

SCHEDULES

SCHEDULE 3

Section 32

SUPERVISED COMMUNITY TREATMENT: FURTHER AMENDMENTS TO 1983 ACT

1 The 1983 Act is amended as follows.

Application in respect of patient already in hospital

2 In section 5 (application in respect of patient already in hospital), in subsection (6) after “this Act”, in each place, insert “or a community patient”.

Return of patients absent without leave

3 (1) Section 18 (return and readmission of patients absent without leave) is amended as follows.

(2) After subsection (2) insert—

“(2A) Where a community patient is at any time absent from a hospital to which he is recalled under section 17E above, he may, subject to the provisions of this section, be taken into custody and returned to the hospital by any approved mental health professional, by any officer on the staff of the hospital, by any constable, or by any person authorised in writing by the responsible clinician or the managers of the hospital.”

(3) In subsection (4)—

- (a) in paragraph (b), after “guardianship” insert “or, in the case of a community patient, the community treatment order is in force”, and
- (b) omit the words from “and, in determining” to the end.

(4) After subsection (4) insert—

“(4A) In determining for the purposes of subsection (4)(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.

(4B) Similarly, in determining for those purposes whether a community treatment order is at any time in force in respect of a person who is or has been absent without leave, a report furnished under section 20A or 21B below before the first day of his absence without leave shall not be taken to have extended the community treatment period unless the extension began before that day.”

(5) After subsection (6) insert—

“(7) In relation to a patient who has yet to comply with a requirement imposed by virtue of this Act to be in a hospital or place, references in this Act to his

liability to be returned to the hospital or place shall include his liability to be taken to that hospital or place; and related expressions shall be construed accordingly.”

Assignment of responsibility for community patients

4 After section 19 insert—

“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—
 - (a) 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;
 - (b) 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
 - (c) that other hospital shall become “the responsible hospital” in relation to the patient for the purposes of this Act.”

Renewal of authority to detain patients

5 In section 20 (duration of authority)—

- (a) in subsection (2), after “discharged” insert “under section 23 below”, and
- (b) in subsections (3) and (6), after “discharge the patient” insert “under section 23 below”.

Special provisions as to patients absent without leave

6 (1) Section 21 (special provisions as to patients absent without leave) is amended as follows.

(2) In subsection (1)—

- (a) in paragraph (a), after “Act” insert “or, in the case of a community patient, the community treatment order would cease to be in force”, and
- (b) after “liable or subject” insert “, or the order shall not cease to be in force,”.

(3) After subsection (3) (inserted by section 37 of this Act) insert—

“(4) Where a community patient is absent without leave on the day on which (apart from this section) the 72-hour period mentioned in section 17F above would expire, that period shall not expire until the end of the period of 72 hours beginning with the time when—

- (a) the patient is taken into custody under section 18 above and returned to the hospital where he ought to be; or

- (b) the patient returns himself to the hospital where he ought to be within the period during which he can be taken into custody under section 18 above.
- (5) Any reference in this section, or in sections 21A to 22 below, to the time when a community treatment order would cease, or would have ceased, to be in force shall be construed as a reference to the time when it would cease, or would have ceased, to be in force by reason only of the passage of time.”
- 7 In section 21A (patients who are taken into custody or return within 28 days), after subsection (3) insert—
- “(4) In the case of a community patient, where the period for which the community treatment order is in force is extended by section 21 above, any examination and report to be made and furnished in respect of the patient under section 20A(4) above may be made and furnished within the period as so extended.
- (5) Where the community treatment period is extended by virtue of subsection (4) above after the day on which (apart from section 21 above) the order would have ceased to be in force, the extension shall take effect as from that day.”
- 8 (1) Section 21B (patients who are taken into custody or return after more than 28 days) is amended as follows.
- (2) In subsection (2), after “ought to be” insert “(his “return day”)”.
- (3) In subsection (3), after “detained” insert “or is a community patient”.
- (4) For subsection (4) substitute—
- “(4) Where—
- (a) the patient would (apart from any renewal of the authority for his detention or guardianship on or after his return day) be liable to be detained or subject to guardianship after the end of the period of one week beginning with that day; or
- (b) in the case of a community patient, the community treatment order would (apart from any extension of the community treatment period on or after that day) be in force after the end of that period,
- he shall cease to be so liable or subject, or the community treatment period shall be deemed to expire, at the end of that period unless a report is duly furnished in respect of him under subsection (2) above.”
- (5) After subsection (4) insert—
- “(4A) If, in the case of a community patient, the community treatment order is revoked under section 17F above during the period of one week beginning with his return day—
- (a) subsections (2) and (4) above shall not apply; and
- (b) any report already furnished in respect of him under subsection (2) above shall be of no effect.”
- (6) After subsection (6) insert—

“(6A) In the case of a community patient, where the community treatment order would (apart from section 21 above) have ceased to be in force on or before the day on which a report is duly furnished in respect of him under subsection (2) above, the report shall extend the community treatment period for the period prescribed in that case by section 20A(3) above.

(6B) Where the community treatment period is extended by virtue of subsection (6A) above—

- (a) the extension shall take effect as from the day on which (apart from section 21 above and that subsection) the order would have ceased to be in force; and
- (b) if (apart from this paragraph) the period as so extended would expire on or before the day on which the report is furnished, the report shall further extend that period, as from the day on which it would expire, for the period prescribed in that case by section 20A(3) above.”

(7) After subsection (7) insert—

“(7A) In the case of a community patient, where the community treatment order would (taking account of any extension under subsection (6A) above) cease to be in force 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 20A(4) above.”

(8) In subsection (10)—

(a) for the definition of “the appropriate body” substitute—

““the appropriate body” means—

- (a) in relation to a patient who is liable to be detained in a hospital, the managers of the hospital;
- (b) in relation to a patient who is subject to guardianship, the responsible local social services authority;
- (c) in relation to a community patient, the managers of the responsible hospital; and”

(b) for the definition of “the relevant conditions” substitute—

““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;
- (b) in relation to a patient who is subject to guardianship, the conditions set out in subsection (7) of that section;
- (c) in relation to a community patient, the conditions set out in section 20A(6) above.”

Patients sentenced to imprisonment etc

9 For section 22 substitute—

“22 Special provisions as to patients sentenced to imprisonment, etc

- (1) If—
- (a) a qualifying patient 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
 - (b) he is so detained for a period exceeding, or for successive periods exceeding in the aggregate, six months,
- the relevant application shall cease to have effect on expiry of that period.
- (2) A patient is a qualifying patient for the purposes of this section if—
- (a) he is liable to be detained by virtue of an application for admission for treatment;
 - (b) he is subject to guardianship by virtue of a guardianship application; or
 - (c) he is a community patient.
- (3) “The relevant application”, in relation to a qualifying patient, means—
- (a) in the case of a patient who is subject to guardianship, the guardianship application in respect of him;
 - (b) in any other case, the application for admission for treatment in respect of him.
- (4) The remaining subsections of this section shall apply if a qualifying patient is detained in custody as mentioned in subsection (1)(a) above but for a period not exceeding, or for successive periods not exceeding in the aggregate, six months.
- (5) If apart from this subsection—
- (a) the patient would have ceased to be liable to be detained or subject to guardianship by virtue of the relevant application on or before the day on which he is discharged from custody; or
 - (b) in the case of a community patient, the community treatment order would have ceased to be in force on or before that day,
- he shall not cease and shall be deemed not to have ceased to be so liable or subject, or the order shall not cease and shall be deemed not to have ceased to be in force, until the end of that day.
- (6) In any case (except as provided in subsection (8) below), sections 18, 21 and 21A above shall apply in relation to the patient as if he had absented himself without leave on that day.
- (7) In its application by virtue of subsection (6) above section 18 above shall have effect as if—
- (a) in subsection (4) for the words from “later of” to the end there were substituted “end of the period of 28 days beginning with the first day of his absence without leave”; and
 - (b) subsections (4A) and (4B) were omitted.
- (8) In relation to a community patient who was not recalled to hospital under section 17E above at the time when his detention in custody began—
- (a) section 18 above shall not apply; but

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- (b) sections 21 and 21A above shall apply as if he had absented himself without leave on the day on which he is discharged from custody and had returned himself as provided in those sections on the last day of the period of 28 days beginning with that day.”

Discharge

- 10 (1) Section 23 (discharge of patients) is amended as follows.
- (2) In subsection (1) for the words from “from detention” to the end substitute “absolutely from detention or guardianship is made in accordance with this section”.
- (3) After subsection (1) insert—
- “(1A) Subject to the provisions of this section and section 25 below, a community patient shall cease to be liable to recall under this Part of this Act, and the application for admission for treatment cease to have effect, if an order in writing discharging him from such liability is made in accordance with this section.
- “(1B) An order under subsection (1) or (1A) above shall be referred to in this Act as “an order for discharge”.”
- (4) In subsection (2), after paragraph (b) insert—
- “(c) where the patient is a community patient, by the responsible clinician, by the managers of the responsible hospital or by the nearest relative of the patient.”
- (5) In subsection (3)—
- (a) for the words from “is liable” to “treatment” substitute “falls within subsection (3A) below”, and
- (b) for “the patient is maintained” substitute “arrangements have been made in respect of the patient”.
- (6) After subsection (3) insert—
- “(3A) A patient falls within this subsection if—
- (a) he is liable to be detained in a registered establishment in pursuance of an application for admission for assessment or for treatment; or
- (b) he is a community patient and the responsible hospital is a registered establishment.”
- 11 (1) Section 24 (visiting and examination of patients) is amended as follows.
- (2) In subsection (1), after “this Act” insert “, or who is a community patient,”.
- (3) In subsection (3)—
- (a) for the words from “, in respect of” to “his discharge” substitute “any power under section 23(3) above to make an order for a patient’s discharge”, and
- (b) in paragraph (b) for “the home” substitute “the establishment in question”.
- (4) In subsection (4)—
- (a) after “the detention of the patient” insert “, or (as the case may be) for his liability to recall,” and
- (b) for “the home” substitute “the establishment”.

- 12 (1) Section 25 (restrictions on discharge by nearest relative) is amended as follows.
- (2) In subsection (1), after “shall not be made” insert “under section 23 above”.
- (3) After that subsection insert—
- “(1A) Subsection (1) above shall apply to an order for the discharge of a community patient as it applies to an order for the discharge of a patient who is liable to be detained in a hospital, but with the reference to the managers of the hospital being read as a reference to the managers of the responsible hospital.”
- (4) In subsection (2), after “treatment” insert “, or in respect of a community patient,”.

Orders appointing acting nearest relative

- 13 In section 29 (appointment by court of acting nearest relative), in subsection (3)(d) omit the words “from hospital or guardianship”.
- 14 (1) Section 30 (discharge and variation of orders under section 29) is amended as follows.
- (2) In subsection (4), for paragraphs (a) and (b) substitute—
- “(a) if—
- (i) on the date of the order the patient was liable to be detained or subject to guardianship by virtue of a relevant application, order or direction; or
- (ii) he becomes so liable or subject within the period of three months beginning with that date; or
- (iii) he was a community patient on the date of the order,
- it shall cease to have effect when he is discharged under section 23 above or 72 below or the relevant application, order or direction otherwise ceases to have effect (except as a result of his being transferred in pursuance of regulations under section 19 above);
- (b) otherwise, it shall cease to have effect at the end of the period of three months beginning with the date of the order.”
- (3) After subsection (4) insert—
- “(4A) In subsection (4) above, reference to a relevant application, order or direction is to any of the following—
- (a) an application for admission for treatment;
- (b) a guardianship application;
- (c) an order or direction under Part 3 of this Act (other than under section 35, 36 or 38).”

Regulations for purposes of Part 2

- 15 In section 32 (regulations for purposes of Part 2), in subsection (2)(c) after “this Part of this Act” insert “or community patients”.

Wards of court

- 16 (1) Section 33 (special provisions as to wards of court) is amended as follows.

Status: This is the original version (as it was originally enacted).

(2) In subsection (2), after “admission under this Part of this Act” insert “or is a community patient”.

(3) For subsection (4) substitute—

“(4) Where a community treatment order has been made in respect of a minor who is a ward of court, the provisions of this Part of this Act relating to community treatment orders and community patients have effect in relation to the minor subject to any order which the court makes in the exercise of its wardship jurisdiction; but this does not apply as regards any period when the minor is recalled to hospital under section 17E above.”

Restricted patients

17 In section 41 (power of higher courts to restrict discharge from hospital), in subsection (3)(aa) for “after-care under supervision” substitute “community treatment orders and community patients”.

Applications and references to Mental Health Review Tribunal

18 (1) Section 66 (applications to tribunals) is amended as follows.

(2) In subsection (1)—

(a) after paragraph (c) insert—

“(ca) a community treatment order is made in respect of a patient;
or

(cb) a community treatment order is revoked under section 17F above in respect of a patient; or”,

(b) in paragraph (f), after “discharged” insert “under section 23 above”,

(c) after that paragraph insert—

“(fza) a report is furnished under section 20A above in respect of a patient and the patient is not discharged under section 23 above; or”,

(d) after paragraph (fa) insert—

“(faa) a report is furnished under subsection (2) of section 21B above in respect of a community patient and subsection (6A) of that section applies (or subsections (6A) and (6B)(b) of that section apply) in the case of the report; or”,

(e) in paragraph (g), after “treatment” insert “or a community patient”, and

(f) in paragraph (h), after “this Act” insert “or who is a community patient”.

(3) In subsection (2)—

(a) after paragraph (c) insert—

“(ca) in the case mentioned in paragraph (ca) of that subsection, six months beginning with the day on which the community treatment order is made;

(cb) in the case mentioned in paragraph (cb) of that subsection, six months beginning with the day on which the community treatment order is revoked;”, and

(b) after paragraph (f) insert—

“(fza) in the cases mentioned in paragraphs (fza) and (faa) of that subsection, the period or periods for which the community treatment period is extended by virtue of the report;”.

(4) After subsection (2) insert—

“(2A) Nothing in subsection (1)(b) above entitles a community patient to make an application by virtue of that provision even if he is admitted to a hospital on being recalled there under section 17E above.”

19 In section 67 (references to tribunals by Secretary of State concerning Part 2 patients), in subsection (1), at the end insert “or of any community patient”.

20 In section 69 (applications to tribunals concerning patients subject to hospital and guardianship orders)—

(a) in subsection (1), for paragraph (a) substitute—

“(a) in respect of a patient liable to be detained in pursuance of a hospital order or a community patient who was so liable immediately before he became a community patient, by the nearest relative of the patient in any period in which an application may be made by the patient under any such provision as so applied;”

(b) in subsection (2)(b), omit the words “45B(2), 46(3),” and

(c) after subsection (2) insert—

“(3) The provisions of section 66 above as applied by section 40(4) above are subject to subsection (4) below.

(4) If the initial detention period has not elapsed when the relevant application period begins, the right of a hospital order patient to make an application by virtue of paragraph (ca) or (cb) of section 66(1) above shall be exercisable only during whatever remains of the relevant application period after the initial detention period has elapsed.

(5) In subsection (4) above—

(a) “hospital order patient” means a patient who is subject to a hospital order, excluding a patient of a kind mentioned in paragraph (a) or (b) of subsection (2) above;

(b) “the initial detention period”, in relation to a hospital order patient, means the period of six months beginning with the date of the hospital order; and

(c) “the relevant application period” means the relevant period mentioned in paragraph (ca) or (cb), as the case may be, of section 66(2) above.”

21 (1) Section 72 (powers of tribunals) is amended as follows.

(2) In subsection (1)—

(a) after “this Act” insert “or is a community patient”, and

(b) after paragraph (b) insert—

“(c) the tribunal shall direct the discharge of a community patient if they are not satisfied—

Status: This is the original version (as it was originally enacted).

- (i) that he is then suffering from mental disorder or mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment; or
- (ii) that it is necessary for his health or safety or for the protection of other persons that he should receive such treatment; or
- (iii) that it is necessary that the responsible clinician should be able to exercise the power under section 17E(1) above to recall the patient to hospital; or
- (iv) that appropriate medical treatment is available for him; or
- (v) in the case of an application by virtue of paragraph (g) of section 66(1) above, that the patient, if discharged, would be likely to act in a manner dangerous to other persons or to himself.”

(3) After subsection (1) insert—

“(1A) In determining whether the criterion in subsection (1)(c)(iii) above is met, the tribunal 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).”

(4) For subsection (3A) substitute—

“(3A) Subsection (1) above does not require a tribunal to direct the discharge of a patient just because they think it might be appropriate for the patient to be discharged (subject to the possibility of recall) under a community treatment order; and a tribunal—

- (a) may recommend that the responsible clinician consider whether to make a community treatment order; and
- (b) may (but need not) further consider the patient’s case if the responsible clinician does not make an order.”

22 In section 76 (visiting and examination of patients), in subsection (1), after “this Act” insert “or a community patient.”.

23 In section 77 (general provisions concerning tribunal applications), in subsection (3) for the words from “to the tribunal” to the end substitute—

- “(a) in the case of a patient who is liable to be detained in a hospital, to the tribunal for the area in which that hospital is situated;
- (b) in the case of a community patient, to the tribunal for the area in which the responsible hospital is situated;
- (c) in the case of a patient subject to guardianship, to the tribunal for the area in which the patient is residing.”

After-care services

- 24 In section 117 (after-care), in subsection (2) for the words from “patient who is subject” to the end substitute “community patient while he remains such a patient.”

Code of practice

- 25 In section 118 (code of practice), in subsection (1)(a) for “after-care under supervision” substitute “community patients”.

General protection of detained patients

- 26 (1) Section 120 (general protection of detained patients) is amended as follows.
- (2) In subsection (1)—
- (a) after “liable to be detained under this Act” insert “or to community patients”,
 - (b) in paragraph (a) after “registered establishments” insert “and community patients in hospitals and establishments of any description and (if access is granted) other places”, and
 - (c) in paragraph (b)—
 - (i) in sub-paragraph (i), after “this Act in” insert “, or recalled under section 17E above to,”, and
 - (ii) in sub-paragraph (ii), after “detained” insert “or is or has been a community patient”.
- (3) In subsection (4)—
- (a) in paragraph (a), for “registered establishment” substitute “hospital or establishment of any description”, and
 - (b) in paragraph (b), for “in a registered establishment” substitute “under this Act or who is or has been a community patient”.
- (4) After subsection (7) insert—
- “(8) In this section, “establishment of any description” has the same meaning as in section 119 above.”
- 27 In section 121 (Mental Health Act Commission), in subsection (4), for the words from “not liable” to the end substitute “neither liable to be detained under this Act nor community patients”.

Offences

- 28 In section 128 (assisting patients to absent themselves without leave, etc), in subsection (1) after “under this Act” insert “or is a community patient”.

Duty to give information

- 29 In section 132 (duty of managers of hospitals to give information to detained patients), in subsection (2) for “nursing home” substitute “establishment”.
- 30 After section 132 insert—

“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 Mental Health Review 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.
- (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.”

31 In section 133 (duty of managers of hospitals to inform nearest relatives of discharge), after subsection (1) insert—

“(1A) The reference in subsection (1) above to a patient who is to be discharged includes a patient who is to be discharged from hospital under section 17A above.

(1B) Subsection (1) above shall also apply in a case where a community patient is discharged under section 23 or 72 above (otherwise than by virtue of an order for discharge made by his nearest relative), but with the reference in that subsection to the managers of the hospital or registered establishment being read as a reference to the managers of the responsible hospital.”

Retaking of patients escaping from custody

32 In section 138 (retaking of patients escaping from custody), in subsection (1)(b) after “under this Act,” insert “or a community patient who was recalled to hospital under section 17E above,”.

Members of Parliament suffering from mental disorder

33 In section 141 (Members of Parliament suffering from mental disorder), after subsection (6B) (inserted by Schedule 1 to this Act) insert—

“(6C) References in this section to a member who is authorised to be detained shall not include a member who is a community patient (whether or not he is recalled to hospital under section 17E above).”

Interpretation

34 (1) Section 145 (interpretation) is amended as follows.

- (2) In subsection (1), in the definition of “absent without leave”, after “related expressions” insert “(including expressions relating to a patient’s liability to be returned to a hospital or other place)”.
- (3) In that subsection, at the appropriate places insert—
- ““community patient” has the meaning given in section 17A above;”
- ““community treatment order” and “the community treatment order” have the meanings given in section 17A above;”
- ““the community treatment period” has the meaning given in section 20A above;”
- ““the responsible hospital” has the meaning given in section 17A above;”.
- (4) In subsection (3), after “guardianship” insert “or a community patient”.

Extent

- 35 (1) In section 146 (application to Scotland), omit the words from “128” to “guardianship”.
- (2) This paragraph does not extend to Scotland.

Application of certain provisions to patients concerned in criminal proceedings

- 36 (1) In Schedule 1 (application of certain provisions to patients subject to hospital and guardianship orders), Part 1 (patients not subject to special restrictions) is amended as follows.
- (2) In paragraph 1, after “17” insert “to 17C, 17E, 17F, 20A”.
- (3) In paragraph 2—
- (a) for “18, 19, 20” substitute “17D, 17G, 18 to 20, 20B”, and
- (b) for “paragraphs 3” substitute “paragraphs 2A”.
- (4) After paragraph 2 insert—
- “2A In section 17D(2)(a) for the reference to section 6(2) above there shall be substituted a reference to section 40(1)(b) below.
- 2B In section 17G—
- (a) in subsection (2) for the reference to section 6(2) above there shall be substituted a reference to section 40(1)(b) below;
- (b) in subsection (4) for paragraphs (a) and (b) there shall be substituted the words “the order or direction under Part 3 of this Act in respect of him were an order or direction for his admission or removal to that other hospital”; and
- (c) in subsection (5) for the words from “the patient” to the end there shall be substituted the words “the date of the relevant order or direction under Part 3 of this Act were the date on which the community treatment order is revoked”.”
- (5) After paragraph 5 insert—

Status: This is the original version (as it was originally enacted).

“5A In section 19A(2), paragraph (b) shall be omitted.”

(6) After paragraph 6 insert—

“6A In section 20B(1), for the reference to the application for admission for treatment there shall be substituted a reference to the order or direction under Part 3 of this Act by virtue of which the patient is liable to be detained.”

(7) In paragraph 8(b), for “and (b)” substitute “to (c)”.

37 (1) Part 2 of that Schedule (patients subject to special restrictions) is amended as follows.

(2) In paragraph 2, for “17 to 19” substitute “17, 18, 19”.

(3) For paragraph 6 substitute—

“6 In section 22, subsections (1) and (5) shall not apply.”