

*Status: Point in time view as at 03/11/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Mental Health Act 2007, SCHEDULE 5. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 5

Section 39

#### CROSS-BORDER ARRANGEMENTS

#### PART 1

#### AMENDMENTS TO PART 6 OF 1983 ACT

##### *Introduction*

1 Part 6 of the 1983 Act is amended as set out in this Part of this Schedule.

##### **Commencement Information**

**II** Sch. 5 para. 1 not in force at Royal Assent see s. 56(1); Sch. 5 para. 1 in force at 3.11.2008 by S.I. 2008/1900, arts. 1(1), 2(n) (with art. 3, Sch.)

##### *Transfer of patients: Scotland*

2 In section 80 (removal of patients to Scotland) (the cross-heading immediately above which becomes “Removal to and from Scotland”), in subsection (1), omit the words “or subject to guardianship” and the words “or, as the case may be, for receiving him into guardianship”.

3 (1) After that section insert—

##### **“80ZA Transfer of responsibility for community patients to Scotland**

(1) If it appears to the appropriate national authority, in the case of a community patient, that the conditions mentioned in subsection (2) below are met, the authority may authorise the transfer of responsibility for him to Scotland.

(2) The conditions are—

- (a) a transfer under this section is in the patient's interests; and
- (b) arrangements have been made for dealing with him under enactments in force in Scotland corresponding or similar to those relating to community patients in this Act.

(3) The appropriate national authority may not act under subsection (1) above while the patient is recalled to hospital under section 17E above.

(4) In this section, “the appropriate national authority” means—

- (a) in relation to a community patient in respect of whom the responsible hospital is in England, the Secretary of State;

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- (b) in relation to a community patient in respect of whom the responsible hospital is in Wales, the Welsh Ministers.”

(2) This paragraph does not extend to Scotland.

#### Commencement Information

**I2** Sch. 5 para. 3 not in force at Royal Assent see s. 56(1); Sch. 5 para. 3 in force at 3.11.2008 by S.I. 2008/1900, arts. 1(1), 2(n) (with art. 3, Sch.)

- 4 (1) After section 80A (the title to which becomes ( “ Transfer of responsibility for conditionally discharged patients to Scotland ”)) insert—

#### Removal of detained patients from Scotland

“80B(1) This section applies to a patient if—

- (a) he is removed to England and Wales under regulations made under section 290(1)(a) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”);
  - (b) immediately before his removal, his detention in hospital was authorised by virtue of that Act or the Criminal Procedure (Scotland) Act 1995; and
  - (c) on his removal, he is admitted to a hospital in England or Wales.
- (2) He shall be treated as if, on the date of his admission to the hospital, he had been so admitted in pursuance of an application made, or an order or direction made or given, on that date under the enactment in force in England and Wales which most closely corresponds to the enactment by virtue of which his detention in hospital was authorised immediately before his removal.
- (3) If, immediately before his removal, he was subject to a measure under any enactment in force in Scotland restricting his discharge, he shall be treated as if he were subject to an order or direction under the enactment in force in England and Wales which most closely corresponds to that enactment.
- (4) If, immediately before his removal, the patient was liable to be detained under the 2003 Act by virtue of a transfer for treatment direction, given while he was serving a sentence of imprisonment (within the meaning of section 136(9) of that Act) imposed by a court in Scotland, he shall be treated as if the sentence had been imposed by a court in England and Wales.
- (5) If, immediately before his removal, the patient was subject to a hospital direction or transfer for treatment direction, the restriction direction to which he is subject by virtue of subsection (3) above shall expire on the date on which that hospital direction or transfer for treatment direction (as the case may be) would have expired if he had not been so removed.
- (6) If, immediately before his removal, the patient was liable to be detained under the 2003 Act by virtue of a hospital direction, he shall be treated as if any sentence of imprisonment passed at the time when that hospital direction was made had been imposed by a court in England and Wales.

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- (7) Any directions given by the Scottish Ministers under regulations made under section 290 of the 2003 Act as to the removal of a patient to which this section applies shall have effect as if they were given under this Act.
- (8) Subsection (8) of section 80 above applies to a reference in this section as it applies to one in that section.
- (9) In this section—
  - “hospital direction” means a direction made under section 59A of the Criminal Procedure (Scotland) Act 1995; and
  - “transfer for treatment direction” has the meaning given by section 136 of the 2003 Act.

### **Removal of patients subject to compulsion in the community from Scotland**

- 80C (1) This section applies to a patient if—
- (a) he is subject to an enactment in force in Scotland by virtue of which regulations under section 289(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 apply to him; and
  - (b) he is removed to England and Wales under those regulations.
- (2) He shall be treated as if on the date of his arrival at the place where he is to reside in England or Wales—
- (a) he had been admitted to a hospital in England or Wales in pursuance of an application or order made on that date under the corresponding enactment; and
  - (b) a community treatment order had then been made discharging him from the hospital.
- (3) For these purposes—
- (a) if the enactment to which the patient was subject in Scotland was an enactment contained in the Mental Health (Care and Treatment) (Scotland) Act 2003, the corresponding enactment is section 3 of this Act;
  - (b) if the enactment to which he was subject in Scotland was an enactment contained in the Criminal Procedure (Scotland) Act 1995, the corresponding enactment is section 37 of this Act.
- (4) “The responsible hospital, in the case of a patient in respect of whom a community treatment order is in force by virtue of subsection (2) above, means the hospital to which he is treated as having been admitted by virtue of that subsection, subject to section 19A above.
- (5) As soon as practicable after the patient's arrival at the place where he is to reside in England or Wales, the responsible clinician shall specify the conditions to which he is to be subject for the purposes of section 17B(1) above, and the conditions shall be deemed to be specified in the community treatment order.
- (6) But the responsible clinician may only specify conditions under subsection (5) above which an approved mental health professional agrees should be specified.

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### **Transfer of conditionally discharged patients from Scotland**

80D(1) This section applies to a patient who is subject to—

- (a) a restriction order under section 59 of the Criminal Procedure (Scotland) Act 1995; and
  - (b) a conditional discharge under section 193(7) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”).
- (2) A transfer of the patient to England and Wales under regulations made under section 290 of the 2003 Act shall have effect only if the Secretary of State has consented to the transfer.
- (3) If a transfer under those regulations has effect, the patient shall be treated as if—
- (a) on the date of the transfer he had been conditionally discharged under section 42 or 73 above; and
  - (b) he were subject to a hospital order under section 37 above and a restriction order under section 41 above.
- (4) If the restriction order to which the patient was subject immediately before the transfer was of limited duration, the restriction order to which he is subject by virtue of subsection (3) above shall expire on the date on which the first-mentioned order would have expired if the transfer had not been made.”

(2) This paragraph does not extend to Scotland.

#### **Commencement Information**

**I3** Sch. 5 para. 4 not in force at Royal Assent see s. 56(1); Sch. 5 para. 4 in force for specified purposes for E.W. at 1.10.2007 by S.I. 2007/2798, art. 2(c)(i); Sch. 5 para. 4 in force at 3.11.2008 by S.I. 2008/1900, arts. 1(1), 2(n) (with art. 3, Sch.)

#### *Transfer of patients: Northern Ireland*

5 In section 81 (removal of patients to Northern Ireland), in subsection (2), for the words from “where he is” to “the corresponding enactment” substitute “ where he is subject to a hospital order and a restriction order or a transfer direction and a restriction direction under any enactment in this Act, as if he were subject to a hospital order and a restriction order or a transfer direction and a restriction direction under the corresponding enactment ”.

6 After that section insert—

#### **“81ZA Removal of community patients to Northern Ireland**

- (1) Section 81 above shall apply in the case of a community patient as it applies in the case of a patient who is for the time being liable to be detained under this Act, as if the community patient were so liable.
- (2) Any reference in that section to the application, order or direction by virtue of which a patient is liable to be detained under this Act shall be construed,

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for these purposes, as a reference to the application, order or direction under this Act in respect of the patient.”

#### Commencement Information

**I4** Sch. 5 para. 6 not in force at Royal Assent see s. 56(1); Sch. 5 para. 6 in force at 3.11.2008 by S.I. 2008/1900, arts. 1(1), 2(n) (with art. 3, Sch.)

- 7 (1) Section 81A (transfer of responsibility for patients to Northern Ireland) is amended as follows.
- (2) For subsection (1)(a) substitute—
- “(a) is subject to a hospital order under section 37 above and a restriction order under section 41 above or to a transfer direction under section 47 above and a restriction direction under section 49 above;”
- (3) In subsection (2)(b), for “a restriction order or restriction direction” substitute “a hospital order and a restriction order, or to a transfer direction and a restriction direction, ”.

#### Commencement Information

**I5** Sch. 5 para. 7 not in force at Royal Assent see s. 56(1); Sch. 5 para. 7 in force for E.W. at 1.10.2007 by S.I. 2007/2798, art. 2(c)(ii)

- 8 In section 82 (removal to England and Wales of patients from Northern Ireland), in subsection (2), for the words from “where he is” to “the corresponding enactment” substitute “ where he is subject to a hospital order and a restriction order or a transfer direction and a restriction direction under any enactment in that Order, as if he were subject to a hospital order and a restriction order or a transfer direction and a restriction direction under the corresponding enactment ”.

#### Commencement Information

**I6** Sch. 5 para. 8 not in force at Royal Assent see s. 56(1); Sch. 5 para. 8 in force for E.W. at 1.10.2007 by S.I. 2007/2798, art. 2(c)(iii)

- 9 In section 82A (the title to which becomes “Transfer of responsibility for conditionally discharged patients to England and Wales from Northern Ireland), for subsection (2)(b) substitute—
- “(b) as if he were subject to a hospital order under section 37 above and a restriction order under section 41 above or to a transfer direction under section 47 above and a restriction direction under section 49 above.”

#### Commencement Information

**I7** Sch. 5 para. 9 not in force at Royal Assent see s. 56(1); Sch. 5 para. 9 in force for E.W. at 1.10.2007 by S.I. 2007/2798, art. 2(c)(iv)

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*Transfer of patients: Channel Islands and Isle of Man*

- 10 Before section 83A (the title to which becomes “Transfer of responsibility for conditionally discharged patients to Channel Islands or Isle of Man”) insert—

**Removal or transfer of community patients to Channel Islands or Isle of Man**

- “83Z(A) Section 83 above shall apply in the case of a community patient as it applies in the case of a patient who is for the time being liable to be detained under this Act, as if the community patient were so liable.
- (2) But if there are in force in any of the Channel Islands or the Isle of Man enactments (“relevant enactments”) corresponding or similar to those relating to community patients in this Act—
- (a) subsection (1) above shall not apply as regards that island; and
  - (b) subsections (3) to (6) below shall apply instead.
- (3) If it appears to the appropriate national authority, in the case of a community patient, that the conditions mentioned in subsection (4) below are met, the authority may authorise the transfer of responsibility for him to the island in question.
- (4) The conditions are—
- (a) a transfer under subsection (3) above is in the patient's interests; and
  - (b) arrangements have been made for dealing with him under the relevant enactments.
- (5) But the authority may not act under subsection (3) above while the patient is recalled to hospital under section 17E above.
- (6) In this section, “the appropriate national authority” means—
- (a) in relation to a community patient in respect of whom the responsible hospital is in England, the Secretary of State;
  - (b) in relation to a community patient in respect of whom the responsible hospital is in Wales, the Welsh Ministers.”

**Commencement Information**

- 18** Sch. 5 para. 10 not in force at Royal Assent see s. 56(1); Sch. 5 para. 10 in force at 3.11.2008 by S.I. 2008/1900, arts. 1(1), 2(n) (with art. 3, Sch.)

- 11 In section 85 (patients removed from Channel Islands or Isle of Man), in subsection (2), for “to a restriction order or restriction direction” substitute “ to a hospital order and a restriction order or to a hospital direction and a limitation direction or to a transfer direction and a restriction direction ”.

**Commencement Information**

- 19** Sch. 5 para. 11 not in force at Royal Assent see s. 56(1); Sch. 5 para. 11 in force for E.W. at 1.10.2007 by S.I. 2007/2798, art. 2(c)(v)

- 12 Before section 85A (the title to which becomes “Responsibility for conditionally discharged patients transferred from Channel Islands or Isle of Man”) insert—

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### **Responsibility for community patients transferred from Channel Islands or Isle of Man**

- “85ZA) This section shall have effect if there are in force in any of the Channel Islands or the Isle of Man enactments (“relevant enactments”) corresponding or similar to those relating to community patients in this Act.
- (2) If responsibility for a patient is transferred to England and Wales under a provision corresponding to section 83ZA(3) above, he shall be treated as if on the date of his arrival at the place where he is to reside in England or Wales—
- (a) he had been admitted to the hospital in pursuance of an application made, or an order or direction made or given, on that date under the enactment in force in England and Wales which most closely corresponds to the relevant enactments; and
- (b) a community treatment order had then been made discharging him from the hospital.
- (3) “The responsible hospital”, in his case, means the hospital to which he is treated as having been admitted by virtue of subsection (2) above, subject to section 19A above.
- (4) As soon as practicable after the patient's arrival at the place where he is to reside in England or Wales, the responsible clinician shall specify the conditions to which he is to be subject for the purposes of section 17B(1) above, and the conditions shall be deemed to be specified in the community treatment order.
- (5) But the responsible clinician may only specify conditions under subsection (4) above which an approved mental health professional agrees should be specified.”

#### **Commencement Information**

**I10** Sch. 5 para. 12 not in force at Royal Assent see s. 56(1); Sch. 5 para. 12 in force at 3.11.2008 by S.I. 2008/1900, arts. 1(1), 2(n) (with art. 3, Sch.)

- 13 (1) Section 85A is amended as follows.
- (2) For subsection (2)(b) substitute—
- “(b) as if he were subject to a hospital order under section 37 above and a restriction order under section 41 above, or to a hospital direction and a limitation direction under section 45A above, or to a transfer direction under section 47 above and a restriction direction under section 49 above.”
- (3) In subsection (3) after “restriction order” insert “, limitation direction”.

#### **Commencement Information**

**I11** Sch. 5 para. 13 not in force at Royal Assent see s. 56(1); Sch. 5 para. 13 in force for E.W. at 1.10.2007 by S.I. 2007/2798, art. 2(c)(vi)

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*Patients absent from hospitals in England and Wales*

- 14 (1) Section 88 (patients absent from hospitals in England and Wales) is amended as follows.
- (2) In subsection (1) for the words from “any other part” to the end substitute “ Northern Ireland ”.
- (3) For subsection (2) substitute—
- “(2) For the purposes of the enactments referred to in subsection (1) above in their application by virtue of this section, the expression “constable” includes an officer or constable of the Police Service of Northern Ireland.”
- (4) In subsection (3) omit the following—
- (a) the words “to Scotland or Northern Ireland”,
  - (b) paragraph (a), and
  - (c) in paragraph (b), the words “in Northern Ireland.”.

**Commencement Information**

**I12** Sch. 5 para. 14 not in force at Royal Assent see s. 56(1); Sch. 5 para. 14 in force insofar as not already in force for E.W. at 28.10.2008 by S.I. 2008/2788, art. 2(a)

*Regulations for purposes of Part 6*

- 15 In section 90 (regulations for purposes of Part 6), for the words from “and to regulations” to the end substitute “, so far as this Part of this Act applies to patients removed to England and Wales or for whom responsibility is transferred to England and Wales. ”

**Commencement Information**

**I13** Sch. 5 para. 15 not in force at Royal Assent see s. 56(1); Sch. 5 para. 15 in force at 3.11.2008 by S.I. 2008/1900, arts. 1(1), 2(n) (with art. 3, Sch.)

*General provisions as to patients removed from England and Wales*

- 16 In section 91 (general provisions as to patients removed from England and Wales), after subsection (2) insert—
- “(2A) Where responsibility for a community patient is transferred to a jurisdiction outside England and Wales (or such a patient is removed outside England and Wales) in pursuance of arrangements under this Part of this Act, the application, order or direction mentioned in subsection (1) above in force in respect of him shall cease to have effect on the date on which responsibility is so transferred (or he is so removed) in pursuance of those arrangements.”

**Commencement Information**

**I14** Sch. 5 para. 16 not in force at Royal Assent see s. 56(1); Sch. 5 para. 16 in force at 3.11.2008 by S.I. 2008/1900, arts. 1(1), 2(n) (with art. 3, Sch.)



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### *Interpretation*

- 17 In section 92 (interpretation of Part 6), after subsection (1) insert—
- “(1A) References in this Part of this Act to the responsible clinician shall be construed as references to the responsible clinician within the meaning of Part 2 of this Act.”

#### **Commencement Information**

**I15** Sch. 5 para. 17 not in force at Royal Assent see s. 56(1); Sch. 5 para. 17 in force at 3.11.2008 by S.I. 2008/1900, arts. 1(1), 2(n) (with art. 3, Sch.)

## **PART 2**

### RELATED AMENDMENTS

#### *The 1983 Act*

- 18 In section 69 of the 1983 Act (applications to tribunals concerning patients subject to hospital and guardianship orders), in subsection (2)(a)—
- (a) after “hospital order” insert “ , hospital direction ”, and
- (b) for the words from “ , 82(2) or” to the end substitute “ or section 80B(2), 82(2) or 85(2) below. ”

#### **Commencement Information**

**I16** Sch. 5 para. 18 not in force at Royal Assent see s. 56(1); Sch. 5 para. 18(a) in force for E.W. at 1.10.2007 by S.I. 2007/2798, art. 2(c)(vii); Sch. 5 para. 18 in force insofar as not already in force at 3.11.2008 by S.I. 2008/1900, arts. 1(1), 2(n) (with art. 3, Sch.)

- 19 (1) Section 79 of that Act (interpretation of Part 5) is amended as follows.
- (2) In subsection (1), for paragraph (c) substitute—
- “(c) is treated as subject to a hospital order and a restriction order, or to a hospital direction and a limitation direction, or to a transfer direction and a restriction direction, by virtue of any provision of Part 6 of this Act (except section 80D(3), 82A(2) or 85A(2) below),”.
- (3) In subsection (5)—
- (a) after “the relevant hospital order,” insert “ the relevant hospital direction, ”,
- (b) after “the restriction order” insert “ , the limitation direction ”,
- (c) after “the hospital order,” insert “ hospital direction, ”, and
- (d) after “restriction order,” insert “ limitation direction, ”.
- (4) After that subsection insert—
- “(5A) Section 75 above shall, subject to the modifications in subsection (5C) below, have effect in relation to a qualifying patient as it has effect in relation to a restricted patient who is conditionally discharged under section 42(2), 73 or 74 above.

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- (5B) A patient is a qualifying patient if he is treated by virtue of section 80D(3), 82A(2) or 85A(2) below as if he had been conditionally discharged and were subject to a hospital order and a restriction order, or to a hospital direction and a limitation direction, or to a transfer direction and a restriction direction.
- (5C) The modifications mentioned in subsection (5A) above are—
- (a) references to the relevant hospital order, hospital direction or transfer direction, or to the restriction order, limitation direction or restriction direction to which the patient is subject, shall be construed as references to the hospital order, hospital direction or transfer direction, or restriction order, limitation direction or restriction direction, to which the patient is treated as subject by virtue of section 80D(3), 82A(2) or 85A(2) below; and
  - (b) the reference to the date on which the patient was conditionally discharged shall be construed as a reference to the date on which he was treated as conditionally discharged by virtue of a provision mentioned in paragraph (a) above.”

#### Commencement Information

**I17** Sch. 5 para. 19 not in force at Royal Assent see s. 56(1); Sch. 5 para. 19 in force for E.W. at 1.10.2007 by S.I. 2007/2798, art. 2(c)(viii)

- 20 (1) In section 146 (application to Scotland), omit the words from “88” to “138”.
- (2) This paragraph does not extend to Scotland.

#### Commencement Information

**I18** Sch. 5 para. 20 not in force at Royal Assent see s. 56(1); Sch. 5 para. 20 in force insofar as not already in force for E.W. at 28.10.2008 by S.I. 2008/2788, art. 2(a)

#### *Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078)*

- 21 (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 is amended as follows.
- (2) Omit the following provisions—
- (a) article 1(5),
  - (b) article 2, and
  - (c) article 3.
- (3) In article 8 (the title to which becomes “Patients absent from hospitals or other places in Scotland”), in paragraph (1)(b), for “290” substitute “ 289, 290, 309, 309A ”.
- (4) In article 12(2), for “2 to 11” substitute “ 4 to 11 ”.

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**Commencement Information**

**I19** Sch. 5 para. 21 not in force at Royal Assent see s. 56(1); Sch. 5 para. 21(2)(c) in force for E.W. at 1.10.2007 by S.I. 2007/2798, art. 2(c)(ix); Sch. 5 para. 21 in force insofar as not already in force at 3.11.2008 by S.I. 2008/1900, arts. 1(1), 2(n) (with art. 3, Sch.)

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