shall apply as if the patient had been transferred into the guardianship of that authority or person in pursuance of regulations under that section.

#### *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 local social services authority named in the application as guardian, or, as the case may be, to the local social services authority for the area in which the person so named resides.
- (3) Before or within a reasonable time after an application for the admission of a patient for assessment is made by an approved 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 23(2)(a) below.
- (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 local social services authority by whom that social worker is appointed, that he objects to the application being made and, without prejudice to the foregoing provision, 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) above shall be made by any person in respect of a patient unless that person has personally seen the patient within the period of 14 days ending with the date of the application.
- (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 shall be of no effect unless the patient is described in each of the recommendations as suffering from the same form of mental disorder,

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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) above shall be sufficient if the recommendations on which it is founded are given either as separate recommendations, each signed by a registered medical practitioner, or as a joint recommendation signed by two such practitioners.

## 12 General provisions as to medical recommendations.

- (1) The recommendations required for the purposes of an application for the admission of a patient under this Part of this Act (in this Act referred to as “medical recommendations”) shall be signed on or before the date of the application, and shall be given by practitioners who have personally examined the patient either together or separately, but where they have examined the patient separately not more than five days must have elapsed between the days on which the separate examinations took place.
- (2) Of the medical recommendations given for the purposes of any such application, one shall be given by a practitioner approved for the purposes of this section by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder; and unless that practitioner has previous acquaintance with the patient, the other such recommendation shall, if practicable, be given by a registered medical practitioner who has such previous acquaintance.
- (3) Subject to subsection (4) below, where the application is for the admission of the patient to a hospital which is not a [<sup>F1</sup>registered establishment], 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 [<sup>F2</sup>section 21(4) or 44(6) of the National Health Service Act 2006, paragraph 15 of Schedule 2 to, or paragraph 11 of Schedule 6 to, that Act, or paragraph 15 of Schedule 2 to, or paragraph 11 of Schedule 5 to, the National Health Service (Wales) Act 2006](which relate to accommodation for private patients) [<sup>F3</sup>or otherwise to be accommodated, by virtue of an undertaking to pay in respect of the accommodation, in a hospital vested in an NHS foundation trust] .
- (4) Subsection (3) above 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 of this Act 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;



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- (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) above, a practitioner on the staff of the hospital to which the patient is to be admitted,  
or by the husband, wife [<sup>F4</sup>, civil partner], 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) above, 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) above shall apply to applications for guardianship as they apply to applications for admission but with the substitution for paragraph (e) of subsection (5) above of the following paragraph—  
“(e) the person named as guardian in the application.”

#### Textual Amendments

- F1** Words in s. 12(3) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(2)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in **art. 4** and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **art. 3(3)(d)** (subject to transitional provisions in **Schs. 1-3** and with **art. 3(4)-(10)**)
- F2** Words in s. 12(3) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 63** (with Sch. 3 Pt. 1)
- F3** Words in s. 12(3) inserted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 34, 199, **Sch. 4 para. 51**; S.I. 2004/759, **art. 2**
- F4** Words in s. 12(5) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 26(1), 263, **Sch. 27 para. 86(a)**; S.I. 2005/3175, **art. 2(2)**

#### Modifications etc. (not altering text)

- C3** S. 12(2): certain functions not to be exercisable by a Primary Care Trust (E.) (1.4.2002) by virtue of 2000/695, reg. 4(1), Sch. 4 (as amended by S.I. 2002/555, **reg. 6(3)**)
- C4** S. 12(2): transfer of functions (E.) (1.4.2001) by S.I. 2001/747, **regs. 2(1), 3, 4, Sch. 1**

VALID FROM 01/04/2008

#### <sup>F5</sup>12A Conflicts of interest

- (1) The appropriate national authority may make regulations as to the circumstances in which there would be a potential conflict of interest such that—
  - (a) an approved mental health professional shall not make an application mentioned in section 11(1) above;
  - (b) a registered medical practitioner shall not give a recommendation for the purposes of an application mentioned in section 12(1) above.
- (2) Regulations under subsection (1) above may make—
  - (a) provision for the prohibitions in paragraphs (a) and (b) of that subsection to be subject to specified exceptions;
  - (b) different provision for different cases; and

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- (c) transitional, consequential, incidental or supplemental provision.
- (3) In subsection (1) above, “the appropriate national authority” means—
- (a) in relation to applications in which admission is sought to a hospital in England or to guardianship applications in respect of which the area of the relevant local social services authority is in England, the Secretary of State;
  - (b) in relation to applications in which admission is sought to a hospital in Wales or to guardianship applications in respect of which the area of the relevant local social services authority is in Wales, the Welsh Ministers.
- (4) References in this section to the relevant local social services authority, in relation to a guardianship application, are references to the local social services authority named in the application as guardian or (as the case may be) the local social services authority for the area in which the person so named resides.]

#### Textual Amendments

**F5** S. 12A inserted (1.4.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 22\(5\)](#), 56 (with [Sch. 10](#)); [S.I. 2008/745](#), [art. 3\(c\)](#)

### 13 **Duty of approved social workers to make applications for admission or guardianship.**

- (1) It shall be the duty of an approved social worker to make an application for admission to hospital or a guardianship application in respect of a patient within the area of the local social services authority by which that officer is appointed 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) An application under this section by an approved social worker may be made outside the area of the local social services authority by which he is appointed.
- (4) It shall be the duty of a local social services authority, if so required by the nearest relative of a patient residing in their area, to direct an approved social worker as soon as practicable to take the patient’s case into consideration under subsection (1) above 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.
- (5) 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) above, or as restricting the power of an approved social worker to make any application under this Act.

### 14

Where a patient is admitted to a hospital in pursuance of an application (other than an emergency application) made under this Part of this Act by his nearest relative,

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the managers of the hospital shall as soon as practicable give notice of that fact to the local social services authority for the area in which the patient resided immediately before his admission; and that authority shall as soon as practicable arrange for a social worker <sup>F6</sup> . . . to interview the patient and provide the managers with a report on his social circumstances.

#### Textual Amendments

**F6** Words in s. 14 repealed (1.4.2005 for E. and 1.4.2006 for W.) by [Children Act 2004 \(c. 31\)](#), ss. 64, 67, [Sch. 5 Pt. 4](#); S.I. 2005/394, [art. 2\(2\)\(g\)](#); S.I. 2006/885, [art. 2\(2\)\(h\)](#)

### 15 Rectification of applications and recommendations.

- (1) If within the period of 14 days beginning with the day on which a patient has been admitted to a hospital in pursuance of an application for admission for assessment or for treatment the application, or any medical recommendation given for the purposes of the application, is found to be in any respect incorrect or defective, the application or recommendation may, within that period and with the consent of the managers of the hospital, be amended by the person by whom it was signed; and upon such amendment being made the application or recommendation shall have effect and shall be deemed to have had effect as if it had been originally made as so amended.
- (2) Without prejudice to subsection (1) above, if within the period mentioned in that subsection it appears to the managers of the hospital that one of the two medical recommendations on which an application for the admission of a patient is founded is insufficient to warrant the detention of the patient in pursuance of the application, they may, within that period, give notice in writing to that effect to the applicant; and where any such notice is given in respect of a medical recommendation, that recommendation shall be disregarded, but the application shall be, and shall be deemed always to have been, sufficient if—
  - (a) a fresh medical recommendation complying with the relevant provisions of this Part of this Act (other than the provisions relating to the time of signature and the interval between examinations) is furnished to the managers within that period; and
  - (b) that recommendation, and the other recommendation on which the application is founded, together comply with those provisions.
- (3) Where the medical recommendations upon which an application for admission is founded are, taken together, insufficient to warrant the detention of the patient in pursuance of the application, a notice under subsection (2) above may be given in respect of either of those recommendations; but this subsection shall not apply in a case where the application is of no effect by virtue of section 11(6) above.
- (4) Nothing in this section shall be construed as authorising the giving of notice in respect of an application made as an emergency application, or the detention of a patient admitted in pursuance of such an application, after the period of 72 hours referred to in section 4(4) above, unless the conditions set out in paragraphs (a) and (b) of that section are complied with or would be complied with apart from any error or defect to which this section applies.

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*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 shall have effect as if that other form of mental disorder were specified in it.
- (2) Where a report under subsection (1) above 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) above 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 a local social services authority, 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 of this Act 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.

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- (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) below, by notice in writing given to the patient or to the person for the time being in charge of the patient, revoke the leave of absence and recall the patient to the hospital.
- (5) A patient to whom leave of absence is granted under this section shall not be recalled under subsection (4) above after he has ceased to be liable to be detained under this Part of this Act;<sup>F7</sup> . . .

#### Textual Amendments

- F7** Words in s. 17(5) omitted (1.4.1996 with application as mentioned in s. 3(3) of the omitting Act) by virtue of 1995 c. 52, ss. 3(1)(3), 7(2)

VALID FROM 03/11/2008

#### <sup>F8</sup>17A Community treatment orders

- (1) The responsible clinician may by order in writing discharge a detained patient from hospital subject to his being liable to recall in accordance with section 17E below.
- (2) A detained patient is a patient who is liable to be detained in a hospital in pursuance of an application for admission for treatment.
- (3) An order under subsection (1) above is referred to in this Act as a “community treatment order”.
- (4) The responsible clinician may not make a community treatment order unless—
  - (a) in his opinion, the relevant criteria are met; and
  - (b) an approved mental health professional states in writing—
    - (i) that he agrees with that opinion; and
    - (ii) that it is appropriate to make the order.
- (5) The relevant criteria are—
  - (a) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment;
  - (b) it is necessary for his health or safety or for the protection of other persons that he should receive such treatment;
  - (c) subject to his being liable to be recalled as mentioned in paragraph (d) below, such treatment can be provided without his continuing to be detained in a hospital;
  - (d) it is necessary that the responsible clinician should be able to exercise the power under section 17E(1) below to recall the patient to hospital; and
  - (e) appropriate medical treatment is available for him.
- (6) In determining whether the criterion in subsection (5)(d) above is met, the responsible clinician shall, in particular, consider, having regard to the patient's history of mental disorder and any other relevant factors, what risk there would be of a deterioration of the patient's condition if he were not detained in a hospital (as a result, for example, of

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his refusing or neglecting to receive the medical treatment he requires for his mental disorder).

(7) In this Act—

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

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

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

### Textual Amendments

**F8** Ss. 17A-17G inserted (1.4.2008 s. 17F for certain purposes, otherwise 3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 32(2), 56** (with [Sch. 10](#)); S.I. 2008/745, **art. 2(c)(i)**; S.I. 2008/1900, **art. 2(i)** (with [art. 3, Sch.](#) )

### Modifications etc. (not altering text)

**C5** S. 17A modified (3.11.2008) by [The Mental Health Act 2007 \(Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions\) Order 2008 \(S.I. 2008/1210\)](#), **art. 6(b)**

**C6** S. 17A(7) modified (3.11.2008) by [The Mental Health Act 2007 \(Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions\) Order 2008 \(S.I. 2008/1210\)](#), **art. 11(a)**

VALID FROM 03/11/2008

## 17B Conditions

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

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

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

(3) The order shall specify—

- (a) a condition that the patient make himself available for examination under section 20A below; and
- (b) a condition that, if it is proposed to give a certificate under Part 4A of this Act in his case, he make himself available for examination so as to enable the certificate to be given.

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

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- (5) He may also suspend any conditions specified in a community treatment order.
- (6) If a community patient fails to comply with a condition specified in the community treatment order by virtue of subsection (2) above, that fact may be taken into account for the purposes of exercising the power of recall under section 17E(1) below.
- (7) But nothing in this section restricts the exercise of that power to cases where there is such a failure.

#### Textual Amendments

- F8** Ss. 17A-17G inserted (1.4.2008 s. 17F for certain purposes, otherwise 3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 32(2)**, 56 (with [Sch. 10](#)); S.I. 2008/745, **art. 2(c)(i)**; S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch. )

#### Modifications etc. (not altering text)

- C7** S. 17B(2) modified (3.11.2008) by [The Mental Health Act 2007 \(Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions\) Order 2008 \(S.I. 2008/1210\)](#), **art. 6(c)**

VALID FROM 03/11/2008

### 17C Duration of community treatment order

A community treatment order shall remain in force until—

- (a) the period mentioned in section 20A(1) below (as extended under any provision of this Act) expires, but this is subject to sections 21 and 22 below;
  - (b) the patient is discharged in pursuance of an order under section 23 below or a direction under section 72 below;
  - (c) the application for admission for treatment in respect of the patient otherwise ceases to have effect; or
  - (d) the order is revoked under section 17F below,
- whichever occurs first.

#### Textual Amendments

- F8** Ss. 17A-17G inserted (1.4.2008 s. 17F for certain purposes, otherwise 3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 32(2)**, 56 (with [Sch. 10](#)); S.I. 2008/745, **art. 2(c)(i)**; S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch. )

#### Modifications etc. (not altering text)

- C8** S. 17C modified (3.11.2008) by [The Mental Health Act 2007 \(Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions\) Order 2008 \(S.I. 2008/1210\)](#), **art. 11(b)**



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VALID FROM 03/11/2008

### 17D Effect of community treatment order

- (1) The application for admission for treatment in respect of a patient shall not cease to have effect by virtue of his becoming a community patient.
- (2) But while he remains a community patient—
  - (a) the authority of the managers to detain him under section 6(2) above in pursuance of that application shall be suspended; and
  - (b) reference (however expressed) in this or any other Act, or in any subordinate legislation (within the meaning of the Interpretation Act 1978), to patients liable to be detained, or detained, under this Act shall not include him.
- (3) And section 20 below shall not apply to him while he remains a community patient.
- (4) Accordingly, authority for his detention shall not expire during any period in which that authority is suspended by virtue of subsection (2)(a) above.

#### Textual Amendments

- F8** Ss. 17A-17G inserted (1.4.2008 s. 17F for certain purposes, otherwise 3.11.2008) by [Mental Health Act 2007 \(c. 12\), ss. 32\(2\), 56](#) (with [Sch. 10](#)); [S.I. 2008/745, art. 2\(c\)\(i\)](#); [S.I. 2008/1900, art. 2\(i\)](#) (with [art. 3, Sch. \)](#)

#### Modifications etc. (not altering text)

- C9** S. 17D modified (3.11.2008) by [The Mental Health Act 2007 \(Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions\) Order 2008 \(S.I. 2008/1210\), art. 11\(c\)](#)

VALID FROM 03/11/2008

### 17E Power to recall to hospital

- (1) The responsible clinician may recall a community patient to hospital if in his opinion—
  - (a) the patient requires medical treatment in hospital for his mental disorder; and
  - (b) there would be a risk of harm to the health or safety of the patient or to other persons if the patient were not recalled to hospital for that purpose.
- (2) The responsible clinician may also recall a community patient to hospital if the patient fails to comply with a condition specified under section 17B(3) above.
- (3) The hospital to which a patient is recalled need not be the responsible hospital.
- (4) Nothing in this section prevents a patient from being recalled to a hospital even though he is already in the hospital at the time when the power of recall is exercised; references to recalling him shall be construed accordingly.



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- (5) The power of recall under subsections (1) and (2) above shall be exercisable by notice in writing to the patient.
- (6) A notice under this section recalling a patient to hospital shall be sufficient authority for the managers of that hospital to detain the patient there in accordance with the provisions of this Act.

#### Textual Amendments

- F8** Ss. 17A-17G inserted (1.4.2008 s. 17F for certain purposes, otherwise 3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 32\(2\)](#), 56 (with [Sch. 10](#)); [S.I. 2008/745](#), [art. 2\(c\)\(i\)](#); [S.I. 2008/1900](#), [art. 2\(i\)](#) (with [art. 3](#), [Sch.](#) )

VALID FROM 01/04/2008

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

- (1) This section applies to a community patient who is detained in a hospital by virtue of a notice recalling him there under section 17E above.
- (2) The patient may be transferred to another hospital in such circumstances and subject to such conditions as may be prescribed in regulations made by the Secretary of State (if the hospital in which the patient is detained is in England) or the Welsh Ministers (if that hospital is in Wales).
- (3) If he is so transferred to another hospital, he shall be treated for the purposes of this section (and section 17E above) as if the notice under that section were a notice recalling him to that other hospital and as if he had been detained there from the time when his detention in hospital by virtue of the notice first began.
- (4) The responsible clinician may by order in writing revoke the community treatment order if—
  - (a) in his opinion, the conditions mentioned in section 3(2) above are satisfied in respect of the patient; and
  - (b) an approved mental health professional states in writing—
    - (i) that he agrees with that opinion; and
    - (ii) that it is appropriate to revoke the order.
- (5) The responsible clinician may at any time release the patient under this section, but not after the community treatment order has been revoked.
- (6) If the patient has not been released, nor the community treatment order revoked, by the end of the period of 72 hours, he shall then be released.
- (7) But a patient who is released under this section remains subject to the community treatment order.
- (8) In this section—
  - (a) “the period of 72 hours” means the period of 72 hours beginning with the time when the patient's detention in hospital by virtue of the notice under section 17E above begins; and

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

#### Textual Amendments

- F8** Ss. 17A-17G inserted (1.4.2008 s. 17F for certain purposes, otherwise 3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 32\(2\)](#), 56 (with [Sch. 10](#)); S.I. 2008/745, [art. 2\(c\)\(i\)](#); S.I. 2008/1900, [art. 2\(i\)](#) (with art. 3, Sch. )

VALID FROM 03/11/2008

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

- (1) This section applies if a community treatment order is revoked under section 17F above in respect of a patient.
- (2) Section 6(2) above shall have effect as if the patient had never been discharged from hospital by virtue of the community treatment order.
- (3) The provisions of this or any other Act relating to patients liable to be detained (or detained) in pursuance of an application for admission for treatment shall apply to the patient as they did before the community treatment order was made, unless otherwise provided.
- (4) If, when the order is revoked, the patient is being detained in a hospital other than the responsible hospital, the provisions of this Part of this Act shall have effect as if—
  - (a) the application for admission for treatment in respect of him were an application for admission to that other hospital; and
  - (b) he had been admitted to that other hospital at the time when he was originally admitted in pursuance of the application.
- (5) But, in any case, section 20 below shall have effect as if the patient had been admitted to hospital in pursuance of the application for admission for treatment on the day on which the order is revoked.]

#### Textual Amendments

- F8** Ss. 17A-17G inserted (1.4.2008 s. 17F for certain purposes, otherwise 3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 32\(2\)](#), 56 (with [Sch. 10](#)); S.I. 2008/745, [art. 2\(c\)\(i\)](#); S.I. 2008/1900, [art. 2\(i\)](#) (with art. 3, Sch. )

#### Modifications etc. (not altering text)

- C10** S. 17G modified (3.11.2008) by [The Mental Health Act 2007 \(Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions\) Order 2008 \(S.I. 2008/1210\)](#), [art. 11\(d\)](#)

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

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

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

he may, subject to the provisions of this section, be taken into custody and returned to the hospital or place by any approved 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 paragraph (c) of subsection (1) above is a hospital other than the one in which the patient is for the time being liable to be detained, the references in that subsection to an officer on the staff of the hospital and the managers of the hospital shall respectively include references to an officer on the staff of the first-mentioned hospital and the managers of that hospital.

(3) Where a patient who is for the time being subject to guardianship under this Part of this Act absents himself without the leave of the guardian from the place at which he is required by the guardian to reside, he may, subject to the provisions of this section, be taken into custody and returned to that place by any officer on the staff of a local social services authority, by any constable, or by any person authorised in writing by the guardian or a local social services authority.

[<sup>F9</sup>(4) A patient shall not be taken into custody under this section after the later of—

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

and, in determining for the purposes of paragraph (b) above or any other provision of this Act whether a person who is or has been absent without leave is at any time liable to be detained or subject to guardianship, a report furnished under section 20 or 21B below before the first day of his absence without leave shall not be taken to have renewed the authority for his detention or guardianship unless the period of renewal began before that day.]

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

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

### **Extent Information**

**E1** For extent of s. 18 see 146, 147

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### Textual Amendments

**F9** S. 18(4) substituted (1.4.1996) by 1995 c. 52, ss. 2(1), 7(2)

## 19 Regulations as to transfer of patients.

- (1) In such circumstances and subject to such conditions as may be prescribed by regulations made by the Secretary of State—
  - (a) a patient who is for the time being liable to be detained in a hospital by virtue of an application under this Part of this Act may be transferred to another hospital or into the guardianship of a local social services authority or of any person approved by such an authority;
  - (b) a patient who is for the time being subject to the guardianship of a local social services authority or other person by virtue of an application under this Part of this Act may be transferred into the guardianship of another local social services authority or person, or be transferred to a hospital.
- (2) Where a patient is transferred in pursuance of regulations under this section, the provisions of this Part of this Act (including this subsection) shall apply to him as follows, that is to say—
  - (a) in the case of a patient who is liable to be detained in a hospital by virtue of an application for admission for assessment or for treatment and is transferred to another hospital, as if the application were an application for admission to that other hospital and as if the patient had been admitted to that other hospital at the time when he was originally admitted in pursuance of the application;
  - (b) in the case of a patient who is liable to be detained in a hospital by virtue of such an application and is transferred into guardianship, as if the application were a guardianship application duly accepted at the said time;
  - (c) in the case of a patient who is subject to guardianship by virtue of a guardianship application and is transferred into the guardianship of another authority or person, as if the application were for his reception into the guardianship of that authority or person and had been accepted at the time when it was originally accepted;
  - (d) in the case of a patient who is subject to guardianship by virtue of a guardianship application and is transferred to a hospital, as if the guardianship application were an application for admission to that hospital for treatment and as if the patient had been admitted to the hospital at the time when the application was originally accepted.
- (3) Without prejudice to subsections (1) and (2) above, any patient, who is for the time being liable to be detained under this Part of this Act in a hospital vested in the Secretary of State for the purposes of his functions under the <sup>F10</sup>National Health Service Act 2006, in a hospital vested in the Welsh Ministers for the purposes of their functions under the National Health Service (Wales) Act 2006, in any accommodation used under either of those Acts] by the managers of such a hospital <sup>F11</sup>or in a hospital vested in a National Health Service trust <sup>F12</sup>, NHS foundation trust<sup>F13</sup>or Primary Care Trust], may at any time be removed to any other such hospital or accommodation <sup>F14</sup>[which is managed by the managers of, or is vested in the National Health Service trust <sup>F12</sup>, NHS foundation trust<sup>F13</sup>or Primary Care Trust] for, the first-mentioned hospital]; and paragraph (a) of subsection (2) above shall apply in relation to a patient so removed as it applies in relation to a patient transferred in pursuance of regulations made under this section.

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- (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) above.

#### Textual Amendments

- F10** Words in s. 19(3) substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\), ss. 2, 8\(2\), Sch. 1 para. 64](#) (with Sch. 3 Pt. 1)
- F11** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 66\(1\), Sch. 9 para. 24\(2\)](#)
- F12** Words in s.19(3) inserted (1.4.2004) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\), ss. 34, 199, Sch. 4 para. 52; S.I. 2004/759, art. 2](#)
- F13** Words in s. 19(3) inserted (8.2.2000) by [S.I. 2000/90, art. 3\(1\), Sch. 1 para. 16\(3\)](#) (with art. 2(5))
- F14** Words substituted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 66\(1\), Sch. 9 para. 24\(2\)](#)

VALID FROM 01/04/2008

#### [<sup>F15</sup>19A Regulations as to assignment of responsibility for community patients

- (1) Responsibility for a community patient may be assigned to another hospital in such circumstances and subject to such conditions as may be prescribed by regulations made by the Secretary of State (if the responsible hospital is in England) or the Welsh Ministers (if that hospital is in Wales).
- (2) If responsibility for a community patient is assigned to another hospital—
- the application for admission for treatment in respect of the patient shall have effect (subject to section 17D above) as if it had always specified that other hospital;
  - the patient shall be treated as if he had been admitted to that other hospital at the time when he was originally admitted in pursuance of the application (and as if he had subsequently been discharged under section 17A above from there); and
  - that other hospital shall become “the responsible hospital” in relation to the patient for the purposes of this Act.]

#### Textual Amendments

- F15** [S. 19A](#) inserted (1.4.2008 for certain purposes, otherwise 3.11.2008) by [Mental Health Act 2007 \(c. 12\), ss. 32, 56, Sch. 3 para. 4](#) (with Sch. 10); [S.I. 2008/745, art. 2\(c\)\(ii\)](#); [S.I. 2008/1900, art. 2\(i\)](#) (with art. 3, Sch.)

### *Duration of detention or guardianship and discharge*

#### 20 Duration of authority.

- (1) Subject to the following provisions of this Part of this Act, a patient admitted to hospital in pursuance of an application for admission for treatment, and a patient

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placed under guardianship in pursuance of a guardianship application, may be detained in a hospital or kept under guardianship for a period not exceeding six months beginning with the day on which he was so admitted, or the day on which the guardianship application was accepted, as the case may be, but shall not be so detained or kept for any longer period unless the authority for his detention or guardianship is renewed under this section.

- (2) Authority for the detention or guardianship of a patient may, unless the patient has previously been discharged, be renewed—
- (a) from the expiration of the period referred to in subsection (1) above, for a further period of six months;
  - (b) from the expiration of any period of renewal under paragraph (a) above, for a further period of one year,
- and so on for periods of one year at a time.

- (3) Within the period of two months ending on the day on which a patient who is liable to be detained in pursuance of an application for admission for treatment would cease under this section to be so liable in default of the renewal of the authority for his detention, it shall be the duty of the responsible medical officer—
- (a) to examine the patient; and
  - (b) if it appears to him that the conditions set out in subsection (4) below are satisfied, to furnish to the managers of the hospital where the patient is detained a report to that effect in the prescribed form;

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

- (4) The conditions referred to in subsection (3) above 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 shall be an alternative to the condition specified in paragraph (b) above 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) above 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 two months ending with the day on which a patient who is subject to guardianship under this Part of this Act would cease under this section to be so liable in default of the renewal of the authority for his guardianship, it shall be the duty of the appropriate medical officer—
- (a) to examine the patient; and
  - (b) if it appears to him that the conditions set out in subsection (7) below are satisfied, to furnish to the guardian and, where the guardian is a person other

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- than a local social services authority, to the responsible local social services authority a report to that effect in the prescribed form;
- and where such a report is furnished in respect of a patient, the local social services authority shall, unless they discharge the patient, cause him to be informed.
- (7) The conditions referred to in subsection (6) above 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) above, the authority for the detention or guardianship of the patient shall be thereby renewed for the period prescribed in that case by subsection (2) above.
- (9) Where the form of mental disorder specified in a report furnished under subsection (3) or (6) above 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 shall have 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 above.
- (10) In this section “appropriate medical officer” has the same meaning as in section 16(5) above.

VALID FROM 03/11/2008

#### **[<sup>F16</sup>20A Community treatment period**

- (1) Subject to the provisions of this Part of this Act, a community treatment order shall cease to be in force on expiry of the period of six months beginning with the day on which it was made.
- (2) That period is referred to in this Act as “the community treatment period”.
- (3) The community treatment period may, unless the order has previously ceased to be in force, be extended—
  - (a) from its expiration for a period of six months;
  - (b) from the expiration of any period of extension under paragraph (a) above for a further period of one year,and so on for periods of one year at a time.
- (4) Within the period of two months ending on the day on which the order would cease to be in force in default of an extension under this section, it shall be the duty of the responsible clinician—
  - (a) to examine the patient; and
  - (b) if it appears to him that the conditions set out in subsection (6) below are satisfied and if a statement under subsection (8) below is made, to furnish to the managers of the responsible hospital a report to that effect in the prescribed form.



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- (5) Where such a report is furnished in respect of the patient, the managers shall, unless they discharge him under section 23 below, cause him to be informed.
- (6) The conditions referred to in subsection (4) above are that—
  - (a) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment;
  - (b) it is necessary for his health or safety or for the protection of other persons that he should receive such treatment;
  - (c) subject to his continuing to be liable to be recalled as mentioned in paragraph (d) below, such treatment can be provided without his being detained in a hospital;
  - (d) it is necessary that the responsible clinician should continue to be able to exercise the power under section 17E(1) above to recall the patient to hospital; and
  - (e) appropriate medical treatment is available for him.
- (7) In determining whether the criterion in subsection (6)(d) above is met, the responsible clinician shall, in particular, consider, having regard to the patient's history of mental disorder and any other relevant factors, what risk there would be of a deterioration of the patient's condition if he were to continue not to be detained in a hospital (as a result, for example, of his refusing or neglecting to receive the medical treatment he requires for his mental disorder).
- (8) The statement referred to in subsection (4) above is a statement in writing by an approved mental health professional—
  - (a) that it appears to him that the conditions set out in subsection (6) above are satisfied; and
  - (b) that it is appropriate to extend the community treatment period.
- (9) Before furnishing a report under subsection (4) above the responsible clinician shall consult one or more other persons who have been professionally concerned with the patient's medical treatment.
- (10) Where a report is duly furnished under subsection (4) above, the community treatment period shall be thereby extended for the period prescribed in that case by subsection (3) above.

#### Textual Amendments

**F16** Ss. 20A, 20B inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 32(3), 56 (with Sch. 10); S.I. 2008/1900, art. 2(i) (with art. 3, Sch.)

VALID FROM 03/11/2008

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

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



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

#### Textual Amendments

**F16** Ss. 20A, 20B inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32(3), 56 (with Sch. 10); S.I. 2008/1900, art. 2(i) (with art. 3, Sch.)

#### Modifications etc. (not altering text)

**C11** S. 20B(1) modified (3.11.2008) by The Mental Health Act 2007 (Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions) Order 2008 (S.I. 2008/1210), arts. 1(1)(b), 11(e)

### [<sup>F17</sup>21 Special provisions as to patients absent without leave.

- (1) Where a patient is absent without leave—
- (a) on the day on which (apart from this section) he would cease to be liable to be detained or subject to guardianship under this Part of this Act; or
  - (b) within the period of one week ending with that day,
- he shall not cease to be so liable or subject until the relevant time.
- (2) For the purposes of subsection (1) above the relevant time—
- (a) where the patient is taken into custody under section 18 above, is the end of the period of one week beginning with the day on which he is returned to the hospital or place where he ought to be;
  - (b) where the patient returns himself to the hospital or place where he ought to be within the period during which he can be taken into custody under section 18 above, is the end of the period of one week beginning with the day on which he so returns himself; and
  - (c) otherwise, is the end of the period during which he can be taken into custody under section 18 above.]

#### Textual Amendments

**F17** Ss. 21, 21A, 21B substituted (1.4.1996) for s. 21 by 1995 c. 52, ss. 2(2), 7(2)

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

- (1) This section applies where a patient who is absent without leave is taken into custody under section 18 above, or returns himself to the hospital or place where he ought to be, not later than the end of the period of 28 days beginning with the first day of his absence without leave.
- (2) Where the period for which the patient is liable to be detained or subject to guardianship is extended by section 21 above, any examination and report to be made and furnished in respect of the patient under section 20(3) or (6) above may be made and furnished within the period as so extended.

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

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

- (1) This section applies where a patient who is absent without leave is taken into custody under section 18 above, or returns himself to the hospital or place where he ought to be, later than the end of the period of 28 days beginning with the first day of his absence without leave.
- (2) It shall be the duty of the appropriate 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 in respect of the patient the appropriate body shall cause him to be informed.
- (3) Where the patient is liable to be detained (as opposed to subject to guardianship), the appropriate medical officer shall, before furnishing a report under subsection (2) above, consult—
- (a) one or more other persons who have been professionally concerned with the patient's medical treatment; and
  - (b) an approved 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 shall cease to be so liable or subject at the end of that period unless a report is duly furnished in respect of him under subsection (2) above.
- (5) Where the patient would (apart from section 21 above) have ceased to be liable to be detained or subject to guardianship on or before the day on which a report is duly furnished in respect of him under subsection (2) above, the report shall renew the authority for his detention or guardianship for the period prescribed in that case by section 20(2) above.
- (6) Where the authority for the detention or guardianship of the patient is renewed by virtue of subsection (5) above—
- (a) the renewal shall take effect as from the day on which (apart from section 21 above and that subsection) the authority would have expired; and
  - (b) if (apart from this paragraph) the renewed authority would expire on or before the day on which the report is furnished, the report shall further renew the authority, as from the day on which it would expire, for the period prescribed in that case by section 20(2) above.
- (7) Where the authority for the detention or guardianship of the patient would expire within the period of two months beginning with the day on which a report is duly furnished in respect of him under subsection (2) above, the report shall, if it so provides, have effect also as a report duly furnished under section 20(3) or (6) above;

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

- (8) Where the form of mental disorder specified in a report furnished under subsection (2) above 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) above), 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) above the appropriate medical officer need not on that occasion furnish a report under section 16 above.
- (10) In this section—
- “appropriate medical officer” has the same meaning as in section 16(5) above;
  - “the appropriate body” means—
    - (a) in relation to a patient who is liable to be detained in a hospital, the managers of the hospital; and
    - (b) in relation to a patient who is subject to guardianship, the responsible local social services authority; and
  - “the relevant conditions” means—
    - (a) in relation to a patient who is liable to be detained in a hospital, the conditions set out in subsection (4) of section 20 above; and
    - (b) in relation to a patient who is subject to guardianship, the conditions set out in subsection (7) of that section.

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

- (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 United Kingdom (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, six 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) above, 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 shall 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 <sup>[F18]</sup>, 21 and 21A] above shall apply in relation to the patient as if he had absented himself without leave on that day.
- <sup>[F19]</sup>(3) In its application by virtue of subsection (2) above section 18(4) above shall have effect with the substitution of the words “end of the period of 28 days beginning with the first day of his absence without leave.” for the words from “later of” onwards.]

### Extent Information

E2 For extent of s. 22 see [ss. 146, 147](#)

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### Textual Amendments

**F18** Words in s. 22(2)(b) substituted (1.4.1996) by 1995 c. 52, ss. 2(3)(a), 7(2)

**F19** S. 22(3) inserted (1.4.1996) by 1995 c. 52, ss. 2(3)(b), 7(2)

## 23 Discharge of patients.

- (1) Subject to the provisions of this section and section 25 below, a patient who is for the time being liable to be detained or subject to guardianship under this Part of this Act shall cease to be so liable or subject if an order in writing discharging him from detention or guardianship (in this Act referred to as “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 responsible local social services authority or by the nearest relative of the patient.
- (3) Where the patient is liable to be detained in a <sup>F20</sup>registered establishment] in pursuance of an application for admission for assessment or for treatment, an order for his discharge may, without prejudice to subsection (2) above, be made by the Secretary of State and, if the patient is maintained under a contract with a <sup>F21</sup>National Health Service trust ]<sup>F22</sup>, <sup>F23</sup>NHS foundation trust,]<sup>F24</sup>Health Authority, Special Health Authority or Primary Care Trust], by that National Health Service trust, <sup>F23</sup>NHS foundation trust,]<sup>F24</sup>Health Authority, Special Health Authority or Primary Care Trust].
- (4) The powers conferred by this section on any authority <sup>F25</sup>trust ]<sup>F26</sup>(other than an NHS foundation trust)] or body of persons may be exercised <sup>F25</sup>subject to subsection (5) below] by any three or more members of that authority <sup>F25</sup>trust] or body authorised by them in that behalf or by three or more members of a committee or sub-committee of that authority <sup>F25</sup>trust] or body which has been authorised by them in that behalf.
- <sup>F27</sup>(5) The reference in subsection (4) above to the members of an authority, trust or body or the members of a committee or sub-committee of an authority, trust or body,—
  - (a) in the case of <sup>F28</sup>a <sup>F29</sup>Health Authority, Special Health Authority or Primary Care Trust]] or a committee or sub-committee of <sup>F28</sup>a <sup>F29</sup>Health Authority, Special Health Authority or Primary Care Trust]], is a reference only to the chairman of the authority <sup>F30</sup>or trust]and such members (of the authority <sup>F30</sup>, trust], committee or sub-committee, as the case may be) as are not also officers of the authority <sup>F30</sup>or trust], within the meaning of <sup>F31</sup>the National Health Service Act 2006 or the National Health Service (Wales) Act 2006] ; and
  - (b) in the case of a National Health Service trust or a committee or sub-committee of such a trust, is a reference only to the chairman of the trust and such directors or (in the case of a committee or sub-committee) members as are not also employees of the trust.]
- <sup>F32</sup>(6) The powers conferred by this section on any NHS foundation trust may be exercised by any three or more non-executive directors of the board of the trust authorised by the board in that behalf.]

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### Textual Amendments

- F20** Words in s. 23(3) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(2)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in **art. 4** and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **art. 3(3)(d)** (subject to transitional provisions in **Schs. 1-3** and **art. 3(4)-(10)**)
- F21** Words inserted by **National Health Service and Community Care Act 1990** (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 24(3)(a)**
- F22** Words in s. 23(3) substituted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8, **Sch. 1 Pt. III**, para. 107(2)(a)
- F23** Words in s. 23(3) inserted (1.4.2004) by **Health and Social Care (Community Health and Standards) Act 2003** (c. 43), ss. 34, 199, **Sch. 4 para. 53(a)**; S.I. 2004/759, {art. 2}
- F24** Words in s. 23(3) substituted (8.2.2000) by S.I. 2000/90, art. 3(1), **Sch. 1 para. 16(4)(a)** (with art. 2(5))
- F25** Words inserted by **National Health Service and Community Care Act 1990** (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 24(3)(b)**
- F26** Words in s. 23(4) inserted (1.4.2004) by **Health and Social Care (Community Health and Standards) Act 2003** (c. 43), ss. 34, 199, **Sch. 4 para. 53(b)**; S.I. 2004/759, **art. 2**
- F27** S.23(5) inserted by **National Health Service and Community Care Act 1990** (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 24(3)(c)**
- F28** Words in s. 23(5)(a) substituted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8, **Sch. 1 Pt. III**, para. 107(2)(b)
- F29** Words in s. 23(5)(a) substituted (8.2.2000) by S.I. 2000/90, art. 3(1), **Sch. 1 para. 16(4)(b)(i)** (with art. 2(5))
- F30** Words in s. 23(5)(a) inserted (8.2.2000) by S.I. 2000/90, art. 3(1), **Sch. 1 para. 16(4)(b)(ii)(iii)** (with art. 2(5))
- F31** Words in s. 23(5)(a) substituted (1.3.2007) by **National Health Service (Consequential Provisions) Act 2006** (c. 43), ss. 2, 8(2), **Sch. 1 para. 65** (with Sch. 3 Pt. 1)
- F32** S. 23(6) inserted (1.4.2004) by **Health and Social Care (Community Health and Standards) Act 2003** (c. 43), ss. 34, 199, **Sch. 4 para. 53(c)**; S.I. 2004/759, **art. 2**

## 24 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 this Act 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) above to visit and examine a patient may require the production of and inspect any records relating to the detention or treatment of the patient in any hospital [<sup>F33</sup>or to any after-care services provided for the patient under section 117 below.].
- (3) Where application is made by the Secretary of State or a [<sup>F34</sup>Health Authority, Special Health Authority [<sup>F35</sup>, Primary Care Trust ]]<sup>F36</sup>, National Health Service trust or NHS foundation trust] to exercise, in respect of a patient liable to be detained in a [<sup>F37</sup>registered establishment], any power to make an order for his discharge, the following persons, that is to say—
  - (a) any registered medical practitioner authorised by the Secretary of State or, as the case may be, that [<sup>F34</sup>Health Authority, Special Health Authority [<sup>F35</sup>, Primary Care Trust]<sup>F36</sup>, National Health Service trust or NHS foundation trust]; and

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- (b) any other person (whether a registered medical practitioner or not) authorised under <sup>F38</sup>Part II of the Care Standards Act 2000] 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) above 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 of this Act; 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 <sup>F33</sup>or to any after-care services provided for the patient under section 117 below.].

#### Textual Amendments

- F33** Words in s. 24(2)(4) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), Sch. 1, para. 1
- F34** Words in s. 24(3) substituted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, s. 2(1), Sch. 1, Pt. III, para. 107(3) (with ss. 2(3), 8)
- F35** Words in s. 24(3) inserted (8.2.2000) by S.I. 2000/90, art. 3(1), Sch. 1 para. 16(5) (with art. 2(5))
- F36** Words in s. 24(3) substituted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 34, 199, Sch. 4 para. 54; S.I. 2004/759, art.2
- F37** Words in s. 24(3) substituted (1.4.2002) by 2000 c. 14, s. 116, Sch. 4 para. 9(2); S.I. 2001/4150, art. 3(3) (subject to transitional provisions in art. 4 and S.I. 2002/1493, art. 4); S.I. 2002/920, art. 3(3)(d) (subject to transitional provisions in Schs. 1-3 and art. 3(4)-(10))
- F38** Words in s. 24(3) substituted (1.4.2002) by 2000 c. 14, s. 116, Sch. 4 para. 9(3); S.I. 2001/4150, art. 3(3) (subject to transitional provisions in art. 4 and S.I. 2002/1493, art. 4); S.I. 2002/920, art. 3(3)(d) (with transitional provisions in Schs. 1-3 and art. 3(4)-(10))

## 25 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; and if, within 72 hours after such notice has been given, the responsible medical officer furnishes to the managers 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 shall be of no effect; and
- (b) no further order for the discharge of the patient shall be made by that relative during the period of six months beginning with the date of the report.
- (2) In any case where a report under subsection (1) above is furnished in respect of a patient who is liable to be detained in pursuance of an application for admission for treatment the managers shall cause the nearest relative of the patient to be informed.

<sup>F39</sup> *After-care under supervision]*

#### Textual Amendments

- F39** Ss. 25A-25J inserted (1.4.1996) by 1995 c. 52, ss. 1(1), 7(2)

*Status: Point in time view as at 01/03/2007. This version of this part contains provisions that are not valid for this point in time.*

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## [<sup>F39</sup>25A 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 117 below.
- (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 of this Act 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 25B and 25C below.
- (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 or 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 117 below 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.
- (6) A supervision application in respect of a patient shall be addressed to the [<sup>F40</sup>Primary Care Trust or] Health Authority which will have the duty under section 117 below to provide after-care services for the patient after he leaves hospital.
- (7) Before accepting a supervision application in respect of a patient a [<sup>F40</sup>Primary Care Trust or] Health Authority shall consult the local social services authority which will also have that duty.
- (8) Where a [<sup>F40</sup>Primary Care Trust or] Health Authority accept a supervision application in respect of a patient the [<sup>F40</sup>Primary Care Trust or] Health Authority 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 a Mental Health Review Tribunal are available);
  - (b) inform any person whose name is stated in the supervision application in accordance with sub-paragraph (i) of paragraph (e) of section 25B(5) below that the supervision application has been accepted; and
  - (c) inform in writing any person whose name is so stated in accordance with sub-paragraph (ii) of that paragraph that the supervision application has been accepted.



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- (9) Where a patient in respect of whom a supervision application is made is granted leave of absence from a hospital under section 17 above (whether before or after the supervision application is made), references in—
- (a) this section and the following provisions of this Part of this Act; and
  - (b) Part V of this Act,
- 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).]

#### Textual Amendments

**F40** Words in s. 25A inserted (1.10.2002) by 2002 c. 17, s. 2(5), **Sch. 2 Pt. 2 para. 43**; S.I. 2002/2478, **art. 3(1)(d)** (with saving in **art. 3(3)** and transitional provision in **art. 4**)

#### Modifications etc. (not altering text)

**C12** S. 25A applied (with modifications) (1.4.1996) by S.I. 1996/295, **reg. 2, Sch.**

**C13** S. 25A(6)-(8): functions of local authority may be responsibility of an executive of the authority (1.4.2000) by virtue of S.I. 2000/695, **reg. 3(2)(b), Sch. 2**

### [<sup>F39</sup>25B Making of supervision application.

- (1) The responsible medical officer shall not make a supervision application unless—
- (a) subsection (2) below is complied with; and
  - (b) the responsible medical officer has considered the matters specified in subsection (4) below.
- (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 117 below; 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 paragraph (b) of subsection (2) above should not apply, that paragraph shall not apply unless—
- (a) the patient has a propensity to violent or dangerous behaviour towards others; and



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- (b) the responsible medical officer considers that it is appropriate for steps such as are mentioned in that paragraph to be taken.
- (4) The matters referred to in subsection (1)(b) above are—
- (a) the after-care services to be provided for the patient under section 117 below; and
  - (b) any requirements to be imposed on him under section 25D below.
- (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 25A(4) above 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 paragraph (a)(iv) of subsection (2) above; and
    - (ii) any person who has been consulted under paragraph (b) of that subsection.
- (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) above 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 25A(4) above are complied with.
- (8) A recommendation under subsection (6)(b) above shall include a statement that in the opinion of the social worker (having regard in particular to the patient's history) both of the conditions set out in section 25A(4)(b) and (c) above 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 117 below;
  - (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 117 below; and

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- (d) details of any requirements to be imposed on him under section 25D below.
- (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 paragraph (a)(iv) of subsection (2) above; and
  - (c) inform in writing any person who has been consulted under paragraph (b) of that subsection,
- of the matters specified in subsection (11) below.
- (11) The matters referred to in subsection (10) above are—
- (a) that the application is being made;
  - (b) the after-care services to be provided for the patient under section 117 below;
  - (c) any requirements to be imposed on him under section 25D below; 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.]

**Modifications etc. (not altering text)**

**C14** S. 25B applied (with modifications) (1.4.1996) by S.I. 1996/295, reg. 2, Sch.

[<sup>F39</sup>**25C Supervision applications: supplementary.**

- (1) Subject to subsection (2) below, a supervision application, and the recommendation under section 25B(6)(a) above 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 the recommendation under section 25B(6)(a) above 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 25B(6)(a) above.
- (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 25B(6)(b) above.
- (5) For the purpose of deciding whether to make a recommendation under section 25B(6) above in respect of a patient, 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 117 below.
- (6) If, within the 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 [<sup>F41</sup>Primary Care

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Trust or]Health Authority which accepted the application, 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) above 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 25B(6) above 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 25B(6) above 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) above or of a person by whom the other recommendation is given under section 25B(6) above for the purposes of the application.
- (10) In subsection (9)(c) above “close relative” means husband, wife [<sup>F42</sup>, civil partner] , 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.]

#### Textual Amendments

- F41** Words in s. 25C(6) inserted (1.10.2002) by 2002 c. 17, s. 2(5), **Sch. 2 Pt. 2 para. 44**; S.I. 2002/2478, **art. 3(1)(d)** (with saving in **art. 3(3)** and transitional provision in **art. 4**)
- F42** Words in s. 25C(10) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 26(1), 263, {Sch. 27 para. 86(b)}; S.I. 2005/3175, **art. 2(2)**

#### Modifications etc. (not altering text)

- C15** S. 25C applied (with modifications) (1.4.1996) by S.I. 1996/295, **reg. 2, Sch.**
- C16** S. 25C(6): functions of local authority may be responsibility of an executive of the authority (1.4.2000) by virtue of S.I. 2000/695, **reg. 3(2)(b), Sch. 2**

### [<sup>F39</sup>25D 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 responsible after-care bodies have power to impose any of the requirements specified in subsection (3) below for the purpose of securing that the patient receives the after-care services provided for him under section 117 below.
- (2) In this Act “the responsible after-care bodies”, in relation to a patient, means the bodies which have (or will have) the duty under section 117 below to provide after-care services for the patient.
- (3) The requirements referred to in subsection (1) above are—
  - (a) that the patient reside at a specified place;

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- (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.
- (4) 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.
- (5) A person who demands—
- (a) to be given access to a patient in whose case a requirement has been imposed under subsection (3)(c) above; or
  - (b) to take and convey a patient in pursuance of subsection (4) above,
- 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.]

**Modifications etc. (not altering text)**

**C17** S. 25D applied (with modifications) (1.4.1996) by S.I. 1996/295, reg. 2, Sch.

**C18** S. 25D(1): functions of local authority may be responsibility of an executive of the authority (1.4.2000) by virtue S.I. 2000/695, reg. 3(2)(b), Sch. 2

[<sup>F39</sup>**25E Review of after-care under supervision etc.**

- (1) The after-care services provided (or to be provided) under section 117 below for a patient who is (or is to be) subject to after-care under supervision, and any requirements imposed on him under section 25D above, shall be kept under review, and (where appropriate) modified, by the responsible after-care bodies.
- (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 117 below; or
  - (b) to comply with any or all of any requirements imposed on him under section 25D above.
- (3) Where subsection (2) above applies in relation to a patient, the responsible after-care bodies shall review, and (where appropriate) modify—
  - (a) the after-care services provided for him under section 117 below; and
  - (b) any requirements imposed on him under section 25D above.
- (4) Where subsection (2) above applies in relation to a patient, the responsible after-care bodies shall also—
  - (a) consider whether it might be appropriate for him to cease to be subject to after-care under supervision and, if they conclude 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 they conclude that it might be, inform an approved social worker.

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- (5) The responsible after-care bodies shall not modify—
- (a) the after-care services provided (or to be provided) under section 117 below for a patient who is (or is to be) subject to after-care under supervision; or
  - (b) any requirements imposed on him under section 25D above,
- unless subsection (6) below is complied with.
- (6) This subsection is complied with if—
- (a) the patient has been consulted about the modifications;
  - (b) any person who the responsible after-care bodies believe 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 117 below 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 responsible after-care bodies have taken into account any views expressed by the persons consulted.
- (7) Where the patient has requested that paragraph (c) of subsection (6) above should not apply, that paragraph 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 that paragraph to be taken.
- (8) Where the responsible after-care bodies modify the after-care services provided (or to be provided) for the patient under section 117 below or any requirements imposed on him under section 25D above, they shall—
- (a) inform the patient both orally and in writing;
  - (b) inform any person who has been consulted under paragraph (b) of subsection (6) above; and
  - (c) inform in writing any person who has been consulted under paragraph (c) of that subsection,
- 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 becomes, the community responsible medical officer,
- the responsible after-care bodies shall comply with subsection (11) below.
- (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 becomes, the supervisor,
- the responsible after-care bodies shall comply with subsection (11) below.
- (11) The responsible after-care bodies comply with this subsection if they—

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- (a) inform the patient both orally and in writing;
- (b) inform any person who they believe 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 117 below; and
- (c) unless the patient otherwise requests, take such steps as are practicable to inform in writing 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.]

**Modifications etc. (not altering text)**

**C19** S. 25E: functions of local authority may be responsibility of an executive of the authority (1.4.2000) by virtue of S.I. 2000/695, reg. 3(2)(b), Sch. 2

**[<sup>F39</sup>25F 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 [<sup>F43</sup>Primary Care Trust or] Health Authority which have the duty under section 117 below to provide after-care services for the patient.
- (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) above.
- (4) Where a report is furnished under subsection (1) above in respect of a patient, the responsible after-care bodies 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 in writing the person (if any) appearing to be the nearest relative of the patient,

that the report has been furnished.]

**Textual Amendments**

**F43** Words in s. 25F(1) inserted (1.10.2002) by 2002 c. 17, s. 2(5), Sch. 2 Pt. 2 para. 45; S.I. 2002/2478, art. 3(1)(d) (with saving in art. 3(3) and transitional provision in art. 4)

**Modifications etc. (not altering text)**

**C20** S. 25F(1)(4): functions of local authority may be responsibility of an executive of the authority (1.4.2000) by virtue of S.I. 2000/695, reg. 3(2)(b), Sch. 2

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## **[<sup>F39</sup>25G Duration and renewal of after-care under supervision.**

- (1) Subject to sections 25H and 25I below, 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 six 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) above, for a further period of six months; and
  - (b) from the end of any period of renewal under paragraph (a) above, for a further period of one year,and so on for periods of one year at a time.
- (3) Within the period of two months ending on the day on which a patient who is subject to after-care under supervision would (in default of the operation of subsection (7) below) 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) below are complied with, to furnish to the responsible after-care bodies a report to that effect in the prescribed form.
- (4) The conditions referred to in subsection (3) above are that—
  - (a) the patient 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 or 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 provided for him under section 117 below;
  - (c) his being subject to after-care under supervision is likely to help to secure that he receives the after-care services so provided.
- (5) The community responsible medical officer shall not consider whether the conditions set out in subsection (4) above 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 117 below; 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 the after-care services so provided;

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- (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 paragraph (b) of subsection (5) above should not apply, that paragraph 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 that paragraph to be taken.
- (7) Where a report is duly furnished under subsection (3) above, the patient shall be thereby made subject to after-care under supervision for the further period prescribed in that case by subsection (2) above.
- (8) Where a report is furnished under subsection (3) above, the responsible after-care bodies 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 a Mental Health Review Tribunal are available);
  - (b) inform any person who has been consulted under paragraph (a)(v) of subsection (5) above that the report has been furnished; and
  - (c) inform in writing any person who has been consulted under paragraph (b) of that subsection that the report has been furnished.
- (9) Where the form of mental disorder specified in a report furnished under subsection (3) above is a form of disorder other than that 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) above the community responsible medical officer need not on that occasion furnish a report under section 25F above.]

**Modifications etc. (not altering text)**

**C21** S. 25G applied (with modifications) (1.4.1996) by S.I. 1996/295, reg. 2, Sch.

**C22** S. 25G(3)(8): functions of local authority may be responsibility of an executive of the authority (1.4.2000) by virtue of S.I. 2000/695, reg. 3(2)(b), Sch. 2

**[<sup>F39</sup>25H 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) above unless subsection (3) below is complied with.
- (3) This subsection is complied with if—



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- (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 117 below; 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 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.
- (4) Where the patient has requested that paragraph (b) of subsection (3) above should not apply, that paragraph 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 that paragraph to be taken.
- (5) A patient subject to after-care under supervision shall cease to be so subject if he—
- (a) is admitted to a hospital in pursuance of an application for admission for treatment; or
  - (b) is received into guardianship.
- (6) Where a patient (for any reason) ceases to be subject to after-care under supervision the responsible after-care bodies shall—
- (a) inform the patient both orally and in writing;
  - (b) inform any person who they believe 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 117 below; and
  - (c) take such steps as are practicable to inform in writing the person (if any) appearing to be the nearest relative of the patient,
- that the patient has ceased to be so subject.
- (7) Where the patient has requested that paragraph (c) of subsection (6) above should not apply, that paragraph shall not apply unless subsection (3)(b) above applied in his case by virtue of subsection (4) above.]

**Modifications etc. (not altering text)**

**C23** S. 25H(6): functions of local authority may be responsibility of an executive of the authority (1.4.2000) by virtue of S.I. 2000/695, reg. 3(2)(b), **Sch. 2**

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[<sup>F39</sup>**25I Special provisions as to patients sentenced to imprisonment etc.**

- (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 United Kingdom (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) above he is not required—
  - (a) to receive any after-care services provided for him under section 117 below; or
  - (b) to comply with any requirements imposed on him under section 25D above.
- (3) If the patient is detained as mentioned in paragraph (a) of subsection (1) above for a period of, or successive periods amounting in the aggregate to, six months or less, or is detained as mentioned in paragraph (b) of that subsection, and, apart from this subsection, he—
  - (a) would have ceased to be subject to after-care under supervision during the period for which he is so detained; or
  - (b) 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) above, any examination and report to be made and furnished in respect of the patient under section 25G(3) above may be made and furnished within the period as so extended.
- (5) Where, by virtue of subsection (4) above, the patient is made subject to after-care under supervision for a further period after the day on which (apart from subsection (3) above) he would have ceased to be so subject, the further period shall be deemed to have commenced with that day.]

[<sup>F39</sup>**25J Patients moving from Scotland to England and Wales.**

- (1) <sup>F44</sup> .....
- (2) Sections 25A to 25I above, section 117 below and any other provision 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 the Secretary of State may by regulations prescribe.]

**Textual Amendments**

**F44** S. 25J(1) repealed (5.10.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Consequential Provisions\) Order 2005 \(S.I. 2005/2078\)](#), art. 16, **Sch. 3**

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*Functions of relatives of patients*

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

- (1) In this Part of this Act “relative” means any of the following persons:—
  - (a) husband or wife;
  - (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
  - <sup>F45</sup>(a) his mother, and
  - (b) if his father has parental responsibility for him within the meaning of section 3 of the Children Act 1989, his father.]
- (3) In this Part of this Act, subject to the provisions of this section and to the following provisions of this Part of this Act, the “nearest relative” means the person first described in subsection (1) above who is for the time being surviving, relatives of the whole blood being preferred to relatives of the same description of the half-blood and the elder or eldest of two or more relatives described in any paragraph of that subsection being preferred to the other or others of those relatives, regardless of sex.
- (4) Subject to the provisions of this section and to the following provisions of this Part of this Act, where the patient ordinarily resides with or is cared for by one or more of his relatives (or, if he is for the time being an in-patient in a hospital, he last ordinarily resided with or was cared for by one or more of his relatives) his nearest relative shall be determined—
  - (a) by giving preference to that relative or those relatives over the other or others; and
  - (b) as between two or more such relatives, in accordance with subsection (3) above.
- (5) Where the person who, under subsection (3) or (4) above, would be the nearest relative of a patient—
  - (a) in the case of a patient ordinarily resident in the United Kingdom, the Channel Islands or the Isle of Man, is not so resident; or
  - (b) is the husband or wife 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; <sup>F46</sup> . . .
  - <sup>F46</sup>(d) . . . . .the nearest relative of the patient shall be ascertained as if that person were dead.

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- (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 six 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 paragraph (b) of subsection (5) above.
- (7) A person, other than a relative, with whom the patient ordinarily resides (or, if the patient is for the time being an in-patient in a hospital, last ordinarily resided before he was admitted), and with whom he has or had been ordinarily residing for a period of not less than five years, shall be treated for the purposes of this Part of this Act as if he were a relative but—
- (a) shall be treated for the purposes of subsection (3) above as if mentioned last in subsection (1) above; and
  - (b) shall not be treated by virtue of this subsection as the nearest relative of a married patient unless the husband or wife of the patient is disregarded by virtue of paragraph (b) of subsection (5) above.

#### Textual Amendments

**F45** S. 26(2)(a)(b) substituted (14.10.1991) by S.I. 1991/1881 art.3

**F46** In s. 26(5) the word “or” and paragraph (d) repealed (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(7), [Sch. 15](#) (with [Sch. 14 paras. 1\(1\), 27\(4\)](#)); S.I. 1991/828, [art. 3\(2\)](#)

### [<sup>F47</sup>27] Children and young persons in care.

Where—

- (a) a patient who is a child or young person is in the care of a local authority by virtue of a care order within the meaning of the Children Act 1989; or
- (b) the rights and powers of a parent of a patient who is a child or young person are vested in a local authority by virtue of section 16 of the Social Work (Scotland) Act 1968,

the authority shall be deemed to be the nearest relative of the patient in preference to any person except the patient’s husband or wife (if any).]

#### Textual Amendments

**F47** S. 27 substituted (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(5), [Sch. 13 para. 48\(1\)](#) (with [Sch. 14 para. 1\(1\)](#)); S.I. 1991/828, [art. 3\(2\)](#)

### 28 Nearest relative of minor under guardianship, etc.

[<sup>F48</sup>(1) Where—

- (a) a guardian has been appointed for a person who has not attained the age of eighteen years; or
- (b) a residence order (as defined by section 8 of the Children Act 1989) is in force with respect to such a person,

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the guardian (or guardians, where there is 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) Subsection (5) of section 26 above shall apply in relation to a person who is, or who is one of the persons, deemed to be the nearest relative of a patient by virtue of this section as it applies in relation to a person who would be the nearest relative under subsection (3) of that section.

[<sup>F49</sup>(3) In this section “guardian” [<sup>F50</sup>includes a special guardian (within the meaning of the Children Act 1989), but] does not include a guardian under this Part of this Act.]

- (4) In this section “court” includes a court in Scotland or Northern Ireland, and “enactment” includes an enactment of the Parliament of Northern Ireland, a Measure of the Northern Ireland Assembly and an Order in Council under Schedule 1 of the <sup>M1</sup>Northern Ireland Act 1974.

#### Textual Amendments

- F48** S. 28(1) substituted (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(5), [Sch. 13 para. 48\(3\)](#) (with [Sch. 14 para. 1\(1\)](#)); [S.I. 1991/828](#), [art. 3\(2\)](#)
- F49** S. 28(3) substituted (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(5), [Sch. 13 para. 48\(4\)](#); [S.I. 1991/828](#), [art. 3\(2\)](#)
- F50** Words in s. 28(3) inserted (30.12.2005) by [2002 c. 38](#), ss. 139, 148, [Sch. 3 para. 41](#) (with [Sch. 4 paras. 6-8](#)); [S.I. 2005/2213](#), [art. 2\(o\)](#)

#### Marginal Citations

- M1** 1974 c. 28.

## 29 Appointment by court of acting nearest relative.

- (1) The county court may, upon application made in accordance with the provisions of this section in respect of a patient, by order direct that the functions of the nearest relative of the patient under this Part of this Act and sections 66 and 69 below shall, during the continuance in force of the order, be exercisable by the 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—
- any relative of the patient;
  - 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
  - an approved social worker;
- but in relation to an application made by such a social worker, subsection (1) above shall have effect as if for the words “the applicant” there were substituted the words “the local social services authority”.
- (3) An application for an order under this section may be made upon any of the following grounds, that is to say—
- 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;

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- (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; or
  - (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 of this Act, or is likely to do so.
- (4) If, immediately before the expiration of the period for which a patient is liable to be detained by virtue of an application for admission for assessment, an application under this section, which is an application made on the ground specified in subsection (3)(c) or (d) above, is pending in respect of the patient, that period shall be extended—
- (a) in any case, until the application under this section has been finally disposed of; and
  - (b) if an order is made in pursuance of the application under this section, for a further period of seven days;
- and for the purposes of this subsection an application under this section shall be deemed to have been finally disposed of at the expiration of the time allowed for appealing from the decision of the court or, if notice of appeal has been given within that time, when the appeal has been heard or withdrawn, and “pending” shall be construed accordingly.
- (5) An order made on the ground specified in subsection (3)(a) or (b) above may specify a period for which it is to continue in force unless previously discharged under section 30 below.
- (6) While an order made under this section is in force, the provisions of this Part of this Act (other than this section and section 30 below) and sections 66, 69, 132(4) and 133 below shall apply in relation to the patient as if for any reference to the nearest relative of the patient there were substituted a reference to the person having the functions of that relative and (without prejudice to section 30 below) shall so apply notwithstanding that the person who was the patient’s nearest relative when the order was made is no longer his nearest relative; but this subsection shall not apply to section 66 below in the case mentioned in paragraph (h) of subsection (1) of that section.

### **30 Discharge and variation of orders under s. 29.**

- (1) An order made under section 29 above in respect of a patient may be discharged by the county court upon application made—
- (a) in any case, by the person having the functions of the nearest relative of the patient by virtue of the order;
  - (b) where the order was made on the ground specified in paragraph (a) or paragraph (b) of section 29(3) above, or where the person who was the nearest relative of the patient when the order was made has ceased to be his nearest relative, on the application of the nearest relative of the patient.
- (2) An order made under section 29 above in respect of a patient may be varied by the county court, on the application of the person having the functions of the nearest relative by virtue of the order or on the application of an approved social worker, by substituting for the first-mentioned person a local social services authority or any other

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person who in the opinion of the court is a proper person to exercise those functions, being an authority or person who is willing to do so.

- (3) If the person having the functions of the nearest relative of a patient by virtue of an order under section 29 above dies—
  - (a) subsections (1) and (2) above shall apply as if for any reference to that person there were substituted a reference to any relative of the patient, and
  - (b) until the order is discharged or varied under those provisions the functions of the nearest relative under this Part of this Act and sections 66 and 69 below shall not be exercisable by any person.
- (4) An order under section 29 above shall, unless previously discharged under subsection (1) above, cease to have effect at the expiration of the period, if any, specified under subsection (5) of that section 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 an order or direction under Part III of this Act (otherwise than under section 35, 36 or 38) or was subject to guardianship under this Part of this Act or by virtue of such an order or direction, or becomes so liable or subject within the period of three 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 above);
  - (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 29 above shall not affect the validity of anything previously done in pursuance of the order.

### *Supplemental*

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

County court rules which relate to applications authorised by this Part of this Act to be made to a county court may make provision—

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

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

- (1) The Secretary of State may make regulations for prescribing anything which, under this Part of this Act, is required or authorised to be prescribed, and otherwise for carrying this Part of this Act into full effect.
- (2) Regulations under this section may in particular make provision—
  - (a) for prescribing the form of any application, recommendation, report, order, notice or other document to be made or given under this Part of this Act;

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- (b) for prescribing the manner in which any such application, recommendation, report, order, notice or other document may be proved, and for regulating the service of any such application, report, order or notice;
- (c) for requiring [<sup>F51</sup>such bodies as may be prescribed by the regulations] to keep such registers or other records as may be [<sup>F51</sup>so prescribed] in respect of patients liable to be detained or subject to guardianship [<sup>F52</sup>or to after-care under supervision] under this Part of this Act, 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 <sup>M2</sup>Births and Deaths Registration Act 1953; and
- (e) for enabling the functions under this Part of this Act of the nearest relative of a patient to be performed, in such circumstances and subject to such conditions (if any) as may be prescribed by the regulations, by any person authorised in that behalf by that relative;

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

- (3) Without prejudice to subsections (1) and (2) above, but subject to section 23(4) above, regulations under this section may determine the manner in which functions under this Part of this Act of the managers of hospitals, local social services authorities, [<sup>F53</sup>Health Authorities, Special Health Authorities [<sup>F54</sup>, Primary Care Trusts][<sup>F55</sup>, National Health Service trusts or NHS foundation trusts]] are to be exercised, and such regulations may in particular specify the circumstances in which, and the conditions subject to which, any such functions may be performed by officers of or other persons acting on behalf of those managers [<sup>F56</sup>authorities and trusts].

#### Textual Amendments

- F51** Words in s. 32(2)(c) substituted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1 para. 2**
- F52** Words in s. 32(2)(c) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1 para. 2(c)**
- F53** Words in s. 32(3) substituted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, s. 2(1)(3), 8, **Sch. 1, Pt. III, para. 107(4)**
- F54** Words in s. 32(3) inserted (8.2.2000) by S.I. 2000/90, art. 3(1), **Sch. 1 para. 16(6)** (with art. 2(5))
- F55** Words in s. 32(3) substituted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 34, 199, **Sch. 4 para. 55**; S.I. 2004/759, **art.2**
- F56** Words substituted by virtue of National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 24(5)**

#### Marginal Citations

- M2** 1953 c. 20.

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

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



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- (2) Where a minor who is a ward of court is liable to be detained in a hospital by virtue of an application for admission under this Part of this Act, any power exercisable under this Part of this Act or under section 66 below 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 of this Act shall be construed as authorising the making of a guardianship application in respect of a minor who is a ward of court, or the transfer into guardianship of any such minor.
- [<sup>F57</sup>(4) Where a supervision application has been made in respect of a minor who is a ward of court, the provisions of this Part of this Act 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.]

#### Textual Amendments

**F57** S. 33(4) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), Sch. 2, para. 3

### 34 Interpretation of Part II.

- (1) In this Part of this Act—

[<sup>F58</sup>“the community responsible medical officer”, in relation to a patient subject to after-care under supervision, means the person who, in accordance with section 117(2A)(a) below, is in charge of 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 a local social services authority, means the person appointed in pursuance of regulations made under section 9(2) above to act as the medical attendant of the patient;

[<sup>F59</sup>“registered establishment” means an establishment—

- (a) which would not, apart from subsection (2) below, be a hospital for the purposes of this Part; and
- (b) in respect of which a person is registered under Part II of the Care Standards Act 2000 as an independent hospital in which treatment or nursing (or both) are provided for persons liable to be detained under this Act;]

“the responsible medical officer” means [<sup>F60</sup>(except in the phrase “the community responsible medical officer”)]—

- (a) in relation to a patient [<sup>F61</sup>who is]liable to be detained by virtue of an application for admission for assessment or an application for admission for treatment [<sup>F61</sup>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 local social services authority to act (either generally or in any particular case or for any particular purpose) as the responsible medical officer.

[<sup>F62</sup>“the supervisor”, in relation to a patient subject to after-care under supervision, means the person who, in accordance with section 117(2A)(b) below, is supervising him.]

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- [<sup>F63</sup>(1A) Nothing in this Act prevents the same person from acting as more than one of the following in relation to a patient, that is—
- (a) the responsible medical officer;
  - (b) the community responsible medical officer; and
  - (c) the supervisor.]
- (2) Except where otherwise expressly provided, this Part of this Act applies in relation to [<sup>F64</sup>a registered establishment], as it applies in relation to a hospital, and references in this Part of this Act to a hospital, and any reference in this Act to a hospital to which this Part of this Act applies, shall be construed accordingly.
- (3) In relation to a patient who is subject to guardianship in pursuance of a guardianship application, any reference in this Part of this Act to the responsible local social services authority is a reference—
- (a) where the patient is subject to the guardianship of a local social services authority, to that authority;
  - (b) where the patient is subject to the guardianship of a person other than a local social services authority, to the local social services authority for the area in which that person resides.

#### Textual Amendments

- F58** Definition in s. 34(1) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 2**, para. 4(2)
- F59** S. 34(1): definition of "registered establishment" inserted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(4)(a)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **art. 3(3)(d)** (subject to transitional provisions in Schs. 1-3 and art. 3(4)-(10))
- F60** Words in s. 34(1) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 4(3)(a)
- F61** Words in s. 34(1)(a) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 4(3)(b)
- F62** Definition inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 4(4)
- F63** S. 34(1A) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 4(5)
- F64** Words in s. 34(2) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(4)(b)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **art. 3(3)(d)** (subject to transitional provisions in Schs. 1-3 and art. 3(4)-(10))

**Status:**

Point in time view as at 01/03/2007. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

Mental Health Act 1983, Part II is up to date with all changes known to be in force on or before 20 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.