


# Mental Health Act 2025

CHAPTER 33

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# Mental Health Act 2025

**CHAPTER 33**

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# Mental Health Act 2025

**2025 CHAPTER 33**

An Act to make provision to amend the Mental Health Act 1983 in relation to mentally disordered persons; and for connected purposes.

[18th December 2025]

BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Code of practice*

**1 Principles to inform decisions**

In section 118 of the Mental Health Act 1983 (duty to prepare code of practice, including principles which the person making it thinks should inform decisions under the Act) for subsection (2B) substitute—

"(2B) The statement of principles must, in particular, include the principles, and address the matters, specified in the table.

| **Principle** | **Matters to be addressed** |
|---|---|
| Choice and autonomy | involvement of patients in decision-making, and consideration of the views of carers and other interested parties |
| Least restriction | minimising restrictions on liberty so far as consistent with patient wellbeing and safety and public safety |
| Therapeutic benefit | effectiveness and appropriateness of treatment |

| Principle | Matters to be addressed |
|---|---|
| The person as an individual | treating patients with dignity and respect and considering their attributes and past experiences" |

**2 Application of principles to Wales**

(1) Section 118 of the Mental Health Act 1983 is amended as follows.

(2) In subsection (1), for "Secretary of State" substitute "appropriate national authority".

(3) In subsection (2)—

(a) for "The code" substitute "A code prepared under this section";

(b) for "Secretary of State" substitute "appropriate national authority".

(4) In subsection (2A)—

(a) for "The code" substitute "A code prepared under this section";

(b) for "Secretary of State" substitute "appropriate national authority".

(5) In subsection (2C), for "Secretary of State" substitute "appropriate national authority".

(6) For subsection (2D) substitute—

"(2D) Any person for whose guidance a code of practice under this section is prepared or revised must have regard to the code."

(7) For subsection (3) substitute—

"(3) Before preparing a code under this section or making any alteration in it the appropriate national authority must consult such bodies as appear to the appropriate national authority to be concerned."

(8) In subsection (4), for "the code and of any alteration in the code" substitute "any code prepared by the Secretary of State under this section and any alteration in such a code".

(9) After subsection (5) insert—

"(5A) The Welsh Ministers must lay copies of any code prepared by them under this section or any alteration in such a code before Senedd Cymru; and if the Senedd passes a resolution requiring the code or any alteration in it to be withdrawn, the Welsh Ministers must withdraw the code or alteration, and where they withdraw the code, must prepare a code in substitution for the one which is withdrawn.

(5B) No resolution may be passed by Senedd Cymru under subsection (5A) in respect of a code or revised code after the expiration of the period of 40 days beginning with the day on which a copy of the code was laid before the Assembly.

(5C) For the purposes of subsection (5B) no account is to be taken of any time during which the Senedd Cymru is dissolved or is in recess for more than four days."

(10) In subsection (6) for "Secretary of State" substitute "appropriate national authority".

(11) After subsection (7) insert—

"(8) In this section "the appropriate national authority"—

(a) in relation to England, means the Secretary of State;

(b) in relation to Wales, means the Welsh Ministers."

*Autism and learning disability*

**3 Application of the Mental Health Act 1983: autism and learning disability**

(1) The Mental Health Act 1983 is amended as follows.

(2) In section 1 (application of Act: "mental disorder")—

(a) in subsection (2), at the appropriate places insert—

""autism" means a lifelong developmental disorder of the mind that affects how people perceive, communicate and interact with others;";

""learning disability" means a state of arrested or incomplete development of the mind which includes significant impairment of intelligence;";

""psychiatric disorder" means mental disorder other than autism or learning disability;";

(b) for subsections (2A) and (2B) substitute—

"(2A) For the purposes of this Act, a person's learning disability has "serious behavioural consequences" if it is associated with abnormally aggressive or seriously irresponsible conduct by the person.";

(c) omit subsection (4).

(3) In section 145 (interpretation of the Mental Health Act 1983), in subsection (1), at the appropriate places insert—

""autism" has the meaning given in section 1;";

""learning disability" has the meaning given in section 1;";

""psychiatric disorder" has the meaning given in section 1;";

""serious behavioural consequences", in relation to a person's learning disability, is to be read in accordance with section 1(2A);".

(4) Schedule 1 amends the Mental Health Act 1983 to—

(a) prevent people from being detained under section 3 of that Act (admission for treatment) on the basis of autism or learning disability, and

(b) make related changes in relation to the application of that Act to autism and learning disability.

## 4 People with autism or learning disability

In the Mental Health Act 1983, after Part 8 insert—

**"PART 8A**

PEOPLE IN ENGLAND WITH AUTISM OR LEARNING DISABILITY

### 125A Children and young people with autism or learning disability: reviews

(1) The responsible commissioner must make arrangements for ensuring that care, education and treatment review meetings take place in relation to a patient if—

(a) the patient is liable to be detained under this Act in a hospital or registered establishment in England otherwise than—

(i) by virtue of an emergency application where the second medical recommendation referred to in section 4(4)(a) has not been given and received, or

(ii) by virtue of section 5(2) or (4), 135 or 136 or directions for detention in a place of safety under section 35(4), 36(3), 37(4), 38(4) or 45A(5),

(b) the patient is considered by the responsible commissioner to have autism or a learning disability,

(c) the patient—

(i) is aged under 18, or

(ii) is aged 18 or over and is a person for whom a plan is maintained under section 37 of the Children and Families Act 2014 (education, health and care plans), and

(d) either—

(i) the patient consents to meetings taking place and to the disclosure of information in accordance with the arrangements, and to the use of the information in accordance with this Act, or

(ii) the patient lacks capacity or competence to give that consent but the responsible commissioner considers that it is nonetheless in the patient's best interests for the meetings to take place, and information to be disclosed and used, as mentioned in sub-paragraph (i).

(2) In this section "care, education and treatment review meeting" means a meeting, convened by the responsible commissioner, for the purpose of reviewing a patient's case in order to—

(a) identify any needs of the patient for—

(i) social care provision,

(ii) special educational provision, or

(iii) medical treatment, and

(b) make recommendations about—

(i) whether and how any such needs can be met,

(ii) how the patient's safety can be ensured while they are liable to be detained,

(iii) the discharge of the patient from the hospital or registered establishment under section 23 (where that section applies in relation to the patient), and

(iv) how to reduce any risk of the patient being re-admitted to a hospital or registered establishment following discharge.

(3) The arrangements under subsection (1) must include—

(a) arrangements for the preparation of a report (whether by the responsible commissioner or another person) setting out the needs identified, and recommendations made, at each meeting,

(b) arrangements for the provision of a copy of the report, within the period of 14 days beginning with the day on which a meeting takes place, to each of the following persons (other than any who prepared the report)—

(i) the responsible commissioner,

(ii) the patient's responsible clinician,

(iii) the integrated care board that will have the duty under section 117 to provide or arrange for the provision of after-care services for the patient, and

(iv) the local authority in whose area the patient is ordinarily resident.

(The arrangements may also include provision authorising or requiring a copy of the report to be given to other persons.)

(4) The arrangements under subsection (1) must include arrangements for ensuring that—

(a) the first meeting in relation to the patient takes place within the period of 14 days beginning with the applicable day, and

(b) a further meeting takes place at least once in each successive period of 12 months for which the patient remains liable to be detained under this Act, beginning with the day on which the first meeting takes place.

(5) In subsection (4) "the applicable day" means—

(a) in relation to a patient who is liable to be detained by virtue of an emergency application—

(i) if, when the second medical recommendation referred to in section 4(4)(a) is received, the patient is considered by the relevant commissioner to have autism or a learning disability, the day on which that recommendation is received;

(ii) otherwise, the day on which the responsible commissioner forms the view that the patient has autism or a learning disability;

(b) in relation to any other patient—

(i) if, when the patient becomes liable to be detained as mentioned in subsection (1)(a), the patient is considered by the relevant commissioner to have autism or a learning disability, the day on which the patient becomes so liable;

(ii) otherwise, the day on which the responsible commissioner forms the view that the patient has autism or a learning disability.

(6) A patient may withdraw consent to the taking place of meetings and to the disclosure of information in accordance with arrangements under subsection (1).

(7) The arrangements under subsection (1) must include provision about—

(a) how consent to the taking place of meetings or the disclosure of information may be withdrawn;

(b) what is to happen when consent is withdrawn (which may include provision about who is to be informed).

**125B Other people with autism or learning disability: reviews**

(1) The responsible commissioner must make arrangements for ensuring that care and treatment review meetings take place in relation to a patient if—

(a) the patient is liable to be detained under this Act in a hospital or registered establishment in England otherwise than—

(i) by virtue of an emergency application where the second medical recommendation referred to in section 4(4)(a) has not been given and received, or

(ii) by virtue of section 5(2) or (4), 135 or 136 or directions for detention in a place of safety under section 35(4), 36(3), 37(4), 38(4) or 45A(5),

(b) the patient is considered by the responsible commissioner to have autism or a learning disability,

(c) the patient is aged 18 or over and is not a person for whom a plan is maintained under section 37 of the Children and Families Act 2014 (education, health and care plans), and

(d) either—

(i) the patient consents to meetings taking place and to the disclosure of information in accordance with the arrangements, and to the use of the information in accordance with this Act, or

(ii) the patient lacks capacity to give that consent but the responsible commissioner considers that it is nonetheless in the patient's best interests for the meetings to take

place, and information to be disclosed and used, as mentioned in sub-paragraph (i).

(2) In this section "care and treatment review meeting" means a meeting, convened by the responsible commissioner, for the purpose of reviewing a patient's case in order to—

(a) identify any needs of the patient for—

(i) social care provision, or

(ii) medical treatment, and

(b) make recommendations about—

(i) whether and how any such needs can be met,

(ii) how the patient's safety can be ensured while they are liable to be detained,

(iii) the discharge of the patient from the hospital or registered establishment under section 23 (where that section applies in relation to the patient), and

(iv) how to reduce any risk of the patient being re-admitted to a hospital or registered establishment following discharge.

(3) The arrangements under subsection (1) must include arrangements for—

(a) the preparation of a report (whether by the responsible commissioner or another person) setting out the needs identified, and recommendations made, at each meeting, and

(b) the provision of a copy of the report, within the period of 14 days beginning with the day on which a meeting takes place, to each of the following persons (other than any who prepared the report)—

(i) the responsible commissioner,

(ii) the patient's responsible clinician,

(iii) the integrated care board that will have the duty under section 117 to provide or arrange for the provision of after-care services for the patient, and

(iv) the local authority in whose area the patient is ordinarily resident.

(The arrangements may also include provision authorising or requiring a copy of the report to be given to other persons.)

(4) The arrangements under subsection (1) must include arrangements for ensuring that—

(a) the first meeting in relation to the patient takes place within the period of 28 days beginning with the applicable day, and

(b) a further meeting takes place at least once in each successive period of 12 months for which the patient remains liable to be detained under this Act, beginning with the day on which the first meeting takes place.

(5) In subsection (4) "the applicable day" has the meaning given by section 125A(5).

(6) A patient may withdraw consent to the taking place of meetings and to the disclosure of information in accordance with arrangements under subsection (1).

(7) The arrangements under subsection (1) must include provision about—

(a) how consent to the taking place of meetings or the disclosure of information may be withdrawn;

(b) what is to happen when consent is withdrawn (which may include provision about who is to be informed).

**125C Reviews: supplementary**

In exercising functions in relation to a patient in respect of whom a review meeting has taken place under section 125A or 125B, the following must have regard to the recommendations set out in a report prepared in accordance with that section—

(a) the patient's responsible clinician;

(b) the responsible commissioner;

(c) the integrated care board to which the report is provided;

(d) the local authority to which the report is provided.

**125D Registers of people at risk of detention**

(1) Each integrated care board must, in accordance with this section, establish and maintain a register and include a person in that register if—

(a) the person is someone for whom the board has responsibility for the purposes of this section,

(b) the person is someone the integrated care board considers—

(i) to have autism or a learning disability, and

(ii) to have specified risk factors for detention under Part 2 of this Act, and

(c) either—

(i) the person consents to their inclusion in the register and the use, in accordance with this section, of information about them, or

(ii) the person lacks capacity or competence to give that consent but the board considers that it is nonetheless in their best interests to be included in the register and for the use, in accordance with this section, of information about them.

(2) The register must specify the local authority in whose area each person included in it is ordinarily resident.

(3) The Secretary of State may by regulations make provision about—

(a) the establishment and maintenance of a register under subsection (1);

(b) the information about a person that is to be included in a register;

(c) the obtaining by an integrated care board of—

(i) information for the purpose of determining whether subsection (1)(b) or (c) applies in relation to a person, or

(ii) information for inclusion in the register;

(d) the disclosure by or to any person of information included in a register or obtained by virtue of paragraph (c);

(e) the withdrawal of consent by a person to their inclusion in the register.

(4) The Secretary of State must by regulations specify the description of people for which each integrated care board is "responsible" for the purpose of this section, who must be people in relation to which the board has commissioning functions.

(5) In this section "specified risk factors for detention under Part 2 of this Act" means factors which are specified in regulations made by the Secretary of State as factors that the Secretary of State considers increase the probability of a person being detained under Part 2 of this Act.

**125E Registers: duties relating to commissioning of services etc**

(1) An integrated care board must, in exercising its commissioning functions—

(a) have regard to the information included in its register under section 125D and any other information obtained by it by virtue of section 125D(3)(c), and

(b) seek to ensure that the needs of people with autism or a learning disability can be met without detaining them under Part 2 of this Act.

(2) A local authority must, in exercising its market function—

(a) have regard to any information disclosed to it by virtue of section 125D(3)(d), and

(b) seek to ensure that the needs of people with autism or a learning disability can be met without detaining them under Part 2 of this Act.

(3) In this section "market function", in relation to a local authority, means its function under section 5(1) of the Care Act 2014 (promoting diversity and quality in provision of services).

**125F Guidance**

(1) The Secretary of State must publish guidance for the following about the exercise of their functions under this Part—

(a) responsible clinicians;

(b) responsible commissioners;

(c) integrated care boards;

(d) local authorities.

(2) The persons referred to in subsection (1)(a) to (d) must have regard to guidance published under this section.

**125G Interpretation of Part 8A**

(1) In this Part—

"commissioning functions", in relation to an NHS commissioning body, means functions of the body in arranging for the provision of services as part of the health service continued under section 1(1) of the National Health Service Act 2006;

"local authority" means—

(a) a county council in England,

(b) a district council for an area in England for which there is no county council,

(c) a London borough council,

(d) the Common Council of the City of London, or

(e) the Council of the Isles of Scilly;

"NHS commissioning body" means NHS England or an integrated care board;

"responsible clinician" has the same meaning as it has in Part 2 (see section 34(1));

"responsible commissioner", in relation to a patient liable to be detained in a hospital or registered establishment, means the NHS commissioning body in pursuance of whose commissioning functions arrangements are required to be made for the patient's admission to the hospital or registered establishment;

"social care provision" has the same meaning as it has in Part 3 of the Children and Families Act 2014 (see section 21 of that Act);

"special educational provision" has the same meaning as it has in Part 3 of the Children and Families Act 2014 (see section 21 of that Act).

(2) References in this Part to a patient who lacks capacity are to a patient who lacks capacity within the meaning of the Mental Capacity Act 2005.

(3) In determining the ordinary residence of a person who is aged under 18 for the purposes of section 125A(3)(b)(iv) or 125D(2), section 105(6)

of the Children Act 1989 applies as if there were inserted after paragraph (c)—

"(d) while the child is being provided with accommodation under section 117 of the Mental Health Act 1983; or

(e) while the child is being provided with accommodation under the National Health Service Act 2006."

(4) A person aged under 18 who—

(a) does not have an ordinary residence, and

(b) is living in a place listed in section 105(6) of the Children Act 1989, as modified by subsection (3) of this section,

is to be treated for the purposes of section 125A(3)(b)(iv) or 125D(2) as ordinarily resident in the area in which they were present immediately before living in such a place.

(5) In determining the ordinary residence of a person who is aged 18 or over for the purposes of section 125A(3)(b)(iv), 125B(3)(b)(iv) or 125D(2), section 39(1) to (6) of, and paragraphs 1(1), 2(1) and (2) and 8 of Schedule 1 to, the Care Act 2014 apply."

*Grounds for detention and community treatment orders*

**5 Grounds for detention**

(1) The Mental Health Act 1983 is amended as follows.

(2) In section 2 (admission for assessment), in subsection (2)—

(a) omit the "and" at the end of paragraph (a);

(b) for paragraph (b) substitute—

"(b) serious harm may be caused to the health or safety of the patient or of another person unless the patient is so detained; and

(c) given the nature, degree and likelihood of the harm, the patient ought to be so detained."

(3) In section 3 (admission for treatment)—

(a) in subsection (2), for paragraphs (c) and (d) substitute—

"(b) serious harm may be caused to the health or safety of the patient or of another person unless the patient receives medical treatment,

(c) it is necessary, given the nature, degree and likelihood of the harm, for the patient to receive medical treatment,

(d) the necessary treatment cannot be provided unless the patient is detained under this Act, and

(e) appropriate medical treatment is available for the patient.";

(b) in subsection (3)—

(i) in paragraph (a), for "(d)" substitute "(e)";

(ii) in paragraph (b), for "(c)" substitute "(b) to (d)".

(4) In section 5(4) (detention for six hours pending application for admission), for paragraph (a) (but not the "and" at the end) substitute—

"(a) that the patient is suffering from mental disorder to such a degree that serious harm may be caused to the health or safety of the patient or of another person unless the patient is immediately restrained from leaving the hospital;".

(5) In section 20 (renewal of authority for detention of patient detained in pursuance of application for admission for treatment etc), in subsection (4), for paragraphs (c) and (d) substitute—

"(b) serious harm may be caused to the health or safety of the patient or of another person unless the patient receives medical treatment,

(c) it is necessary, given the nature, degree and likelihood of the harm, for the patient to receive medical treatment,

(d) the necessary treatment cannot be provided unless the patient continues to be liable to be detained, and

(e) appropriate medical treatment is available for the patient."

(6) The amendment made by subsection (5), so far as relating to persons who are liable to be detained by virtue of Part 3 of the Mental Health Act 1983, applies in relation to such a person whether the person became so liable before or after the coming into force of this section.

### 6 Grounds for community treatment orders

(1) The Mental Health Act 1983 is amended as follows.

(2) In section 17A (community treatment orders)—

(a) in subsection (5), for paragraphs (b) to (e) substitute—

"(b) serious harm may be caused to the health or safety of the patient or of another person unless the patient receives medical treatment,

(c) it is necessary, given the nature, degree and likelihood of the harm, for the patient to receive medical treatment,

(d) subject to the patient being liable to be recalled as mentioned in paragraph (e), the necessary treatment can be provided without the patient being detained in a hospital,

(e) it is necessary that the responsible clinician should be able to exercise the power under section 17E(1) to recall the patient to hospital, and

(f) appropriate medical treatment is available for the patient."

(b) in subsection (6), for "(5)(d)" substitute "(5)(e)".

(3) In section 20A (community treatment period)—

(a) in subsection (4)(b), for "conditions set out in subsection (6) below are satisfied" substitute "criteria in section 17A(5) are met";

(b) omit subsection (6);

(c) for subsection (7) substitute—

"(7) Subsection (6) of section 17A applies for the purposes of subsection (4)(b) of this section as it applies for the purposes of subsection (4)(a) of that section.";

(d) in subsection (8)(a), for "conditions set out in subsection (6) above are satisfied" substitute "criteria in section 17A(5) are met".

(4) The amendments made by subsection (2), so far as relating to persons who are liable to be detained by virtue of Part 3 of the Mental Health Act 1983, apply in relation to such a person whether the person became so liable before or after the coming into force of this section.

(5) The amendments made by subsection (3), so far as relating to persons who are subject to community treatment orders (within the meaning given by section 17A of the Mental Health Act 1983) by virtue of Part 3 of that Act, apply in relation to such a person whether the person became subject to a community treatment order before or after the coming into force of this section.

## 7 Grounds for discharge by tribunal

(1) The Mental Health Act 1983 is amended as follows.

(2) In section 72 (powers of tribunals)—

(a) in subsection (1)(a), for sub-paragraphs (i) and (ii) substitute "that the grounds in section 2(2) are made out;";

(b) in subsection (1)(b), for sub-paragraphs (i) to (iia) (but not the "or" at the end) substitute—

"(i) that the conditions in section 20(4) are met;";

(c) in subsection (1)(c), for sub-paragraphs (i) to (iv) (but not the "or" at the end) substitute—

"(i) that the criteria in section 17A(5) are met;";

(d) in subsection (1A), for "whether the criterion in subsection (1)(c)(iii) above" substitute "for the purposes of subsection (1)(c)(i) whether the criterion in section 17A(5)(e)".

(3) In section 73 (power to discharge restricted patients), in subsection (1)(a), for "as to the matters mentioned in paragraph (b)(i), (ii) or (iia) of section 72(1) above" substitute "that the conditions in section 20(4) are met".

(4) The amendments made by this section—

(a) so far as relating to persons who are liable to be detained by virtue of Part 3 of the Mental Health Act 1983, apply in relation to such a person whether the person became so liable before or after the coming into force of this section;

(b) so far as relating to persons who are subject to community treatment orders (within the meaning given by section 17A of the Mental Health

Act 1983) by virtue of Part 3 of that Act, apply in relation to such a person whether the person became subject to a community treatment order before or after the coming into force of this section.

*Appropriate medical treatment*

**8 Appropriate medical treatment: therapeutic benefit**

(1) The Mental Health Act 1983 is amended as follows.

(2) In Part 1—

(a) for the Part heading substitute "Introductory";

(b) after section 1 insert—

**"1A "Appropriate medical treatment"**

In this Act—

(a) references to appropriate medical treatment, in relation to a person suffering from mental disorder, are references to medical treatment which, taking into account the nature and degree of the disorder and all other circumstances—

(i) has a reasonable prospect of alleviating, or preventing the worsening of, the disorder or one or more of its symptoms or manifestations, and

(ii) is appropriate in the person's case;

(b) references to medical treatment, in relation to mental disorder, are references to medical treatment the purpose of which is to alleviate, or prevent a worsening of, the disorder or one or more of its symptoms or manifestations.";

(c) in section 3 (admission for treatment) omit subsection (4).

(3) In section 57 (treatment requiring consent and a second opinion), in subsection (2)(b), for "it is appropriate for the treatment to be given" substitute "the treatment constitutes appropriate medical treatment".

(4) In section 58 (treatment requiring consent or a second opinion), in subsection (3)(b), for "it is appropriate for the treatment to be given" substitute "the treatment constitutes appropriate medical treatment".

(5) In section 58A (electro-convulsive therapy etc), in subsection (4)(c), for sub-paragraph (ii) substitute—

"(ii) that the treatment constitutes appropriate medical treatment."

(6) In section 62A (treatment on recall of community patient or revocation of order), in subsection (5)(a)—

(a) omit "it is appropriate for";

(b) for "to be given to the patient" substitute "constitute appropriate medical treatment".

(7) In section 63 (treatment not requiring consent)—

(a) the existing text becomes subsection (1);

(b) in that subsection, after "patient", insert "who is liable to be detained in pursuance of an application for admission for assessment";

(c) after that subsection insert—

"(2) The consent of any other patient is not required for any medical treatment given to the patient for such disorder, not being a form of treatment to which section 57, 58 or 58A above applies, if—

(a) the treatment is given by or under the direction of the approved clinician in charge of the treatment, and

(b) the approved clinician in charge of the treatment considers that the treatment constitutes appropriate medical treatment.".

(8) In section 64 (supplementary provisions for Part 4) omit subsection (3).

(9) In section 64C (section 64B: supplemental), in subsection (4)(a), for "it is appropriate for the treatment to be given or for the treatment to be" substitute "the treatment constitutes appropriate medical treatment or constitutes appropriate medical treatment if".

(10) In section 64K (interpretation of Part 4A) omit subsection (8).

(11) In section 145 (interpretation)—

(a) in subsection (1)—

(i) at the appropriate place insert—

""appropriate medical treatment" is to be read in accordance with section 1A(a);";

(ii) in the definition of "medical treatment", for "(but see also subsection (4) below)" substitute "; and references to medical treatment are to be read in accordance with section 1A(b)";

(b) omit subsection (1AB);

(c) omit subsection (4).

## 9 Remission or release of prisoners etc from hospital: treatment condition

In the Mental Health Act 1983, in the following places, for "effective" substitute "appropriate medical"—

section 50(1) (prisoners under sentence);

section 51(3)(b) and (4)(b) (detained persons);

section 52(5)(b) (persons remanded by magistrates' courts);

section 53(2)(b) (civil prisoners and persons detained under the Immigration Acts).

*The responsible clinician*

### 10 Nomination of the responsible clinician

(1) The Mental Health Act 1983 is amended as follows.

(2) In section 34(1) (interpretation of Part 2)—

(a) at the appropriate place insert—

""the relevant hospital" means—

(a) in relation to a patient who is liable to be detained in a hospital, that hospital;

(b) in relation to a community patient, the responsible hospital;";

(b) in the definition of "the responsible clinician", in paragraph (a), for "with" substitute "nominated by the managers of the relevant hospital to have".

(3) In the following places, after "would" insert "be nominated by the managers of the hospital to"—

section 36(3) (remand for treatment only if admission is arranged);

section 37(4) (hospital order to be made only if admission is arranged);

section 38(4) (interim hospital order to be made only if admission is arranged);

section 44(2) (evidence for admission to hospital by magistrates' court);

section 45A(5) (hospital direction and limitation direction to be made only if admission is arranged).

(4) In section 55(1) (interpretation of Part 3), in the definition of "responsible clinician", for "with" substitute "nominated by the managers of the hospital to have".

(5) In section 64 (supplementary provisions for Part 4), for subsection (1) substitute—

"(1) In this Part—

"hospital" includes a registered establishment;

"responsible clinician" means the responsible clinician within the meaning of Part 2 (see section 34(1))."

(6) In section 134(1), in the words after paragraph (b), for "with" substitute "nominated by the managers of the hospital to have".

*Treatment*

### 11 Making treatment decisions

(1) The Mental Health Act 1983 is amended as follows.

(2) After section 56 insert—

**"56A Making treatment decisions**

(1) In deciding whether to give medical treatment to a patient by virtue of this Part, the approved clinician in charge of the treatment must—

(a) identify and evaluate any alternative forms of medical treatment available for the patient;

(b) take such steps as are reasonably practicable to assist and encourage the patient to participate, as fully as possible, in the decision-making process;

(c) not rely merely on—

(i) the patient's age or appearance, or

(ii) a condition of the patient's, or an aspect of the patient's behaviour, which might lead others to make unjustified assumptions about what medical treatment might be appropriate for the patient;

(d) consider the patient's past and present wishes, feelings, beliefs and values, so far as it is reasonable to regard them as relevant and so far as they are reasonably ascertainable;

(e) consider the relevant views of the following, so far as they are reasonably ascertainable—

(i) anyone named by the patient as someone to be consulted on the decision in question, or decisions of that kind;

(ii) the patient's nominated person and any independent mental health advocate from whom the patient is receiving help by virtue of section 130A or 130E;

(iii) any donee or deputy for the patient;

(iv) any other person who cares for the patient or is interested in the patient's welfare and whom the approved clinician considers it appropriate to consult;

(f) consider all other circumstances of which the approved clinician is aware and which it would be reasonable to regard as relevant.

(2) Where the patient lacks capacity in relation to matters that, in the opinion of the approved clinician, are relevant to the decision, the approved clinician must also consider any wishes, feelings, views and beliefs that the clinician thinks the patient would have in relation to those matters but for the lack of capacity (including any relevant written statement made by the patient when they had capacity).

(3) In subsection (1)(e), "relevant views" means—

(a) views about the nature of the patient's past and present wishes, feelings, beliefs and values,

(b) where the patient lacks capacity in relation to matters that, in the opinion of the approved clinician, are relevant to the decision, views about the nature of the wishes, feelings, views

and beliefs the patient would have in relation to those matters but for the lack of capacity, and

(c) views about whether the medical treatment should be given to the patient."

(3) In section 57 (treatment requiring consent and a second opinion), in subsection (2)(b), at the end insert ", and that the decision to give the treatment was made by the person in charge of the treatment in accordance with section 56A".

(4) In section 58 (treatment requiring consent or a second opinion)—

(a) in subsection (3)(a), at the end (but before the "; or") insert ", and that the decision to give the treatment was made by the approved clinician in charge of the treatment in accordance with section 56A";

(b) in subsection (3)(b), at the end insert ", and that the decision to give the treatment was made by the approved clinician in charge of the treatment in accordance with section 56A".

(5) In section 58A (electro-convulsive therapy etc)—

(a) in subsection (3)(c), at the end insert ", and that the decision to give the treatment was made by the approved clinician in charge of the treatment in accordance with section 56A";

(b) in subsection (4)(c)—

(i) omit the "and" at the end of sub-paragraph (i);

(ii) at the end of sub-paragraph (ii) insert "; and";

(iii) after sub-paragraph (ii) insert—

"(iii) that the decision to give the treatment was made by the approved clinician in charge of the treatment in accordance with section 56A."

**12 Appointment of doctors to provide second opinions**

(1) The Mental Health Act 1983 is amended as follows.

(2) After section 56A (as inserted by section 11 of this Act) insert—

**"56B Appointment of doctors to provide second opinions**

(1) Where, in relation to a patient, a function under this Part is to be performed by a "second opinion appointed doctor" (whether because this Part requires it to be so performed or because a decision has been made under this Part that it will be so performed)—

(a) the relevant person must request that the regulatory authority appoint a person to perform the function in relation to the patient, and

(b) on receiving the request, the regulatory authority must, as soon as reasonably practicable (subject to section 62ZA(8)), appoint a person to perform the function in relation to the patient.

(2) The person appointed by the regulatory authority—

(a) must be a registered medical practitioner, and

(b) must not be the patient's responsible clinician or the person in charge of the treatment that is to be given to the patient.

(3) In this section "the relevant person" means—

(a) if there is a responsible clinician for the patient, the responsible clinician;

(b) otherwise, the person in charge of the treatment that is to be given to the patient."

(3) In section 57 (treatment requiring consent and a second opinion)—

(a) in subsection (2)(a), for the words from the beginning to "question)" substitute "a second opinion appointed doctor";

(b) in subsection (2)(b), for the words from the beginning to "above" substitute "the second opinion appointed doctor";

(c) in subsection (3), for "the registered medical practitioner concerned" substitute "the second opinion appointed doctor".

(4) In section 58 (treatment requiring consent or a second opinion)—

(a) in subsection (3)(a), for the words from "a registered" to "authority" substitute "a second opinion appointed doctor";

(b) in subsection (3)(b), for the words from the beginning to "question)" substitute "a second opinion appointed doctor".

(5) In section 58A (electro-convulsive therapy etc)—

(a) in subsection (3)(c), for the words from "a registered" to "above" substitute "a second opinion appointed doctor";

(b) in subsection (4)(c), for the words from the beginning to "treatment)" substitute "a second opinion appointed doctor";

(c) in subsection (6), in the words before paragraph (a), for "the registered medical practitioner" substitute "the second opinion appointed doctor".

(6) In section 64 (supplementary provisions for Part 4), in subsection (1) (as substituted by section 10 of this Act), at the appropriate place insert—

""second opinion appointed doctor" is to be read in accordance with section 56B".

(7) In section 64C (section 64B: supplemental)—

(a) in subsection (4)(a), for the words from the beginning to "treatment)" substitute "a second opinion appointed doctor";

(b) after subsection (9) insert—

"(10) In this section "second opinion appointed doctor" has the same meaning as in Part 4 (see section 64)."

(8) In section 119 (practitioners approved for Part 4 and section 118), in subsection (1), after "Act" insert "(see section 56B)".

**13 Medicine etc: treatment conflicting with a decision by or on behalf of a patient**

(1) The Mental Health Act 1983 is amended as follows.

(2) After section 57 insert—

**"57A Treatment without consent requiring a second opinion and a compelling reason**

(1) This section applies to the forms of medical treatment for relevant disorder mentioned in subsection (2) where—

(a) the patient has capacity to consent to the treatment but has not consented to it, or

(b) the patient lacks capacity to consent to the treatment, and the giving of the treatment would conflict with—

(i) a valid and applicable advance decision, or

(ii) a decision of a donee or deputy or the Court of Protection.

(2) The forms of medical treatment referred to in subsection (1) are—

(a) such forms of treatment as may be specified in regulations made under section 58(1)(a);

(b) the administration of medicine to a patient by any means (not being a form of treatment specified under section 57, section 58(1)(a) or section 58A(1)(b)) at any time during a period for which the patient is liable to be detained as a patient to whom this Part of this Act applies.

(3) Where this section applies, and subject to section 62, a patient may not be given any of those forms of medical treatment unless there is a compelling reason to give treatment of that form and a second opinion appointed doctor has certified in writing—

(a) that the treatment constitutes appropriate medical treatment,

(b) that the decision to give the treatment was made by the approved clinician in charge of the treatment in accordance with section 56A, and

(c) that, in relation to the form of treatment and any alternative forms of appropriate medical treatment that are available for the patient's relevant disorder (taking each form of treatment separately)—

(i) the patient has capacity to consent but has not consented, or

(ii) the patient lacks capacity to consent and it appears to the second opinion appointed doctor that there is a decision mentioned in subsection (1)(b)(i) or (ii) which, if valid, would conflict with the giving of the treatment.

(4) For the purposes of this section there is a "compelling reason" to give a form of medical treatment to a patient if—

(a) alternative forms of appropriate medical treatment are available for the patient's relevant disorder but, in relation to each of those forms—

(i) the patient has not consented, or

(ii) the patient lacks capacity to consent and the giving of the treatment would conflict with a decision mentioned in subsection (1)(b)(i) or (ii), or

(b) no alternative forms of appropriate medical treatment are available for the patient's relevant disorder.

(5) Before giving a certificate under subsection (3) the second opinion appointed doctor must consult two other persons who have been professionally concerned with the patient's medical treatment but, of those persons—

(a) one must be a nurse and the other must be neither a nurse nor a registered medical practitioner, and

(b) neither may be the responsible clinician or the approved clinician in charge of the treatment in question."

(3) In section 58 (treatment requiring consent or a second opinion)—

(a) before subsection (1) insert—

"(A1) This section applies to the forms of medical treatment for relevant disorder mentioned in subsection (1) where—

(a) the patient has capacity to consent to the treatment and has consented to it, or

(b) the patient lacks capacity to consent to the treatment and the giving of the treatment would not conflict with—

(i) any valid and applicable advance decision, or

(ii) any decision of a donee or deputy or the Court of Protection.";

(b) in subsection (1), for the words before paragraph (a) substitute "The forms of medical treatment referred to in subsection (A1) are—";

(c) in subsection (3)(b) omit "or being so capable has not consented to it".

(4) In section 59 (plans of treatment), after "57" insert ", 57A".

(5) In section 60 (withdrawal of consent), in subsection (1C)(a), after "section" insert "57A,".

(6) In section 62 (urgent treatment), in subsection (2), after "57" insert ", 57A".

(7) In section 63 (treatment not requiring consent), for the words from "not", in the second place it occurs, to "applies" substitute "where none of sections 57 to 58A apply".

(8) In section 64C (section 64B: supplemental)—

(a) for subsection (3) substitute—

"(3) Relevant treatment is—

(a) section 58 type treatment if it is—

(i) treatment of a form which, at the time when it is given to the patient, is specified under section 58(1)(a), or

(ii) the administration of medicine to the patient by any means (not being a form of treatment specified under section 57, section 58(1)(a) or section 58A(1)(b)) if a period equal to or longer than the section 58 period has elapsed since the first occasion, during the relevant period, when medicine was administered to the patient by any means for relevant disorder;

(b) section 58A type treatment if it is—

(i) electro-convulsive therapy, or

(ii) treatment of a form which, at the time when it is given to the patient, is specified under section 58A(1)(b).

(3A) For the purposes of subsection (3)—

(a) the "section 58 period" is the period which, at the time when the treatment is given to the patient, is specified under section 58(1)(b);

(b) the "relevant period" is the period during which the patient has continuously been a patient to whom this Part applies.";

(b) in subsection (6), for "subsection (1)(a) of that section" substitute "subsection (3)(b)(i) of this section";

(c) in subsection (7)—

(i) for "subsection (1)(b) of that section" substitute "subsection (3)(b)(ii) of this section";

(ii) for "that section", in the second place it occurs, substitute "section 58A(1)(b)".

## 14 Medicine etc: treatment in other circumstances

In section 58 of the Mental Health Act 1983 (treatment requiring consent or a second opinion)—

(a) in subsection (1)(b), for "three" substitute "two";

(b) in subsection (3)(a), after "has consented to it" insert ", that the treatment constitutes appropriate medical treatment";

(c) in subsection (4), for "(3)(b) above the registered medical practitioner concerned" substitute "(3) the person giving the certificate".

## 15 Electro-convulsive therapy etc

In section 58A of the Mental Health Act 1983 (electro-convulsive therapy etc), for subsection (5) substitute—

"(5) A patient falls within this subsection if—

(a) the patient lacks capacity to consent to the treatment and the giving of the treatment would not conflict with—

(i) any valid and applicable advance decision, or

(ii) any decision of a donee or deputy or the Court of Protection, and

(b) a second opinion appointed doctor has certified in writing—

(i) that the patient lacks capacity to consent to the treatment,

(ii) that the treatment constitutes appropriate medical treatment, and

(iii) that the decision to give the treatment was made by the approved clinician in charge of the treatment in accordance with section 56A."

**16 Review of treatment**

(1) The Mental Health Act 1983 is amended as follows.

(2) In section 61 (review of treatment)—

(a) in subsection (1)—

(i) in the words before paragraph (a), for "58(3)(b) or 58A(4) or (5)" substitute "57A(3), 58(3)(b) or 58A(5)";

(ii) in paragraph (a), after "patient" insert ", except that, in the case of a patient who is liable to be detained in pursuance of an application for admission for treatment, no report is required under this subsection on the first occasion on which the responsible clinician furnishes a report under section 20(3) in respect of them";

(b) after subsection (1) insert—

"(1A) Where a patient is given treatment in accordance with section 58(3)(a) or 58A(3) or (4), a report on the treatment and the patient's condition must be given by the approved clinician in charge of the treatment to the regulatory authority at any time, if so required by the regulatory authority.

(1B) In relation to a patient to whom paragraph 5B or 5D of Part 1 of Schedule 1 applies, subsection (1) has effect as if, in paragraph (a), for the words "application for admission for treatment" there were substituted "order under Part 3 of this Act".

(1C) In relation to a patient to whom paragraph 5C or 6 of Part 1 of Schedule 1 applies, subsection (1) has effect as if, in paragraph (a), the words from ", except that" to the end of that paragraph were omitted.";

(c) in subsection (3)—

(i) for "58(3)(b)" substitute "57A(3), 58(3)";

(ii) for "58A(4)" substitute "58A(3), (4)";

(iii) for "sections 57" substitute "sections 57, 57A".

(3) In section 55, in subsection (4), after "section 42 above or" insert "section 61(1B) or".

**17 Urgent treatment to alleviate serious suffering**

In section 62 of the Mental Health Act 1983 (urgent treatment)—

(a) in subsection (1), for "Sections 57 and 58" substitute "Section 57";

(b) after subsection (1) insert—

"(1ZA) Sections 57A and 58 do not apply to—

(a) any treatment which falls within paragraphs (a), (b) or (d) of subsection (1), or

(b) any treatment which falls within paragraph (c) of subsection (1) and is given to a patient who lacks capacity to consent to the treatment."

**18 Urgent electro-convulsive therapy etc**

(1) The Mental Health Act 1983 is amended as follows.

(2) In section 58A (electro-convulsive therapy etc), in subsection (2), for "section 62" substitute "section 62ZA".

(3) In section 62 (urgent treatment) omit subsections (1A) to (1C).

(4) After section 62 insert—

**"62ZA Urgent treatment: electro-convulsive therapy, etc.**

(1) This section applies instead of section 58A—

(a) to any treatment with electro-convulsive therapy where—

(i) the treatment is immediately necessary to save the patient's life, or

(ii) the treatment is not irreversible and is immediately necessary to prevent a serious deterioration of the patient's condition;

(b) to any treatment of a form specified under section 58A(1)(b), where the treatment falls within such of paragraphs (a) to (d) of section 62(1) as may be specified in regulations under section 58A(1)(b).

(2) The treatment may be given to a patient who has capacity to consent to the treatment only if—

(a) the patient has consented to it, or

(b) the patient has not consented but a certificate has been given by a second opinion appointed doctor under subsection (4).

(3) The treatment may be given to a patient who lacks capacity to consent to the treatment only if—

(a) the giving of the treatment would not conflict with any of the following—

(i) a valid and applicable advance decision, or

(ii) a decision of a donee or deputy or the Court of Protection, or

(b) the giving of the treatment would conflict with such a decision but a certificate has been given by a second opinion appointed doctor under subsection (5).

(4) A certificate under this subsection is a certificate stating—

(a) that the patient has capacity to consent to the treatment but has not consented to it,

(b) that the decision to give the treatment was made by the approved clinician in charge of the treatment in accordance with section 56A,

(c) where the treatment is electro-convulsive therapy, that the treatment—

(i) is immediately necessary to save the patient's life, or

(ii) is not irreversible and is immediately necessary to prevent a serious deterioration of the patient's condition, and

(d) where the treatment is of a form specified under section 58A(1)(b), which of the paragraphs of section 62(1) it falls within (see subsection (1)(b)).

(5) A certificate under this subsection is a certificate stating—

(a) that the patient lacks capacity to consent to the treatment and it appears to the second opinion appointed doctor that there is a decision mentioned in subsection (3)(a) or (b) which, if valid, would conflict with the giving of the treatment,

(b) that the decision to give the treatment was made by the approved clinician in charge of the treatment in accordance with section 56A,

(c) where the treatment is electro-convulsive therapy, that the treatment—

(i) is immediately necessary to save the patient's life, or

(ii) is not irreversible and is immediately necessary to prevent a serious deterioration of the patient's condition, and

(d) where the treatment is of a form specified under section 58A(1)(b), which of the paragraphs of section 62(1) it falls within (see subsection (1)(b)).

(6) Before giving a certificate under this section, the second opinion appointed doctor must, if it is practicable to do so within any period specified under section 62ZC(1), consult—

(a) a nurse who has been professionally concerned with the patient's medical treatment and is neither the responsible clinician nor the approved clinician in charge of the treatment in question, and

(b) the patient's nominated person.

(7) Any request under section 56B for the appointment of a second opinion doctor in relation to the function of giving a certificate under this section must be made by the relevant person (within the meaning of section 56B) as soon as reasonably practicable.

(8) The regulatory authority must, on receiving such a request, make the appointment under section 56B as soon as practicable.

(9) Subsection (3) of section 62 applies for the purposes of this section as it applies for the purposes of that section.

**62ZB Life-saving section 62ZA treatment: modified procedure in exceptional circumstances**

(1) Where—

(a) a request is made to the regulatory authority under section 56B for the appointment of a second opinion doctor to perform the function of giving a certificate under section 62ZA in relation to any treatment, and

(b) the regulatory authority determines that there are exceptional circumstances which mean that there will be a delay in appointing a second opinion doctor,

a function of a second opinion appointed doctor under section 62ZA in relation to the giving of a certificate containing a statement under subsection (4)(c)(i) or (5)(c)(i) of that section may be performed, instead, by the approved clinician in charge of that treatment.

(2) But no treatment may be given in reliance on a certificate given by the approved clinician by virtue of subsection (1) once the second opinion doctor has been appointed under section 56B.

(3) Each time a patient is given treatment in reliance on a certificate given by the approved clinician by virtue of subsection (1), the managers of the hospital or registered establishment in which the treatment is given must notify the regulatory authority of that treatment as soon as reasonably practicable.

(4) The regulatory authority's annual report under section 120D must include—

(a) a statement of how many times the regulatory authority has made a determination under subsection (1)(b) in the period to which the report relates and a summary of the reasons why any determinations have been made, and

(b) a statement of how many times during that period treatment has been given in reliance on a certificate issued by virtue of subsection (1).

**62ZC Section 62ZA(1) treatment: powers of appropriate national authority**

(1) The appropriate national authority may by regulations impose duties on—

(a) the managers of hospitals or registered establishments,
(b) approved clinicians, or
(c) the regulatory authority,

for the purpose of ensuring that a certificate given under section 62ZA is given within a period specified in the regulations.

(2) Regulations under this section may make—
(a) provision subject to specified exceptions;
(b) different provision for different cases;
(c) transitional, consequential, incidental or supplemental provision."

(5) In section 64 (supplementary provisions for Part 4), in subsection (1) (as substituted by section 10 of this Act), at the appropriate place insert—

""the appropriate national authority" has the meaning given by section 58A(10);".

(6) In section 118 (code of practice), in subsection (1), after paragraph (d) (as inserted by Schedule 3 to this Act) insert—

"(e) for the guidance of the regulatory authority in relation to its functions under or by virtue of Part 4; and".

**19 Remote assessment for treatment**

(1) Section 119 of the Mental Health Act 1983 (practitioners approved for Part 4 and section 118) is amended as follows.

(2) In subsection (2)(a), for the first "and" substitute "or".

(3) After subsection (2) insert—

"(2A) A person authorised by subsection (2) to carry out an interview or examination may, to the extent that they consider appropriate, carry it out—
(a) by live audio link, or
(b) by live video link."

(4) In subsection (3), before the definition of "regulated establishment" insert—

""live audio link", in relation to the carrying out of an interview or examination, means a live telephone link or other arrangement which enables the patient and the person carrying out the interview or examination to hear one another;

"live video link", in relation to the carrying out of an interview or examination, means a live television link or other arrangement which enables the patient and the person carrying out the interview or examination to see and hear one another;".

**20 Capacity to consent to treatment**

(1) The Mental Health Act 1983 is amended as follows.

(2) In section 57 (treatment requiring consent and a second opinion), in subsection (2)(a), for "is capable of understanding the nature, purpose and likely effects of" substitute "has capacity to consent to".

(3) In section 58 (treatment requiring consent or a second opinion), in subsection (3)—

(a) in paragraph (a), for "is capable of understanding its nature, purpose and likely effects" substitute "has capacity to consent to it";

(b) in paragraph (b), for "is not capable of understanding the nature, purpose and likely effects of" substitute "lacks capacity to consent to".

(4) In section 58A (electro-convulsive therapy etc)—

(a) in subsection (3)(c), for "is capable of understanding the nature, purpose and likely effects of" substitute "has capacity to consent to";

(b) in subsection (4)(c), for sub-paragraph (i) (but not the "and" at the end) substitute—

"(i) that the patient has capacity to consent to the treatment and has consented to it,";

(c) in subsection (7), for the words from "is not" to the end substitute "lacks capacity to consent to the treatment";

(d) omit subsection (9).

(5) In section 60 (withdrawal of consent)—

(a) in subsection (1A)(b), for the words from "be" to the end substitute "have capacity to consent to the treatment";

(b) in subsection (1C)—

(i) in paragraph (a), for the words from "is not" to "effects of" substitute "lacks capacity to consent to";

(ii) in paragraph (b), for the words from "becomes" to the end substitute "gains capacity to consent to that treatment".

(6) In section 64 (supplementary provisions for Part 4), after subsection (1B) insert—

"(1BA) In relation to a patient who is aged under 16, references in this Part to capacity are to be read as references to competence.

(1BB) In relation to a patient who is aged 16 or over—

(a) references in this Part to lacking capacity are to lacking capacity within the meaning of the Mental Capacity Act 2005, and

(b) references in this Part to having, ceasing to have or gaining capacity are to be read accordingly.

(1BC) References in this Part—

(a) to an advance decision are to an advance decision (within the meaning of the Mental Capacity Act 2005) made by the patient;

(b) to a donee are to a donee of a lasting power of attorney (within the meaning of section 9 of the Mental Capacity Act 2005) created by the patient, where the donee is acting within the scope of their authority and in accordance with that Act;

(c) to a deputy are to a deputy appointed for the patient by the Court of Protection under section 16 of the Mental Capacity Act 2005, where the deputy is acting within the scope of their authority and in accordance with that Act.

(1BD) In this Part "valid and applicable", in relation to an advance decision, means valid and applicable to the treatment in question in accordance with section 25 of the Mental Capacity Act 2005."

**21 Care and treatment plans**

In the Mental Health Act 1983, in Part 10, before section 130A insert—

**"130ZA Care and treatment plans for patients in England**

(1) The appropriate practitioner must prepare a care and treatment plan for a patient to whom this section applies.

(2) This section applies to a patient who—

(a) is liable to be detained under this Act in a hospital or registered establishment in England otherwise than—

(i) by virtue of an emergency application where the second medical recommendation referred to in section 4(4)(a) has not been given and received, or

(ii) by virtue of section 5(2) or (4), 135 or 136 or directions for detention in a place of safety under section 35(4), 36(3), 37(4), 38(4) or 45A(5),

(b) is subject to guardianship under this Act, if the area of the responsible local social services authority is in England, or

(c) is a community patient, if the responsible hospital is in England.

(3) A "care and treatment plan" is a document—

(a) containing a plan, made in accordance with regulations made by the Secretary of State, for meeting the patient's needs arising from or related to mental disorder, and

(b) containing, or to which is attached, any other information authorised or required by the regulations.

(4) The information authorised or required to be included in, or attached to, a care and treatment plan by virtue of regulations under subsection (3) may include—

(a) information about people with whom a patient has a relationship or other connection, or to whom a care and treatment plan is relevant, for purposes related to—

(i) the meeting of the patient's needs mentioned in subsection (3)(a), or

(ii) the review or revision of the care and treatment plan;

(b) any information contained in a report prepared in accordance with section 125A or 125B.

(5) The appropriate practitioner must review a care and treatment plan—

(a) following any meeting relating to the patient under section 125A or 125B;

(b) following any change in the relevant patient's condition or circumstances which the appropriate practitioner considers significant;

(c) if the appropriate practitioner is considering whether the relevant patient should—

(i) become liable to be detained by virtue of a different provision of this Act,

(ii) become subject to guardianship under this Act,

(iii) become a community patient, or

(iv) be discharged under section 23;

(d) if the appropriate practitioner is notified that the patient's case is to be considered by a tribunal under this Act;

(e) if requested to do so by virtue of section 130ZB(3);

(f) if reasonably requested to do so by—

(i) the relevant patient;

(ii) anyone named by the relevant patient as someone to be consulted about their care and treatment plan;

(iii) the relevant patient's nominated person;

(iv) any independent mental health advocate from whom the relevant patient is receiving help by virtue of section 130A;

(v) any donee or deputy for the relevant patient;

(vi) any other person who cares for the relevant patient or is interested in the relevant patient's welfare.

(6) When preparing or reviewing a care and treatment plan, the appropriate practitioner must, if it is practicable and appropriate to do so, consult the persons mentioned in subsection (5)(f).

(7) The Secretary of State may by regulations make provision—

(a) requiring a care and treatment plan to be revised in specified circumstances;

(b) specifying, in relation to cases in which a care and treatment plan must be prepared, reviewed or revised, when that must be done.

(8) The Secretary of State may by regulations make provision about—

(a) disclosure of information contained in a care and treatment plan;

(b) disclosure of other information for the purposes of functions under this section.

(9) Regulations under this section may make—

(a) provision subject to specified exceptions;

(b) different provision for different cases;

(c) transitional, consequential, incidental or supplemental provision.

(10) References in this section—

(a) to a donee for a patient are to a donee of a lasting power of attorney (within the meaning of section 9 of the Mental Capacity Act 2005) created by the patient;

(b) to a deputy for a patient are to a deputy appointed for the patient by the Court of Protection under section 16 of the Mental Capacity Act 2005;

(c) to the responsible local social services authority—

(i) in relation to a patient who is subject to guardianship in pursuance of a guardianship application, are to be read in accordance with section 34(3);

(ii) in relation to a patient who is subject to guardianship in pursuance of a guardianship order under section 37, are to the local social services authority specified in the order.

(11) In this section "the appropriate practitioner" has the same meaning as in Part 2 (see section 34(1)).

**130ZB Care and treatment plans: monitoring**

(1) The managers of a hospital or registered establishment in England must make arrangements for the monitoring of compliance with the duties imposed by section 130ZA in relation to relevant patients for whom the managers are responsible.

(2) A local social services authority whose area is in England must make arrangements for the monitoring of compliance with the duties imposed by section 130ZA in relation to relevant patients for whom the authority is the responsible local social services authority.

(3) Arrangements under subsection (1) or (2) must include arrangements for the appropriate practitioner, in relation to a relevant patient, to be requested to review the patient's care and treatment plan where the managers or local social services authority (as the case may be) consider that the care and treatment plan should be reviewed.

(4) For the purposes of subsection (1) the managers of a hospital or registered establishment are "responsible" for a relevant patient if the patient—

(a) is liable to be detained under this Act in the hospital or registered establishment, or

(b) is a community patient for whom the hospital or registered establishment is the responsible hospital.

(5) The reference in subsection (2) to the responsible local social services authority is to be read in accordance with section 130ZA(10)(c).

(6) In this section—

"the appropriate practitioner" has the same meaning as in Part 2 (see section 34(1));

"care and treatment plan" has the meaning given by section 130ZA(3);

"relevant patient" means a patient to whom section 130ZA applies."

*Community treatment orders*

**22 Consultation of the community clinician**

(1) The Mental Health Act 1983 is amended as follows.

(2) In section 17A(4) (grounds for making community treatment orders)—

(a) omit the "and" at the end of paragraph (a);

(b) for paragraph (b) substitute—

"(b) an approved mental health professional states in writing—

(i) that they agree that the relevant criteria are met; and

(ii) that it is appropriate to make the order; and

(c) where the responsible clinician is not the community clinician, the community clinician states in writing that they agree that the relevant criteria are met."

(3) In section 17B (conditions of community treatment orders)—

(a) in subsection (2), for the words from "approved" to "above" substitute "relevant professionals";

(b) after subsection (5) insert—

"(5A) Where the responsible clinician is not the community clinician, the responsible clinician must consult the community clinician before varying or suspending conditions specified in a community treatment order, unless consultation would involve unreasonable delay.";

(c) after subsection (7) insert—

"(8) In this section "the relevant professionals" means—

(a) the approved mental health professional making the statement required by section 17A(4)(b), and

(b) where section 17A(4)(c) applies, the community clinician."

(4) In section 17E (power to recall a community patient to hospital), after subsection (2) insert—

"(2A) Where the responsible clinician is not the community clinician, the responsible clinician must consult the community clinician before recalling a community patient to hospital, unless consultation would involve unreasonable delay."

(5) In section 17F (powers in respect of recalled patients), after subsection (4) insert—

"(4A) Where the responsible clinician is not the community clinician, the responsible clinician must consult the community clinician before revoking a community treatment order, unless consultation would involve unreasonable delay."

(6) In section 20A (community treatment period)—

(a) in subsection (4)(b), for "under subsection (8) below is made," substitute "has been made—

(i) under subsection (8), and

(ii) where the responsible clinician is not the community clinician, under subsection (8A),";

(b) in subsection (8), after "(4)" insert "(b)(i)";

(c) after subsection (8) insert—

"(8A) The statement referred to in subsection (4)(b)(ii) is a statement in writing by the community clinician that it appears to the community clinician that the conditions set out in subsection (6) are satisfied.";

(d) omit subsection (9).

(7) In section 34(1) (interpretation of Part 2), at the appropriate place insert—

""the community clinician" means—

(a) in relation to a patient who is liable to be detained in a hospital in pursuance of an application for admission for treatment, the approved clinician who would oversee the patient's care if they were to become a community patient;

(b) in relation to a community patient, the approved clinician overseeing the patient's care as a community patient;".

(8) In section 80C (removal of patients subject to compulsion in the community from Scotland)—

(a) in subsection (6), for "an approved mental health professional agrees" substitute "the relevant professionals agree";

(b) after subsection (6) insert—

"(7) In this section "the relevant professionals" means—

(a) an approved mental health professional, and

(b) where the responsible clinician is not the community clinician, the community clinician."

(9) In section 85ZA (responsibility for community patients transferred from Channel Islands or Isle of Man)—

(a) in subsection (5), for "an approved mental health professional agrees" substitute "the relevant professionals agree";

(b) after subsection (5) insert—

"(6) In this section "the relevant professionals" means—

(a) an approved mental health professional, and
(b) where the responsible clinician is not the community clinician, the community clinician."

(10) In section 92 (interpretation of Part 6), after subsection (1A) insert—

"(1B) References in this Part to the community clinician are to be construed as references to the community clinician within the meaning of Part 2."

### 23 Conditions of community treatment orders

(1) In section 17B(2) of the Mental Health Act 1983 (conditions of community treatment orders) omit "or appropriate".

(2) In section 72 of that Act (powers of tribunals), after subsection (3A) insert—

"(3B) Where a tribunal does not direct the discharge of a community patient, the tribunal may recommend that the responsible clinician reconsider whether a condition specified in the community treatment order is necessary."

*Nominated persons*

### 24 Nominated person

Schedule 2 contains amendments of the Mental Health Act 1983 which—
(a) make provision about the appointment of a nominated person for a patient,
(b) transfer to nominated persons functions currently conferred on patients' nearest relatives, and
(c) confer functions on nominated persons for certain patients concerned in criminal proceedings.

### 25 Applications for admission or guardianship: role of nominated person

(1) The Mental Health Act 1983 is amended as follows.

(2) In section 11 (general provisions about applications for admission or guardianship), for subsection (4) substitute—

"(4) Before an approved mental health professional makes an application for admission for treatment or a guardianship application in respect of a patient who appears to have a nominated person, the professional must consult that person.

(4A) But the consultation requirement imposed by subsection (4) does not apply if it appears to the approved mental health professional that consultation—
(a) is not reasonably practicable, or
(b) would involve unreasonable delay.

(4B) A patient's nominated person may object to the making of an application for admission for treatment or the making of a guardianship application by an approved mental health professional by—

(a) notifying the professional, or

(b) notifying the local social services authority on whose behalf the professional is acting.

(4C) Where a nominated person objects under subsection (4B) to the making of an application, the application may be made only if it is accompanied by a report certifying that, in the opinion of the approved mental health professional, the patient, if not admitted for treatment or received into guardianship, would be likely to act in a manner that is dangerous to other persons or to the patient."

(3) In section 20 (duration of authority)—

(a) in subsection (5)—

(i) the words from "one" to the end become paragraph (a), and

(ii) after that paragraph insert "; and

(b) if the patient appears to have a nominated person, the nominated person.";

(b) after subsection (6) insert—

"(6A) Before furnishing a report under subsection (6), the appropriate practitioner must, if the patient appears to have a nominated person, consult that person."

(4) In section 66 (applications to tribunals), in subsection (1), after sub-paragraph (i) insert—

"(ia) in the cases mentioned in paragraphs (b) and (c) where the application was made despite an objection under section 11(4B), by the patient's nominated person;".

## 26 Discharge of patients: role of nominated person

In section 25 of the Mental Health Act 1983 (restrictions on discharge by nearest relative)—

(a) in the heading, for "nearest relative" substitute "nominated person";

(b) in subsection (1)—

(i) in the words before paragraph (a), for "nearest relative" substitute "nominated person";

(ii) in paragraphs (a) and (b), for "relative" substitute "nominated person";

(iii) in paragraph (b) for "six months" substitute "three months";

(c) in subsection (2), for "nearest relative" substitute "nominated person";

## 27 Community treatment orders: role of nominated person

(1) The Mental Health Act 1983 is amended as follows.

(2) After section 17A insert—

**"17AA Community treatment orders: role of nominated person**

(1) Before the responsible clinician makes a community treatment order in respect of a patient who appears to have a nominated person, the responsible clinician must consult that person.

(2) But the consultation requirement imposed by subsection (1) does not apply if it appears to the responsible clinician that consultation—

(a) is not reasonably practicable, or

(b) would involve unreasonable delay.

(3) A patient's nominated person may object to the making of a community treatment order by notifying the responsible clinician.

(4) Where the nominated person objects under subsection (3), the community treatment order may not be made unless the responsible clinician certifies in writing that—

(a) in the opinion of the responsible clinician, the patient should be discharged from hospital, and

(b) the patient, if so discharged without a community treatment order being in force, would be likely to act in a manner that is dangerous to other persons or to the patient."

(3) In the heading to section 17B, after "Conditions" insert "to be included in community treatment orders".

(4) In section 20A (community treatment period and extensions), after subsection (8A) (as inserted by section 22 of this Act) insert—

"(8B) Before making a statement under subsection (8)(b) in respect of a patient who appears to have a nominated person, the approved mental health professional must consult the nominated person, unless consultation—

(a) is not reasonably practicable, or

(b) would involve unreasonable delay."

(5) In section 66 (applications to tribunals), in subsection (1), after sub-paragraph (ia) (as inserted by section 25 of this Act) insert—

"(ib) in the case mentioned in paragraph (ca) where the application was made despite an objection under section 17AA(3), by the patient's nominated person;".

(6) In Part 1 of Schedule 1 (application of certain provisions to patients subject to hospital and guardianship orders: patients not subject to special restrictions), in paragraph 1, before "17B," (as inserted by Schedule 1 to this Act) insert "17AA,".

**28 Transfer of patients: role of nominated person**

In section 19 of the Mental Health Act 1983 (transfer of patients), after subsection (3) insert—

"(3A) Before deciding to transfer a patient between hospitals in pursuance of regulations under subsection (1), or in pursuance of subsection (3), the person responsible for taking that decision must consult the patient's nominated person (if any), unless consultation—

(a) is not reasonably practicable, or

(b) would involve unreasonable delay."

*Detention periods*

**29 Detention periods**

(1) The Mental Health Act 1983 is amended as follows.

(2) In section 19 (regulations as to transfers of patients), after subsection (2) insert—

"(2A) But, in the case of a patient falling within subsection (2)(d), section 20 has effect as if the patient had been admitted to hospital in pursuance of an application for admission for treatment on the day on which the patient is transferred."

(3) In section 20 (duration of authority)—

(a) for subsections (1) and (2) substitute—

"(1) Subject to the following provisions of this Part—

(a) a patient admitted to hospital in pursuance of an application for admission for treatment may be detained in a hospital for a period not exceeding three months beginning with the day on which the patient was so admitted, but may not be so detained for any longer period unless the authority for the patient's detention is renewed under this section;

(b) a patient placed under guardianship in pursuance of a guardianship application may be kept under guardianship for a period not exceeding six months beginning with the day on which the guardianship application was accepted, but may not be so kept for any longer period unless the authority for the patient's guardianship is renewed under this section.

(2) Authority for the detention of a patient may, unless the patient has previously been discharged under section 23, be renewed—

(a) from the expiration of the period referred to in subsection (1)(a), for a further period of three months;

(b) from the expiration of any period of renewal under paragraph (a), for a further period of six months;

(c) from the expiration of any period of renewal under paragraph (b), for a further period of one year, and so on for periods of one year at a time.

(2A) Authority for the guardianship of a patient may, unless the patient has previously been discharged under section 23, be renewed—

(a) from the expiration of the period referred to in subsection (1)(b), for a further period of six months;

(b) from the expiration of any period of renewal under paragraph (a), for a further period of one year, and so on for periods of one year at a time.";

(b) in subsection (8), after "subsection (2)" insert "or (2A)".

(4) In section 21B (patients who are taken into custody or return after more than 28 days)—

(a) in subsection (5), after "20(2)" insert "or (2A)";

(b) in subsection (6)(b), after "20(2)" insert "or (2A)".

(5) In Part 1 of Schedule 1 (application of certain provisions to patients subject to hospital and guardianship orders)—

(a) in paragraph 2, at the end insert "(subject to any qualifications expressed in those paragraphs)";

(b) in paragraph 2B, for paragraph (c) substitute—

"(c) subsection (5) is to be omitted.";

(c) in paragraph 5—

(i) for "section 19(2)" substitute "section 19—

(a) in subsection (2)";

(ii) at the end insert—

"(b) subsection (2A) is to be omitted.";

(d) after paragraph 5A insert—

"5B (1) The modifications of section 20 made by this paragraph apply in relation to a patient transferred from guardianship to a hospital in pursuance of regulations made under section 19.

(2) In section 20(1)(a)—

(a) for "in pursuance of an application for admission for treatment" there is to be substituted "as a result of being transferred in pursuance of regulations under section 19 ";

(b) for "admitted", in the second place it occurs, there is to be substituted "transferred".

5C (1) The modifications of section 20 made by this paragraph apply in relation to a patient in respect of whom a community treatment order was revoked under section 17F

within the period of six months beginning with the date of the relevant order or direction under Part 3.

(2) In section 20(1)(a)—

(a) for "application for admission for treatment" there is to be substituted "order or direction under Part 3 of this Act";

(b) for "three months" there is to be substituted "six months";

(c) for "day on which the patient was so admitted" there is to be substituted "day on which the community treatment order in respect of the patient was revoked".

(3) In section 20(2)—

(a) in paragraph (a), for "three months" there is to be substituted "six months";

(b) in paragraph (b), for "six months" there is to be substituted "one year".

5D (1) The modifications of section 20 made by this paragraph apply in relation to a patient in respect of whom a community treatment order was revoked under section 17F after the end of the period of six months beginning with the date of the relevant order or direction under Part 3.

(2) In section 20(1)(a)—

(a) for "application for admission for treatment" there is to be substituted "order or direction under Part 3 of this Act";

(b) for "day on which the patient was so admitted" there is to be substituted "day on which the community treatment order in respect of the patient was revoked".";

(e) for paragraph 6 substitute—

"6 (1) The modifications of section 20 made by this paragraph apply in relation to a patient where none of paragraphs 5B to 5D applies.

(2) In section 20(1)—

(a) in paragraph (a)—

(i) for "application for admission for treatment" there is to be substituted "order or direction under Part 3 of this Act";

(ii) for "three months" there is to be substituted "six months";

(iii) for "day on which the patient was so admitted" there is to be substituted "date of the relevant order or direction under Part 3 of this Act";

(b) in paragraph (b)—

(i) for "a guardianship application" there is to be substituted "an order under Part 3 of this Act";

(ii) for "day on which the guardianship application was accepted" there is to be substituted "date of the relevant order under Part 3 of this Act".

(3) In section 20(2)—

(a) in paragraph (a), for "three months" there is to be substituted "six months";

(b) in paragraph (b), for "six months" there is to be substituted "one year"."

(6) In Part 2 of Schedule 1 (application of certain provisions to patients subject to special restrictions), in paragraph 5, after paragraph (b) insert—

"(ba) subsection (2A) is to be omitted;".

(7) In Schedule 5 (transitional and saving provisions), in paragraph 9 omit sub-paragraph (2).

*Periods for applications and references to tribunal*

**30 Periods for tribunal applications**

(1) In section 66 of the Mental Health Act 1983 (applications to tribunals), in subsection (2)—

(a) in paragraph (a), for "14 days" substitute "21 days";

(b) in paragraph (b), for "six months" substitute "three months";

(c) in paragraph (e), for "six months" substitute "three months".

(2) In section 75 of the Mental Health Act 1983 (applications and references concerning conditionally discharged restricted patients)—

(a) in subsection (1), after "above" insert "("conditionally discharged")";

(b) in subsection (2)—

(i) in the words before paragraph (a), for "as aforesaid but" substitute ", is not subject to conditions amounting to a deprivation of liberty and";

(ii) in paragraph (a), for the words from "beginning" to "discharged", substitute "beginning—

"(i) in the case of a patient who has previously been subject to conditions amounting to a deprivation of liberty, with the date on which the patient most recently ceased to be subject to such conditions, and

(ii) in any other case, with the date on which the patient was conditionally discharged";

(c) after subsection (2) insert—

"(2A) Where a restricted patient has been conditionally discharged, is subject to conditions amounting to a deprivation of liberty and has not been recalled to hospital, the patient may apply to the appropriate tribunal—

(a) in the period between the expiration of six months and the expiration of 12 months beginning with the date on which the patient most recently became subject to conditions amounting to a deprivation of liberty (whether or not that was the date on which the patient was conditionally discharged), and

(b) in any subsequent period of two years."

**31 References to tribunal**

(1) The Mental Health Act 1983 is amended as follows.

(2) In section 17G (effect of revoking community treatment order), in subsection (5), after "section 20" insert "and section 68".

(3) In section 19(2A) (as inserted by section 29 of this Act) for "has" substitute "and section 68 have".

(4) In section 68 (duty of managers of hospitals to refer cases to tribunal)—

(a) in subsection (1) omit paragraphs (d) and (e);

(b) in subsection (2), for "the period of six months beginning with the applicable day" substitute "a relevant period";

(c) in subsection (3)—

(i) in the words before paragraph (a), for "that" substitute "the relevant";

(ii) in paragraph (a), after "(e)," insert "(f), (fza), (fa), (faa),";

(iii) in paragraph (c), for "(7)" substitute "(6)";

(d) in subsection (4), for "period mentioned in subsection (2) above" substitute "relevant period";

(e) after subsection (4) insert—

"(4A) In this section "relevant period" means—

(a) in the case of a patient who is admitted to a hospital in pursuance of an application for admission for assessment, the period of three months beginning with the applicable day;

(b) in the case of a patient who is admitted to hospital in pursuance of an application for admission for treatment—

(i) the period of three months beginning with the applicable day;

(ii) the period between the expiry of three months and the expiry of 12 months beginning with the applicable day;

(iii) each subsequent period of 12 months;

(c) in the case of a community patient—

(i) the period of six months beginning with the applicable day;

(ii) the period between the expiry of six months and the expiry of 12 months beginning with the applicable day;

(iii) each subsequent period of 12 months.";

(f) in subsection (5)—

(i) in the words before paragraph (a), for "(2) above" substitute "(4A)";

(ii) in paragraph (c), for the words from "or a patient" to the end substitute ", the day on which the community treatment order was made";

(iii) omit paragraph (d);

(g) for subsection (6) substitute—

"(6) The managers of the hospital must also refer the patient's case to the appropriate tribunal if—

(a) the patient's case has not been considered by such a tribunal within the last 12 months, whether on the patient's own application or otherwise, and

(b) there is no pending application or reference to the appropriate tribunal in relation to the patient's case.";

(h) omit subsection (7).

(5) Omit section 68A.

(6) In section 143 (general provisions as to regulations, orders and rules)—

(a) in subsection (2)(b), as inserted by section 37 of this Act, omit "or 68A(7)";

(b) in subsection (3) omit ", 68A(1)";

(c) in subsection (3C) omit ", or an order under section 68A(7) above,";

(d) omit subsection (3D).

(7) In Part 1 of Schedule 1 (application of certain provisions to patients subject to hospital and guardianship orders), in paragraph 10—

(a) the existing text becomes sub-paragraph (1);

(b) in sub-paragraph (1), for paragraph (b) substitute—

"(b) subsections (2) to (5) are to apply if—

(i) the patient falls within paragraph (b) of subsection (1) as a result of being—

(A) a patient who was transferred from guardianship to hospital in pursuance

of regulations made under section 19, or

(B) a patient in respect of whom a community treatment order was revoked, where the revocation took place after the end of the period of six months beginning with the date of the relevant order or direction under Part 3 of this Act, or

(ii) the patient falls within paragraph (c) of subsection (1),

but otherwise are not to apply.";

(c) after sub-paragraph (1) insert—

"(2) In the application of subsections (2) to (5) of section 68 by virtue of sub-paragraph (1)(b), those subsections apply as if the patient had been admitted to hospital in pursuance of an application for admission for treatment on the day on which the patient was transferred or the community treatment order was revoked."

**32 References: restricted patients subject to deprivation of liberty conditions**

(1) The Mental Health Act 1983 is amended as follows.

(2) In section 71 (references by Secretary of State concerning restricted patients)—

(a) in subsection (3A), for the words from "include" to the end substitute "make—

(a) provision subject to specified exceptions,

(b) different provision for different cases or areas, and

(c) transitional, consequential, incidental or supplemental provision.";

(b) after subsection (4) insert—

"(4A) Sections 73 and 74 do not apply to a reference under subsection (1) in respect of a patient who has been conditionally discharged and not recalled to hospital but on any such reference the tribunal may—

(a) vary any condition to which the patient is subject in connection with the patient's discharge or impose any condition which might have been imposed in connection with their discharge, or

(b) direct that the restriction order, limitation direction or restriction direction to which the patient is subject ceases to have effect,

and if the tribunal gives a direction under paragraph (b) the patient ceases to be liable to be detained by virtue of the relevant hospital order, hospital direction or transfer direction.

(4B) Conditions amounting to a deprivation of liberty may be imposed under subsection (4A)(a) only if the tribunal is satisfied—

(a) that conditions amounting to a deprivation of the patient's liberty are necessary for the protection of another person from serious harm while the patient remains discharged from hospital, and

(b) that for the patient to remain discharged subject to those conditions would be no less beneficial to their mental health than for them to be recalled to hospital."

(3) In section 75 (applications and references concerning conditionally discharged restricted patients)—

(a) after subsection (2A) (as inserted by section 30(2)(c) of this Act) insert—

"(2C) Where a restricted patient has been conditionally discharged, is subject to conditions amounting to a deprivation of liberty and has not been recalled to hospital, the Secretary of State must refer the patient's case to the appropriate tribunal on the expiry of—

(a) the period of 12 months beginning with the date on which the patient most recently became subject to conditions amounting to a deprivation of liberty (whether or not that was the date on which the patient was conditionally discharged), and

(b) each subsequent period of two years.

(2D) The Secretary of State is not required to make a reference under subsection (2C) if the patient's case was considered by the appropriate tribunal during the period in question.

(2E) The Secretary of State must refer to the appropriate tribunal the case of any restricted patient who has been conditionally discharged, is subject to conditions amounting to a deprivation of liberty and has not been recalled to hospital if—

(a) the patient's case has not been considered by the appropriate tribunal within the last four years, and

(b) there is no pending application or reference to the appropriate tribunal in relation to the patient's case.

(2F) The Secretary of State may by order vary the length of a period mentioned in subsection (2C) or (2E).

(2G) An order under subsection (2F) may make—

(a) provision subject to specified exceptions;

(b) different provision for different cases or areas;

(c) transitional, consequential, incidental or supplemental provision.

(2H) Any reference under subsection (2C) or (2E) must be made to the tribunal for the area in which the patient resides.

(2I) References in this section to the patient's case being considered by the appropriate tribunal are to the patient's case being considered by the appropriate tribunal on the patient's own application or otherwise.";

(b) in subsection (3)—

(i) after "subsection (2) above" insert ", or any reference under subsection (2C) or (2E)";

(ii) after "such application" insert "or reference";

(c) after subsection (3) insert—

"(4) Conditions amounting to a deprivation of liberty may be imposed under subsection (3)(a) only if the tribunal is satisfied—

(a) that conditions amounting to a deprivation of the patient's liberty are necessary for the protection of another person from serious harm while the patient remains discharged from hospital, and

(b) that for the patient to remain discharged subject to those conditions would be no less beneficial to their mental health than for them to be recalled to hospital."

(4) In section 143 (general provisions as to regulations, orders and rules), in subsection (3), for "or 71(3)" substitute ", 71(3) or 75(2F)".

(5) The amendments made by this section apply in relation to any person who is a restricted patient within the meaning given by subsection (1) of section 79 of the Mental Health Act 1983, or is treated as a restricted patient as a result of that subsection, whether the person became such a patient (or treated as such a patient) before or after the coming into force of this section.

**33 References: restricted patients not subject to deprivation of liberty conditions**

(1) The Mental Health Act 1983 is amended as follows.

(2) In section 71 (references by Secretary of State concerning restricted patients), for subsection (2) substitute—

"(2) The Secretary of State must refer to the appropriate tribunal the case of any restricted patient detained in a hospital if—

(a) the patient's case has not been considered by the appropriate tribunal within the last 12 months, whether on the patient's own application or otherwise, and

(b) there is no pending application or reference to the appropriate tribunal in relation to the patient's case."

(3) In section 75 (applications and references concerning conditionally discharged restricted patients)—

(a) before subsection (2C) (as inserted by section 32(3)(a) of this Act) insert—

"(2B) Where a restricted patient has been conditionally discharged, is not subject to conditions amounting to a deprivation of

liberty and has not been recalled to hospital, the Secretary of State must refer the patient's case to the appropriate tribunal on the expiry of—

(a) the period of two years beginning—

(i) in the case of a patient who has previously been subject to conditions amounting to a deprivation of liberty, with the date on which the patient most recently ceased to be subject to such conditions, and

(ii) in any other case, with the date on which the patient was conditionally discharged, and

(b) each subsequent period of four years.";

(b) in subsection (2D), after "subsection" insert "(2B) or";

(c) in subsection (2E) omit ", is subject to conditions amounting to a deprivation of liberty";

(d) in subsection (2F), after "subsection" insert "(2B),";

(e) in subsection (2H), after "subsection" insert "(2B),";

(f) in subsection (3), after "subsection", in the second place it occurs, insert "(2B),".

(4) The amendments made by this section apply in relation to any person who is a restricted patient within the meaning given by subsection (1) of section 79 of the Mental Health Act 1983, or is treated as a restricted patient as a result of that subsection, whether the person became such a patient (or treated as such a patient) before or after the coming into force of this section.

*Discharge: process*

**34 Discharge: process**

In section 23 of the Mental Health Act 1983 (discharge of patients), after subsection (2) insert—

"(2A) Before making an order for discharge by virtue of subsection (2)(a), the responsible clinician must consult a person—

(a) who has been professionally concerned with the patient's medical treatment, and

(b) who belongs to a profession other than that to which the responsible clinician belongs.

(2B) Before making an order for discharge by virtue of subsection (2)(b)—

(a) the responsible clinician must consult a person—

(i) who has been professionally concerned with the patient's care or treatment, and

(ii) who belongs to a profession other than that to which the responsible clinician belongs;

(b) the responsible local social services authority must ensure that whoever is taking the decision for the authority consults a person who has been professionally concerned with the patient's

care or treatment (whether or not a member of staff of the authority);

(c) the patient's nominated person must consult the responsible local social services authority.

(2C) Before making an order for discharge by virtue of subsection (2)(c)—

(a) the responsible clinician must, if they are not the community clinician, consult the community clinician;

(b) the hospital managers must consult the community clinician."

*Patients concerned in criminal proceedings or under sentence*

**35 Conditional discharge subject to deprivation of liberty conditions**

(1) The Mental Health Act 1983 is amended as follows.

(2) In section 42 (powers of Secretary of State in respect of patients subject to restriction orders), after subsection (2) insert—

"(2A) Conditions amounting to a deprivation of a patient's liberty may be imposed under subsection (2) if the Secretary of State is satisfied that those conditions are necessary for the protection of the public from serious harm."

(3) In section 73 (power of tribunal to discharge patients subject to restriction orders)—

(a) in subsection (2)—

(i) omit the "but" at the end of paragraph (a);

(ii) at the end of paragraph (b), after "apply" insert "; and

(c) the tribunal—

(i) is not satisfied that conditions amounting to a deprivation of the patient's liberty would be necessary for the protection of another person from serious harm, if the patient were discharged from hospital; or

(ii) is satisfied that conditions amounting to a deprivation of the patient's liberty would be necessary for the protection of another person from serious harm if the patient were discharged from hospital, and is also satisfied that for the patient to be discharged subject to those conditions would be no less beneficial to their mental health than for them to remain in hospital";

(b) after subsection (5) insert—

"(5A) Conditions amounting to a deprivation of a patient's liberty may be imposed by the tribunal under subsection (4)(b) only

where the tribunal is satisfied as to the matters mentioned in subsection (2)(c)(ii).

(5B) Conditions amounting to a deprivation of a patient's liberty may be imposed by the Secretary of State under subsection (4)(b) or (5) only where the Secretary of State is satisfied that those conditions are necessary for the protection of the public from serious harm."

(4) In section 145(1) (interpretation), at the appropriate place insert—

""deprivation of liberty" and related expressions are to be construed in accordance with section 64(5) and (6) of the Mental Capacity Act 2005;".

(5) The amendments made by this section apply in relation to any person who is a restricted patient within the meaning given by subsection (1) of section 79 of the Mental Health Act 1983, or is treated as a restricted patient as a result of that subsection, whether the person became such a patient (or treated as such a patient) before or after the coming into force of this section.

### 36 Transfers of prisoners and others to hospital: conditions

(1) The Mental Health Act 1983 is amended as follows.

(2) In section 47 (removal to hospital of persons serving sentences of imprisonment etc) for subsection (1)(c) substitute—

"(c) that appropriate medical treatment can be given for the relevant disorder from which the person is suffering;".

(3) In section 48 (removal to hospital of other prisoners)—

(a) for subsection (1)(c) substitute—

"(c) appropriate medical treatment can be given for the relevant disorder from which the person is suffering;";

(b) in subsection (2), for paragraph (d) substitute—

"(d) persons detained under—

(i) the Immigration Act 1971,

(ii) section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State),

(iii) section 36 of the UK Borders Act 2007 (detention of offenders for deportation), or

(iv) regulation 32 of the Immigration (European Economic Area) Regulations 2016 (S.I. 2016/1052) (which are saved by the Citizens' Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020 (S.I. 2020/1210))."

### 37 Transfers of prisoners and others to hospital: time limits

(1) The Mental Health Act 1983 is amended as follows.

(2) After section 47 insert—

**"47A Hospital treatment for prisoners: 28 day transfer period**

(1) As soon as practicable after a relevant referring body makes an initial request for a medical report in relation to a person serving a sentence of imprisonment ("P"), the body must give a referral notice to the persons specified in subsection (3).

(2) For the purposes of this section—

(a) a request is an "initial request" for a medical report if it is the first request for a report by a registered medical practitioner on whether the conditions in section 47(1) are satisfied in relation to P at a particular time;

(b) "referral notice" means a notice—

(i) stating that an initial request has been made in relation to P, and

(ii) specifying the date on which the initial request was made;

(c) "relevant referring body" means—

(i) in relation to a person serving a sentence of imprisonment in England, a person who is a "service provider" within the meaning given by section 12ZA(9) of the National Health Service Act 2006 or provides "NHS medical services" within the meaning given by section 14Z31(5) of that Act;

(ii) in relation to a person serving a sentence of imprisonment in Wales, a Local Health Board.

(3) The persons to whom the referral notice must be given ("the notified authorities") are—

(a) the Secretary of State;

(b) the relevant detention authority (see section 48B);

(c) as many of the following (other than the relevant referring body) as the relevant referring body considers likely to have functions in relation to P in the event that the Secretary of State gives a direction under section 47—

(i) NHS England;

(ii) integrated care boards;

(iii) National Health Service trusts established under section 18 of the National Health Service (Wales) Act 2006;

(iv) Local Health Boards;

(v) service providers within the meaning given by section 12ZA(9) of the National Health Service Act 2006.

(4) When exercising functions in relation to P, the relevant referring body and the notified authorities must seek to ensure that, absent exceptional circumstances, the following all happen within the period of 28 days beginning with the date of the initial request—

(a) a decision is taken as to whether to make a direction under section 47 in respect of P,

(b) if a decision is taken to make such a direction, the direction is made, and

(c) where the direction is made, P is removed to and detained in a hospital in pursuance of the direction.

(5) For the purposes of subsection (4) the following are not (together or separately) "exceptional circumstances"—

(a) a shortage of hospital accommodation;

(b) a shortage of hospital staff;

unless occurring as a result of other exceptional circumstances."

(3) After section 48 insert—

**"48A Hospital treatment for other prisoners: 28 day transfer period**

(1) As soon as practicable after a relevant referring body makes an initial request for a medical report in relation to a person ("P") to whom section 48 applies, the body must give a referral notice to the persons specified in subsection (3).

(2) For the purposes of this section—

(a) a request is an "initial request" for a medical report if it is the first request for a report by a registered medical practitioner on whether the conditions in section 48(1) are satisfied in relation to P at a particular time;

(b) "referral notice" means a notice—

(i) stating that an initial request has been made in relation to P, and

(ii) specifying the date on which the initial request was made;

(c) "relevant referring body" means—

(i) in relation to a person to whom section 48 applies and who is detained or remanded at a place in England, a person who is a "service provider" within the meaning given by section 12ZA(9) of the National Health Service Act 2006 or provides "NHS medical services" within the meaning given by section 14Z31(5) of that Act;

(ii) in relation to a person to whom section 48 applies and who is detained or remanded at a place in Wales, a Local Health Board.

(3) The persons to whom the referral notice must be given ("the notified authorities") are—

(a) the Secretary of State;

(b) the relevant detention authority (see section 48B);

(c) as many of the following (other than the relevant referring body) as the relevant referring body considers likely to have

functions in relation to P in the event that the Secretary of State gives a direction under section 48—

(i) NHS England;

(ii) integrated care boards;

(iii) National Health Service trusts established under section 18 of the National Health Service (Wales) Act 2006;

(iv) Local Health Boards;

(v) service providers within the meaning given by section 12ZA(9) of the National Health Service Act 2006.

(4) When exercising functions in relation to P, the relevant referring body and the notified authorities must seek to ensure that, absent exceptional circumstances, the following all happen within the period of 28 days beginning with the date of the initial request—

(a) a decision is taken as to whether to make a direction under section 48 in respect of P,

(b) if a decision is taken to make such a direction, the direction is made, and

(c) where the direction is made, P is removed to and detained in a hospital in pursuance of the direction.

(5) For the purposes of subsection (4) the following are not (together or separately) "exceptional circumstances"—

(a) a shortage of hospital accommodation;

(b) a shortage of hospital staff;

unless occurring as a result of other exceptional circumstances."

(4) After section 48A (as inserted by subsection (3)) insert—

**"48B Sections 47A and 48A: supplementary**

(1) For the purposes of sections 47A and 48A, "the relevant detention authority", in relation to a referral notice (within the meaning of the section in question), has the meaning given by the table.

| *Where, on the day the referral notice is sent, P is detained or remanded in* | *The relevant detention authority is* |
|---|---|
| a prison | the governor or director of the prison |
| a young offender institution | the governor or director of the institution |
| a secure training centre | the governor or director of the centre |
| a secure children's home | the registered manager of the home |
| a removal centre | the manager of the centre |
| a short-term holding facility | the manager of the facility |

| *Where, on the day the referral notice is sent, P is detained or remanded in* | *The relevant detention authority is* |
|---|---|
| pre-departure accommodation | the manager of the accommodation |

(2) In this section—

"pre-departure accommodation" has the meaning given by section 147 of the Immigration and Asylum Act 1999;

"registered manager", in relation to a secure children's home, means a person who is registered under Part 2 of the Care Standards Act 2000 as the manager of the home;

"removal centre" has the meaning given by section 147 of the Immigration and Asylum Act 1999;

"secure children's home" has the meaning given by section 102(11) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

"secure training centre" has the meaning given by section 43(1)(d) of the Prison Act 1952;

"short-term holding facility" has the meaning given by section 147 of the Immigration and Asylum Act 1999;

"young offender institution" has the meaning given by section 43(1)(aa) of the Prison Act 1952.

(3) The Secretary of State may by regulations—

(a) amend this section or section 47A or 48A so as to change the persons—

(i) who are subject to the duty to give a referral notice under section 47A(1) or 48A(1), or

(ii) to whom a referral notice must be given under subsection 47A(3) or 48A(3);

(b) amend the period in 47A(4) or 48A(4)."

(5) In section 143 (general provisions as to regulations, orders and rules)—

(a) for subsection (2) substitute—

"(2) The following are subject to annulment in pursuance of a resolution of either House of Parliament—

(a) any Order in Council under this Act;

(b) any order made by the Secretary of State under section 54A or 68A(7);

(c) any statutory instrument containing regulations made by the Secretary of State under this Act, other than regulations made under section 48B(3);

(d) any statutory instrument containing rules made under this Act.";

(b) after subsection (3) insert—

"(3ZA) A statutory instrument containing regulations under section 48B(3) (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament."

**38 Transfer directions for persons detained in youth detention accommodation**

(1) In section 48 of the Mental Health Act 1983 (removal to hospital of other prisoners), in subsection (2)(a), for "remand centre" substitute "remanded to youth detention accommodation under section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012".

(2) In Schedule 8 to the Criminal Justice and Court Services Act 2000 (repeals), in the table, omit the entry relating to section 48(2)(a) of the Mental Health Act 1983.

**39 Minor amendment**

In Part 1 of Schedule 1 to the Mental Health Act 1983 (application of certain provisions to patients subject to hospital and guardianship orders who are not subject to special restrictions), in paragraph 9(b), for the words from "and (g)" to """, (g)"," substitute ", (d) and (g)".

*Help and information for patients*

**40 Independent mental health advocates**

Schedule 3 contains amendments relating to independent mental health advocates, including amendments which—

(a) provide for informal patients to qualify for help from independent mental health advocates;

(b) impose duties on hospital managers and others to notify providers of advocacy services about qualifying patients;

(c) impose duties on providers of advocacy services to arrange for certain patients to be interviewed to find out whether they want to use those services.

**41 Information about complaints for detained patients**

In section 132 of the Mental Health Act 1983 (duty of managers of hospitals to give information to detained patients)—

(a) in subsection (2) omit the words from "and those steps" to the end;

(b) after subsection (2) insert—

"(2A) The managers of a hospital or registered establishment in which a patient is detained under this Act must also take such steps as are practicable to ensure that the patient understands how to exercise any right the patient has to make complaints about—

(a) the carrying out of functions under this Act;
(b) any medical treatment for mental disorder received during the patient's detention;
(c) the outcome of any complaint referred to in paragraph (b).

(2B) Where a patient is detained under any provision of this Act, the steps under subsections (2) and (2A) must be taken —
(a) as soon as practicable after the commencement of the patient's detention under the provision in question, and
(b) again—
(i) if the patient is a restricted patient within the meaning given by subsection (1) of section 79, or is treated as mentioned in paragraph (a) or (c) of that subsection, as soon as practicable after the end of each successive period of twelve months beginning with the day on which the patient became a restricted patient or was first so treated (as the case may be);
(ii) otherwise, as soon as practicable after any report is furnished under section 20 in respect of the patient.";

(c) in subsection (3), for "and (2)" substitute ", (2) and (2A)";
(d) in subsection (4), for "and (2)" substitute ", (2) and (2A)".

**42 Information about complaints for community patients**

In section 132A of the Mental Health Act 1983 (duty of managers of hospitals to give information to community patients), in subsection (1)—
(a) omit the "and" at the end of paragraph (a);
(b) after paragraph (b) insert—

"(c) how to exercise any right the patient has to make complaints about—
(i) the carrying out of functions under this Act;
(ii) any medical treatment for mental disorder received while the patient is a community patient;
(iii) the outcome of any complaint referred to in sub-paragraph (ii);";

(c) at the end insert "and again as soon as practicable after any report is furnished under section 20A in respect of the patient".

**43 Information for conditionally discharged patients**

After section 132A of the Mental Health Act 1983 insert—

**"132B Duty of managers of hospitals to give information to conditionally discharged patients**

(1) Where a patient is discharged from a hospital or registered establishment under section 42(2), 73 or 74 and the discharge is a conditional discharge, the managers of the hospital or registered establishment must take such steps as are practicable to ensure that the patient understands—

(a) under which provision the patient is conditionally discharged and the effect of that provision;

(b) the effect of the provisions of this Act applying to patients who are conditionally discharged under that provision;

(c) what rights of applying to a tribunal are available to the patient while the patient is conditionally discharged;

(d) how to exercise any right the patient has to make complaints about—

(i) the carrying out of functions under this Act;

(ii) any medical treatment for mental disorder received while the patient is conditionally discharged;

(iii) the outcome of any complaint referred to in sub-paragraph (ii).

(2) Those steps must be taken as soon as practicable.

(3) The steps to be taken under subsection (1) must include giving the requisite information both orally and in writing.

(4) The managers of the hospital or registered establishment must, except where the patient otherwise requests, take such steps as are practicable to furnish the patient's nominated person with a copy of any information given to the patient in writing under subsection (1).

(5) Those steps must be taken when the information is given to the patient or within a reasonable time thereafter."

**44 Advance choice documents**

(1) The Mental Health Act 1983 is amended as follows.

(2) After section 130L insert—

**"130M Advance choice documents: England**

(1) NHS England and each integrated care board must make such arrangements as it considers appropriate for—

(a) making information about advance choice documents available to people for whom it is responsible for the purposes of this section,

(b) helping such of those people as it considers appropriate to create advance choice documents, and

(c) bringing the availability of that information and help to the attention of such people as it considers appropriate.

(2) The arrangements that must be made under subsection (1) include such arrangements as NHS England or the integrated care board considers appropriate for people to be given information or help by having a conversation with someone who is suitably qualified, whether in-person or remotely.

(3) In deciding how to discharge the duty under subsection (1), NHS England or an integrated care board must have regard to the particular benefits to a person of making an advance choice document within 12 months of their discharge from a hospital or a registered establishment where they were receiving medical treatment for, or assessment in relation to, mental disorder.

(4) For the purposes of this section—

(a) NHS England is "responsible" for any people for whom it is required to arrange the provision of services or facilities by virtue of section 3B(1)(c) of the National Health Service Act 2006 (prisoners etc);

(b) an integrated care board is "responsible" for anyone not within paragraph (a) who falls within the group of people for whom the board has core responsibility (as to which, see section 14Z31 of the National Health Service Act 2006).

(5) An "advance choice document" is a written statement made by a qualifying person specifying their decisions, wishes or feelings about any relevant matter that may arise in the event that—

(a) at some future time—

(i) consideration is given to the person's admission to hospital or a registered establishment as an in-patient either for medical treatment for mental disorder or for assessment in relation to mental disorder, or

(ii) the person is detained under this Act, or given medical treatment for mental disorder as an in-patient in hospital, and

(b) at that time, the person lacks capacity or competence in relation to that matter.

(6) For the purposes of subsection (5)—

(a) "qualifying person" means a person who has capacity or competence to make the statement,

(b) "relevant matter", in relation to a qualifying person, means a matter relating to, or arising as a consequence of—

(i) consideration of an application for the person's admission for assessment or treatment, or

(ii) the person's detention under this Act, or their medical treatment for a mental disorder as an in-patient in hospital, and

(c) a reference to lacking capacity is to lacking capacity within the meaning of the Mental Capacity Act 2005; and a reference to having capacity is to be read accordingly.

**130N Advance choice documents: Wales**

(1) Each Local Health Board must make such arrangements in relation to its area as it considers appropriate for—

(a) making available information about advance choice documents,

(b) helping such of those people as it considers appropriate to create advance choice documents, and

(c) bringing the availability of that information and help to the attention of such people as it considers appropriate.

(2) The arrangements that must be made under subsection (1) include such arrangements as the Local Health Board considers appropriate for people to be given information or help by having a conversation with someone who is suitably qualified, whether in-person or remotely.

(3) In deciding how to discharge the duty under subsection (1), a Local Health Board must have regard to the particular benefits to a person of making an advance choice document within 12 months of their discharge from a hospital or a registered establishment where they were receiving medical treatment for, or assessment in relation to, mental disorder.

(4) In this section "advance choice document" has the meaning given by section 130M(5)."

(3) In section 118 (code of practice), in subsection (1), after paragraph (e) (as inserted by section 18 of this Act) insert—

"(f) for the guidance of NHS England, integrated care boards and Local Health Boards in relation to their functions under section 130M or 130N.""

*After-care*

**45 Tribunal power to recommend after-care**

(1) Section 72 of the Mental Health Act 1983 (powers of tribunals) is amended as follows.

(2) In subsection (3)(a), for the words from "he" to "guardianship" substitute—

"(i) the patient be granted leave of absence;

(ii) the patient be transferred to another hospital or into guardianship; or

(iii) the responsible after-care bodies make plans for the provision of after-care services for the patient;".

(3) After subsection (7) insert—

"(8) In this section—

"after-care services" means after-care services provided or arranged under section 117;

"the responsible after-care bodies", in relation to a patient, means the bodies that will have the duty under section 117 to provide after-care services for the patient."

**46 After-care services**

(1) Section 117 of the Mental Health Act 1983 (after-care) is amended as follows.

(2) In subsection (2), after "authority", in the second place it occurs, insert "jointly give notice in writing to the person stating that they".

(3) After subsection (3) insert—

"(3A) In applying subsection (3) for the purpose of determining the local social services authority in relation to a person—

(a) section 105(6) of the Children Act 1989—

(i) applies for the purpose of determining the person's ordinary residence at any time when they were aged under 18, and

(ii) in its application for that purpose, is to be read as if there were inserted, after paragraph (c)—

"(d) while the child is being provided with accommodation under section 117 of the Mental Health Act 1983; or

(e) while the child is being provided with accommodation under any of the following—

the National Health Service Act 2006;

the National Health Service (Wales) Act 2006;

the National Health Service (Scotland) Act 1978;

the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14));

the Health and Social Care (Reform) Act (Northern Ireland) 2009; or

(f) which is referred to in section 194(6) of the Social Services and Well-being (Wales) Act 2014 (anaw 4).";

(b) the following provisions apply for the purpose of determining the person's ordinary residence at any time when they were aged 18 or over—

(i) section 39(1) to (6) of, and paragraphs 1(1), 2(1) and (2) and 8 of Schedule 1 to, the Care Act 2014;

(ii) section 194(1) to (3) of the Social Services and Well-being (Wales) Act 2014 (anaw 4)."

*Miscellaneous*

### 47 Tribunal powers in guardianship cases: burden of proof

In section 72(4) of the Mental Health Act 1983 (powers of tribunals in relation to guardianship cases)—

(a) in the opening words, after "it is" insert "not";

(b) in paragraph (a) omit "not";

(c) in paragraph (b) omit "not".

### 48 Removal of police stations and prisons as places of safety

(1) The Mental Health Act 1983 is amended as follows.

(2) In section 55 (interpretation of Part 3), in subsection (1), for the definition of "place of safety" substitute—

""place of safety"—

(a) in relation to a person who is not a child or young person, means any hospital the managers of which are willing temporarily to receive that person;

(b) in relation to a child or young person, has the same meaning as in the Children and Young Persons Act 1933 except that it does not include a police station;".

(3) The amendment made by subsection (2) does not apply in relation to any directions given under sections 35(4), 36(3), 37(4), 38(4) or 45A(5) before the coming into force of that subsection.

(4) In section 135 (warrant to search for and remove patients)—

(a) in subsection (6) omit "a police station,";

(b) in subsection (7), before paragraph (a) insert—

"(za) a police station may not be regarded as a suitable place;";

(c) omit subsection (8).

(5) In section 136 (removal etc of mentally disordered persons without a warrant) omit subsection (5).

(6) Omit section 136A (use of police stations as places of safety).

(7) In section 136B (extension of detention) omit subsection (3).

**49 Remand for a person's own protection etc**

(1) Schedule 1 to the Bail Act 1976 (persons entitled to bail: supplementary provisions) is amended as follows.

(2) In Part 1 of that Schedule (defendants accused or convicted of imprisonable offences), for paragraph 3 substitute—

"3 (1) The defendant need not be granted bail if—

(a) the defendant has attained the age of 18, and

(b) the court is satisfied, otherwise than by reason only of concerns about the defendant's mental health, that the defendant should be kept in custody for their own protection.

(2) The defendant need not be granted bail if—

(a) the defendant is a child or young person, and

(b) the court is satisfied that the defendant should be kept in custody for their own welfare."

(3) In Part 1A of that Schedule (defendants accused or convicted of imprisonable offences to which Part 1 does not apply), for paragraph 5 substitute—

"5 (1) The defendant need not be granted bail if—

(a) the defendant has attained the age of 18, and

(b) the court is satisfied, otherwise than by reason only of concerns about the defendant's mental health, that the defendant should be kept in custody for their own protection.

(2) The defendant need not be granted bail if—

(a) the defendant is a child or young person, and

(b) the court is satisfied that the defendant should be kept in custody for their own welfare."

(4) In Part 2 of that Schedule (defendants accused or convicted of non-imprisonable offences), for paragraph 3 substitute—

"3 (1) The defendant need not be granted bail if—

(a) the defendant has attained the age of 18, and

(b) the court is satisfied, otherwise than by reason only of concerns about the defendant's mental health, that the defendant should be kept in custody for their own protection.

(2) The defendant need not be granted bail if—

(a) the defendant is a child or young person, and

(b) the court is satisfied that the defendant should be kept in custody for their own welfare."

(5) The amendments made by this section apply in relation to any person who is before a court after the coming into force of this section.

**50 Removal of interim remand patients to and from Channel Islands or Isle of Man**

(1) The Mental Health Act 1983 is amended as follows.

(2) In section 83 (removal of patients to Channel Islands or Isle of Man) omit "(otherwise than by virtue of section 35, 36 or 38 above)".

(3) In section 85 (patients removed from Channel Islands or Isle of Man)—

(a) in subsection (1) omit "(other than section 35, 36 or 38 above)";

(b) in subsection (2), after "shall" insert "(subject to subsection (2A))";

(c) after subsection (2) insert—

"(2A) In relation to a patient treated by virtue of subsection (2) as liable to be detained under section 35, 36 or 38, this Act is to be read with the modifications set out in Schedule A2."

(4) In section 91 (general provisions as to patients removed from England and Wales), in subsection (1) omit "(other than section 35, 36 or 38 above)".

(5) After Schedule A1 (as inserted by Schedule 2 to this Act) insert—

"SCHEDULE A2 Section 85(2A)

INTERIM REMAND PATIENTS FROM CHANNEL ISLANDS OR ISLE OF MAN: MODIFICATIONS OF THIS ACT

*Modifications of section 35*

1 (1) In relation to a patient who is treated by virtue of section 85(2) as admitted to hospital in pursuance of an order made under section 35(1) (remand to hospital for report on accused's mental condition), section 35 applies with the modifications set out in this paragraph.

(2) Subsection (2) is to be omitted.

(3) References to an "accused person" are to be read as references to the patient referred to in sub-paragraph (1).

(4) References to "the court" are to be read as references to whichever of—

(i) the Crown Court, and

(ii) a magistrates' court,

has functions most closely corresponding to those of the court under whose order or direction the patient was liable to be detained immediately before the patient's removal to England and Wales.

(5) In subsection (5) for the words from the beginning to "him" there is to be substituted "The court may further remand an accused person".

(6) After subsection (5) there is to be inserted—

"(5A) The court may also further remand an accused person if it has been notified by the Secretary of State that—

(a) the person is the subject of criminal proceedings in any of the Channel Islands or the Isle of Man, and

(b) the Secretary of State is considering exercising the power in section 83 in relation to the accused person."

(7) For subsection (7) there is to be substituted—

"(7) A remand under this section has effect for 28 days.

(7A) Further periods of remand by the court may not be for more than 28 days at a time and an accused person may not be remanded for more than 12 weeks in all.

(7B) Where the court further remands an accused person it must notify the Secretary of State of the period for which the person is further remanded.

(7C) The court may at any time recommend to the Secretary of State that the accused person be returned to the island from which the person was removed."

(8) In subsection (8), for "his remand to be terminated under subsection (7)" there is to be substituted "a recommendation to be made under subsection (7C)".

(9) In subsection (10), the words from "that remanded him" to the end are to be omitted.

*Modifications of section 36*

2 (1) Section 36 (remand of accused person to hospital for treatment) applies—

(a) in relation to a patient who is treated by virtue of section 85(2) as admitted to hospital in pursuance of an order made under section 35(1) (remand to hospital for report on accused's mental condition), with the modifications set out in sub-paragraphs (2) to (8);

(b) in relation to a patient who—

(i) was treated by virtue of section 85(2) as admitted to hospital in pursuance of an order made under section 35(1), and

(ii) is subsequently remanded under section 36(1) as it applies by virtue of paragraph (a),

with the modifications set out in sub-paragraphs (3) to (8);

(c) in relation to a patient who is treated by virtue of section 85(2) as admitted to hospital in pursuance of an order made under section 36(1), with the modifications set out in sub-paragraphs (3) to (8).

(2) In subsection (1), in the words before paragaph (a), for ", instead of remanding an accused person in custody, remand him" there is to be substituted "remand an accused person".

(3) Subsection (2) is to be omitted.

(4) References to an "accused person" are to be read as references to the patient referred to in sub-paragraph (1)(a), (b) or (c).

(5) In subsection (4), for "warranted" there is to be substituted "warranted—

(a) because the court has been notified by the Secretary of State that—

(i) the person is the subject of criminal proceedings in any of the Channel Islands or the Isle of Man, and

(ii) the Secretary of State is considering exercising the power in section 83 in relation to the accused person, or

(b) for other reasons".

(6) For subsection (6) there is to be substituted—

"(6) A remand under this section has effect for 28 days.

(6A) Further periods of remand by the court may not be for more than 28 days at a time and an accused person may not be remanded for more than 12 weeks in all.

(6B) Where the court further remands an accused person it must notify the Secretary of State of the period for which the person is further remanded.

(6C) The court may at any time recommend to the Secretary of State that the accused person be returned to the island from which the person was removed."

(7) In subsection (7) for "his remand to be terminated under subsection (6)" there is to be substituted "a recommendation to be made under subsection (6C)";

(8) Subsection (8) is to be read as applying subsection (10) of section 35 as modified by paragraph 1(9) of this Schedule.

*Modifications of section 38*

3 (1) In relation to a patient who is treated by virtue of section 85(2) as admitted to hospital in pursuance of an order made under section 38(1) (interim hospital orders), section 38 applies with the modifications set out in this paragraph.

(2) Subsection (2) is to be omitted.

(3) References to "the court" are to be read as references to whichever of—

(i) the Crown Court, and

(ii) a magistrates' court,

has functions most closely corresponding to those of the court under whose order or direction the patient was liable to be detained immediately before the patient's removal to England and Wales.

(4) In subsection (5)—

(a) in paragraph (b), for "warranted" there is to be substituted "warranted—

(i) because the court has been notified by the Secretary of State that—

(A) the offender is the subject of criminal proceedings in any of the Channel Islands or the Isle of Man, and

(B) the Secretary of State is considering exercising the power in section 83 in relation to the offender, or

(ii) for other reasons";

(b) in the words after paragraph (b), the words from "and" to the end are to be omitted.

(5) After subsection (5) there is to be inserted—

"(5A) Where the court renews the interim hospital order it must notify the Secretary of State of the period for which it is renewed.

(5B) The court may at any time recommend to the Secretary of State that the offender be returned to the island from which the offender was removed."

(6) In subsection (7), the words from "that made the order" to the end are to be omitted.

*Modification of section 83*

4 In relation to a patient referred to in paragraph 1(1), 2(1) or 3(1), in section 83 (removal of patients to Channel Islands or Isle of Man), for "in the interests of the patient" there is to be substituted "appropriate"."

**51 Human Rights Act 1998: extension to certain private care providers**

In the Mental Health Act 1983, after section 142B insert—

**"142C Human Rights Act 1998: extension to certain private care providers**

(1) A registered care provider is to be regarded for the purposes of section 6(3)(b) of the Human Rights Act 1998 as exercising a function of a public nature in providing any of the services mentioned in subsection (2) (to the extent that it would not otherwise be so regarded).

(2) The services are—

(a) after-care services provided in pursuance of arrangements made under section 117;

(b) services provided in pursuance of arrangements made by a local authority in Scotland discharging its duty under section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003;

(c) the provision of medical treatment for mental disorder or assessment in relation to mental disorder, for an in-patient at a hospital, but only where that treatment or assessment is arranged or paid for by an NHS body.

(3) In this section—

"hospital" means any institution for the reception and treatment of people—

(a) suffering from mental disorder or other illness,

(b) convalescing, or

(c) requiring medical rehabilitation;

"illness" includes any injury or disability requiring medical treatment or nursing;

"NHS body"—

(a) in relation to England, has the meaning given by section 275(1) of the National Health Service Act 2006;

(b) in relation to Wales, has the meaning given by section 206(1) of the National Health Service (Wales) Act 2006;

(c) in relation to Scotland, a health board constituted by order made under section 2 of the National Health Service (Scotland) Act 1978;

(d) in relation to Northern Ireland means—

(i) the Department of Health, or

(ii) a Health and Social Care Trust;

"registered care provider" means--

(a) a person registered under Chapter 2 of Part 1 of the Health and Social Care Act 2008,

(b) a person registered under Part 2 of the Care Standards Act 2000 or Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016,

(c) a person providing—

(i) a care service which is registered under section 59 of the Public Services Reform (Scotland) Act 2010, or

(ii) an independent health care service registered under section 10P of the National Health Service (Scotland) Act 1978, or

(d) a person registered under Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003."

### 52 Review of duty to notify incidents

(1) The Secretary of State must carry out a review into—

(a) whether regulation 18 of the Care Quality Commission (Registration) Regulations 2009 (S.I.2009/3112) (duty to notify incidents) ought to be extended to require a notification to be given in any other cases in which a person under the age of 18 is admitted to a hospital or registered establishment for medical treatment for, or assessment in relation to, mental disorder, and

(b) whether the time period mentioned in regulation 18(2)(h) of those Regulations remains appropriate.

(2) The Secretary of State must prepare and publish a report setting out the conclusions of the review.

(3) The Secretary of State must lay a copy of the report before Parliament.

(4) The report must be laid and published before the end of the period of 2 years beginning with the day on which this Act is passed.

(5) In this section the following expressions have the meaning given by section 145 of the Mental Health Act 1983—

"hospital";

"medical treatment";

"mental disorder";

"registered establishment".

*General*

### 53 Power of Secretary of State to make consequential provision

(1) The Secretary of State may by regulations made by statutory instrument make provision that is consequential on this Act.

(2) Regulations under this section may amend, repeal or revoke provision made by or under primary legislation passed—

(a) before this Act, or

(b) later in the same session of Parliament as this Act.

(3) In this section "primary legislation" means—

(a) an Act, or

(b) an Act or Measure of Senedd Cymru.

(4) A statutory instrument containing (alone or with other provision) regulations under this section that amend or repeal provision made by primary legislation may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(5) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

### 54 Power of Welsh Ministers to make consequential provision

(1) The Welsh Ministers may by regulations made by statutory instrument make provision that is consequential on this Act.

(2) The only provision that may be made by virtue of this section is provision that would be within the legislative competence of Senedd Cymru if contained in an Act of the Senedd.

(3) Regulations under this section may amend, repeal or revoke provision made by or under primary legislation passed—

(a) before this Act, or

(b) later in the same session of Parliament as this Act.

(4) In this section "primary legislation" means—

(a) an Act, or

(b) an Act or Measure of Senedd Cymru.

(5) A statutory instrument containing (alone or with other provision) regulations under this section that amend or repeal provision made by primary legislation may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, Senedd Cymru.

(6) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of Senedd Cymru.

### 55 Extent

(1) An amendment or repeal made by this Act has the same extent as the provision amended or repealed subject to subsection (2).

(2) Section 51, section 53, this section and sections 56 and 57 extend to England and Wales, Scotland and Northern Ireland.

### 56 Commencement

(1) Sections 30(2), 32, 35, 36(1) and (3)(b), 38 and 39 come into force at the end of the period of two months beginning with the day on which this Act is passed.

(2) Sections 53 to 55, this section and section 57 come into force on the day on which this Act is passed.

(3) Except as mentioned in subsections (1) and (2), this Act comes into force on such day as the Secretary of State may by regulations appoint.

(4) Regulations under this section are to be made by statutory instrument.

(5) Different days may be appointed under subsection (3) for different purposes.

(6) The Secretary of State may by regulations make transitional or saving provision in connection with the coming into force of any provision of this Act.

(7) The power to make regulations under subsection (6) includes power to make different provision for different purposes.

(8) Transitional and savings made by regulations under subsection (6) are additional, and without prejudice, to those made by any other provision of this Act.

### 57 Short title

This Act may be cited as the Mental Health Act 2025.

# SCHEDULES

## SCHEDULE 1

Section 3(4)

APPLICATION OF THE 1983 ACT TO AUTISM AND LEARNING DISABILITY: AMENDMENTS AND TRANSITORY PROVISION

*Amendments of Part 2 of the Mental Health Act 1983*

1 Part 2 of the Mental Health Act 1983 (compulsory admission to hospital and guardianship) is amended as follows.

2 In section 3 (admission for treatment), in subsection (2), for paragraph (a) substitute—

"(a) the patient is suffering from psychiatric disorder of a nature or degree which makes it appropriate for the patient to receive medical treatment in a hospital,".

3 In section 7 (application for guardianship), in subsection (2), for paragraph (a) substitute—

"(a) the patient is suffering from—

(i) psychiatric disorder,

(ii) autism, or

(iii) learning disability which has serious behavioural consequences,

of a nature or degree which warrants the patient's reception into guardianship under this section, and".

4 (1) Section 17A (community treatment orders) is amended as follows.

(2) In subsection (5), for paragraph (a) substitute—

"(a) the patient is suffering from psychiatric disorder of a nature or degree which makes it appropriate for the patient to receive medical treatment,".

(3) In subsection (6), for "mental", in both places it occurs, substitute "psychiatric".

5 In section 17E (power to recall community patient to hospital), in subsection (1)(a), for "mental" substitute "psychiatric".

6 (1) Section 20 (renewal of authority in relation to admission for treatment and guardianship) is amended as follows.

(2) In subsection (4) (admission for treatment), for paragraph (a) substitute—

"(a) the patient is suffering from psychiatric disorder of a nature or degree which makes it appropriate for the patient to receive medical treatment in a hospital,".

(3) In subsection (7) (guardianship), for paragraph (a) substitute—

"(a) the patient is suffering from—

(i) psychiatric disorder,

(ii) autism, or

(iii) learning disability which has serious behavioural consequences,

of a nature or degree which warrants the patient's reception into guardianship, and".

*Amendments of Part 3 of the Mental Health Act 1983*

7 Part 3 of the Mental Health Act 1983 (patients concerned in criminal proceedings or under sentence) is amended as follows.

8 Before the italic heading before section 35 insert—

*"Application of Part 3: "relevant disorder"*

**34A Application of Part 3: "relevant disorder"**

In this Part "relevant disorder" means—

(a) psychiatric disorder,

(b) autism, or

(c) learning disability which has serious behavioural consequences."

9 In the following places, for "mental" substitute "relevant"—

section 35(3)(a) (remand to hospital for report);

section 36(1)(a) (remand to hospital for treatment);

section 37(2)(a) (orders for hospital admission or guardianship), in each place it occurs;

section 38(1)(a) and (b) (interim hospital orders);

section 45A(2)(a) and (b) (conditions on hospital admission);

section 47(1)(a) and (b) (removal to hospital of prisoners under sentence, etc);

section 48(1)(a) (removal to hospital of other prisoners);

section 50(1) (sentenced prisoners: power to remit or release);

section 51(3)(a), (4)(a) and (6)(a) (detainees: powers to remit or release);

section 52(5)(a) (accused persons: magistrates' court's power);

section 53(2)(a) (civil prisoners and immigration detainees).

10 In section 55 (interpretation)—

(a) in subsection (1), at the appropriate place insert—

""relevant disorder" has the meaning given by section 34A;";

(b) in subsection (4), after "69(1)" insert "or 72(1ZA)".

11 (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—

(a) for "to 17C, 17E, 17F," substitute ", 17B, 17C,";

(b) omit "20A,".

(3) In paragraph 2—

(a) for "17D, 17G," substitute "17A, 17D to 17G,";

(b) for "2A" substitute "2ZA";

(c) omit "20,".

(4) After paragraph 2 insert—

"2ZA In section 17A—

(a) in subsection (5)(a), for "psychiatric disorder" there is to be substituted "relevant disorder (within the meaning given by section 34A)";

(b) in subsection (6), for "psychiatric disorder", in both places it occurs, there is to be substituted "relevant disorder (within the meaning given by section 34A)".

2ZB In section 17E, in subsection (1)(a), for "psychiatric disorder" there is to be substituted "relevant disorder (within the meaning given by section 34A)"."

(5) After paragraph 2A insert—

"2AA In section 17F, after subsection (4) there is to be inserted—

"(4A) Section 3(2) as it applies for the purposes of subsection (4)(a) is to be read as if the reference to psychiatric disorder were a reference to relevant disorder (within the meaning given by section 34A).""

(6) In paragraph 5B (as inserted by section 29 of this Act), after sub-paragraph (2) insert—

"(3) In section 20(4)(a), for "psychiatric disorder" there is to be substituted "relevant disorder (within the meaning given by section 34A)"."

(7) In paragraph 5C (as inserted by section 29 of this Act), after sub-paragraph (3) insert—

"(4) In section 20(4)(a), for "psychiatric disorder" there is to be substituted "relevant disorder (within the meaning given by section 34A)"."

(8) In paragraph 5D (as inserted by section 29 of this Act), after sub-paragraph (2) insert—

"(3) In section 20(4)(a), for "psychiatric disorder" there is to be substituted "relevant disorder (within the meaning given by section 34A)"."

(9) In paragraph 6 (as substituted by section 29 of this Act), after sub-paragraph (3) insert—

"(4) In section 20(4)(a), for "psychiatric disorder" there is to be substituted "relevant disorder (within the meaning given by section 34A)"."

(10) After paragraph 6 insert—

"6ZA In section 20A, after subsection (10) there is to be inserted—

"(11) Section 17A(5) as it applies for the purposes of subsection (4)(b) is to be read as if the reference to psychiatric disorder were a reference to relevant disorder (within the meaning given by section 34A).""

*Amendments of Part 4 of the Mental Health Act 1983*

12 Part 4 of the Mental Health Act 1983 (consent to treatment) is amended as follows.

13 In section 56 (patients to whom Part 4 applies)—

(a) for the heading substitute "Application of Part 4: patients and disorders";

(b) after subsection (5) insert—

"(6) In this Part "relevant disorder"—

(a) in relation to—

(i) a patient falling within subsection (3) where the patient is liable to be detained by virtue of section 3,

(ii) a patient falling within subsection (3), where the patient is liable to be detained by virtue of section 20(4), otherwise than as that provision applies by virtue of Part 1 of Schedule 1, or

(iii) a patient falling within subsection (4),

means psychiatric disorder;

(b) in relation to any other patient, means mental disorder."

14 In the following places, for "mental", substitute "relevant"—

section 58(1)(b) (administration of medicine requiring consent or a second opinion);

section 63 (treatment not requiring consent).

*Amendments of Part 4A of the Mental Health Act 1983*

15 In Part 4A of the Mental Health Act 1983 (treatment of community patients not recalled to hospital), for section 64A substitute—

**"64A Meaning of "relevant treatment"**

(1) In this Part of this Act "relevant treatment"—

(a) in relation to a Part 3 community patient, means medical treatment which—

(i) is for the relevant disorder from which the patient is suffering, and

(ii) is not a form of treatment to which section 57 applies, and

(b) in relation to any other community patient, means medical treatment which—

(i) is for the psychiatric disorder from which the patient is suffering, and

(ii) is not a form of treatment to which section 57 applies.

(2) In subsection (1)(a)—

"Part 3 community patient" means a person who is a community patient by virtue of a community treatment order under section 17A as applied by Part 1 of Schedule 1;

"relevant disorder" has the meaning given by section 34A."

*Amendments of Part 5 of the Mental Health Act 1983*

16 Part 5 of the Mental Health Act 1983 (tribunals) is amended as follows.

17 (1) Section 72 (grounds for discharge by tribunal) is amended as follows.

(2) After subsection (1) insert—

"(1ZA) In relation to a patient admitted to hospital in pursuance of a hospital order (see section 55(4)), section 20(4) is to be read, for the purposes of subsection (1)(b), as if the reference to psychiatric disorder were a reference to relevant disorder (within the meaning given by section 34A)."

(3) In subsection (1A), for "mental", in both places it occurs, substitute "psychiatric".

(4) After subsection (1A) insert—

"(1B) In relation to a person who is a community patient by virtue of a community treatment order under section 17A as applied by Part 1 of Schedule 1—

(a) for the purposes of subsection (1)(c), section 17A(5) is to be read as if the reference to psychiatric disorder were a reference to relevant disorder (within the meaning given by section 34A), and

(b) subsection (1A) is to be read as if the references to psychiatric disorder were references to relevant disorder (within the meaning given by section 34A)."

(5) In subsection (4) (guardianship), in paragraph (a), for "mental disorder" substitute—

"(i) psychiatric disorder,
(ii) autism, or
(iii) learning disability which has serious behavioural consequences".

18 In section 73 (power to discharge restricted patients), after subsection (8) insert—

"(9) Subsection (4) of section 20 is to be read, for the purposes of this section, as if the reference to psychiatric disorder in paragraph (a) of that subsection were a reference to relevant disorder (within the meaning given by section 34A)."

19 In section 74 (restricted patients subject to restriction directions), in subsection (6), for "(8)" substitute "(9)".

*Transitory modifications of the Mental Health Act 1983*

20 Pending the coming into force of section 6(3)(b) of this Act, section 20A(6)(a) of the Mental Health Act 1983 is to be read as if—

(a) in relation to a patient admitted to hospital in pursuance of a hospital order (read in accordance with section 55(4) of the Mental Health Act 1983), as if for "mental" there were substituted "relevant";

(b) in relation to any other patient, for "mental" there were substituted "psychiatric".

21 (1) Pending the coming into force of section 7(2) of this Act, section 72(1)(b) and (c) and (1A) of the Mental Health Act 1983 are to be read—

(a) in relation to a patient admitted to hospital in pursuance of a hospital order (read in accordance with section 55(4) of the Mental Health Act 1983) or a Part 3 community patient, as if, for "mental", in each place it occurs, there were substituted "relevant";

(b) in relation to any other patient as if for "mental", in each place it occurs, there were substituted "psychiatric".

(2) In sub-paragraph (1)(a) "Part 3 community patient" means a person who is a community patient by virtue of a community treatment order under section 17A as applied by Part 1 of Schedule 1 to the Mental Health Act 1983.

22 Pending the coming into force of section 7(3) of this Act, section 72(1)(b) of the Mental Health Act 1983 is to be read, for the purposes of section 73 of that Act, as modified by paragraph 21(1)(a) of this Schedule.

23 Pending the coming into force of section 8(8) of this Act, section 64(3) of the Mental Health Act 1983 is to be read as if for "mental" there were substituted "relevant".

24 Pending the coming into force of section 13(3)(b) of this Act, section 58(1) of the Mental Health Act 1983 is to be read as if, in the words before paragraph (a), for "mental", there were substituted "relevant".

25 Pending the coming into force of section 29(5)(d) and (e) of this Act, section 20 of the Mental Health Act 1983 is to be read as if for "psychiatric" there were substituted "relevant".

## SCHEDULE 2

Section 24

### NOMINATED PERSONS

### PART 1

### APPOINTMENT ETC

1 The Mental Health Act 1983 is amended as follows.

2 Before section 31 and the italic heading before that section insert—

*"Nominated persons: appointment and removal*

**30A Nominated person**

Schedule A1—

(a) confers power to appoint a nominated person for a patient for the purposes of this Act, and

(b) makes provision about the duration of an appointment of a nominated person.

**30B Power of court to terminate appointment of nominated person**

(1) The county court may, on an application made in accordance with the provisions of this section, make an order terminating the appointment of a nominated person for a patient.

(2) An order under this section may be made on the application of—

(a) the patient,

(b) an approved mental health professional, or

(c) any person engaged in caring for the patient or interested in the patient's welfare.

(3) An application for an order under this section may only be made on the grounds that—

(a) the nominated person unreasonably objects to the making of an application for admission for treatment or a guardianship application in respect of the patient;

(b) the nominated person has, without due regard to the welfare of the patient or the interests of the public, exercised the power to discharge the patient under this Part of this Act or is likely to do so;

(c) the nominated person unreasonably objects to the making of a community treatment order in respect of the patient;

(d) the patient has done anything which is clearly inconsistent with the nominated person remaining the patient's nominated person;

(e) the nominated person lacks the capacity or competence to act as a nominated person;

(f) the nominated person is otherwise not a suitable person to act as a nominated person.

(4) If, immediately before the expiry of the period for which a patient is liable to be detained by virtue of an application for admission for assessment, an application under this section, which is an application made on the ground specified in subsection (3)(a) or (b), is pending in respect of the patient, that period is extended—

(a) in any case, until the application under this section has been finally disposed of, and

(b) if an order is made in pursuance of the application under this section, for a further period of seven days.

(5) For the purposes of subsection (4)—

(a) an application under this section is "pending" until it is finally disposed of, and

(b) an application under this section is "finally disposed of"—

(i) when the time allowed for appealing against the court's decision expires without an appeal being brought, or

(ii) where an appeal is brought within that time, when the appeal has been heard or withdrawn.

(6) Where an order under this section terminates the appointment of a nominated person for a patient, the person is disqualified from being re-appointed for the period specified by the court in the order.

(7) In this section "patient" means—

(a) a person by whom a nominated person is appointed under Part 1 of Schedule A1, or

(b) a person for whom a nominated person is appointed under Part 2 of that Schedule."

3 Before Schedule 1 insert –

"SCHEDULE A1 Section 30A

NOMINATED PERSON

**PART 1**

APPOINTMENT OF NOMINATED PERSON BY A PATIENT

*Right of patients etc to appoint nominated person*

1 A person (the "patient") may appoint another person to act as their nominated person for the purposes of this Act.

*Who can be appointed by a patient as a nominated person?*

2 (1) A person is eligible to be appointed as a nominated person under this Part of this Schedule only if the person –

(a) is an individual who meets the age requirement (see sub-paragraph (2)), and

(b) is not disqualified by section 30B(6) (disqualification as a result of court order terminating previous appointment as a nominated person).

(2) The table sets out the age requirement for a nominated person who is an individual.

| Where the patient is: | The nominated person must be: |
|---|---|
| 16 or over | 16 or over |
| Under 16 | 18 or over |

*Appointment formalities*

3 (1) The appointment of a nominated person under this Part of this Schedule is valid only if –

(a) the person is eligible to be appointed as a nominated person,

(b) the appointment is made by an instrument in writing signed by the patient in the presence of a health or care professional or independent mental health advocate ("the witness"),

(c) the nominated person has signed a statement that they –

(i) meet the age requirement (see paragraph 2(2)), and

(ii) agree to act as the nominated person, and

(d) the witness has signed a statement that –

(i) the instrument appointing the nominated person was signed by the patient in the presence of the witness,

(ii) the witness has no reason to think that the patient lacks capacity or competence to make the appointment,

(iii) the witness has no reason to think that the nominated person lacks capacity or competence to act as a nominated person,

(iv) the witness has no reason to think that any fraud or undue pressure has been used to induce the patient to make the appointment, and

(v) the witness has no reason to think that the nominated person is unsuitable to act as a nominated person.

*Duration of appointment*

4 The appointment of a nominated person under this Part of this Schedule ceases to have effect if—

(a) the nominated person dies;

(b) the patient appoints a different nominated person;

(c) the patient terminates the appointment under paragraph 5;

(d) the nominated person resigns under paragraph 6;

(e) the county court terminates the appointment under section 30B.

*Termination of appointment by patient*

5 (1) The appointment of a nominated person under this Part of this Schedule may be terminated by the patient giving the nominated person written notice.

(2) The notice must be—

(a) signed by the patient in the presence of a health or care professional or independent mental health advocate ("the witness"), and

(b) contain a statement, signed by the witness, that—

(i) the notice was signed by the patient in the presence of the witness,

(ii) the witness has no reason to think that the patient lacks capacity or competence to terminate the appointment, and

(iii) the witness has no reason to think that any fraud or undue pressure has been used to induce the patient to terminate the appointment.

*Resignation of nominated person*

6 (1) A nominated person appointed under this Part of this Schedule may resign by giving written notice to the patient and at least one of the persons mentioned in sub-paragraph (2).

(2) The persons are—

(a) an approved mental health professional;

(b) the patient's responsible clinician (if any);

(c) in relation to a patient who is—

(i) liable to be detained in pursuance of an application for admission for assessment or treatment,

(ii) the subject of an application for admission for assessment or treatment, or

(iii) a community patient,

the relevant managers;

(d) in relation to a patient who is—

(i) subject to guardianship in pursuance of a guardianship application, or

(ii) the subject of a guardianship application,

the relevant local social services authority.

(3) The notice must be signed by the nominated person.

## PART 2

APPOINTMENT OF NOMINATED PERSON BY AN APPROVED MENTAL HEALTH PROFESSIONAL

*Power of approved mental health professional to appoint nominated person*

7 (1) Where an approved mental health professional reasonably believes that a relevant patient—

(a) lacks capacity or is not competent to appoint a nominated person, and

(b) has not appointed a person under Part 1 of this Schedule to act as their nominated person,

the professional may appoint a person to act as the patient's nominated person for the purposes of this Act.

(2) In this Schedule "relevant patient" means a person—

(a) who is liable to be detained in pursuance of an application for admission for assessment or treatment,

(b) who is the subject of an application for admission for assessment or treatment,

(c) in relation to whom an approved mental health professional is considering making an application for admission for assessment or treatment,

(d) who is a community patient,
(e) who is subject to guardianship in pursuance of a guardianship application,
(f) who is the subject of a guardianship application, or
(g) in relation to whom an approved mental health professional is considering making a guardianship application.

*Who can be appointed by an approved mental health professional as a nominated person?*

8 A person is eligible to be appointed as a nominated person under this Part of this Schedule only if the person—
(a) is an individual who meets the age requirement (see paragraph 2(2)) or is a local authority, and
(b) is not disqualified by section 30B(6) (disqualification as a result of court order terminating previous appointment as a nominated person).

*Selection of nominated person*

9 (1) This paragraph applies where an approved mental health professional is deciding who to appoint as a nominated person for a relevant patient who is aged 18 or over.

(2) If the relevant patient has a competent donee or deputy who is willing to act as the nominated person, the approved mental health professional must appoint the donee or deputy.

(3) In any other case, the approved mental health professional must, in deciding who to appoint, take into account the relevant patient's past and present wishes and feelings so far as reasonably ascertainable.

(4) In this paragraph—
(a) "donee" means a donee of a lasting power of attorney (within the meaning of section 9 of the Mental Capacity Act 2005) created by the patient;
(b) "deputy" means a deputy appointed for the patient by the Court of Protection under section 16 of that Act;
(c) a donee or deputy is "competent" if the scope of the authority conferred on them as donee or deputy would extend to taking decisions of the kind taken by a nominated person.

10 (1) This paragraph applies where an approved mental health professional is deciding who to appoint as a nominated person for a relevant patient who is aged 16 or 17.

(2) If a local authority has parental responsibility for the relevant patient, the approved mental health professional must appoint that local authority.

(3) If no local authority has parental responsibility for the relevant patient but the relevant patient has a competent deputy who is willing to act as the nominated person, the approved mental health professional must appoint the deputy.

(4) In any case in which sub-paragraphs (2) and (3) do not identify who is to be appointed, the approved mental health professional must, in deciding who to appoint, take into account the relevant patient's past and present wishes and feelings so far as reasonably ascertainable.

(5) In this paragraph—

(a) "deputy" means a deputy appointed for the patient by the Court of Protection under section 16 of the Mental Capacity Act 2005;

(b) a deputy is "competent" if the scope of the authority conferred on them as donee or deputy would extend to taking decisions of the kind taken by a nominated person.

11 (1) This paragraph applies where an approved mental health professional is deciding who to appoint as a nominated person for a relevant patient who is aged under 16.

(2) If a local authority has parental responsibility for the relevant patient, the approved mental health professional must appoint that local authority.

(3) If no local authority has parental responsibility for the relevant patient and there is a person within the following list who is willing to act as the nominated person, the approved mental health professional must appoint such a person—

(a) a person who has parental responsibility for the relevant patient;

(b) a person named in a child arrangements order as a person with whom the relevant patient is to live;

(c) a person who is a special guardian of the relevant patient.

(4) In sub-paragraph (3) "child arrangements order" and "special guardian" have the same meaning as in the Children Act 1989 (see sections 8(1) and 14A(1) of that Act respectively).

(5) In any case in which sub-paragraphs (2) and (3) do not identify who is to be appointed, the approved mental health professional must, in deciding who to appoint, take into account the relevant patient's past and present wishes and feelings so far as reasonably ascertainable.

*Appointment formalities*

12 The appointment of a nominated person by an approved mental health professional is valid only if—

(a) the person is eligible to be appointed as a nominated person (see paragraph 8),

(b) the person agrees to act as the nominated person, and

(c) the appointment is made by an instrument in writing and signed by the professional.

*Notification of appointment*

13 (1) Where an approved mental health professional appoints a nominated person under this Part of this Schedule, the professional must—

(a) if the appointment relates to a relevant patient falling within paragraph 7(2)(a) to (d), notify the relevant managers;

(b) if the appointment relates to a relevant patient falling within paragraph 7(2)(e) to (g), notify the relevant local social services authority.

(2) A person who is notified under sub-paragraph (1) of the appointment of a nominated person must take such steps as the person considers appropriate to inform the relevant patient of the appointment.

*Duration of appointment*

14 The appointment of a nominated person under this Part of this Schedule ceases to have effect if—

(a) the nominated person dies;

(b) an approved mental health professional appoints a different nominated person for the relevant patient;

(c) an approved mental health professional terminates the appointment under paragraph 15;

(d) the relevant patient terminates the appointment under paragraph 16;

(e) the nominated person resigns under paragraph 17;

(f) the county court terminates the appointment under section 30B;

(g) the relevant patient appoints a different nominated person under Part 1 of this Schedule;

(h) the person for whom the nominated person was appointed ceases to be a relevant patient.

*Termination of appointment by approved mental health professional*

15 (1) Where an approved mental health professional has appointed a nominated person for a relevant patient, an approved mental health professional may terminate the appointment by giving written notice to the nominated person and the patient.

(2) The appointment may only be terminated on the grounds that—

(a) the person lacks capacity to exercise the functions of a nominated person,

(b) the person is otherwise not a suitable person to act as the nominated person, or

(c) the relevant patient has regained capacity or competence to appoint a nominated person under Part 1 of this Schedule.

(3) Where an approved mental health professional terminates the appointment of a nominated person under this Part of this Schedule, the professional must—

(a) if the appointment relates to a relevant patient falling within paragraph 7(2)(a) to (d), notify the relevant managers;

(b) if the appointment relates to a relevant patient falling within paragraph 7(2)(e) to (g), notify the relevant local social services authority.

*Termination of appointment by relevant patient*

16 (1) The appointment of a nominated person under this Part of this Schedule may be terminated by the relevant patient giving the nominated person written notice.

(2) The notice must be—

(a) signed by the relevant patient in the presence of a health or care professional or independent mental health advocate ("the witness"), and

(b) contain a statement, signed by the witness, that—

(i) the notice was signed by the patient in the presence of the witness,

(ii) the witness has no reason to think that the patient lacks capacity or competence to terminate the appointment, and

(iii) the witness has no reason to think that any fraud or undue pressure has been used to induce the patient to terminate the appointment.

*Resignation of nominated person*

17 (1) A nominated person appointed by an approved mental health professional may resign by giving written notice to the patient and at least one of the persons mentioned in sub-paragraph (2).

(2) The persons are—

(a) an approved mental health professional;

(b) the relevant patient's responsible clinician (if any);

(c) in relation to a relevant patient falling within paragraph 7(2)(a), (b) or (d), the relevant managers;

(d) in relation to a relevant patient falling within paragraph 7(2)(e) or (f), the relevant local social services authority.

(3) The notice must be signed by the nominated person.

## PART 3

DEFINITIONS

*"Health or care professional"*

18 In this Schedule "health or care professional" means—

(a) a registered medical practitioner;

(b) a registered nurse or midwife;

(c) a person registered as a member of a profession to which the Health and Social Work Professions Order 2001 (S.I. 2002/254) for the time being extends;

(d) a person registered as a social worker in the register maintained by Social Work England under section 39(1) of the Children and Social Work Act 2017;

(e) a person registered as a social worker in the register maintained by Social Care Wales under section 80 of the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2).

*"Independent mental health advocate"*

19 In this Schedule "independent mental health advocate", in relation to a person appointing a nominated person, means an independent mental health advocate appointed under arrangements made under section 130A or 130E.

*"Capacity"*

20 In relation to a person who has attained the age of 16 years—

(a) references in this Schedule to lacking capacity are to lacking capacity within the meaning of the Mental Capacity Act 2005, and

(b) references in this Schedule to having, ceasing to have or gaining capacity are to be read accordingly.

*"Relevant managers"*

21 References in this Schedule to "the relevant managers" are—

(a) in relation to a patient who is liable to be detained under this Act in a hospital or registered establishment, the managers of the hospital or registered establishment;

(b) in relation to a patient who is the subject of an application for admission for assessment or treatment, the managers of the hospital or registered establishment to which admission is sought;

(c) in relation to a patient in relation to whom an approved mental health professional is considering making an application for admission for assessment or treatment, the managers of the hospital or registered establishment to which admission would be sought;

(d) in relation to a community patient, the managers of the responsible hospital.

*"Relevant local social services authority"*

22 References in this Schedule to "the relevant local social services authority" are—

(a) in relation to a person who is subject to guardianship—

(i) where the patient is subject to the guardianship of a local social services authority, to that authority;

(ii) where the patient is subject to the guardianship of a person other than a local social services authority, to the local social services authority for the area in which that person resides;

(b) in relation to a person who is the subject of a guardianship application, or in relation to whom an approved mental health professional is considering making a guardianship application—

(i) where the application names or would name a local social services authority as guardian, to that authority;

(ii) where the application names or would name a person other than a local social services authority as guardian, to the local social services authority for the area in which the person named as guardian resides.

*"Relevant patient"*

23 In this Schedule "relevant patient" has the meaning given by paragraph 7(2)."

## PART 2

FUNCTIONS OF NOMINATED PERSON

4 The Mental Health Act 1983 is amended as follows.

5 In section 4 (admission for assessment in cases of emergency), in subsection (2), for "the nearest relative of the patient" substitute "the patient's nominated person".

6 (1) Section 11 (general provisions as to applications) is amended as follows.

(2) In subsection (1), for "the nearest relative of the patient" substitute "the patient's nominated person".

(3) In subsection (3)—

(a) for "the nearest relative of the patient" substitute "the patient's nominated person";

(b) for "the nearest relative" substitute "the nominated person".

7 In section 13 (duty of approved mental health professionals to make applications for admission or guardianship), in subsection (4), for "the nearest relative", in both places it occurs, substitute "the nominated person".

8 In section 14 (social reports), for "nearest relative" substitute "nominated person".

9 In section 23 (discharge of patients), in subsection (2)(a), (b) and (c), for "the nearest relative of the patient" substitute "the patient's nominated person".

10 In section 24 (visiting and examination of patient), in subsection (1), for "the nearest relative", in both places it occurs, substitute "the nominated person".

11 Omit sections 26 to 30 and the italic heading before section 26.

12 In section 32 (regulations for purposes of Part), in subsection (2)—

(a) at the end of paragraph (c) insert "and";

(b) omit paragraph (e) and the "and" before it.

13 In section 33 (special provisions as to wards of court), in subsection (2), for "nearest relative" substitute "nominated person".

14 In section 66 (applications to tribunals), in subsection (1), in sub-paragraph (ii), for "his nearest relative" substitute "the patient's nominated person".

15 In section 69 (applications to tribunals concerning patients subject to hospital and guardianship orders), in subsection (1)(a) and (b)(ii), for "the nearest relative of the patient" substitute "the patient's nominated person".

16 In section 116 (welfare of certain hospital patients), in subsection (2) omit paragraph (c) and the "or" before it.

17 In section 118 (code of practice), in subsection (1)—

(a) omit the "and" at the end of paragraph (a);

(b) after paragraph (b) insert—

"(c) for the guidance of nominated persons in relation to their functions under this Act and for the guidance of health or care professionals within the meaning of paragraph 17 of Schedule A1 in respect of their functions under that Schedule;".

18 In section 130B (arrangements in relation to independent mental advocates: England), in subsection (5)(a), for "nearest relative" substitute "nominated person".

19 In section 130D (duty to give information about independent mental health advocates), in subsection (5), for "nearest relative" substitute "nominated person".

20 In section 130H (independent mental health advocates for Wales: supplementary powers and duties), in subsection (3)(b), for "nearest relative" substitute "nominated person".

21 In section 130K (duty to give information about independent mental health advocates to Welsh qualifying compulsory patients), in subsection (6)(a), for "nearest relative" substitute "nominated person".

22 In section 132 (duty of managers of hospitals to give information to detained patients), in subsection (4), for "nearest relative" substitute "nominated person".

23 In section 132A (duty of managers of hospitals to give information to community patients), in subsection (3), for "nearest relative" substitute "nominated person".

24 (1) Section 133 (duty of managers of hospitals to give information to community patients) is amended as follows.

(2) In the heading for "nearest relatives" substitute "nominated persons".

(3) In subsection (1)—

(a) for "nearest relative", in the first place it occurs, substitute "nominated person";

(b) for "nearest relative of the patient" substitute "patient's nominated person".

(4) In subsections (1B) and (2), for "nearest relative" substitute "nominated person".

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

(2) Omit the definition of "nearest relative".

(3) At the appropriate place insert—

""nominated person", in relation to a patient, means a person for the time being appointed by or for the patient under Schedule A1;".

## PART 3

### PATIENTS CONCERNED IN CRIMINAL PROCEEDINGS ETC: FUNCTIONS OF NOMINATED PERSON

26 The Mental Health Act 1983 is amended as follows.

27 After section 36 (but before the italic heading after that section) insert—

**"36A Remands to hospital: nominated person**

Sections 30A and 30B and Schedule A1 (nominated person) apply in relation to a person remanded to hospital under section 35 or 36 as they apply in relation to a person subject to an order under section 41 (see section 41(3) and Part 2 of Schedule 1)."

28 In section 38 (interim hospital orders), after subsection (7) insert—

"(8) Sections 30A and 30B and Schedule A1 (nominated person) apply in relation to an offender subject to an interim hospital order as they apply in relation to a person subject to an order under section 41 (see section 41(3) and Part 2 of Schedule 1)."

29 In Part 1 of Schedule 1 (application of certain provisions to patients subject to hospital and guardianship orders who are not subject to special restrictions)—

(a) in paragraph 1, for "26 to 28" substitute "30A";

(b) in paragraph 2—

(i) after "23" insert ", 30B";

(ii) after "68" insert "and Schedule A1";

(iii) for "10" substitute "11";

(c) in paragraph 8(b), for "nearest relative" substitute "nominated person";

(d) after paragraph 8 insert—

"8ZA In section 30B—

(a) in subsection (2)(b) the reference to an approved mental health professional is to be read as a reference to the responsible clinician;

(b) in subsection (3), paragraphs (a) and (b) are to be omitted.";

(e) in paragraph 9 for "paragraph (ii)" substitute "paragraphs (ia), (ib) and (ii)";

(f) after paragraph 10 insert—

"11 In Schedule A1, references to an approved mental health professional are to be read as references to the responsible clinician."

30 In Part 2 of Schedule 1 (application of certain provisions to patients subject to hospital and guardianship orders who are subject to special restrictions)—

(a) in paragraph 1, after "Sections" insert "30A,";

(b) in paragraph 2—

(i) after "23" insert ", 30B";

(ii) after "34" insert "and Schedule A1";

(iii) for "8" substitute "9";

(c) in paragraph 5—

(i) omit the "and" at the end of paragraph (b);

(ii) at the end of paragraph (c) insert "and

(d) in subsection (3A), after paragraph (a) there is to be inserted—

"(za) is inappropriate,"";

(d) in paragraph 7(b)(i), for "the nearest relative of the patient" substitute "the patient's nominated person";

(e) after paragraph 7 insert—

"7A In section 30B—

(a) in subsection (2)(b) the reference to an approved mental health professional is to be read as a reference to the responsible clinician;

(b) in subsection (3), paragraphs (a) to (c) are to be omitted.";

(f) after paragraph 8 insert—

"9 In Schedule A1, references to an approved mental health professional are to be read as references to the responsible clinician."

## SCHEDULE 3

section 40

### INDEPENDENT MENTAL HEALTH ADVOCATES

1 The Mental Health Act 1983 is amended as follows.

2 (1) Section 118 (code of practice) is amended as follows.

(2) In subsection (1), after paragraph (c) (as inserted by Schedule 2 to this Act) insert—

"(d) for the guidance of independent mental health advocates appointed under arrangements made under section 130A or 130E;".

(3) Omit subsection (1A).

3 (1) Section 130A (independent mental health advocates) is amended as follows.

(2) In subsection (1), for "qualifying patients" substitute "English qualifying patients".

(3) After subsection (1) insert—

"(1A) In this Part "English qualifying patient" means—

(a) an English qualifying compulsory patient (see section 130C), or

(b) an English qualifying informal patient (see section 130CA)."

4 (1) Section 130B (arrangements under section 130A) is amended as follows.

(2) In subsection (1), for "a qualifying patient", in both places it occurs, substitute "an English qualifying compulsory patient".

(3) In subsection (2)—

(a) for "a qualifying patient" substitute "an English qualifying compulsory patient";

(b) omit the "and" at the end of paragraph (a);

(c) after paragraph (b) insert—

"(c) help (by way of representation or otherwise)—

(i) for patients who wish to become involved, or more involved, in decisions made about their care or treatment, or care or treatment generally; and

(ii) for patients who wish to complain about their care or treatment; and

(d) the provision of information about other services which are or may be available to the patient."

(4) After subsection (2) insert—

"(2A) The help available to an English qualifying informal patient under arrangements under section 130A must include help in obtaining information about and understanding—

(a) what (if any) medical treatment is given to the patient or is proposed or discussed in the patient's case,

(b) why it is given, proposed or discussed, and

(c) the authority under which it is, or would be, given.

(2B) The help available under the arrangements to an English qualifying informal patient must also include—

(a) help (by way of representation or otherwise)—

(i) for patients who wish to become involved, or more involved, in decisions made about their care or treatment, or care or treatment generally, and

(ii) for patients who wish to complain about their care or treatment, and

(b) the provision of information about other services which are or may be available to the patient.

(2C) Arrangements under section 130A must require a provider of advocacy services, on becoming aware of an English qualifying compulsory patient for whom they are responsible, to arrange for an independent mental health advocate to visit and interview the patient (if possible) with a view to determining—

(a) whether the patient has the capacity or is competent to take a decision about whether to receive help from an independent mental health advocate,

(b) if the patient does have that capacity or competence, whether the patient wishes to receive such help, and

(c) if the patient does not have that capacity or competence, whether it is nonetheless in the patient's best interests to receive such help (which, if so, is to be provided under the arrangements).

(2D) For the purposes of subsection (2C)—

(a) "provider of advocacy services" means a person required by arrangements under section 130A to make available the services of independent mental health advocates, and

(b) a provider of advocacy services is "responsible" for an English qualifying compulsory patient if the arrangements require the provider to make available the services of an independent mental health advocate to help that patient."

(5) In subsection (3), for "the arrangements" substitute "arrangements under section 130A".

(6) In subsection (6) for "declining to be provided with" substitute "refusing consent to the provision of".

(7) After subsection (6) insert—

"(6A) A reference in this section to a patient who has capacity is to be read in accordance with the Mental Capacity Act 2005.""".

(8) In subsection (7) omit paragraph (a).

5 (1) Section 130C (section 130A: supplemental) is amended as follows.

(2) For the heading, substitute ""English qualifying compulsory patients"".

(3) Omit subsection (1).

(4) In subsection (2) for "A patient is a qualifying patient" substitute "For the purposes of this Part a patient is an English qualifying compulsory patient".

(5) In subsection (3)—

(a) in the words before paragraph (a), for "A patient is also a qualifying patient" substitute "For the purposes of this Part a patient is also an English qualifying compulsory patient";

(b) in paragraphs (a) and (b), for "a qualifying patient" substitute "an English qualifying compulsory patient".

(6) In subsection (4), for "a qualifying patient", in both places it occurs, substitute "an English qualifying compulsory patient".

(7) Omit subsections (4A) and (4B).

6 After section 130C insert—

**"130CA "English qualifying informal patients"**

For the purposes of this Part a patient is an "English qualifying informal patient" if—

(a) the patient is an in-patient at a hospital or registered establishment situated in England,

(b) the patient is receiving treatment for, or assessment in relation to, mental disorder at the hospital or registered establishment, and

(c) the patient is not liable to be detained under this Act or any other legislation or by virtue of a court order.

**130CB Local social services authority responsible for making arrangements under section 130A(1)**

(1) For the purposes of section 130A(1) a local social services authority is responsible for an English qualifying patient if—

(a) in the case of an English qualifying compulsory patient falling within section 130C(2)(a), the hospital or registered establishment in which the patient is liable to be detained is situated in that authority's area;

(b) in the case of an English qualifying compulsory patient falling within section 130C(2)(b), that authority is the responsible local social services authority within the meaning of section 34(3);

(c) in the case of an English qualifying compulsory patient falling within section 130C(2)(c), the responsible hospital is situated in that authority's area;

(d) in the case of an English qualifying compulsory patient falling within section 130C(3)—

(i) in a case where the patient has capacity or is competent to do so, the patient nominates that

authority as responsible for the purposes of section 130A, or

(ii) in any other case, a donee or deputy or the Court of Protection, or a person engaged in caring for the patient or interested in the patient's welfare, nominates that authority on the patient's behalf as responsible for the purposes of that section;

(e) in the case of an English qualifying informal patient, the hospital or registered establishment to which the patient is admitted as an in-patient is situated in that authority's area.

(2) In subsection (1)(d)—

(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 their 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 the their authority and in accordance with that Act.

**130CC Duty to notify providers of person's eligibility for advocacy services**

(1) The responsible person in relation to an English qualifying patient must take such steps as are practicable to give the appropriate provider of advocacy services the required information about the patient.

(2) In this section "the responsible person" means—

(a) in relation to an English qualifying compulsory patient falling within section 130C(2)(a), the managers of the hospital or registered establishment in which the patient is liable to be detained;

(b) in relation to an English qualifying compulsory patient falling within section 130C(2)(b), the responsible local social services authority within the meaning of section 34(3);

(c) in relation to an English qualifying compulsory patient falling within section 130C(2)(c), the managers of the responsible hospital;

(d) in relation to an English qualifying compulsory patient falling within section 130C(3), the managers of the hospital or registered establishment in which the treatment would be given;

(e) in relation to an English qualifying informal patient, the managers of the hospital or registered establishment to which the patient is admitted as an in-patient.

(3) In this section "appropriate provider of advocacy services", in relation to a patient, means the person required by arrangements under section 130A to make available the services of an independent mental health advocate to help that patient.

(4) In this section "the required information", in relation to a patient, means such information relating to the patient as may be prescribed in regulations made by the Secretary of State."

7 For section 130D substitute—

**"130DA Duty to give information to English qualifying informal patients**

(1) The responsible person in relation to an English qualifying informal patient must take such steps as are practicable to ensure that the patient understands—

(a) that help is available to the patient from an independent mental health advocate, and

(b) how the patient can obtain that help.

(2) In this section "the responsible person", in relation to an English qualifying informal patient, means the managers of the hospital or registered establishment to which the patient is admitted as an in-patient.

(3) The steps to be taken under subsection (1) must be taken as soon as practicable after the patient becomes an English qualifying informal patient.

(4) The steps that must be taken under subsection (1) include giving the requisite information both orally and in writing.

(5) The responsible person in relation to an English qualifying informal patient must, except where the patient otherwise requests, take such steps as are practicable to give the person (if any) appearing to the responsible person to be the patient's nominated person a copy of any information given to the patient in writing under subsection (1).

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

8 In section 130J (Welsh qualifying informal patients), in subsection (2), for paragraph (c) substitute—

"(c) the patient is not liable to be detained under this Act or any other legislation or by virtue of a court order".

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