



# Mental Health Act 1983

## 1983 CHAPTER 20

### PART X

#### MISCELLANEOUS AND SUPPLEMENTARY

##### *Miscellaneous provisions*

VALID FROM 01/04/2008

#### **[<sup>F1</sup>130A Independent mental health advocates**

- (1) The appropriate national authority shall make such arrangements as it considers reasonable to enable persons (“independent mental health advocates”) to be available to help qualifying patients.
- (2) The appropriate national authority may by regulations make provision as to the appointment of persons as independent mental health advocates.
- (3) The regulations may, in particular, provide—
  - (a) that a person may act as an independent mental health advocate only in such circumstances, or only subject to such conditions, as may be specified in the regulations;
  - (b) for the appointment of a person as an independent mental health advocate to be subject to approval in accordance with the regulations.
- (4) In making arrangements under this section, the appropriate national authority shall have regard to the principle that any help available to a patient under the arrangements should, so far as practicable, be provided by a person who is independent of any person who is professionally concerned with the patient's medical treatment.

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- (5) For the purposes of subsection (4) above, a person is not to be regarded as professionally concerned with a patient's medical treatment merely because he is representing him in accordance with arrangements—
  - (a) under section 35 of the Mental Capacity Act 2005; or
  - (b) of a description specified in regulations under this section.
- (6) Arrangements under this section may include provision for payments to be made to, or in relation to, persons carrying out functions in accordance with the arrangements.
- (7) Regulations under this section—
  - (a) may make different provision for different cases;
  - (b) may make provision which applies subject to specified exceptions;
  - (c) may include transitional, consequential, incidental or supplemental provision.

#### Textual Amendments

- F1** Ss. 130A-130D inserted (1.4.2008 for ss. 130A, 130C for certain purposes, otherwise 3.11.2008 for W. and 1.4.2009 for E.) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 30\(2\)](#), 56 (with Sch. 10); [S.I. 2008/745](#), [arts. 2\(b\)\(i\)](#), [3\(d\)](#); [S.I. 2008/2561](#), [art. 2\(c\)](#) (with art. 3, Sch.); [S.I. 2009/139](#), [art. 2\(a\)](#)

VALID FROM 03/11/2008

### 130B Arrangements under section 130A

- (1) The help available to a qualifying patient under arrangements under section 130A above shall include help in obtaining information about and understanding—
  - (a) the provisions of this Act by virtue of which he is a qualifying patient;
  - (b) any conditions or restrictions to which he is subject by virtue of this Act;
  - (c) what (if any) medical treatment is given to him or is proposed or discussed in his case;
  - (d) why it is given, proposed or discussed;
  - (e) the authority under which it is, or would be, given; and
  - (f) the requirements of this Act which apply, or would apply, in connection with the giving of the treatment to him.
- (2) The help available under the arrangements to a qualifying patient shall also include—
  - (a) help in obtaining information about and understanding any rights which may be exercised under this Act by or in relation to him; and
  - (b) help (by way of representation or otherwise) in exercising those rights.
- (3) For the purpose of providing help to a patient in accordance with the arrangements, an independent mental health advocate may—
  - (a) visit and interview the patient in private;
  - (b) visit and interview any person who is professionally concerned with his medical treatment;

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- (c) require the production of and inspect any records relating to his detention or treatment in any hospital or registered establishment or to any after-care services provided for him under section 117 above;
  - (d) require the production of and inspect any records of, or held by, a local social services authority which relate to him.
- (4) But an independent mental health advocate is not entitled to the production of, or to inspect, records in reliance on subsection (3)(c) or (d) above unless—
- (a) in a case where the patient has capacity or is competent to consent, he does consent; or
  - (b) in any other case, the production or inspection would not conflict with a decision made by a donee or deputy or the Court of Protection and the person holding the records, having regard to such matters as may be prescribed in regulations under section 130A above, considers that—
    - (i) the records may be relevant to the help to be provided by the advocate; and
    - (ii) the production or inspection is appropriate.
- (5) For the purpose of providing help to a patient in accordance with the arrangements, an independent mental health advocate shall comply with any reasonable request made to him by any of the following for him to visit and interview the patient—
- (a) the person (if any) appearing to the advocate to be the patient's nearest relative;
  - (b) the responsible clinician for the purposes of this Act;
  - (c) an approved mental health professional.
- (6) But nothing in this Act prevents the patient from declining to be provided with help under the arrangements.
- (7) In subsection (4) above—
- (a) the reference to a patient who has capacity is to be read in accordance with the Mental Capacity Act 2005;
  - (b) the reference to a donee is to a donee of a lasting power of attorney (within the meaning of section 9 of that Act) created by the patient, where the donee is acting within the scope of his authority and in accordance with that Act;
  - (c) the reference to a deputy is to a deputy appointed for the patient by the Court of Protection under section 16 of that Act, where the deputy is acting within the scope of his authority and in accordance with that Act.

#### Textual Amendments

- F1** Ss. 130A-130D inserted (1.4.2008 for ss. 130A, 130C for certain purposes, otherwise 3.11.2008 for W. and 1.4.2009 for E.) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 30\(2\), 56](#) (with [Sch. 10](#)); [S.I. 2008/745](#), [arts. 2\(b\)\(i\), 3\(d\)](#); [S.I. 2008/2561](#), [art. 2\(c\)](#) (with [art. 3, Sch.](#)); [S.I. 2009/139](#), [art. 2\(a\)](#)

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VALID FROM 01/04/2008

### **130C Section 130A: supplemental**

- (1) This section applies for the purposes of section 130A above.
- (2) A patient is a qualifying patient if he is—
  - (a) liable to be detained under this Act (otherwise than by virtue of section 4 or 5(2) or (4) above or section 135 or 136 below);
  - (b) subject to guardianship under this Act; or
  - (c) a community patient.
- (3) A patient is also a qualifying patient if—
  - (a) not being a qualifying patient falling within subsection (2) above, he discusses with a registered medical practitioner or approved clinician the possibility of being given a form of treatment to which section 57 above applies; or
  - (b) not having attained the age of 18 years and not being a qualifying patient falling within subsection (2) above, he discusses with a registered medical practitioner or approved clinician the possibility of being given a form of treatment to which section 58A above applies.
- (4) Where a patient who is a qualifying patient falling within subsection (3) above is informed that the treatment concerned is proposed in his case, he remains a qualifying patient falling within that subsection until—
  - (a) the proposal is withdrawn; or
  - (b) the treatment is completed or discontinued.
- (5) References to the appropriate national authority are—
  - (a) in relation to a qualifying patient in England, to the Secretary of State;
  - (b) in relation to a qualifying patient in Wales, to the Welsh Ministers.
- (6) For the purposes of subsection (5) above—
  - (a) a qualifying patient falling within subsection (2)(a) above is to be regarded as being in the territory in which the hospital or registered establishment in which he is liable to be detained is situated;
  - (b) a qualifying patient falling within subsection (2)(b) above is to be regarded as being in the territory in which the area of the responsible local social services authority within the meaning of section 34(3) above is situated;
  - (c) a qualifying patient falling within subsection (2)(c) above is to be regarded as being in the territory in which the responsible hospital is situated;
  - (d) a qualifying patient falling within subsection (3) above is to be regarded as being in the territory determined in accordance with arrangements made for the purposes of this paragraph, and published, by the Secretary of State and the Welsh Ministers.

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### Textual Amendments

- F1** Ss. 130A-130D inserted (1.4.2008 for ss. 130A, 130C for certain purposes, otherwise 3.11.2008 for W. and 1.4.2009 for E.) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 30\(2\)](#), [56](#) (with [Sch. 10](#)); [S.I. 2008/745](#), [arts. 2\(b\)\(i\)](#), [3\(d\)](#); [S.I. 2008/2561](#), [art. 2\(c\)](#) (with [art. 3](#), [Sch.](#)); [S.I. 2009/139](#), [art. 2\(a\)](#)

VALID FROM 03/11/2008

### 130D Duty to give information about independent mental health advocates

- (1) The responsible person in relation to a qualifying patient (within the meaning given by section 130C above) shall take such steps as are practicable to ensure that the patient understands—
  - (a) that help is available to him from an independent mental health advocate; and
  - (b) how he can obtain that help.
- (2) In subsection (1) above, “the responsible person” means—
  - (a) in relation to a qualifying patient falling within section 130C(2)(a) above (other than one also falling within paragraph (b) below), the managers of the hospital or registered establishment in which he is liable to be detained;
  - (b) in relation to a qualifying patient falling within section 130C(2)(a) above and conditionally discharged by virtue of section 42(2), 73 or 74 above, the responsible clinician;
  - (c) in relation to a qualifying patient falling within section 130C(2)(b) above, the responsible local social services authority within the meaning of section 34(3) above;
  - (d) in relation to a qualifying patient falling within section 130C(2)(c) above, the managers of the responsible hospital;
  - (e) in relation to a qualifying patient falling within section 130C(3) above, the registered medical practitioner or approved clinician with whom the patient first discusses the possibility of being given the treatment concerned.
- (3) The steps to be taken under subsection (1) above shall be taken—
  - (a) where the responsible person falls within subsection (2)(a) above, as soon as practicable after the patient becomes liable to be detained;
  - (b) where the responsible person falls within subsection (2)(b) above, as soon as practicable after the conditional discharge;
  - (c) where the responsible person falls within subsection (2)(c) above, as soon as practicable after the patient becomes subject to guardianship;
  - (d) where the responsible person falls within subsection (2)(d) above, as soon as practicable after the patient becomes a community patient;
  - (e) where the responsible person falls within subsection (2)(e) above, while the discussion with the patient is taking place or as soon as practicable thereafter.
- (4) The steps to be taken under subsection (1) above shall include giving the requisite information both orally and in writing.
- (5) The responsible person in relation to a qualifying patient falling within section 130C(2) above (other than a patient liable to be detained by virtue of Part 3 of this Act) shall, except where the patient otherwise requests, take such steps as are

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practicable to furnish the person (if any) appearing to the responsible person to be the patient's nearest relative with a copy of any information given to the patient in writing under subsection (1) above.

- (6) The steps to be taken under subsection (5) above shall be taken when the information concerned is given to the patient or within a reasonable time thereafter.]

#### Textual Amendments

- F1** Ss. 130A-130D inserted (1.4.2008 for ss. 130A, 130C for certain purposes, otherwise 3.11.2008 for W. and 1.4.2009 for E.) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 30\(2\)](#), 56 (with [Sch. 10](#)); [S.I. 2008/745](#), [arts. 2\(b\)\(i\)](#), [3\(d\)](#); [S.I. 2008/2561](#), [art. 2\(c\)](#) (with [art. 3](#), [Sch.](#)); [S.I. 2009/139](#), [art. 2\(a\)](#)

### 131 Informal admission of patients.

- (1) Nothing in this Act shall be construed as preventing a patient who requires treatment for mental disorder from being admitted to any hospital or mental nursing home in pursuance of arrangements made in that behalf and without any application, order or direction rendering him liable to be detained under this Act, or from remaining in any hospital or mental nursing home in pursuance of such arrangements after he has ceased to be so liable to be detained.
- (2) In the case of a minor who has attained the age of 16 years and is capable of expressing his own wishes, any such arrangements as are mentioned in subsection (1) above may be made, carried out and determined [<sup>F2</sup>notwithstanding any right of custody or control vested by law in his parent or guardian][<sup>F2</sup>even though there are one or more persons who have parental responsibility for him (within the meaning of the Children Act 1989)].

#### Textual Amendments

- F2** Words commencing “even though” substituted (*prosp.*) for words commencing “notwithstanding any” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(5), [Sch. 13 para. 48\(5\)](#)

VALID FROM 01/04/2010

#### [<sup>F3</sup>131A Accommodation, etc. for children

- (1) This section applies in respect of any patient who has not attained the age of 18 years and who—
- (a) is liable to be detained in a hospital under this Act; or
  - (b) is admitted to, or remains in, a hospital in pursuance of such arrangements as are mentioned in section 131(1) above.
- (2) The managers of the hospital shall ensure that the patient's environment in the hospital is suitable having regard to his age (subject to his needs).
- (3) For the purpose of deciding how to fulfil the duty under subsection (2) above, the managers shall consult a person who appears to them to have knowledge or

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experience of cases involving patients who have not attained the age of 18 years which makes him suitable to be consulted.

(4) In this section, “ hospital ” includes a registered establishment. ]

### Textual Amendments

F3 S. 131A inserted (1.4.2010) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 31\(3\)](#), [56\(1\)](#); [S.I. 2010/143](#), [art. 2](#)

## 132 Duty of managers of hospitals to give information to detained patients.

- (1) The managers of a hospital or mental nursing home in which a patient is detained under this Act shall take such steps as are practicable to ensure that the patient understands—
  - (a) under which of the provisions of this Act he is for the time being detained and the effect of that provision; and
  - (b) what rights of applying to a Mental Health Review Tribunal are available to him in respect of his detention under that provision;and those steps shall be taken as soon as practicable after the commencement of the patient’s detention under the provision in question.
- (2) The managers of a hospital or mental nursing home in which a patient is detained as aforesaid shall also take such steps as are practicable to ensure that the patient understands the effect, so far as relevant in his case, of sections 23, 25, 56 to 64, 66(1) (g), 118 and 120 above and section 134 below; and those steps shall be taken as soon as practicable after the commencement of the patient’s detention in the hospital or nursing home.
- (3) The steps to be taken under subsections (1) and (2) above shall include giving the requisite information both orally and in writing.
- (4) The managers of a hospital or mental nursing home in which a patient is detained as aforesaid shall, except where the patient otherwise requests, take such steps as are practicable to furnish the person (if any) appearing to them to be his nearest relative with a copy of any information given to him in writing under subsections (1) and (2) above; and those steps shall be taken when the information is given to the patient or within a reasonable time thereafter.

VALID FROM 03/11/2008

### [<sup>F4</sup>132A Duty of managers of hospitals to give information to community patients

- (1) The managers of the responsible hospital shall take such steps as are practicable to ensure that a community patient understands—
  - (a) the effect of the provisions of this Act applying to community patients; and
  - (b) what rights of applying to a [<sup>F5</sup>tribunal] are available to him in that capacity;and those steps shall be taken as soon as practicable after the patient becomes a community patient.
- (2) The steps to be taken under subsection (1) above shall include giving the requisite information both orally and in writing.



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- (3) The managers of the responsible hospital shall, except where the community patient otherwise requests, take such steps as are practicable to furnish the person (if any) appearing to them to be his nearest relative with a copy of any information given to him in writing under subsection (1) above; and those steps shall be taken when the information is given to the patient or within a reasonable time thereafter.]

#### Textual Amendments

- F4** S. 132A inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 32, 56, [Sch. 3 para. 30](#) (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(i\)](#) (with [art. 3](#), [Sch.](#))
- F5** Words in s. 132A(1)(b) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), [art. 6](#), [Sch. 3 para. 64](#)

### 133 Duty of managers of hospitals to inform nearest relatives of discharge.

- (1) Where a patient liable to be detained under this Act in a hospital or mental nursing home is to be discharged otherwise than by virtue of an order for discharge made by his nearest relative, the managers of the hospital or mental nursing home shall, subject to subsection (2) below, take such steps as are practicable to inform the person (if any) appearing to them to be the nearest relative of the patient; and that information shall, if practicable, be given at least seven days before the date of discharge.
- (2) Subsection (1) above shall not apply if the patient or his nearest relative has requested that information about the patient's discharge should not be given under this section.

### 134 Correspondence of patients.

- (1) A postal packet addressed to any person by a patient detained in a hospital under this Act and delivered by the patient for dispatch may be withheld from the Post Office—
- (a) if that person has requested that communications addressed to him by the patient should be withheld; or
  - (b) subject to subsection (3) below, if the hospital is a special hospital and the managers of the hospital consider that the postal packet is likely—
    - (i) to cause distress to the person to whom it is addressed or to any other person (not being a person on the staff of the hospital); or
    - (ii) to cause danger to any person;
 and any request for the purposes of paragraph (a) above shall be made by a notice in writing given to the managers of the hospital, the registered medical practitioner in charge of the treatment of the patient or the Secretary of State.
- (2) Subject to subsection (3) below, a postal packet addressed to a patient detained in a special hospital under this Act may be withheld from the patient if, in the opinion of the managers of the hospital, it is necessary to do so in the interests of the safety of the patient or for the protection of other persons.
- (3) Subsections (1)(b) and (2) above do not apply to any postal packet addressed by a patient to, or sent to a patient by or on behalf of—
- (a) any Minister of the Crown or Member of either House of Parliament;
  - (b) the Master or any other officer of the Court of Protection or any of the Lord Chancellor's Visitors;



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- (c) the Parliamentary Commissioner for Administration, the Health Service Commissioner for England, the Health Service Commissioner for Wales or a Local Commissioner within the meaning of Part III of the <sup>M1</sup>Local Government Act 1974;
  - (d) a Mental Health Review Tribunal;
  - (e) a health authority within the meaning of the <sup>M2</sup>National Health Service Act 1977, a local social services authority, a Community Health Council or a probation and after-care committee appointed under paragraph 2 of Schedule 3 to the <sup>M3</sup>Powers of Criminal Courts Act 1973;
  - (f) the managers of the hospital in which the patient is detained;
  - (g) any legally qualified person instructed by the patient to act as his legal adviser; or
  - (h) the European Commission of Human Rights or the European Court of Human Rights.
- (4) The managers of a hospital may inspect and open any postal packet for the purposes of determining—
- (a) whether it is one to which subsection (1) or (2) applies, and
  - (b) in the case of a postal packet to which subsection (1) or (2) above applies, whether or not it should be withheld under that subsection;
- and the power to withhold a postal packet under either of those subsections includes power to withhold anything contained in it.
- (5) Where a postal packet or anything contained in it is withheld under subsection (1) or (2) above the managers of the hospital shall record that fact in writing.
- (6) Where a postal packet or anything contained in it is withheld under subsection (1)(b) or (2) above the managers of the hospital shall within seven days give notice of that fact to the patient and, in the case of a packet withheld under subsection (2) above, to the person (if known) by whom the postal packet was sent; and any such notice shall be given in writing and shall contain a statement of the effect of section 121(7) and (8) above.
- (7) The functions of the managers of a hospital under this section shall be discharged on their behalf by a person on the staff of the hospital appointed by them for that purpose and different persons may be appointed to discharge different functions.
- (8) The Secretary of State may make regulations with respect to the exercise of the powers conferred by this section.
- (9) In this section “hospital” has the same meaning as in Part II of this Act, “postal packet” has the same meaning as in the <sup>M4</sup>Post Office Act 1953 and the provisions of this section shall have effect notwithstanding anything in section 56 of that Act.

#### Marginal Citations

- M1** 1974 c. 7.
- M2** 1977 c. 49.
- M3** 1973 c. 62.
- M4** 1953 c. 36.

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VALID FROM 01/04/2009

### [<sup>F6</sup>134A Review of decisions to withhold correspondence

- (1) The regulatory authority must review any decision to withhold a postal packet (or anything contained in it) under subsection (1)(b) or (2) of section 134 if an application for a review of the decision is made—
  - (a) in a case under subsection (1)(b) of that section, by the patient; or
  - (b) in a case under subsection (2) of that section, either by the patient or by the person by whom the postal packet was sent.
- (2) An application under subsection (1) must be made within 6 months of receipt by the applicant of the notice referred to in section 134(6).
- (3) On an application under subsection (1), the regulatory authority may direct that the postal packet (or anything contained in it) is not to be withheld.
- (4) The managers of the hospital concerned must comply with any such direction.
- (5) The Secretary of State may by regulations make provision in connection with the making to and determination by the Care Quality Commission of applications under subsection (1), including provision for the production to the Commission of any postal packet which is the subject of such an application.
- (6) The Welsh Ministers may by regulations make provision in connection with the making to them of applications under subsection (1), including provision for the production to them of any postal packet which is the subject of such an application.]

#### Textual Amendments

- F6** S. 134A inserted (1.4.2009) by [Health and Social Care Act 2008 \(c. 14\)](#), ss. 52, 170, [Sch. 3 para. 12](#); [S.I. 2009/462](#), [arts. 1\(1\)\(b\)](#), 2, [Sch. 1 para. 33](#)

### 135 Warrant to search for and remove patients.

- (1) If it appears to a justice of the peace, on information on oath laid by an approved social worker, that there is reasonable cause to suspect that a person believed to be suffering from mental disorder—
  - (a) has been, or is being, ill-treated, neglected or kept otherwise than under proper control, in any place within the jurisdiction of the justice, or
  - (b) being unable to care for himself, is living alone in any such place,
 the justice may issue a warrant authorising any constable . . . <sup>F7</sup> to enter, if need be by force, any premises specified in the warrant in which that person is believed to be, and, if thought fit, to remove him to a place of safety with a view to the making of an application in respect of him under Part II of this Act, or of other arrangements for his treatment or care.
- (2) If it appears to a justice of the peace, on information on oath laid by any constable or other person who is authorised by or under this Act or under section 83 of the [<sup>F8</sup>Mental Health (Scotland) Act 1984] to take a patient to any place, or to take into

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custody or retake a patient who is liable under this Act or under the said section 83 to be so taken or retaken—

- (a) that there is reasonable cause to believe that the patient is to be found on premises within the jurisdiction of the justice; and
- (b) that admission to the premises has been refused or that a refusal of such admission is apprehended,

the justice may issue a warrant authorising any constable . . . <sup>F7</sup> to enter the premises, if need be by force, and remove the patient.

- (3) A patient who is removed to a place of safety in the execution of a warrant issued under this section may be detained there for a period not exceeding 72 hours.
- (4) In the execution of a warrant issued under subsection (1) above, [<sup>F9</sup>a constable] shall be accompanied by an approved social worker and by a registered medical practitioner, and in the execution of a warrant issued under subsection (2) above [<sup>F9</sup>a constable] may be accompanied—
  - (a) by a registered medical practitioner;
  - (b) by any person authorised by or under this Act or under section 83 of the [<sup>F10</sup>Mental Health (Scotland) Act 1984] to take or retake the patient.
- (5) It shall not be necessary in any information or warrant under subsection (1) above to name the patient concerned.
- (6) In this section “place of safety” means residential accommodation provided by a local social services authority under Part III of the <sup>M5</sup>National Assistance Act 1948 [<sup>F11</sup>or under paragraph 2 of Schedule 8 to the <sup>M6</sup>National Health Service Act 1977], a hospital as defined by this Act, a police station, a mental nursing home or residential home for mentally disordered persons or any other suitable place the occupier of which is willing temporarily to receive the patient.

#### Textual Amendments

- F7** Words repealed by [Police and Criminal Evidence Act 1984 \(c. 60, SIF 95\)](#), s. 119, [Sch. 7 Pt. I](#)
- F8** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), ss. 17(2), 127, [Sch. 3 para. 56\(a\)](#)
- F9** Words substituted by [Police and Criminal Evidence Act 1984 \(c. 60, SIF 95\)](#), s. 119, [Sch. 6 Pt. I para. 26](#)
- F10** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), s. 127, [Sch. 3 para. 56\(b\)](#)
- F11** Words repealed (*prosp.*) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), ss. 66(2), 67(2), [Sch. 10](#)

#### Marginal Citations

- M5** 1948 c. 29.
- M6** 1977 c. 49.

### 136 Mentally disordered persons found in public places.

- (1) If a constable finds in a place to which the public have access a person who appears to him to be suffering from mental disorder and to be in immediate need of care or control, the constable may, if he thinks it necessary to do so in the interests of that person or for the protection of other persons, remove that person to a place of safety within the meaning of section 135 above.

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- (2) A person removed to a place of safety under this section may be detained there for a period not exceeding 72 hours for the purpose of enabling him to be examined by a registered medical practitioner and to be interviewed by an approved social worker and of making any necessary arrangements for his treatment or care.

### **137 Provisions as to custody, conveyance and detention.**

- (1) Any person required or authorised by or by virtue of this Act to be conveyed to any place or to be kept in custody or detained in a place of safety or at any place to which he is taken under section 42(6) above shall, while being so conveyed, detained or kept, as the case may be, be deemed to be in legal custody.
- (2) A constable or any other person required or authorised by or by virtue of this Act to take any person into custody, or to convey or detain any person shall, for the purposes of taking him into custody or conveying or detaining him, have all the powers, authorities, protection and privileges which a constable has within the area for which he acts as constable.
- (3) In this section “convey” includes any other expression denoting removal from one place to another.

### **138 Retaking of patients escaping from custody.**

- (1) If any person who is in legal custody by virtue of section 137 above escapes, he may, subject to the provisions of this section, be retaken—
- (a) in any case, by the person who had his custody immediately before the escape, or by any constable or approved social worker;
  - (b) if at the time of the escape he was liable to be detained in a hospital within the meaning of Part II of this Act, or subject to guardianship under this Act, by any other person who could take him into custody under section 18 above if he had absented himself without leave.
- (2) A person to whom paragraph (b) of subsection (1) above applies shall not be retaken under this section after the expiration of the period within which he could be retaken under section 18 above if he had absented himself without leave on the day of his escape unless he is subject to a restriction order under Part III of this Act or an order or direction having the same effect as such an order; and subsection (4) of the said section 18 shall apply with the necessary modifications accordingly.
- (3) A person who escapes while being taken to or detained in a place of safety under section 135 or 136 above shall not be retaken under this section after the expiration of the period of 72 hours beginning with the time when he escapes or the period during which he is liable to be so detained, whichever expires first.
- (4) This section, so far as it relates to the escape of a person liable to be detained in a hospital within the meaning of Part II of this Act, shall apply in relation to a person who escapes—
- (a) while being taken to or from such a hospital in pursuance of regulations under section 19 above, or of any order, direction or authorisation under Part III or VI of this Act (other than under section 35, 36, 38, 53, 83 or 85) or under section 123 above; or

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- (b) while being taken to or detained in a place of safety in pursuance of an order under Part III of this Act (other than under section 35, 36 or 38 above) pending his admission to such a hospital,  
as if he were liable to be detained in that hospital and, if he had not previously been received in that hospital, as if he had been so received.
- (5) In computing for the purposes of the power to give directions under section 37(4) above and for the purposes of sections 37(5) and 40(1) above the period of 28 days mentioned in those sections, no account shall be taken of any time during which the patient is at large and liable to be retaken by virtue of this section.
- (6) Section 21 above shall, with any necessary modifications, apply in relation to a patient who is at large and liable to be retaken by virtue of this section as it applies in relation to a patient who is absent without leave and references in that section to section 18 above shall be construed accordingly.

### **139 Protection for acts done in pursuance of this Act.**

- (1) No person shall be liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings to which he would have been liable apart from this section in respect of any act purporting to be done in pursuance of this Act or any regulations or rules made under this Act, or in, or in pursuance of anything done in, the discharge of functions conferred by any other enactment on the authority having jurisdiction under Part VII of this Act, unless the act was done in bad faith or without reasonable care.
- (2) No civil proceedings shall be brought against any person in any court in respect of any such act without the leave of the High Court; and no criminal proceedings shall be brought against any person in any court in respect of any such act except by or with the consent of the Director of Public Prosecutions.
- (3) This section does not apply to proceedings for an offence under this Act, being proceedings which, under any other provision of this Act, can be instituted only by or with the consent of the Director of Public Prosecutions.
- (4) This section does not apply to proceedings against the Secretary of State or against a health authority within the meaning of the<sup>M7</sup>National Health Service Act 1977 [<sup>F12</sup>or against a National Health Service trust established under the National Health Service and Community Care Act 1990].
- (5) In relation to Northern Ireland the reference in this section to the Director of Public Prosecutions shall be construed as a reference to the Director of Public Prosecutions for Northern Ireland.

#### **Textual Amendments**

**F12** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 66\(1\), Sch. 9 para. 24\(7\)](#)

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

**C1** [S. 139](#) extended by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), ss. 17\(2\), 122\(2\)](#)

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#### Marginal Citations

M7 1977 c. 49.

### 140 Notification of hospitals having arrangements for reception of urgent cases.

It shall be the duty of every Regional Health Authority and in Wales every District Health Authority to give notice to every local social services authority for an area wholly or partly comprised within the region or district, as the case may be, of the Authority specifying the hospital or hospitals administered by [<sup>F13</sup>or otherwise available to] the Authority in which arrangements are from time to time in force for the reception, in case of special urgency, of patients requiring treatment for mental disorder.

#### Textual Amendments

**F13** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 24\(8\)](#)

### 141 Members of Parliament suffering from mental illness.

- (1) Where a member of the House of Commons is authorised to be detained on the ground (however formulated) that he is suffering from mental illness, it shall be the duty of the court, authority or person on whose order or application, and of any registered medical practitioner upon whose recommendation or certificate, the detention was authorised, and of the person in charge of the hospital or other place in which the member is authorised to be detained, to notify the Speaker of the House of Commons that the detention has been authorised.
- (2) Where the Speaker receives a notification under subsection (1) above, or is notified by two members of the House of Commons that they are credibly informed that such an authorisation has been given, the Speaker shall cause the member to whom the notification relates to be visited and examined by two registered medical practitioners appointed in accordance with subsection (3) below.
- (3) The registered medical practitioners to be appointed for the purposes of subsection (2) above shall be appointed by the President of the Royal College of Psychiatrists and shall be practitioners appearing to the President to have special experience in the diagnosis or treatment of mental disorders.
- (4) The registered medical practitioners appointed in accordance with subsection (3) above shall report to the Speaker whether the member is suffering from mental illness and is authorised to be detained as such.
- (5) If the report is to the effect that the member is suffering from mental illness and authorised to be detained as aforesaid, the Speaker shall at the expiration of six months from the date of the report, if the House is then sitting, and otherwise as soon as may be after the House next sits, again cause the member to be visited and examined by two such registered medical practitioners as aforesaid, and the registered medical practitioners shall report as aforesaid.
- (6) If the second report is that the member is suffering from mental illness and authorised to be detained as mentioned in subsection (4) above, the Speaker shall forthwith lay



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both reports before the House of Commons, and thereupon the seat of the member shall become vacant.

- (7) Any sums required for the payment of fees and expenses to registered medical practitioners acting in relation to a member of the House of Commons under this section shall be defrayed out of moneys provided by Parliament.

#### **142 Pay, pensions, etc., of mentally disordered persons.**

- (1) Where a periodic payment falls to be made to any person by way of pay or pension or otherwise in connection with the service or employment of that or any other person, and the payment falls to be made directly out of moneys provided by Parliament or the Consolidated Fund, or other moneys administered by or under the control or supervision of a government department, the authority by whom the sum in question is payable, if satisfied after considering medical evidence that the person to whom it is payable (referred to in this section as “the patient”) is incapable by reason of mental disorder of managing and administering his property and affairs, may, instead of paying the sum to the patient, apply it in accordance with subsection (2) below.
- (2) The authority may pay the sum or such part of it as they think fit to the institution or person having the care of the patient, to be applied for his benefit and may pay the remainder (if any) or such part of the remainder as they think fit—
- (a) to or for the benefit of persons who appear to the authority to be members of the patient’s family or other persons for whom the patient might be expected to provide if he were not mentally disordered, or
  - (b) in reimbursement, with or without interest, of money applied by any person either in payment of the patient’s debts (whether legally enforceable or not) or for the maintenance or other benefit of the patient or such persons as are mentioned in paragraph (a) above.
- (3) In this section “government department” does not include a Northern Ireland department.

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

C2 S. 142 applied (21.1.1994) by S.I. 1993/3253, reg. R1(2).

VALID FROM 01/04/2008

**[<sup>F14</sup>142A Regulations as to approvals in relation to England and Wales**

The Secretary of State jointly with the Welsh Ministers may by regulations make provision as to the circumstances in which—

- (a) a practitioner approved for the purposes of section 12 above, or
- (b) a person approved to act as an approved clinician for the purposes of this Act,

approved in relation to England is to be treated, by virtue of his approval, as approved in relation to Wales too, and vice versa.]

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#### Textual Amendments

**F14** S. 142A inserted (1.4.2008 for E.W.) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 17, 56** (with [Sch. 10](#)); [S.I. 2008/745](#), **art. 3(a)**

VALID FROM 24/07/2007

#### [<sup>F15</sup>142B Delegation of powers of managers of NHS foundation trusts

- (1) The constitution of an NHS foundation trust may not provide for a function under this Act to be delegated otherwise than in accordance with provision made by or under this Act.
- (2) Paragraph 15(3) of Schedule 7 to the National Health Service Act 2006 (which provides that the powers of a public benefit corporation may be delegated to a committee of directors or to an executive director) shall have effect subject to this section.]

#### Textual Amendments

**F15** S. 142B inserted (24.7.2007) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 45(3), 56** (with [Sch. 10](#)); [S.I. 2007/2156](#), **art. 2**

### *Supplemental*

#### **143 General provisions as to regulations, orders and rules.**

- (1) Any power of the Secretary of State or the Lord Chancellor to make regulations, orders or rules under this Act shall be exercisable by statutory instrument.
- (2) Any Order in Council under this Act and any statutory instrument containing regulations or rules made under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) No order shall be made under section 68(4) or 71(3) above unless a draft of it has been approved by a resolution of each House of Parliament.

#### **144 Power to amend local Acts.**

Her Majesty may by Order in Council repeal or amend any local enactment so far as appears to Her Majesty to be necessary in consequence of this Act.

#### **145 Interpretation.**

- (1) In this Act, unless the context otherwise requires—
  - “absent without leave” has the meaning given to it by section 18 above and related expressions shall be construed accordingly;
  - “application for admission for assessment” has the meaning given in section 2 above;

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“application for admission for treatment” has the meaning given in section 3 above;

“approved social worker” means an officer of a local social services authority appointed to act as an approved social worker for the purposes of this Act;

“hospital” means—

- (a) any health service hospital within the meaning of the <sup>M8</sup>National Health Service Act 1977; and
- (b) any accommodation provided by a local authority and used as a hospital by or on behalf of the Secretary of State under that Act;

and “hospital within the meaning of Part II of this Act” has the meaning given in section 34 above;

“hospital order” and “guardianship order” have the meanings respectively given in section 37 above;

“interim hospital order” has the meaning given in section 38 above;

“local social services authority” means a council which is a local authority for the purpose of the <sup>M9</sup>Local Authority Social Services Act 1970;

“the managers” means—

- (a) in relation to a hospital vested in the Secretary of State for the purposes of his functions under the <sup>M10</sup>National Health Service Act 1977, and in relation to any accommodation provided by a local authority and used as a hospital by or on behalf of the Secretary of State under that Act, the District Health Authority or special health authority responsible for the administration of the hospital;
- (b) in relation to a special hospital, the Secretary of State;
- [<sup>F16</sup>(bb) in relation to a hospital vested in a National Health Service trust, the directors of the trust]
- (c) in relation to a mental nursing home registered in pursuance of [<sup>F17</sup>the Registered Homes Act 1984], the person or persons registered in respect of the home;

and in this definition “hospital” means a hospital within the meaning of Part II of this Act;

“medical treatment” includes nursing, and also includes care, habilitation and rehabilitation under medical supervision;

“mental disorder”, “severe mental impairment”, “mental impairment” and “psychopathic disorder” have the meanings given in section 1 above;

“mental nursing home” has the same meaning as in the [<sup>F17</sup>the Registered Homes Act 1984];

“nearest relative”, in relation to a patient, has the meaning given in Part II of this Act;

“patient” (except in Part VII of this Act) means a person suffering or appearing to be suffering from mental disorder;

“restriction direction” has the meaning given to it by section 49 above;

“restriction order” has the meaning given to it by section 41 above;

“special hospital” has the same meaning as in the <sup>M11</sup>National Health Service Act 1977;

“standard scale” has the meaning given in section 75 of the <sup>M12</sup>Criminal Justice Act 1982;

“transfer direction” has the meaning given to it by section 47 above.

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- (2) “Statutory maximum” has the meaning given in section 74 of the Criminal Justice Act 1982 . . . <sup>F18</sup>
- (3) In relation to a person who is liable to be detained or subject to guardianship by virtue of an order or direction under Part III of this Act (other than under section 35, 36 or 38), any reference in this Act to any enactment contained in Part II of this Act or in section 66 or 67 above shall be construed as a reference to that enactment as it applies to that person by virtue of Part III of this Act.

#### Textual Amendments

- F16** In the definition of “the managers” paragraph (bb) inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), **Sch. 9 para. 24(9)**
- F17** Words substituted by [Registered Homes Act 1984 \(c. 23, SIF 113:3\)](#), s. 57, **Sch. 1 para. 11**
- F18** [S. 145\(2\)\(a\)\(b\)](#) and words repealed by [S.I. 1984/703 \(N.I. 3\)](#), art. 19(2), **Sch. 7**

#### Marginal Citations

- M8** 1977 c. 49.
- M9** 1970 c. 42.
- M10** 1977 c. 49.
- M11** 1977 c. 49.
- M12** 1982 c. 48.

### 146 Application to Scotland.

Sections 42(6), 80, 88 (and so far as applied by that section sections 18, 22 and 138), 104(4), 110 (and so much of Part VII of this Act as is applied in relation to Scotland by that section), 116, 122, 128 (except so far as it relates to patients subject to guardianship), 137, 139(1), 141, 142, 143 (so far as applicable to any Order in Council extending to Scotland) and 144 above shall extend to Scotland together with any amendment or repeal by this Act of or any provision of Schedule 5 to this Act relating to any enactment which so extends; but, except as aforesaid and except so far as it relates to the interpretation or commencement of the said provisions, this Act shall not extend to Scotland.

### 147 Application to Northern Ireland.

Sections 81, 82, 86, 87, 88 (and so far as applied by that section sections 18, 22 and 138), 104(4), 110 (and so much of Part VII as is applied in relation to Northern Ireland by that section), section 128 (except so far as it relates to patients subject to guardianship), 137, 139, 141, 142, 143 (so far as applicable to any Order in Council extending to Northern Ireland) and 144 above shall extend to Northern Ireland together with any amendment or repeal by this Act of or any provision of Schedule 5 to this Act relating to any enactment which so extends; but except as aforesaid and except so far as it relates to the interpretation or commencement of the said provisions, this Act shall not extend to Northern Ireland.

### 148 Consequential and transitional provisions and repeals.

- (1) Schedule 4 (consequential amendments) and Schedule 5 (transitional and saving provisions) to this Act shall have effect but without prejudice to the operation of

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sections 15 to 17 of the <sup>M13</sup>Interpretation Act 1978 (which relate to the effect of repeals).

- (2) Where any amendment in Schedule 4 to this Act affects an enactment amended by the <sup>M14</sup>Mental Health (Amendment) Act 1982 the amendment in Schedule 4 shall come into force immediately after the provision of the Act of 1982 amending that enactment.
- (3) The enactments specified in Schedule 6 to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

#### Marginal Citations

**M13** 1978 c. 30.

**M14** 1982 c. 51.

### 149 Short title, commencement and application to Scilly Isles.

- (1) This Act may be cited as the Mental Health Act 1983.
- (2) Subject to subsection (3) below and Schedule 5 to this Act, this Act shall come into force on 30th September 1983.
- (3) Sections 35, 36, 38 and 40(3) above shall come into force on such day (not being earlier than the said 30th September) as may be appointed by the Secretary of State and a different day may be appointed for each of those sections or for different purposes of any of those sections.
- (4) Section 130(4) of the <sup>M15</sup>National Health Service Act 1977 (which provides for the extension of that Act to the Isles of Scilly) shall have effect as if the references to that Act included references to this Act.

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

**C3** Power of appointment conferred by s. 149(3) fully exercised: 1.10.1984 appointed by [S.I. 1984/1357](#)

#### Marginal Citations

**M15** 1977 c. 49.

**Status:**

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**Changes to legislation:**

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