

Mental Health (Amendment) (Scotland) Act 1983

1983 CHAPTER 39

An Act to amend the Mental Health (Scotland) Act 1960; and for connected purposes. [13th May 1983]

BE IT ENACTED by the Queen'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:—

Mental Welfare Commission for Scotland

Constitution of Mental Welfare Commission and remuneration etc. of members.

1.—(1) In subsection (2) of section 2 of the principal Act (which makes provision as to the composition of the Mental Welfare Commission for Scotland)—

(*a*) for the word "seven" there shall be substituted the word "ten";

(*b*) the words "and not more than eleven" shall cease to have effect; and

(*c*) for the words "one woman" there shall be substituted the words "three women".

(2) In subsection (3) of the said section 2 of the principal Act (which makes provision as to the quorum of the Mental Welfare Commission for Scotland) for the word "Four" there shall be substituted the word "Five".

(3) After subsection (4) of the said section 2 of the principal Act (which makes provision as to the appointment of Mental

Welfare commissioners by Her Majesty on the recommendation of the Secretary of State) there shall be inserted the following subsection—

" (4A) Before making a recommendation under subsection (4) of this section the Secretary of State shall consult such bodies as appear to him to be concerned.".

(4) For subsections (7) and (7A) of the said section 2 of the principal Act (which empower the Secretary of State to pay remuneration and allowances to commissioners, and defray expenses, of the Mental Welfare Commission for Scotland) there shall be substituted the following subsections—

" (7) The Mental Welfare Commission may—

(*a*) pay to the said commissioners such remuneration; and

(*b*) make provision for the payment of such pensions, allowances or gratuities to or in respect of the said commissioners,

as the Secretary of State may, with the approval of the Treasury, determine; and such determination may make different provision for different cases or different classes of case.

1978 c. 29.

(7A) The following provisions of the National Health Service (Scotland) Act 1978 shall apply to the Mental Welfare Commission as they apply to a Health Board, that is to say—

(*a*) sections 85(1), (2A), (4) and (6) (which contain provisions as to expenditure being met by the Secretary of State);

(*b*) sections 85A(1) and (3) (which impose financial duties); and

(*c*) section 86 (which provides for the auditing and examination of accounts).

(7B) The Secretary of State may provide for the Mental Welfare Commission such officers and servants and such accommodation as the Commission may require.".

Duties of Mental Welfare Commission.

2. In section 4 of the principal Act (which makes provision as to the functions and duties of the Mental Welfare Commission)—

(*a*) in subsection (2) after paragraph (*b*) there shall be inserted the following paragraph—

" (*bb*) in any case where—

(i) the authority for the detention of a patient

(A) has been renewed for a period of one or two years under section 39(2)(*b*) of this Act; and

(B) is renewed for a further period of one year under that section; and

(ii) the patient has not, during the period referred to in sub-paragraph (i)(A) of this paragraph—

(A) appealed to the sheriff under section 39(7) of this Act; or

(B) been visited by the Mental Welfare Commission under paragraph (*b*) of this subsection,

to visit the patient before the expiry of the period of one year referred to in sub-paragraph (i)(B) of this paragraph, unless the patient has previously been discharged, and on any such visit to afford an opportunity, on request, for private interview to any such patient;" and

(*b*) for subsection (6) there shall be substituted the following subsections—

"(6) It shall be the duty of the Mental Welfare Commission—

(*a*) to advise the Secretary of State, a Health Board or a local authority on any matter arising out of this Act which has been referred to the Commission by the Secretary of State, the Health Board, or the local authority, as the case may be; and

(*b*) to bring to the attention of the Secretary of State, a Health Board, a local authority or any other body any matter concerning the welfare of any persons who are suffering from mental disorder which the Commission consider ought to be brought to his or their attention.

(6A) The Mental Welfare Commission shall in 1985 and in every year thereafter publish a report on their activities; and copies of each such report shall be submitted by the Commission to the Secretary of State who shall lay copies before Parliament.

(6B) Where, in the course of carrying out any of their functions, the Mental Welfare Commission form the opinion that any patient who is—

(*a*) liable to be detained in a hospital; and

(*b*) either a restricted patient within the meaning of section 60A of this Act or a person mentioned in section 60E(1) or (2) of this Act

should be discharged, it shall be their duty to recommend accordingly to the Secretary of State.".

Power of Mental Welfare Commission to appoint persons to make enquiries or chair committees of commissioners.

3.—(1) In subsection (7) of the said section 4 of the principal Act—

(*a*) after the word " appoint " there shall be inserted "—

(*a*) "; and

(*b*) after the word " Act " there shall be inserted the words "; or

(*b*) a person, not being a commissioner—

(i) to make by himself; or

(ii) to act as Chairman of any committee of commissioners appointed under paragraph (*a*) of this subsection to make

any enquiry which they are obliged to make under subsection (2)(*a*) of this section ".

(2) After the said subsection (7) there shall be added the following subsection—

" (7A) A person appointed under subsection (7)(*b*) of this section shall be—

(*a*) an advocate; or

(*b*) a solicitor

of not less than five years standing.".

Appointment etc. of staff by Mental Welfare Commission.

4. After section 5 of the principal Act there shall be inserted the following section—

"Appointment and payment of staff.

5A. The Mental Welfare Commission may—

(*a*) appoint officers and servants on such terms as to remuneration and conditions of service; and

(*b*) make provision for the payment of—

(i) such remuneration to—

(A) any person appointed under section 4(7)(*b*) of this Act; and

(B) any medical practitioner or other person appointed for the purposes of the provisions mentioned in section 93B(2) of this Act; and

(ii) such pensions, allowances or gratuities to or in respect of any officers, servants, persons and medical practitioners appointed under paragraph (*a*)

or as mentioned in paragraph (b)(i) of this section,

as the Secretary of State may, with the consent of the Treasury determine; and such determination may make different provision for different cases or different classes of case.".

Definition of " mental disorder "

Definition of " mental disorder ".

5.—(1) For references in the principal Act to mental deficiency there shall be substituted references to mental handicap.

(2) Section 6 of the principal Act (which defines " mental disorder ") shall be renumbered as subsection (1) of that section and after that subsection (as so renumbered) there shall be inserted the following subsection—

" (2) No person shall be treated under this Act as suffering from mental disorder by reason only of promiscuity or other immoral conduct, sexual deviancy or dependence on alcohol or drugs.".

(3) In section 96 of the principal Act (which makes provision as to the protection of female defectives)—

(*a*) for the words " a defective " in each place where they occur there shall be substituted the words " protected by the provisions of this section ";

(*b*) after subsection (6) there shall be inserted the following subsection—

" (6A) A woman is protected by the provisions of this section if she is suffering from a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning "; and

(*c*) in subsection (7) the definition of " defective " and the word " and " which follows it shall cease to have effect.

After-care

Provision of after-care services.

6. After section 7 of the principal Act there shall be inserted the following section—

" Provision of after-care services.

7A.—(1) It shall be the duty of a local authority to provide after-care services for any persons who are or have been suffering from mental disorder.

(2) In providing after-care services under subsection (1) of this section a local authority shall co-operate with such health board or boards and such

voluntary organisations as appear to the local authority to be concerned.

(3) The duty imposed by this section is without prejudice to any other power or duty which a local authority may have in relation to the provision of after-care services.".

Mental health officers

Appointment and functions of mental health officers.

7.—(1) After section 7A of the principal Act there shall be inserted the following section—

"Appointment of mental health officers.

7B.—(1) A local authority shall appoint a sufficient number of persons for the purpose of discharging in relation to their area the functions of mental health officers under this Act.

(2) Any officer appointed by a local authority to act as a mental health officer after the date of coming into force of section 64(4) of the Local Government (Scotland) Act 1973 (that is to say, 16th May 1975) but before the coming into force of section 7 of the Mental Health (Amendment) (Scotland) Act 1983 shall be deemed to have been appointed under subsection (1) of this section as if that subsection and section 64(5)(*bb*) of the said Act of 1973 had come into force on 16th May 1975.

1973 c. 63.

(3) On and after a day appointed by the Secretary of State by order, no person shall be appointed to act as a mental health officer under subsection (1) of this section unless he is approved by the local authority as having competence in dealing with persons who are suffering from mental disorder; and before appointing a person to act as a mental health officer, a local authority shall—

(*a*) ensure that the person has such qualifications, experience and competence in dealing with persons who are suffering from mental disorder; and

(*b*) have regard to such other matters,

as the Secretary of State may direct.

(4) No person appointed to act as a mental health officer before the appointed day shall continue so to act on or after the appointed day unless—

(*a*) he is approved by the local authority as having competence in dealing with persons who are suffering from mental disorder; and

(*b*) the local authority are satisfied that he has such qualifications, experience and competence in dealing with persons who are suffering from mental disorder as the Secretary of State may direct."

(2) Section 64(5) of the Local Government (Scotland) Act 1973 (which provides for the continued existence of certain specific officers of local authorities) shall be amended by the insertion of the following paragraph after paragraph (*b*) thereof— 1973 c. 65.

" (*bb*) section 7B of the Mental Health (Scotland) Act 1960 (mental health officers) ; ". 1960 c. 61.

(3) In section 26 of the principal Act (which makes provision as to applications for admission to hospital or for guardianship)—

(*a*) after subsection (1) there shall be inserted the following subsection—

" (1A) It shall be the duty of a local authority, if so required by the nearest relative of a patient residing in their area, to direct a mental health officer as soon as practicable to take the patient's case into consideration with a view to making an application for admission or a guardianship application in respect of the patient ; and if in any such case that officer decides not to make an application he shall inform the nearest relative of his reasons in writing." ;

(*b*) in subsection (2) after the words " guardianship application " there shall be inserted the words " —

(*a*) to interview the patient within the period of fourteen days ending with the date on which the proposed application is submitted to the sheriff for his approval and, in the case of an application for admission, to satisfy himself that detention in a hospital is, in all the circumstances of the case, the most appropriate way of providing the care and medical treatment of which the patient stands in need ; and

(*b*) " ;

(*c*) in subsection (3)—

(i) for the words " A person " there shall be substituted the words " The nearest relative of the patient " ; and

(ii) for the words " that person " there shall be substituted the word " he " ; and

(*d*) after the said subsection (3) there shall be added the following subsections—

" (4) A mental health officer shall make an application for admission in respect of a patient where—

(*a*) he has received the two medical recommendations required for the purposes of such an application ; and

(*b*) he has been requested to do so by a medical practitioner who gave one of the medical recommendations,

and the application shall include—

(i) a statement of the mental health officer's opinion as to whether or not the application should be granted ; and

(ii) a statement of the grounds on which that opinion is based.

(5) An application under this section by a mental health officer may be made outside the area of the local authority by whom he is appointed.".

(4) In subsection (2) of section 29 of the principal Act (which makes provision for notification of compulsory admission of a patient to a hospital or of his compulsory reception into guardianship)—

(*a*) after the word " notify " there shall be inserted "—

(*a*) " ; and

(*b*) after the word " reception ", where it first occurs, there shall be inserted the words " ; and

(*b*) in the case of an admission to a hospital, the local authority for the area in which the hospital is situated (except where the admission is in pursuance of an application made by a mental health officer appointed by that authority) ".

(5) After the said subsection (2) there shall be inserted the following subsection—

" (2A) It shall be the duty of a local authority, on being notified under subsection (2) of this section, to arrange for a mental health officer as soon as practicable and, in any event, not later than seven days before the expiry of the period of twenty-eight days beginning with the day on which the patient was admitted to a hospital—

(*a*) to interview the patient whose admission has been notified to them ; and

(*b*) to provide the responsible medical officer and the Mental Welfare Commission with a report on the patient's social circumstances

unless he has done so under section 32A(5) of this Act within the previous twenty-eight days.".

Admission to and detention in hospital and guardianship

Grounds for compulsory admission to hospital or guardianship

8.—(1) For subsections (1) and (2) of section 23 of the principal Act (which provides for the admission to hospital or guardianship of certain patients) there shall be substituted the following subsection—

" *Grounds for hospital admission*

Patients liable to be detained in hospital.

23.—(1) A person may, in pursuance of an application for admission under section 24(1) of this Act, be admitted to a hospital and there detained on the grounds that—

(*a*) he is suffering from a mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment in a hospital; and

(*b*) in the case where the mental disorder from which he suffers is a persistent one manifested only by abnormally aggressive or seriously irresponsible conduct, such treatment is likely to alleviate or prevent a deterioration of his condition; and

(*c*) in the case where the mental disorder from which he suffers is a mental handicap, the handicap comprises—

(i) severe mental impairment; or

(ii) mental impairment, where such treatment is likely to alleviate or prevent a deterioration of his condition; and

(*d*) it is necessary for the health or safety of that person or for the protection of other persons that he should receive such treatment and it cannot be provided unless he is detained under this Part of this Act.".

(2) In section 24(2) of the principal Act (under which admission applications are to be founded on medical recommendations based on certain statements as to the patient's condition) for paragraphs (*b*) and (*c*) there shall be substituted the following paragraph— "; and

(*b*) a statement as to which of the grounds set out in section 23(1) of this Act apply in relation to the patient.".

(3) In section 25 of the principal Act (which makes provision as to the guardianship of patients)—

(*a*) in subsection (1) after the word "patient" there shall be inserted the words "who has attained the age of 16 years"; and

(*b*) after the said subsection (1) there shall be inserted the following subsection—

" (1A) A guardianship application may be made in respect of a patient on the grounds that—

(*a*) he is suffering from a mental disorder of a nature or degree which warrants his reception into guardianship ; and

(*b*) it is necessary in the interests of the welfare of the patient that he should be so received." ; and

(*c*) for subsection (4) there shall be substituted the following subsection—

" (4) A guardianship application shall be founded on and accompanied by two medical recommendations in the prescribed form and a recommendation by a mental health officer in such form ; and

(*a*) each medical recommendation shall include—

(i) a statement of the form of mental disorder from which the patient is suffering being mental illness or mental handicap or both ; and

(ii) a statement that the ground set out in subsection (1A)(*a*) of this section applies in relation to the patient,

being statements of opinion, together with the grounds on which those statements are based ;

(*b*) the recommendation by the mental health officer shall include—

(i) a statement, being a statement of opinion, that the ground set out in subsection (1A)(*b*) of this section applies in relation to the patient, together with the grounds on which the statement is based ; and

(ii) a statement as to whether he is related to the patient and of any pecuniary interest that he may have in the reception of the patient into guardianship.".

(4) Sections 40 and 44(1) of the principal Act (which relate to the detention and guardianship of patients who attain the age of 25 years during detention or guardianship) shall cease to have effect.

Medical recommendations.

9.—(1) Section 27 of the principal Act (which makes provision as to medical recommendations required for applications) shall be renumbered as subsection (1) of that section and—

(*a*) in paragraph (*a*) for the words "at an interval of not more than seven days" there shall be substituted the words ", in which case not more than five days must have elapsed between the days on which the separate examinations took place,"; and

(*b*) in paragraph (*c*) after the word "and" there shall be inserted the words ", subject to subsection (2) of this section,".

(2) After the said subsection (1) (as so renumbered) there shall be added the following subsections—

"(2) Notwithstanding the provisions of paragraph (*c*) of subsection (1) of this section, both medical recommendations may be given by practitioners on the staff of the hospital named in the application where—

(*a*) compliance with the said paragraph (*c*) would result in a delay involving serious risk to the health or safety of the patient or to the safety of other persons;

(*b*) one of the practitioners giving the recommendations works at the hospital for less than half the time which he is bound by contract to devote to work in the health service; and

(*c*) if one of the practitioners is a consultant, the other does not work (whether at the hospital or elsewhere) in a grade in which he is under that consultant's directions.

(3) For the purposes of this section a general practitioner who is employed part-time in a hospital shall not be regarded as a practitioner on its staff.".

Duty of medical officer to discharge patient.

10. For subsection (3) of section 29 of the principal Act (which makes provision as to a medical review within the fourth week after admission into hospital or reception into guardianship) there shall be substituted the following subsection—

"(3) Where a patient has been admitted as aforesaid it shall be the duty of the responsible medical officer—

(*a*) within the period of seven days ending on the twenty-eighth day after his admission—

(i) to examine the patient or to obtain from another medical practitioner a report on the condition of the patient; and

(ii) to consult such other person or persons who appear to him to be principally concerned with the patient's medical treatment; and

(*b*) if the responsible medical officer is satisfied, as a result of the examination or report, that—

(i) the patient is not suffering from mental disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment; or

(ii) it is not necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment,

to order the discharge of the patient; or

(*c*) if the responsible medical officer does not order the discharge of the patient, so to inform the Mental Welfare Commission, the nearest relative of the patient, the local authority and the board of management concerned.".

Effect of guardianship applications.

11. In subsection (4) of the said section 29 of the principal Act (which makes provision as to the effects of guardianship applications) for the words from " all such powers " to the end of the subsection there shall be substituted the words " the following powers—

(*a*) power to require the patient to reside at a place specified by the authority or person named as guardian;

(*b*) power to require the patient to attend at places and times so specified for the purpose of medical treatment, occupation, education or training;

(*c*) power to require access to the patient to be given, at any place where the patient is residing, to any medical practitioner, mental health officer or other person so specified.".

Amendment of law relating to emergency admissions.

12. In section 31 of the principal Act (which makes provision for emergency admission to hospital)—

(*a*) in subsection (1) for the words from " him " to the end of the subsection there shall be substituted the words " his health or safety or for the protection of other persons, that he should be admitted to a hospital, but that compliance with the provisions of this Part of this Act relating to an application for admission before the admission of the patient to a hospital would involve undesirable delay.";

(*b*) in subsection (2) the words from " Except " to " refers " shall cease to have effect;

(*c*) in subsection (3) for the words " seven days " there shall be substituted the words " seventy-two hours from the time of his admission " ;

(*d*) in subsection (5) after the word " patient " where it occurs for the second time there shall be inserted the words " , the Mental Welfare Commission " ; and

(*e*) at the end there shall be added the following subsection—

" (6) A patient who has been detained in a hospital under this section shall not be further detained under this section immediately after the expiry of the period of detention.".

Power to detain patients already in hospital.

13. Section 32 of the principal Act (which makes provision as to the detention of patients already in hospital) shall be renumbered as subsection (1) of that section and after that subsection (as so renumbered) there shall be inserted the following subsections—

" (2) If, in the case of a patient who is already in a hospital receiving treatment for mental disorder and who is not liable to be detained therein under this Part of this Act, it appears to a nurse of the prescribed class—

(*a*) that the patient is suffering from mental disorder to such a degree that it is necessary for his health or safety or for the protection of other persons for him to be immediately restrained from leaving the hospital ; and

(*b*) that it is not practicable to secure the immediate attendance of a medical practitioner for the purpose of making an emergency recommendation,

the patient may be detained in the hospital for a period of two hours from the time when he was first so detained or until the earlier arrival at the place where the patient is detained of a medical practitioner having power to make an emergency recommendation.

(3) Where a patient is detained under subsection (2) of this section the nurse shall as soon as possible record in writing—

(*a*) the facts mentioned in paragraphs (*a*) and (*b*) of the said subsection (2) ;

(*b*) the fact that the patient has been detained ; and

(*c*) the time at which the patient was first so detained.

(4) A record made by a nurse under subsection (3) of this section shall, as soon as possible after it is made, be delivered by the nurse, or by a person authorised by the

nurse in that behalf, to the board of management of the hospital; and a copy of the record shall, within 14 days of the date on which the board of management received it, be sent by them to the Mental Welfare Commission.

(5) A patient who has been detained in a hospital under subsection (2) of this section shall not be further detained thereunder immediately after the expiry of that period of detention.

(6) In subsection (2) of this section "prescribed" means prescribed by an order made by the Secretary of State.".

Short term detention.

14. After section 32 of the principal Act there shall be inserted the following section—

"Short term detention.

32A.—(1) Where a patient is admitted to a hospital in pursuance of section 31 of this Act he may be detained in that hospital after the expiry of the period of seventy-two hours referred to in subsection (3) of that section if—

(*a*) a report on the condition of the patient has been furnished to the board of management of the hospital; and

(*b*) where practicable, consent to the continued detention has been given by the nearest relative of the patient or by a mental health officer.

(2) The report referred to in subsection (1)(*a*) of this section shall satisfy the following requirements—

(*a*) such report shall be given by a medical practitioner approved for the purposes of section 27(1)(*b*) of this Act who has personally examined the patient and shall include a statement that in the opinion of the medical practitioner—

(i) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to be detained in a hospital for at least a limited period; and

(ii) the patient ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons;

(*b*) where consent to the continued detention has not been obtained such report shall include

a statement of the reasons for not obtaining such consent; and

(*c*) the requirement set out in section 27(1)(*e*) of this Act.

(3) Subject to subsection (6) of this section, where a report is duly furnished under subsection (1) of this section the authority for the detention of the patient shall be thereby renewed for a further period of twenty eight days from the expiry of the period of seventy two hours referred to in the said subsection (1).

(4) Where a patient is detained in a hospital in pursuance of this section, the board of management of the hospital shall so inform—

(*a*) the Mental Welfare Commission;

(*b*) where practicable, the nearest relative of the patient (except where the nearest relative has consented under subsection (1)(*b*) of this section); and

(*c*) the local authority (except in a case where a mental health officer appointed by that local authority has consented under subsection (1)(*b*) of this section)

not later than seven days after the patient was detained.

(5) It shall be the duty of a local authority, on being informed under subsection (4) of this section of the admission of a patient, to arrange for a mental health officer, as soon as practicable and, in any event, not later than 7 days before the expiry of the period of 28 days referred to in subsection (3) of this section—

(*a*) to interview the patient; and

(*b*) to provide the responsible medical officer and the Mental Welfare Commission with a report on the patient's social circumstances.

(6) Any patient may, within the period for which the authority for his detention is renewed by virtue of a report furnished in respect of him under this section, appeal to the sheriff to order his discharge and the provisions of section 39(8)(*a*) of this Act shall apply to that appeal as they apply to an appeal under section 39(7) of this Act.

(7) A patient who has been detained in a hospital under this section shall not be further detained under

this section nor detained under section 31 of this Act immediately after the expiry of the period of detention under this section.".

Leave of absence and patients absent without leave.

15.—(1) In subsection (3) of section 35 of the principal Act (which makes provision as to the custody of a patient on leave of absence) at the end there shall be added the words " or, if the patient is required in accordance with conditions imposed on the grant of leave of absence to reside in another hospital, of any officer on the staff of that other hospital.".

(2) In section 36 of the principal Act (which makes provision as to the return and re-admission of patients absent without leave)—

(*a*) after subsection (1) there shall be inserted the following subsection—

" (1A) Where the place referred to in paragraph (*c*) of subsection (1) of this section is a hospital other than the one in which the patient is for the time being liable to be detained, the references in that subsection to an officer on the staff of the hospital and to the board of management of the hospital shall respectively include references to an officer on the staff of the first-mentioned hospital and to the board of management of that hospital." ;

(*b*) in subsection (3) for the words from " following period " to " twenty-eight days ; " there shall be substituted the words " period of twenty-eight days beginning with the first day of his absence without leave " ; and

(*c*) at the end there shall be added the following subsection—

" (4) A patient shall not be taken into custody under this section if the period for which he is liable to be detained is that specified in section 31(3), 32(2) or 32A(3) of this Act and that period has expired.".

Duration of authority for detention and guardianship.

16. In section 39 of the principal Act (which makes provision as to the duration of authority for detention and guardianship)—

(*a*) in subsection (1) for the words " one year " there shall be substituted the words " six months " ;

(*b*) in subsection (2)—

(i) for the words " one year " there shall be substituted the words " six months " ; and

(ii) for the words " two years " in both places where they occur there shall be substituted the words " one year " ;

(*c*) for subsection (3) there shall be substituted the following subsection—

" (3) Within the period of two months ending on the day when a patient who is liable to be detained in a hospital under this Part of this Act would cease to be so liable under this section in default of the renewal of the authority for his detention, it shall be the duty of the responsible medical officer—

(*a*) to examine the patient or to obtain from another medical practitioner a report on the condition of the patient; and

(*b*) to consult such other person or persons who appear to him to be principally concerned with the patient's medical treatment,

and thereafter to assess the need for the detention of the patient to be continued; and if it appears to him that the grounds set out in section 23(1) of this Act apply to the patient he shall furnish to the board of management of the hospital where the patient is liable to be detained and to the Mental Welfare Commission a report to that effect in the prescribed form, along with the report first mentioned if such a report has been obtained.";

(*d*) for subsection (4) there shall be substituted the following subsection—

" (4) Within the period of two months ending with the day on which a patient who is subject to guardianship under this Part of this Act would cease under this section to be so liable in default of the renewal of the authority for his guardianship, it shall be the duty—

(*a*) of the responsible medical officer to examine the patient or to obtain from another medical practitioner a report on the condition of the patient; and, if it appears to him that the ground set out in section 25(1A)(*a*) of this Act continues to apply in relation to the patient, to furnish to such mental health officer as the local authority concerned may direct a report to that effect in the prescribed form along with the report first mentioned if such a report has been obtained; and

(*b*) of that mental health officer to consider whether the ground set out in section 25(1A)(*b*) of this Act continues to apply in relation to the patient and, if it appears to him that it does continue so to apply, to

furnish to the local authority concerned and to the Mental Welfare Commission a report to that effect in the prescribed form along with the report or reports furnished to him under paragraph (*a*) of this subsection."

(*e*) in subsection (7) the words " who has attained the age of sixteen years " shall cease to have effect ; and

(*f*) at the end there shall be added the following subsection—

" (8) Where an appeal is made to the sheriff by a patient under subsection (7) of this section, the sheriff shall order the discharge of the patient—

(*a*) in a case where the patient is liable to be detained in a hospital, if he is satisfied that—

(i) the patient is not at the time of the hearing of the appeal suffering from mental disorder of a nature or degree which makes it appropriate for him to be liable to be detained in hospital for medical treatment ; or

(ii) it is not necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment ;

(*b*) in a case where the patient is subject to guardianship, if he is satisfied that—

(i) the patient is not at the time of the hearing of the appeal suffering from mental disorder of a nature or degree which warrants his remaining under guardianship ; or

(ii) it is not necessary in the interests of the welfare of the patient that he should remain under guardianship.".

Discharge of patients.

17. In section 43 of the principal Act (which makes provision for the discharge of patients)—

(*a*) for subsection (2) there shall be substituted the following subsections—

(2) The responsible medical officer or the Mental Welfare Commission shall make an order for discharge in respect of a patient where he is or they are satisfied—

(*a*) in the case of a patient liable to be detained

in a hospital under this Part of this Act, that—

(i) he is not suffering from mental disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment; or

(ii) it is not necesary for the health or safety of the patient or for the protection of other persons that he should receive such treatment;

(*b*) in the case of a patient subject to guardianship, that he is not suffering from mental disorder of a nature or degree which warrants his remaining under guardianship.

(2A) The local authority concerned or the Mental Welfare Commission shall make an order for discharge in respect of a patient subject to guardianship where they are satisfied that it is not necessary in the interests of the welfare of the patient that he should remain under guardianship." and

(*b*) in subsection (3) after the word " section " there shall be inserted " 32A,".

Grounds for withholding of consent to discharge of patient.

18.—(1) In subsection (5) of section 43 of the principal Act (which provides that the responsible medical officer shall furnish a report in any case where he does not consent to the discharge of a patient by the board of management of a hospital or the local authority)

(*a*) the words " or by the local health authority concerned " and " or, as the case may be, to that authority ", shall cease to have effect; and

(*b*) for the words from " the patient cannot " to the end of the subsection there shall be substituted the words " the grounds set out in section 23(1) of this Act apply in relation to the patient.".

(2) In subsection (2) of section 44 of the principal Act (which provides in relation to the discharge of a patient by the nearest relative that the responsible medical officer may furnish a report)

(*a*) the words " or subject to guardianship ", " or, as the case may be to the local authority concerned " and " or, as the case may be, to that authority " shall cease to have effect; and

(*b*) for the words from " the patient " where they first occur to " or to himself " there shall be substituted the words

" the grounds set out in section 23(1) of this Act apply in relation to the patient".

(3) After subsection (2) of the said section 44 there shall be inserted the following subsection—

" (2A) An order for the discharge of a patient who is subject to guardianship shall not be made by his nearest relative except after giving not less than fourteen days' notice in writing to the local authority concerned; and within that period—

(*a*) if it appears to the local authority that the ground set out in section 25(1A)(*b*) of this Act continues to apply in relation to the patient they shall inform the responsible medical officer of the notice given by the nearest relative; and

(*b*) if it appears to the responsible medical officer that the ground set out in section 25(1A)(*a*) of this Act continues to apply in relation to the patient he shall inform the local authority; and

(*c*) the local authority shall inform the nearest relative of the views taken by them and by the responsible medical officer,

and in that event—

(i) any order for the discharge of the patient made by that relative in pursuance of the notice shall cease to have effect; and

(ii) no further order for the discharge of the patient shall be made by that relative during the period of six months beginning with the date on which that relative is so informed.".

Definition of relatives and nearest relatives.

19. In section 45 of the principal Act (which defines " relative " and " nearest relative ")—

(*a*) in subsection (1) for paragraphs (*c*) and (*d*) there shall be substituted the following paragraph—

" (*c*) father or mother; ";

(*b*) in subsection (4) for paragraph (*a*) there shall be substituted the following paragraph—

" (*a*) in the case of a patient ordinarily resident in the United Kingdom, the Channel Islands or the Isle of Man, is not so resident; or "; and

(*c*) after subsection (6) there shall be inserted the following subsection—

" (7) A person, other than a relative, with whom the patient ordinarily resides (or, if the patient is for

the time being an in-patient in a hospital, last ordinarily resided before he was admitted), and with whom he has or had been ordinarily residing for a period of not less than five years, shall be treated for the purposes of this Part of this Act as if he were a relative but—

(*a*) shall be treated for the purposes of subsection (3) of this section as if mentioned last in subsection (1) of this section; and

(*b*) shall not be treated by virtue of this subsection as the nearest relative of a married patient unless the husband or wife of the patient is disregarded by virtue of paragraph (*b*) of subsection (4) of this section.".

Visiting and examinations of patients.

20. In section 51 of the principal Act (which *inter alia* makes provision for visiting and examination of patients for the purpose of advising whether an appeal should be made to the sheriff in certain cases)—

(*a*) in subsection (1)—

(i) for the words " in respect of a report under section thirty-nine, section forty or section forty-four " there shall be substituted the words " under this Part of this Act "; and

(ii) for the words " the said sections " there shall be substituted the words " sections 32A, thirty-nine forty-four ";

(*b*) for subsection (2) there shall be substituted the following subsection—

" (2) An appeal under this Part of this Act shall be made by way of summary application to a sheriff of the sheriffdom—

(*a*) within which the patient is resident at the time when the appeal is made; or

(*b*) where the patient is a resident patient in a hospital at the time when the appeal is made, within which the hospital is situated.";

(*c*) in subsection (3)—

(i) for the words " such an appeal as aforesaid " there shall be substituted the words " any appeal to the sheriff under this Part of this Act "; and

(ii) after the words " of such an appeal," there shall be inserted the words " or of advising the nearest relative of any such patient as to the exercise

of any power to order the discharge of the patient,"; and

(*d*) after the said subsection (3) there shall be inserted the following subsection—

"(3A) Any medical practitioner authorised for the purposes of subsection (3) of this section to visit and examine a patient may require the production of and inspect any records relating to the detention or treatment of the patient in any hospital.".

Right of appeal of restricted patients etc.

21.—(1) After section 60 of the principal Act (power of court to restrict discharge from hospital) there shall be inserted the following sections—

"Right of appeal of restricted patients etc.

60A.—(1) In this section and in sections 60B to 60E of this Act—

"restricted patient" means a patient who is subject to a restriction order or to a restriction direction;

"relevant hospital order" and "relevant transfer direction", in relation to a restricted patient, mean the hospital order or transfer direction by virtue of which he is liable to be detained in a hospital.

(2) A restricted patient detained in a hospital may appeal by way of summary application to a sheriff of the sheriffdom within which the hospital in which he is liable to be detained is situated—

(*a*) in the period between the expiration of six months and the expiration of twelve months beginning with the date of the relevant hospital order or transfer direction; and

(*b*) in any subsequent period of twelve months,

to order his discharge under section 60B or 60C of this Act.

(3) The provisions of section 51(3) and (3A) of this Act shall have effect in relation to an appeal under sections 60A to 60E of this Act as they have in relation to an appeal under Part IV of this Act.

Right of appeal of patients subject to restriction orders.

60B.—(1) Where an appeal to the sheriff is made by a restricted patient who is subject to a restriction order, the sheriff shall direct the absolute discharge of the patient if he is satisfied—

(*a*) that the patient is not, at the time of the hearing of the appeal, suffering from mental disorder of a nature or degree which

makes it appropriate for him to be liable to be detained in hospital for medical treatment; or

(*b*) that it is not necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment; and (in either case)

(*c*) that it is not appropriate for the patient to remain liable to be recalled to hospital for further treatment.

(2) Where in the case of any such patient as is mentioned in subsection (1) of this section the sheriff is satisfied as to the matters referred to in paragraph (*a*) or (*b*) of that subsection but not as to the matters referred to in paragraph (*c*) of that subsection he shall direct the conditional discharge of the patient.

(3) Where a patient is absolutely discharged under subsection (1) of this section he shall thereupon cease to be liable to be detained by virtue of the relevant hospital order, and the restriction order shall cease to have effect accordingly.

(4) Where a patient is conditionally discharged under subsection (2) of this section—

(*a*) he may be recalled by the Secretary of State under subsection (3) of section 61 of this Act as if he had been conditionally discharged under subsection (2) of that section; and

(*b*) he shall comply with such conditions (if any) as may be imposed at the time of discharge by the sheriff or at any subsequent time by the Secretary of State.

(5) The Secretary of State may from time to time vary any condition imposed (whether by the sheriff or by him) under subsection (4) of this section.

(6) Where a restriction order in respect of a patient ceases to have effect after he has been conditionally discharged under subsection (2) of this section the patient shall, unless previously recalled, be deemed to be absolutely discharged on the date when the order ceases to have effect and shall cease to be liable to be detained by virtue of the relevant hospital order.

(7) The sheriff may defer a direction for the conditional discharge of a patient until such arrange-

ments as appear to the sheriff to be necessary for that purpose have been made to his satisfaction; and where by virtue of any such deferment no direction has been given on an appeal before the time when the patient's case comes before the sheriff on a subsequent appeal, the previous appeal shall be treated as one on which no direction under this section can be given.

(8) This section is without prejudice to section 61 of this Act.

Right of appeal of patients subject to restriction directions.

60C.—(1) Where an appeal to the sheriff is made by a restricted patient who is subject to a restriction direction, the sheriff—

(*a*) shall notify the Secretary of State if, in his opinion, the patient would, if subject to a restriction order, be entitled to be absolutely or conditionally discharged under section 60B of this Act; and

(*b*) if he notifies the Secretary of State that the patient would be entitled to be conditionally discharged, may recommend that in the event of the patient's not being released on licence or discharged under supervision under subsection (2)(*b*)(i) or (ii) of this section he should continue to be detained in a hospital.

(2) If the sheriff notifies the Secretary of State—

(*a*) that the patient would be entitled to be absolutely discharged, the Secretary of State shall—

(i) by warrant direct that the patient be remitted to any prison or other institution in which he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed; or

(ii) exercise any power of releasing the patient on licence or discharging the patient under supervision which would have been exercisable if the patient had been remitted to any prison or other institution in which he might have been detained if he had not been removed to hospital;

(*b*) that the patient would be entitled to be conditionally discharged, the Secretary of State may—

(i) by warrant direct that the patient be remitted to any prison or other institution in which he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed ; or

(ii) exercise any power of releasing the patient on licence or discharging the patient under supervision which would have been exercisable if the patient had been remitted to any prison or other institution in which he might have been detained if he had not been removed to hospital ; or

(iii) decide that the patient should continue to be detained in a hospital,

and on his arrival in the prison or other institution or, as the case may be, his release or discharge as aforesaid, the transfer direction and the restriction direction shall cease to have effect.

Further consideration of case of conditionally discharged patient.

60D.—(1) Where a restricted patient has been conditionally discharged under section 60B or 61(2) of this Act and is subsequently recalled under section 61(3) of this Act to hospital he may, within one month of the day on which he returns or is returned to hospital, appeal against such recall to a sheriff of the sheriffdom in which the hospital in which he is liable to be detained by virtue of the warrant under the said section 61(3) is situated.

(2) Where a restricted patient has been conditionally discharged as aforesaid but is not recalled to hospital he may appeal—

(*a*) in the period between the expiration of twelve months and the expiration of two years beginning with the date on which he was conditionally discharged ; and

(*b*) in any subsequent period of two years,

to a sheriff of the sheriffdom in which he resides.

(3) If in any appeal under subsection (1) or (2) of this section the sheriff is satisfied as mentioned in section 60B(1) or (2) of this Act, he shall uphold the appeal and—

(*a*) where he is satisfied as mentioned in the said section 60B(1), he shall direct the absolute discharge of the patient;

(*b*) where he is satisfied as mentioned in the said section 60B(2), he shall direct, or (as the case may be) continue, the conditional discharge of the patient; and, in either case, he may vary any condition to which the patient is subject in connection with his discharge or impose any condition which might have been imposed in connection therewith.

(4) Where a patient is absolutely discharged in an appeal under subsection (1) or (2) of this section he shall thereupon cease to be liable to be detained by virtue of the relevant hospital order, and the restriction order shall cease to have effect accordingly.

Application of sections 60A to 60D to other persons treated as restricted patients.

60E.—(1) Sections 60A, 60B and 60D of this Act shall apply to a person who—

(*a*) is subject to—

(i) a direction which by virtue of section 64(3) of this Act; or

(ii) an order which by virtue of section 174(4) of the Criminal Procedure (Scotland) Act 1975,

1975 c. 21.

has the like effect as a hospital order and a restriction order; or

(*b*) is treated as subject to a hospital order and a restriction order by virtue of section 80(2) of the Mental Health Act 1983 or section 79(2)(*a*) of this Act,

as they apply to a restricted patient who is subject to a restriction order and references in the said sections 60A, 60B and 60D to the relevant hospital order or restriction order shall be construed as references to the direction under section 64(1) of this Act or the order under section 174(3) of the Criminal Procedure (Scotland) Act 1975.

(2) Sections 60A to 60C of this Act shall apply to a person who is treated as subject to a transfer direction and a restriction direction by virtue of section 80(2) of the Mental Health Act 1983 or section 79(2)(*a*) of this Act as they apply to a restricted patient who is subject to a restriction direction and references in the said sections 60A and 60C to the relevant transfer direction or the restriction direction

1983 c. 20.

shall be construed as references to the transfer direction or restriction direction to which that person is treated as subject by virtue of the said section 80(2) or 79(2)(*a*)."

Restriction orders and restriction directions. 1975 c. 21.

22.—(1) An order under section 178 or 379 of the 1975 Act (which sections empower the court to restrict an offender's discharge from hospital) shall be known as " a restriction order " instead of as " an order restricting discharge " ; and a direction under section 67 of the principal Act (which empowers the Secretary of State to make a direction having the same effect as such an order) shall be known as " a restriction direction " instead of as " a direction restricting discharge.".

(2) In each of sections 178(1) and 379(1) of the 1975 Act after the words " protection of the public " there shall be inserted the words " from serious harm ".

(3) After section 60(3) of the principal Act (which among other things sets out the restrictions to which a person to whom a restriction order applies is subject) there shall be inserted the following subsection—

" (3A) While a person is a restricted patient within the meaning of section 60A of this Act or a person to whom section 60E of this Act applies, the responsible medical officer shall at such intervals (not exceeding one year) as the Secretary of State may direct examine and report to the Secretary of State on that person ; and every report shall contain such particulars as the Secretary of State may require.".

(4) In section 61(1) of the principal Act (which empowers the Secretary of State to direct that restrictions on an offender's discharge from hospital shall cease to have effect) after the words " protection of the public " there shall be inserted the words " from serious harm ".

Continued detention in hospital.

23. In subsection (3) of section 68 of the principal Act (which makes provision as to continued detention in hospital in certain cases) after the word " him ; " there shall be inserted—

" (*aa*) making a probation order under section 183, 184, 384 or 385 of the said Act of 1975 in relation to him ; ".

Calculation of date of expiry of sentence of imprisonment.

24. In section 69 of the principal Act (which among other things makes provision for a direction restricting the discharge of a person ceasing to have effect on the expiration of sentence of imprisonment)—

(*a*) for subsection (1) there shall be substituted the following subsections—

" (1) Where a transfer direction and a restriction

direction have been given in respect of a person serving a sentence of imprisonment and the Secretary of State is satisfied—

(*a*) that the person is not suffering from mental disorder of a nature or degree which makes it appropriate for him to be liable to be detained in hospital for medical treatment; or

(*b*) that it is not necessary for the health or safety of the person or for the protection of other persons that he should receive such treatment; and (in either case)

(*c*) that it is not appropriate for the person to remain liable to be recalled to hospital for further treatment,

he shall—

(*a*) by warrant direct that the person be remitted to any prison or other institution in which he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed; or

(*b*) exercise any power of releasing the person on licence or discharging the person under supervision, which would have been exercisable if he had been remitted to any prison or other institution in which he might have been detained if he had not been removed to hospital,

and on his arrival in the prison or other institution, or as the case may be, his release or discharge as aforesaid, the transfer direction and the restriction direction shall cease to have effect.

(1A) Where in the case of any such person as is mentioned in subsection (1) of this section the Secretary of State is satisfied as to the matters referred to in paragraph (*a*) or (*b*) of that subsection but not as to the matters referred to in paragraph (*c*) of that subsection he may—

(*a*) by warrant direct that the person be remitted to any prison or other institution in which he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been removed; or

(*b*) exercise any power of releasing the person on licence or discharging the person under supervision, which would have been exercisable if he had been remitted to any prison or other institution in which he might have been detained if he had not been removed to hospital; or

(*c*) decide that the person should continue to be detained in a hospital,

and on his arrival in the prison or other institution or, as the case may be, his release or discharge as aforesaid, the transfer direction and the restriction direction shall cease to have effect." and

(*b*) at the end of subsection (6) there shall be added the words " and if he had not forfeited remission of any part of the sentence after his removal in pursuance of the direction.".

Civil prisoners and persons detained under the Immigration Act 1971.

25. For section 70 of the principal Act (which makes provision as to civil prisoners affected by transfer directions) there shall be substituted the following section—

" Further provisions as to civil prisoners and persons detained under the Immigration Act 1971.

70.—(1) Subject to subsection (2) of this section, a transfer direction given in respect of any such person as is described in paragraph (*b*) or (*c*) of section 66(2) of this Act shall cease to have effect on the expiration of the period during which he would, but for his removal to a hospital, be liable to be detained in the place from which he was removed.

(2) Where a transfer direction and a restriction direction have been given in respect of any such person as is mentioned in subsection (1) of this section, and the Secretary of State is satisfied—

(*a*) that the person is not suffering from mental disorder of a nature or degree which makes it appropriate for him to be liable to be detained in hospital for medical treatment; or

(*b*) that it is not necessary for the health or safety of the person or for the protection of other persons that he should receive such treatment; and (in either case),

(*c*) that it is not appropriate for the person to remain liable to be recalled to hospital for further treatment,

he shall—

(i) by warrant direct that the person be remitted to any prison or other institution in which

he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed ; or

(ii) exercise any power of releasing the person on licence or discharging the person under supervision, which would have been exercisable if he had been remitted to any prison or other institution in which he might have been detained if he had not been removed to hospital,

and on his arrival in the prison or other institution, or as the case may be, his release or discharge as aforesaid, the transfer direction and the restriction direction shall cease to have effect.

(3) Where in the case of any such person as is mentioned in subsection (2) of this section the Secretary of State is satisfied as to the matters referred to in paragraph (*a*) or (*b*) of that subsection but not as to the matters referred to in paragraph (*c*) of that subsection he may—

(i) by warrant direct that the person be remitted to any prison or other institution in which he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed ; or

(ii) exercise any power of releasing the person on licence or discharging the person under supervision, which would have been exercisable if he had been remitted to any prison or other institution in which he might have been detained if he had not been removed to hospital ; or

(iii) decide that the person should continue to be detained in hospital,

and on his arrival in the prison or other institution or, as the case may be, his release or discharge as aforesaid, the transfer direction and the restriction direction shall cease to have effect.".

State Hospital Management Committees

State Hospital Management Committees.

26.—(1) In section 90 of the principal Act (which makes provision as to the administration and management of State hospitals) for subsections (2) to (4) there shall be substituted the following subsections—

" (2) The Secretary of State may by order constitute in accordance with the provisions of Schedule 2A to this Act a committee to manage, on his behalf and subject to

such directions as he may give, a State hospital; and a committee so constituted shall be called a State Hospital Management Committee.

(3) The Secretary of State may by order dissolve a State Hospital Management Committee and any such order may contain such provision as he considers necessary or expedient in connection with the dissolution of the Committee and the winding up of its affairs including provision for the transfer of employment of staff, property, rights and liabilities.

(4) A State Hospital Management Committee may—

(*a*) pay to its members such remuneration; and

(*b*) make provision for the payment of such pensions, allowances or gratuities to or in respect of its members,

as the Secretary of State may, with the approval of the Treasury, determine; and such determination may make different provision for different cases or different classes of case.

(4A) A State Hospital Management Committee may appoint such officers and servants on such terms as to remuneration and conditions of service as the Secretary of State may, with the approval of the Treasury, determine; and such determination may make different provision for different cases or different classes of case.".

(2) After Schedule 2 to the principal Act there shall be inserted the following Schedule—

"SCHEDULE 2A

STATE HOSPITAL MANAGEMENT COMMITTEES

PART I

Constitution

1. A State Hospital Management Committee shall be a body corporate and shall have a common seal.

2. A State Hospital Management Committee shall consist of a chairman appointed by the Secretary of State and such number of other members so appointed as the Secretary of State thinks fit.

3. Not less than one half of the members of the State Hospital Management Committee shall be persons other than medical practitioners.

4. The application of the seal of a State Hospital Management Committee to any document shall be attested by at least one member of the Committee and by the person for the time being acting as secretary of the Committee.

5. Every document purporting to be an instrument issued by a State Hospital Management Committee and to be sealed and attested as aforesaid or to be duly signed on behalf of the Committee, shall be received in evidence and shall be deemed to be such an instrument without further proof, unless the contrary is shown.

PART II

Supplementary Provisions

6. Regulations may make provision—

(*a*) as to the appointment, tenure and vacation of office of the chairman and other members of a State Hospital Management Committee;

(*b*) as to the delegation of functions to committees or sub-committees composed, as to a majority, of members of a State Hospital Management Committee; and

(*c*) as to the procedure of a State Hospital Management Committee, its committees and sub-committees.

7. The proceedings of a State Hospital Management Committee shall not be invalidated by any vacancy in membership or by any defect in the appointment of any member thereof.

1978 c. 29.

8. The following provisions of the National Health Service (Scotland) Act 1978 shall apply to a State Hospital Management Committee as they apply to a Health Board, that is to say—

(*a*) section 77 (which gives default powers to the Secretary of State);

(*b*) section 78 (which gives emergency powers to the Secretary of State);

(*c*) sections 85(1), (2A), (4) and (6) (which contain provisions as to expenditure being met by the Secretary of State);

(*d*) sections 85A(1) and (3) (which impose financial duties); and

(*e*) section 86 (which provides for the auditing and examination of accounts).".

Transfer of property, staff etc.

27. After section 90 of the principal Act there shall be inserted the following section—

"Transfer of property, staff etc.

90A.—(1) All property, rights, liabilities and obligations to which the committee for any State hospital (in this section referred to as "the former committee") constituted under section 90(2) of this Act before the date of coming into force of sections 26 and 27 of the Mental Health (Amendment) (Scotland) Act 1983 (in this section referred to as "the operative date") were entitled or subject shall become by virtue of this section property, rights, liabilities and obligations of the first State Hospital Management Committee (in this section referred to as "the new Committee") constituted under the said section 90(2) on the operative date.

(2) Where any enactment, instrument or other document refers, expressly or by implication, to the former committee that reference shall be construed on and after the operative date as a reference to the new Committee.

(3) It is hereby declared for the avoidance of doubt that subsections (1) and (2) of this section apply in relation to any contract whereby a person is employed as a member of staff at a State hospital immediately before the operative date and has been appointed as such by the former committee; and that the effect of the said subsections (1) and (2) is merely to modify the contract as from that date by substituting the new Committee as the employer (and not to terminate the contract or vary it in any other way).

(4) Where by virtue of this section such a contract of employment is modified and the new Committee is substituted as the employer—

(*a*) the employee's period of employment at the time when the modification takes effect shall count as a period of employment with the new Committee;

(*b*) the change of employer shall not break the continuity of the period of employment;

(*c*) the employee shall not be regarded as having been made redundant for the purposes of—

(i) any provision relating to redundancy payments or to payments which are treated as equivalent to such payments; and

(ii) any regulations made under section 10 or 24 of the Superannuation Act 1972.". 1972 c. 11.

Miscellaneous

Power of Mental Welfare Commission to petition for appointment of curator bonis.

28. After section 91 of the principal Act there shall be inserted the following section—

"Power of Mental Welfare Commission to petition for appointment of curator bonis.

91A. Where the Mental Welfare Commission are satisfied—

(*a*) that any person is incapable, by reason of mental disorder, of adequately managing and administering his property and affairs;

(*b*) that a curator bonis ought to be appointed in respect of that person; and

(*c*) that no arrangements have been made or are being made in that behalf,

they may petition the court for such appointment as aforesaid; and, where that person is a patient in a hospital or has been placed under guardianship, it shall be the duty of the Commission, on the grant of any such petition, so to inform the board of management or, as the case may be, the local authority for the area in which the patient resides, within twenty-eight days therefrom.".

Consent to treatment.

29. After Part VIII of the principal Act there shall be inserted the following Part—

"PART VIIIA

Consent to Treatment

Preliminary.

93A.—(1) This Part of this Act applies to any patient liable to be detained under this Act except—

(*a*) a patient who is liable to be detained by virtue of an emergency recommendation;

(*b*) a patient who is liable to be detained by virtue of sections 32(2), 103 or 104 of this Act or section 177 or 378 of the Criminal Procedure (Scotland) Act 1975;

1975 c. 21.

(*c*) a patient who has been conditionally discharged under section 60B or 61(2) of this Act and has not been recalled to hospital.

(2) Any certificate for the purposes of this Part of this Act shall be in such form as may be prescribed by regulations made by the Secretary of State.

Treatment requiring consent and a second opinion.

93B.—(1) This section applies to the following forms of medical treatment for mental disorder—

(*a*) any surgical operation for destroying brain tissue or for destroying the functioning of brain tissue; and

(*b*) such other forms of treatment as may be specified for the purposes of this section by regulations made by the Secretary of State.

(2) Subject to section 93G of this Act, a patient shall not be given any form of treatment to which this section applies unless he has consented to it and—

(*a*) a medical practitioner (not being the responsible medical officer) appointed for the purposes of this Part of this Act by the Mental Welfare Commission and two other persons (not being medical practitioners) appointed for the purposes of this paragraph by the Commission have certified in writing that the patient is capable of understanding the nature, purpose and likely effects of the treatment in question and has consented to it; and

(*b*) the medical practitioner referred to in paragraph (*a*) above has certified in writing that, having regard to the likelihood of the treatment alleviating or preventing a deterioration of the patient's condition, the treatment should be given.

(3) Before giving a certificate under subsection (2)(*b*) of this section the medical practitioner concerned shall consult such person or persons who appear to him to be principally concerned with the patient's medical treatment.

(4) Where any person has given a certificate under subsection (2)(*a*) or (*b*) of this section he shall send a copy thereof to the Mental Welfare Commission within seven days of the day on which the certificate was given.

(5) A medical practitioner or other person appointed by the Mental Welfare Commission for the purposes of the provisions mentioned in subsection (2)(*a*) of this section may, for the purpose of exercising his functions under those provisions, at any reasonable time—

(*a*) in private visit and interview any patient; and

(*b*) in the case of a medical practitioner, examine any patient and require the production of and inspect any records relating to the treatment of the patient.

(6) Before making any regulations for the purposes of this section the Secretary of State shall consult such bodies as appear to him to be concerned.

Treatment requiring consent or a second opinion.

93C.—(1) This section applies to the following forms of medical treatment for mental disorder—

(*a*) such forms of treatment as may be specified for the purposes of this section by regulations made by the Secretary of State; and

(*b*) the administration of medicine to a patient by any means (not being a form of treatment specified under paragraph (*a*) of this subsection or section 93B of this Act) at any time during a period for which he is liable to be detained as a patient to whom this Part of this Act applies if three months or more have elapsed since the first occasion in that period when medicine was administered to him by any means for his mental disorder.

(2) The Secretary of State may by order vary the length of the period mentioned in subsection (1)(*b*) of this section.

(3) Subject to section 93G of this Act, a patient shall not be given any form of treatment to which this section applies unless—

(*a*) he has consented to that treatment and either the responsible medical officer or a medical practitioner appointed for the purposes of this Part of this Act by the Mental Welfare Commission has certified in writing that the patient is capable of understanding its nature, purpose and likely effects and has consented to it; or

(*b*) a medical practitioner (not being the responsible medical officer) appointed as aforesaid has certified in writing that the patient is not capable of understanding the nature, purpose and likely effects of that treatment or has not consented to it but that, having regard to the likelihood of its alleviating or preventing a deterioration of his condition, the treatment should be given.

(4) Before giving a certificate under subsection (3)(*b*) of this section the medical practitioner concerned shall consult such person or persons who

appear to him to be principally concerned with the patient's medical treatment.

(5) Where any person has given a certificate under subsection (3)(*a*) or (*b*) of this section, he shall send a copy thereof to the Mental Welfare Commission within seven days of the day on which the certificate was given.

(6) Before making any regulations for the purposes of this section the Secretary of State shall consult such bodies as appear to him to be concerned.

Review of treatment.

93D.—(1) Where a patient is given treatment in accordance with section 93B(2) or 93C(3)(*b*) of this Act a report on the treatment and the patient's condition shall be given by the responsible medical officer to the Mental Welfare Commission—

(*a*) on the next occasion on which the responsible medical officer furnishes a report in respect of the patient under section 39 of this Act; and

(*b*) at any other time if so required by the Mental Welfare Commission.

(2) The Mental Welfare Commission may at any time give notice to the responsible medical officer directing that, subject to section 93G of this Act, a certificate given in respect of a patient under section 93B(2) or 93C(3)(*b*) of this Act shall not apply to treatment given to him after a date specified in the notice, and sections 93B and 93C of this Act shall then apply to any such treatment as if that certificate had not been given.

Plans of treatment.

93E. Any consent or certificate under section 93B or 93C of this Act may relate to a plan of treatment under which the patient is to be given (whether within a specified period or otherwise) one or more of the forms of treatment to which that section applies.

Withdrawal of consent.

93F.—(1) Where the consent of a patient to any treatment has been given for the purposes of section 93B or 93C of this Act, the patient may, subject to section 93G of this Act, at any time before the completion of the treatment withdraw his consent, and those sections shall then apply as if the remainder of the treatment were a separate form of treatment.

(2) Without prejudice to the application of subsection (1) of this section to any treatment given under a plan of treatment to which a patient has consented, a patient who has consented to such a

plan may, subject to section 93G of this Act, at any time withdraw his consent to further treatment, or to further treatment of any description, under the plan.

Urgent treatment.

93G.—(1) Sections 93B and 93C of this Act shall not apply to any treatment—

(*a*) which is immediately necessary to save a patient's life ; or

(*b*) which (not being irreversible) is immediately necessary to prevent a serious deterioration of his condition ; or

(*c*) which (not being irreversible or hazardous) is immediately necessary to alleviate serious suffering by the patient ; or

(*d*) which (not being irreversible or hazardous) is immediately necessary and represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or to others.

(2) Sections 93D(2) and 93F of this Act shall not preclude the continuation of any treatment or of treatment under any plan pending compliance with section 93B or 93C of this Act if the responsible medical officer considers that the discontinuance of the treatment or of treatment under the plan would cause serious suffering to the patient.

(3) For the purposes of this section treatment is irreversible if it has unfavourable irreversible physical or psychological consequences and hazardous if it entails significant physical hazard.

(4) Where a patient is given treatment under this section the responsible medical officer shall, within seven days of the day on which the treatment is given, notify the Mental Welfare Commission—

(*a*) as to which of paragraphs (*a*) to (*d*) of subsection (1) of this section applied in relation to the patient ; and

(*b*) as to the nature of the treatment given to the patient.

Treatment not requiring consent.

93H. The consent of a patient shall not be required for any medical treatment given to him for the mental disorder from which he is suffering, not being treatment falling within section 93B or 93C of this Act, if the treatment is given by or under the direction of the responsible medical officer.

Transitional provisions.

93I.—(1) Subsection (3) of section 93C of this Act shall not apply to any treatment given to a patient in the period of six months beginning with the day on which that section comes into force if—

(*a*) the detention of the patient began before the beginning of that period; and

(*b*) that subsection has not been complied with in respect of any treatment previously given to him in that period.

(2) The Secretary of State may by order reduce the length of the period mentioned in subsection (1) above.".

30. After section 99 of the principal Act there shall be inserted the following sections— Duty to give information to patients and nearest relatives.

"Duty to give information to patients and nearest relatives.

99A.—(1) The board of management of a hospital in which a patient is detained under the provisions of this Act or, in the case of a patient subject to guardianship, the local authority concerned, shall take such steps as are practicable to ensure that the patient understands—

(*a*) under which of those provisions he is for the time being detained or subject to guardianship and the effect of that provision; and

(*b*) what rights of appeal to the sheriff are available to him in respect of his detention or guardianship under that provision; and

(*c*) that he may make representations to the Mental Welfare Commission,

and those steps shall be taken as soon as practicable after the commencement of the patient's detention, or his reception into guardianship, or any renewal of the authority for his detention or guardianship.

(2) The board of management of a hospital in which a patient is detained as aforesaid shall also take such steps as are practicable to ensure that the patient understands the effect, so far as relevant in his case, of—

(*a*) sections 43 and 44 of this Act; and

(*b*) Part VIIIA and sections 102, 102A and 104A of this Act;

and those steps shall be taken as soon as practicable

after the commencement of the patient's detention in the hospital, or his reception into guardianship.

(3) The steps to be taken under this section shall include giving the requisite information both orally and in writing.

(4) The board of management of a hospital in which a patient is detained as aforesaid or, as the case may be, the local authority concerned in relation to a patient subject to guardianship as aforesaid shall, except where the patient otherwise requests, take such steps as are practicable to furnish the person (if any) appearing to them to be his nearest relative with a copy of any information given to him in writing under subsection (1) and (2) above; and those steps shall be taken when the information is given to the patient or within a reasonable time thereafter.

(5) Section 48(4) of this Act shall have effect as if subsection (4) of this section were contained in Part IV of this Act.

Duty of boards of management of hospitals to inform nearest relative of discharge of detained patients.

99B.—(1) Where a patient liable to be detained in a hospital under this Act is to be discharged otherwise than by virtue of an order for discharge made by his nearest relative, the board of management of the hospital shall, subject to subsection (2) of this section, take such steps as are practicable to inform the person (if any) appearing to them to be the nearest relative of the patient; and that information shall, if practicable, be given at least seven days before the date of discharge.

(2) Subsection (1) of this section shall not apply if the patient or his nearest relative has requested that information about the patient's discharge should not be given under this section.

(3) Section 48(4) of this Act shall have effect as if this section were contained in Part IV of this Act.".

Duty of sheriff to give patient opportunity to be heard.

31. After section 100 of the principal Act there shall be inserted the following section—

"Duty of sheriff to give patient opportunity to be heard.

100A.—(1) In any appeal to the sheriff under this Act, or in any proceedings relating to an application for admission to a hospital or for reception into guardianship, the sheriff shall give the patient an opportunity to be heard, either—

(*a*) in person (unless cause to the contrary has been shown); or

(*b*) by means of a representative.

(2) Where it is established to the satisfaction of the sheriff that it would be prejudicial to the patient's health or treatment if he were present during any such appeal or proceedings, the sheriff may exclude the patient (but not his representative) from the whole or part of that appeal or those proceedings.".

Correspondence of patients.

32.—(1) For section 102 of the principal Act (which makes provision as to the interception of correspondence of patients not subject to detention) there shall be substituted the following sections—

"Correspondence of patients.

102.—(1) Any postal packet addressed to any person by a patient detained in a hospital under this Act and delivered by him for dispatch may be withheld from the Post Office—

(*a*) if that person has requested that communications addressed to him by the patient should be withheld; or

(*b*) subject to subsection (3) of this section, if the hospital is a State hospital and the board of management of the hospital consider that the postal packet is likely—

(i) to cause distress to the person to whom it is addressed or to any other person (not being a person on the staff of the hospital); or

(ii) to cause danger to any person,

and any request for the purpose of paragraph (*a*) of this subsection shall be made by a notice in writing given to the board of management of the hospital, the responsible medical officer or the Secretary of State.

(2) Subject to subsection (3) of this section a postal packet addressed to a patient detained in a State hospital under this Act may be withheld from the patient if, in the opinion of the board of management of the hospital, it is necessary to do so in the interests of the safety of the patient or for the protection of other persons.

(3) Subsections (1)(*b*) and (2) of this section do not apply to any postal packet addressed by a patient to, or sent to a patient by or on behalf of—

(*a*) any Minister of the Crown or member of either House of Parliament;

(*b*) the Mental Welfare Commission, any Commissioner thereof or any person appointed by them under section 4(7)(*b*) of this Act;

(*c*) the Parliamentary Commissioner for Administration, the Health Service Commissioner for Scotland, or the Commissioner for Local Administration in Scotland;

(*d*) any judge or clerk of court;

(*e*) a Health Board, the Common Services Agency for the Scottish Health Service or a local council established under section 7 of the National Health Service (Scotland) Act 1978;

1978 c. 29.

(*f*) a local authority within the meaning of section 235 of the Local Government (Scotland) Act 1973;

1973 c. 65.

(*g*) the board of management of the hospital in which the patient is detained;

(*h*) any legally qualified person instructed by the patient to act as his legal adviser; or

(*i*) the European Commission of Human Rights or the European Court of Human Rights.

(4) The board of management of the hospital may open and inspect any postal packet for the purpose of determining whether it is one to which subsection (1) or (2) of this section applies and, if so, whether or not it should be withheld under that subsection; and the power to withhold a postal packet under either of those subsections includes power to withhold anything contained in it.

(5) Where a postal packet or anything contained in it is withheld under subsection (1) or (2) of this section the board of management of the hospital shall record that fact in writing, and shall, within seven days of the date on which they withheld the postal packet or anything contained in it, notify the Mental Welfare Commission of—

(*a*) the name of the patient concerned; and

(*b*) the nature of the postal packet or contents withheld; and

(*c*) the reasons for withholding the postal packet or contents.

(6) Where a postal packet or anything contained in it is withheld under subsection (1)(*b*) or (2) of this section the board of management of the hospital shall within seven days give notice of that fact to the

patient and, in a case under subsection (2) of this section, to the person (if known) by whom the postal packet was sent; and any such notice shall be in writing and shall contain a statement of the effect of section 102A of this Act.

(7) The functions of the board of management of a hospital under this section shall be discharged on their behalf by a person on the staff of the hospital appointed by them for that purpose, and different persons may be appointed to discharge different functions.

(8) The Secretary of State may make regulations with respect to the exercise of the powers conferred by this section.

(9) In this section and in section 102A of this Act " postal packet " has the same meaning as in the Post Office Act 1953; and the provisions of this section and section 102A of this Act shall have effect notwithstanding anything in section 56 of that Act. 1953 c. 36.

Review of decision to withhold postal packet.

102A.—(1) The Mental Welfare Commission shall review any decision to withhold a postal packet or anything contained in it under subsection (1)(*b*) or (2) of section 102 of this Act if an application in that behalf is made—

(*a*) in a case under the said subsection (1)(*b*), by the patient; or

(*b*) in a case under the said subsection (2), either by the patient or by the person by whom the postal packet was sent;

and any such application shall be made within six months of the receipt by the applicant of the notice referred to in subsection (6) of that section.

(2) On an application under subsection (1) of this section the Commission may direct that the postal packet or anything contained in it which is the subject of the application shall not be withheld and the board of management of the hospital in which the patient is detained shall comply with any such direction.

(3) The Secretary of State may by regulations make provision with respect to the making and determination of applications under subsection (1) of this section, including provision for the production to the Mental Welfare Commission of any postal packet which is the subject of such an application.".

(2) Section 34 of the principal Act (which makes provision as to the withholding of correspondence of patients subject to detention) shall cease to have effect.

Code of practice.

33. After section 104 of the principal Act there shall be inserted the following section—

"Code of practice.

104A.—(1) The Secretary of State shall prepare, and from time to time revise, a code of practice—

(*a*) for the guidance of medical practitioners, boards of management and staff of hospitals and mental health officers in relation to the detention and discharge of patients in and from hospitals under this Act; and

(*b*) for the guidance of medical practitioners and members of other professions in relation to the medical treatment of patients suffering from mental disorder.

(2) Before preparing the code or making any alteration in it the Secretary of State shall consult such bodies as appear to him to be concerned.

(3) The Secretary of State shall lay copies of the code and of any alteration in the code before Parliament; and if either House of Parliament passes a resolution requiring the code or any alteration in it to be withdrawn the Secretary of State shall withdraw the code or alteration and, where he withdraws the code, shall prepare a code in substitution for the one which is withdrawn.

(4) No resolution shall be passed by either House of Parliament under subsection (3) of this section in respect of a code or alteration after the expiration of the period of forty days beginning with the day on which a copy of the code or alteration was laid before that House; but for the purposes of this subsection no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(5) The Secretary of State shall publish the code as for the time being in force.".

Interim hospital orders.

34. In the 1975 Act—

(*a*) after section 174 there shall be inserted the following section—

"Interim hospital orders.

174A.—(1) Where a person is convicted in the High Court or the sheriff court of an offence punishable with imprisonment (other than an offence the

sentence for which is fixed by law) and the court before or by which he is convicted is satisfied on the written or oral evidence of two medical practitioners (complying with the provisions of subsection (2) of this section and section 176 of this Act)—

(*a*) that the offender is suffering from mental disorder within the meaning of section 6(1) of the Mental Health (Scotland) Act 1960; 1960 c. 61 and

(*b*) that there is reason to suppose—

(i) that the mental disorder from which the offender is suffering is such that it may be appropriate for a hospital order to be made in his case; and

(ii) that, having regard to the provisions of section 175(4) of this Act, the hospital to be specified in any such hospital order may be a State hospital,

the court may, before making a hospital order or dealing with the offender in some other way, make an order (to be known as " an interim hospital order ") authorising his admission to and detention in a State hospital or such other hospital as for special reasons the court may specify in the order:

Provided that where under any enactment the offender is remitted by the sheriff to the High Court for sentence the power to make an order under this subsection in relation to the offender shall be exercisable by the High Court.

(2) Of the medical practitioners whose evidence is taken into account under subsection (1) of this section at least one shall be employed at the hospital which is to be specified in the order.

(3) An interim hospital order shall not be made in respect of an offender unless the court is satisfied that the hospital which is to be specified in the order, in the event of such an order being made by the court, is available for his admission thereto within 28 days of the making of such an order.

(4) Where a court makes an interim hospital order it shall not make any other order for detention or impose a fine or pass sentence of imprisonment or make a probation order or a community service order in respect of the offence, but may make any

other order which it has power to make apart from this section.

(5) The court by which an interim hospital order is made may include in the order such direction as it thinks fit for the conveyance of the offender to a place of safety and his detention therein pending his admission to the hospital within the period of 28 days referred to in subsection (3) of this section.

(6) An interim hospital order—

(*a*) shall be in force for such period, not exceeding 12 weeks, as the court may specify when making the order; but

(*b*) may be renewed for further periods of not more than 28 days at a time if it appears to the court on the written or oral evidence of the responsible medical officer that the continuation of the order is warranted;

but no such order shall continue in force for more than 6 months in all and the court shall terminate the order if it makes a hospital order in respect of the offender or decides, after considering the written or oral evidence of the responsible medical officer, to deal with the offender in some other way.

(7) An interim hospital order may be renewed under subsection (6) of this section without the offender being brought before the court if he is represented by counsel or a solicitor and his counsel or solicitor is given an opportunity of being heard.

(8) If an offender absconds from a hospital in which he is detained in pursuance of an interim hospital order, or while being conveyed to or from such a hospital, he may be arrested without warrant by a constable and shall, after being arrested, be brought as soon as practicable before the court which made the order; and the court may thereupon terminate the order and deal with him in any way in which it could have dealt with him if no such order had been made.

(9) When an interim hospital order ceases to have effect in relation to an offender the court may deal with him in any way (other than by making a new interim hospital order) in which it could have dealt with him if no such order had been made.

(10) The power conferred on the court by the provisions of this section is without prejudice to the

power of the court under section 180(1) of this Act to remand a person in order that an inquiry may be made into his physical or mental condition.";

(*b*) in section 280 (which makes provision for appeals against hospital orders, etc.)—

(i) after the words " hospital order," there shall be inserted the words " interim hospital order (but not a renewal thereof), "; and

(ii) after the word " law " there shall be inserted the words " (or, where an interim hospital order has been made, to any right of appeal against any other order or sentence which may be imposed) ";

(*c*) after section 375 there shall be inserted the following section—

" Interim hospital orders.

375A.—(1) Where, in the case of any person charged summarily in the sheriff court—

(*a*) the person is convicted of an offence punishable by that court with imprisonment (other than an offence the sentence for which is fixed by law); or

(*b*) the sheriff is satisfied that the person did the act or made the admission charged but does not convict him,

and the sheriff is satisfied on the written or oral evidence of two medical practitioners (complying with the provisions of subsection (3) of this section and section 377 of this Act)—

(*a*) that the offender is suffering from mental disorder within the meaning of section 6(1) of the Mental Health (Scotland) Act 1960; 1960 c. 61. and

(*b*) that there is reason to suppose—

(i) that the mental disorder from which the offender is suffering is such that it may be appropriate for a hospital order to be made in his case; and

(ii) that, having regard to the provisions of section 376(7) of this Act, the hospital to be specified in any such hospital order may be a State hospital,

the court may, before making a hospital order or dealing with the offender in some other way, make an order (to be known as " an interim hospital order ") authorising his admission to and detention

in a State hospital or such other hospital as for special reasons the court may specify in the order.

(2) Where a person is remitted to the sheriff court from the district court under section 376(4) of this Act, the sheriff court may, if it is satisfied as in subsection (1) of this section, make an interim hospital order in relation to that person.

(3) Of the medical practitioners whose evidence is taken into account under subsection (1) of this section at least one shall be employed at the hospital which is to be specified in the order.

(4) An interim hospital order shall not be made in respect of an offender unless the court is satisfied that the hospital which is to be specified in the order, in the event of such an order being made by the court, is available for his admission thereto within 28 days of the making of such an order.

(5) Where a court makes an interim hospital order it shall not make any other order for detention or impose a fine or pass sentence of imprisonment or make a probation order or a community service order in respect of the offence, but may make any other order which it has power to make apart from this section.

(6) The court by which an interim hospital order is made may include in the order such direction as it thinks fit for the conveyance of the offender to a place of safety and his detention therein pending his admission to the hospital within the period of 28 days referred to in subsection (4) of this section.

(7) An interim hospital order—

(*a*) shall be in force for such period, not exceeding 12 weeks, as the court may specify when making the order; but

(*b*) may be renewed for further periods of not more than 28 days at a time if it appears to the court on the written or oral evidence of the responsible medical officer that the continuation of the order is warranted;

but no such order shall continue in force for more than 6 months in all and the court shall terminate the order if it makes a hospital order in respect of the offender or decides, after considering the written or oral evidence of the responsible medical officer, to deal with the offender in some other way.

(8) The power of renewing an interim hospital order may be exercised without the offender being brought before the court if he is represented by counsel or a solicitor and his counsel or solicitor is given an opportunity of being heard.

(9) If an offender absconds from a hospital in which he is detained in pursuance of an interim hospital order, or while being conveyed to or from such a hospital, he may be arrested without warrant by a constable and shall, after being arrested, be brought as soon as practicable before the court which made the order; and the court may thereupon terminate the order and deal with him in any way in which it could have dealt with him if no such order had been made.

(10) When an interim hospital order ceases to have effect in relation to an offender the court may deal with him in any way (other than by making a new interim hospital order) in which it could have dealt with him if no such order had been made.

(11) The power conferred on the court by the provisions of this section is without prejudice to the power of the court under section 381(1) of this Act to remand a person in order that an inquiry may be made into his physical or mental condition." ; and

(*d*) in section 443 (which makes provision for appeals against hospital orders, etc.)—

(i) after the words " hospital order," there shall be inserted the words " interim hospital order (but not a renewal thereof)," ; and

(ii) after the word " law " there shall be inserted the words " (or, where an interim hospital order has been made, to any right of appeal against any other order or sentence which may be imposed) ".

Disclosure of interest of medical practioner.

35. In the 1975 Act—

(*a*) after subsection (1) of section 176 (which makes provision as to requirements relating to medical evidence in solemn proceedings) there shall be inserted the following subsection—

" (1A) Written or oral evidence given for the purposes of the said section 175(1)(*a*) shall include a statement as to whether the person giving the evidence is related to the accused and of any pecuniary interest which that person may have in the admission

of the accused to hospital or his reception into guardianship."; and

(*b*) after subsection (1) of section 377 (which makes provision as to requirements relating to medical evidence in summary proceedings) there shall be inserted the following subsection—

"(1A) Written or oral evidence given for the purposes of the said section 376(1)(*a*) shall include a statement as to whether the person giving the evidence is related to the accused and of any pecuniary interest which that person may have in the admission of the accused to hospital or his reception into guardianship.".

Probation orders requiring treatment for mental condition.

36.—(1) Sections 184(4) and 385(4) of the 1975 Act (which restrict the extent of supervision over a probationer who is to be treated for his mental condition) shall cease to have effect.

(2) For subsection (5) of each of sections 184 and 385 of the 1975 Act (which enable a probationer to receive part of his treatment at a place not authorised in the probation order) there shall be substituted the following subsections—

"(5) Where the medical practitioner by whom or under whose direction a probationer is receiving any of the kinds of treatment to which he is required to submit in pursuance of a probation order is of opinion—

(*a*) that the probationer requires, or that it would be more appropriate for him to receive, a different kind of treatment (whether in whole or in part) from that which he has been receiving, being treatment of a kind which subject to subsection (5A) of this section could have been specified in the probation order; or

(*b*) that the treatment (whether in whole or in part) can be more appropriately given in or at a different institution or place from that where he has been receiving treatment in pursuance of the probation order,

he may, subject to subsection (5B) of this section, make arrangements for the probationer to be treated accordingly.

(5A) Arrangements made under subsection (5) of this section may provide for the probationer to receive his treatment (in whole or in part) as a resident patient in an institution or place notwithstanding that it is not one which could have been specified in that behalf in the probation order.

(5B) Arrangements shall not be made under subsection (5) of this section unless—

(*a*) the probationer and any officer responsible for his supervision agree;

(*b*) the treatment will be given by or under the direction of a registered medical practitioner who has agreed to accept the probationer as his patient; and

(*c*) where such treatment entails the probationer's being a resident patient, he will be received as such.".

(3) In subsection (6) of each of the said sections 184 and 385 of the 1975 Act—

(*a*) for the words "the last foregoing subsection" there shall be substituted the words "subsection (5) of this section"; and

(*b*) in paragraph (*a*) for the words from "medical practitioner" to "carried out;" there shall be substituted the words "any officer responsible for the probationer's supervision shall notify the appropriate court of the arrangements;".

(4) In paragraph 4(*b*) of Schedule 5 to the 1975 Act (which enables a supervising officer to apply to the court for the variation or cancellation of a probation order where the medical practitioner is of the opinion that the probationer needs different treatment) for the words from "needs" to the end of the said paragraph (*b*) there shall be substituted the words "a different kind of treatment (whether in whole or in part) from that which he has been receiving in pursuance of the probation order, being treatment of a kind which could have been specified in the probation order but to which the probationer or his supervising officer has not agreed under subsection (5B) of section 184 or, as the case may be, 385 of this Act.".

Right of appeal against transfer.

37.—(1) In section 37 of the principal Act (which makes provision for the transfer of patients)—

(*a*) in subsection (1)(b) the words "or be transferred to a hospital with the consent of the Mental Welfare Commission and of the board of management of the hospital" shall cease to have effect;

(*b*) in subsection (3), paragraph (*d*) shall cease to have effect; and

(*c*) after subsection (3) there shall be inserted the following subsection—

"(4) Where a patient is transferred to a State hospital under subsection (1)(*a*)(i) of this section he

or his nearest relative may, within twenty-eight days of the date of the transfer, appeal by way of summary application to a sheriff of the sheriffdom within which the hospital from which the patient was transferred is situated against the decision of the board of management to transfer the patient; and on any such appeal the sheriff shall order the return of the patient to the hospital from which he was transferred unless he is satisfied that the patient, on account of his dangerous, violent or criminal propensities, requires treatment under conditions of special security, and cannot suitably be cared for in a hospital other than a State hospital.".

General

Expenses.

38. There shall be defrayed out of moneys provided by Parliament any increase attributable to the provisions of this Act in the sums payable out of moneys so provided under any other enactment.

Transitional provisions, amendments and repeals.

39.—(1) The provisions of Schedule 1 to this Act shall have effect, being transitional provisions and savings consequential upon the provisions of this Act.

(2) The enactments specified in Schedule 2 to this Act shall have effect subject to the amendments specified in that Schedule, being minor amendments or amendments consequential upon the provisions of this Act.

(3) The enactments specified in Schedule 3 to this Act are hereby repealed to the extent specified in that Schedule.

Interpretation.

40. In this Act—

1960 c. 61.

" the principal Act " means the Mental Health (Scotland) Act 1960; and

1975 c. 21.

" the 1975 Act " means the Criminal Procedure (Scotland) Act 1975.

Citation, commencement and extent.

41.—(1) This Act may be cited as the Mental Health (Amendment) (Scotland) Act 1983.

(2) This Act, except this section, shall come into force on such date as the Secretary of State may by order made by statutory instrument appoint, and different dates may be appointed for, or for different purposes of, different provisions.

(3) Any amendment or repeal by this Act of an enactment which extends to England, Wales or Northern Ireland has the same extent as that enactment but, save as aforesaid, this Act applies to Scotland only.

SCHEDULES

SCHEDULE 1

Section 39(1).

TRANSITIONAL PROVISIONS AND SAVINGS

General

1. Except where otherwise provided, any amendment made by this Act to any provision of the principal Act or of the 1975 Act shall apply on and after the date of coming into force of that amendment in relation to anything done under or by virtue of that provision before that date as it applies in relation to anything done under or by virtue of that provision on or after that date.

Definition of mental disorder

2. The amendments made by section 5 of, and the consequential amendments in Schedule 2 to, this Act shall not affect the authority for the detention or guardianship of a person who is liable to be detained or subject to guardianship under the principal Act immediately before the date on which those amendments come into force but shall apply to any renewal of that authority on or after that date.

Admission to hospital

3. The amendments made by sections 8(1) and (2) and 9 of this Act shall not apply to any application for admission made before the date of coming into force of those amendments.

Reception into guardianship

4. Where on the date on which the amendments made by section 8(3)(*a*) of this Act come into force a person who has not attained the age of sixteen years is subject to guardianship by virtue of a guardianship application the authority for his guardianship shall terminate on that date.

5. The amendments made by sections 8(3)(*b*) and (*c*) and 9 of this Act shall not apply to any application for guardianship made before the date of coming into force of those amendments.

Emergency admissions

6. The amendments made by section 12 of, and the consequential repeal in Schedule 3 to, this Act shall not affect any emergency recommendation or admission following thereon made immediately before the date of coming into force of those amendments but, when the period during which a patient may be detained in pursuance of such an emergency recommendation expires, it shall not be competent for the patient to be further detained immediately thereafter under section 31 of the principal Act.

Duration of detention or guardianship

7. The amendments made by section 16(*a*) to (*d*) of this Act shall have effect in relation to any renewal of authority on or after the date on which those amendments come into force; and, where an

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authority has been renewed before that date for a period of two years of which less than sixteen months has expired on that date, that period shall expire at the end of eighteen months from the date on which it began.

Nearest relative

8. The amendments made by section 19 of this Act shall not affect the definition of "nearest relative" in relation to any proceedings commenced before the date of coming into force of those amendments.

Restriction directions

9. Where, apart from paragraph 1 of this Schedule, a restriction direction given before the date of coming into force of the amendments made by section 24 of this Act would by virtue of section 69 of the principal Act have ceased to have effect before that date it shall cease to have effect on that date.

Duty to give information to patients

10. In the case of a patient who is detained on the date of coming into force of the amendments made by section 30 of this Act the steps required to be taken by the provisions inserted by that section shall be taken as soon as practicable after the date of coming into force of those amendments (except where such steps have already been taken before that date).

Opportunity of patient to be heard

11. The amendments made by section 31 of this Act shall not apply in relation to proceedings commenced before the date of coming into force of those amendments.

Disclosure of interest of medical practitioner

12. The amendments made by section 35 of this Act shall not apply in relation to proceedings commenced before the date of coming into force of those amendments.

Section 39(2).

SCHEDULE 2

MINOR AND CONSEQUENTIAL AMENDMENTS

The Mental Health Act 1983 (*c.* 20)

1. In section 80 (which makes provision as to the removal of patients to Scotland)—

(*a*) in subsection (2), for the words "an order or" where they occur for the second time there shall be substituted the words "a restriction order or restriction"; and

(*b*) in subsection (6) for the words from "the order or direction" to the end of the subsection there shall be substituted the words "the restriction order or restriction direction to which he is subject by virtue of subsection (2) of this section shall expire on the date on which the first-mentioned order or direction would have expired if he had not been so removed.".

The Mental Health (Scotland) Act 1960 (*c.* 61) SCH. 2

2. In the following provisions, for the words "local health authority" or "local health authorities", in each place where they occur, there shall be substituted the words "local authority" or "local authorities" respectively—

Section 5(2)
Section 7(1A)(*c*)
Section 7(2)
Section 10(1)
Section 12(1)
Section 12(3)
Section 12(4)
Section 25(2)
Section 25(3)
Section 26(1)
Section 29(2)
Section 29(4)
Section 33(1)
Section 33(2)
Section 36(2)
Section 37(1)
Section 37(2)
Section 37(3)
Section 38(1)
Section 38(2)
Section 38(3)
Section 39(4)
Section 39(6)
Section 48(2)
Section 49(2)
Section 51(1)
Section 53(2)
Section 87(1)
Section 87(2)
Section 88(2)
Section 91(1)
In Schedule 2, the entry relating to section 53.

3. In section 4 (which makes provision as to the functions and duties of the Mental Welfare Commission)—

(*a*) in subsection (2)(*b*) at the beginning there shall be inserted the words "subject to paragraph (*bb*) of this subsection,";

(*b*) in subsection (3) after "(*b*)", there shall be inserted the words "or (*bb*)";

(*c*) in subsection (5) for the words "call for" there shall be substituted the words "require the production of and inspect"; and

(*d*) in subsection (8)—

(i) after the word "committee" there shall be inserted the words "or person"; and

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(ii) for the words " the last foregoing subsection " there shall be substituted the words " subsection (7) of this section ".

4. After section 4 (which *inter alia* makes provision as to the duty of the Mental Welfare Commission to make enquiry into cases of ill-treatment and other matters) there shall be inserted the following section—

" Proceedings and evidence at enquiries under section 4.

4A.—(1) For the purpose of any enquiry under section 4(2)(*a*) of this Act, the Mental Welfare Commission may, by notice in writing, require any person to attend at the time and place set forth in the notice to give evidence, but no person shall be required in obedience to such a notice to go more than ten miles from his place of residence unless the necessary expenses of his attendance are paid or tendered to him.

(2) A person giving evidence at such an enquiry shall not be required to answer any questions which he would be entitled, on the ground of privilege or confidentiality, to refuse to answer if the enquiry were a proceeding in a court of law.

(3) The proceedings in any such enquiry shall have the privilege of a court of law.

(4) The chairman of, or person holding, the enquiry may administer oaths to witnesses and examine witnesses on oath, and may accept, instead of evidence on oath by any person, evidence on affirmation or a statement in writing by that person.

(5) Any person who refuses or wilfully neglects to attend in obedience to a notice under subsection (1) of this section or to give evidence shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale (as defined in section 75 of the Criminal Justice Act 1982).".

1982 c. 48.

5. In section 6(1) (as renumbered by section 5 of this Act and which defines " mental disorder ") for the word " deficiency " there shall be substituted the word " handicap ".

6. In section 7(1A), (which empowers a local authority to make certain arrangements)—

(*a*) for the words from " the purpose " to " that is to say " there shall be substituted the words " a local authority may, with the approval of the Secretary of State and shall, to such extent as he may direct, make arrangements for any of the following purposes " ; and

(*b*) in paragraph (*f*) for the word " deficiency " there shall be substituted the word " handicap ".

7. In section 12(1)(*b*) (which imposes a duty on a local authority to provide training and occupation for persons suffering from mental deficiency who are over school age) for the word " deficiency " there shall be substituted the word " handicap ".

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8. In section 24(2)(*a*) (which makes provision as to statements to be included in medical recommendations accompanying applications for admission to a hospital) for the word "deficiency" there shall be substituted the word "handicap".

9. In section 28 (which makes provision for the approval of applications by the sheriff)—

(*a*) in subsection (1) for the words "the sheriff" there shall be substituted the words "a sheriff of the sheriffdom—

(*a*) within which the patient is resident at the time when the application is submitted; or

(*b*) where the patient is a resident patient in a hospital at the time when the application is submitted, within which the hospital is situated," and

(*b*) in subsection (2)—

(i) after the words "this section", where they occur for the first time, there shall be inserted the words "and to section 100A of this Act";

(ii) after the words "this section" where they occur for the second time there shall be inserted—

"(*a*)"; and

(iii) at the end there shall be added the words "; and

(*b*) shall, where a mental health officer makes an application for admission in respect of a patient under section 26(4) of this Act and such application includes a statement of the mental health officer's opinion that the application should not be granted, afford the mental health officer an opportunity of being heard."

10. In section 29(2) (which makes provision as to the effect of applications for admission or guardianship) the word "medical" shall cease to have effect.

11. In section 39(5) (which makes provision as to the renewal of authority for detention or guardianship)—

(*a*) for the words "subsection (7)" there shall be substituted the words "subsections (7) and (8)"; and

(*b*) after the word "furnished" there shall be inserted the words "to a board of management or a local authority".

12. In section 43 (which makes provision as to the discharge of patients)—

(*a*) in subsection (4), "(*a*)" and paragraph (*b*) and the word "or" which precedes it shall cease to have effect; and

(*b*) at the end there shall be added the following subsection—

"(6) A patient subject to guardianship shall cease to be so subject where—

(*a*) the sheriff has approved under section 28 of this

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Act an application for his admission to a hospital; or

(*b*) he is admitted to a hospital under section 31 of this Act.".

13. In section 44(3) (which makes provision as to appeal by the nearest relative for discharge of a patient)—

(i) after the word "where" there shall be inserted "—
(*a*)";

(ii) the words "or, as the case may be, the local health authority concerned" shall cease to have effect;

(iii) for the word "and" there shall be substituted the words "; or

(*b*) the local authority informs the nearest relative under subsection (2A) of this section"; and

(iv) at the end there shall be added the words " , and the provisions of section 39(8)(*a*) of this Act shall apply in relation to such an appeal as they apply in relation to an appeal by a patient under section 39(7) of this Act.".

14. In section 60 (which makes provision relating to the power of the court to restrict a patient's discharge from hospital)—

(*a*) in subsection (3) for the words "an order restricting discharge" there shall be substituted the words "a restriction order" and for the words "the next following section" there shall be substituted the words "sections 60A to 60E and 61 of this Act"; and

(*b*) in subsection (5)—

(i) for the words "an order restricting the discharge of a patient" there shall be substituted the words "a restriction order in respect of a patient";

(ii) for the words "an order restricting his discharge" there shall be substituted the words "a restriction order"; and

(iii) for the words "the order restricting his discharge" there shall be substituted the words "the restriction order".

15. In section 61 (which contains provisions relating to the power of the Secretary of State in respect of patients subject to restriction orders—

(*a*) in subsection (1)—

(i) for the words "an order restricting the discharge of a patient" there shall be substituted the words "a restriction order in respect of a patient";

(ii) for the words "the last foregoing section" there shall be substituted the words "section 60(3) of this Act"; and

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(iii) for the words "the order restricting the discharge of the patient" there shall be substituted the words "the restriction order";

(*b*) in subsection (2)—

(i) for the words "an order restricting the discharge of a patient is in force" there shall be substituted the words "a restriction order is in force in respect of a patient"; and

(ii) for the words "the order restricting his discharge" there shall be substituted the words "the restriction order";

(*c*) in subsection (3)—

(i) for the words "an order restricting the discharge of a patient" there shall be substituted the words "a restriction order in respect of a patient"; and

(ii) for the words "the order restricting his discharge" in both places where they occur there shall be substituted the words "the restriction order";

(*d*) in subsection (4) for the words "an order restricting the discharge of a patient ceases to have effect" there shall be substituted the words "a restriction order ceases to have effect in respect of a patient"; and

(*e*) in subsection (5) for the words "an order restricting discharge" there shall be substituted the words "a restriction order".

16. In section 65 (which makes provision as to the removal to hospital of persons in prison awaiting trial etc.)—

(*a*) in subsection (1)—

(i) for the words from "the said person" to "warrants" there shall be substituted the words "the grounds are satisfied upon which an application may be made for"; and

(ii) for the words from "person is suffering" to "and detained" there shall be substituted the words "grounds are satisfied as aforesaid";

(*b*) in subsection (3) for the words "an order restricting his discharge" there shall be substituted the words "a restriction order in respect of him"; and

(*c*) in subsection (5), for the word "deficiency" there shall be substituted the word "handicap".

17. In section 66 (which empowers the Secretary of State to make transfer directions)—

(*a*) in subsection (1) for the words from "that person" to "mental disorder" there shall be substituted the words "the grounds are satisfied upon which an application may be made for his admission to a hospital under Part IV of this Act";

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(*b*) in subsection (2) for paragraph (*c*) there shall be substituted the following paragraph—

"(*c*) persons detained under the Immigration Act 1971."; and

(*c*) in subsection (5)—

(i) for the words "three months" there shall be substituted the words "one month" and

(ii) after the words "to cancel the direction" there shall be substituted the words ", and the sheriff shall cancel the direction unless he is satisfied that the grounds are satisfied upon which an application may be made for the admission of the person to a hospital under Part IV of this Act".

18. In section 67(2) (which provides for the effect of a restriction direction) for the words "" a direction restricting discharge "" there shall be substituted the words "" a restriction direction "", and for the words "an order restricting the discharge of the patient" there shall be substituted the words "a restriction order in respect of the patient".

19. In section 68(1) (which makes further provision as to persons removed to hospital while awaiting trial etc.)—

(*a*) after the word "section" where it occurs for the third time there shall be inserted "174A"; and

(*b*) after "178" there shall be inserted "375A,".

20. In section 69 (which makes further provision in relation to transfer directions and restriction directions)—

(*a*) in subsection (1) for the words "a direction restricting discharge" there shall be substituted the words "a restriction direction" and for the words "direction restricting discharge" there shall be substituted the words "restriction direction";

(*b*) in subsection (2) for the words "A direction restricting discharge" there shall be substituted the words "A restriction direction";

(*c*) in subsection (3) for the words "a direction restricting the discharge of a person ceases to have effect" there shall be substituted the words "a restriction direction ceases to have effect in respect of a person";

(*d*) in subsection (4) for the words "a direction restricting the discharge of a person ceases to have effect" there shall be substituted the words "a restriction direction ceases to have effect in respect of a person"; and

(*e*) in subsection (5)—

(i) for the words "an order restricting his discharge" there shall be substituted the words "a restriction order";

(ii) for the words "the direction restricting his discharge" there shall be substituted the words "the restriction direction"; and

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(iii) for the words " and (7) " there shall be substituted the words " (7) and (8) ".

21. In section 72(3) (interpretation of Part V) for the words " an order restricting the discharge of a patient " there shall be substituted the words " a restriction order in respect of a patient ".

22. In section 73(4) (which provides for the expiry of restriction orders and directions in relation to the removal of patients to England and Wales) for the words " an order or direction restricting his discharge " there shall be substituted the words " a restriction order or a restriction direction ".

23. In section 77(5) (which makes provision as to the expiry of restriction orders or directions in relation to the removal of patients to Northern Ireland) for the words " an order or direction restricting his discharge " there shall be substituted the words " a restriction order or a restriction direction ".

24. In section 79 (which makes provision in relation to the removal of patients from Northern Ireland)—

(*a*) in paragraph (*a*) of subsection (2) for the words " an order or direction " there shall be substituted the words " a restriction order or a restriction direction " ; and

(*b*) in subsection (5) for the words from " that order or direction " to the end of the subsection there shall be substituted the words " the restriction order or restriction direction to which he is subject by virtue of subsection (2)(*a*) of this section shall expire on the date on which the first-mentioned order or direction would have expired if he had not been so removed.".

25. In section 81(2) (which makes provision relating to patients removed to Scotland from the Channel Islands and the Isle of Man) for the words " sixty-three of this Act " there shall be substituted the words " 174 or 375 of the Criminal Procedure (Scotland) Act 1975 ". 1975 c. 21.

26. In section 87(1) (which makes provision for the intimation of the removal of patients to Scotland) for the word " deficiency " there shall be substituted the word " handicap ".

27. In section 106(2) (which makes provision as to the retaking of patients escaping from custody) for the words " an order under Part V of this Act restricting his discharge " there shall be substituted the words " a restriction order under Part V of this Act ".

28. In section 111 (interpretation)—

(*a*) in subsection (1)—

(i) the definitions of a " direction restricting discharge " and an " order restricting discharge " shall cease to have effect ;

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(ii) before the definition of "hospital" there shall be inserted the following definition—

"" health service " has the meaning given by section 108(1) of the National Health Service (Scotland) Act 1978, " ;

1978 c. 29.

(iii) after the definition of " mental health officer " there shall be inserted the following definition—

"" mental impairment " means a state of arrested or incomplete development of mind not amounting to severe mental impairment which includes significant impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned ; and cognate expressions shall be construed accordingly." ;

(iv) after the definition of " responsible medical officer " there shall be inserted the following definitions—

"" restriction direction " has the meaning assigned to it by section 67 of this Act ;

" restriction order " means an order made under section 178 or 379 of the Criminal Procedure (Scotland) Act 1975 ;

1975 c. 21.

" severe mental impairment " means a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned ; and cognate expressions shall be construed accordingly." ; and

(v) after the definition of " transfer order " there shall be inserted the following definition—

"" voluntary organisation " means a body the activities of which are carried on otherwise than for profit, but does not include any public or local authority." ; and

(*b*) at the end there shall be added the following subsection—

" (5) Any reference, however expressed, in this Act to a patient admitted to or detained in, or liable to be admitted to or detained in, a hospital or received, or liable to be received, into guardianship under this Act (other than under Part IV thereof) or under Part V of this Act shall include a reference to a patient who is admitted to or detained in, or liable to be admitted to or detained in, a hospital or received or liable to be received into guardianship under the Criminal Procedure (Scotland) Act 1975.".

29. In Schedule 2 (which makes provision for the application of

Part IV of the Act to patients admitted to hospital or received into guardianship under Part V of the Act)— SCH. 2

(*a*) in the heading—

(i) in column 2 for "ss.58 and 71" there shall be substituted "s.58"; and

(ii) in column 3 for "(ss.63 and 64)" there shall be substituted "(s.64 and ss.175 and 375 of the Criminal Procedure (Scotland) Act 1975)"; 1975 c. 21.

(*b*) the entry relating to section 34 shall cease to have effect;

(*c*) in the entry relating to section 36—

(i) in column 2 for the word "None" there shall be substituted the words "Subsection (4) shall be omitted"; and

(ii) in column 3 for the words "and (3)" there shall be substituted the words "(3) and (4)";

(*d*) in the entry relating to section 39, in column 2—

(i) for the words from "day on which he was so" to "as the case may be" there shall be substituted the words "day on which he was so admitted or so received"; and

(ii) at the end there shall be added the words "; in subsection (3) for the words "this Part" there shall be substituted the words "Part V""";

(*e*) in the entry relating to section 41 in column 2 for the words from "In" to "omitted" there shall be substituted the word "None";

(*f*) in the entry relating to section 43 in column 2—

(i) at the beginning there shall be inserted the words "In subsections (1) and (2) for the words 'this Part' there shall be substituted the words "Part V""";

(ii) for the words "the words "fourty or fourty-four" shall be omitted" there shall be substituted the words "for the words '32A, thirty-nine, forty or forty-four' there shall be substituted the words 'thirty-nine'"; and

(iii) the words "or a guardianship application" and "or subject to guardianship" shall cease to have effect; and

(*g*) in the entry relating to section 51, in column 2, the words "section forty, or" shall cease to have effect.

The Criminal Procedure (Scotland) Act 1975 (*c.* 21)

30. In section 174(4) (which makes provision as to the effect of an order under that section) for the words "order restricting his discharge" there shall be substituted the words "restriction order".

31. In section 175, (which makes provision as to the power of the court in solemn proceedings to order hospital admission or guardianship)—

(*a*) in subsection (1) for the words from "the offender is suffering" to "1960" there shall be substituted the words "the

grounds set out in section 23(1) or, as the case may be, the ground set out in section 25(1A)(*a*) of the Mental Health (Scotland) Act 1960 apply in relation to the offender";

1960 c. 61.

(*b*) in subsection (5) after the word "satisfied" there shall be inserted the words—

"(*a*) after taking into consideration the evidence of a mental health officer, that it is necessary in the interests of the welfare of the person that he should be placed under guardianship; and

(*b*)"

(*c*) in subsection (6) for the word "deficiency" there shall be substituted the word "handicap"; and

(*d*) in subsection (7) after the words "probation order" there shall be inserted the words "or a community service order".

32. In section 176(1) (which makes provision as to the qualifications of medical practitioners) for the word "section" where it first occurs there shall be substituted the words "sections 174A(1) and".

33. In section 178 (which makes provision in relation to the power of the court to restrict discharge from hospital)—

(*a*) in subsection (2) for the words ""an order restricting discharge"" there shall be substituted the words ""a restriction order""; and

(*b*) in subsection (3)—

(i) for the words "an order restricting the discharge of a patient is in force" there shall be substituted the words "a restriction order is in force in respect of a patient";

(ii) for the words "the order restricting discharge" there shall be substituted the words "the restriction order"; and

(iii) for the words "another order restricting discharge" there shall be substituted the words "another restriction order".

34. In section 376 (which makes provision as to the power of the court in summary proceedings to order hospital admission or guardianship)—

(*a*) in subsection (1) for the words from "the offender is suffering" to "1960" there shall be substituted the words "the grounds set out in section 23(1) or, as the case may be, the ground set out in section 25(1A)(*a*) of the Mental Health (Scotland) Act 1960 apply in relation to the offender";

1960 c. 61.

(*b*) in subsection (8) after the word "satisfied" there shall be inserted the words—

"(*a*) after taking into consideration the evidence of a mental health officer, that it is necessary in the interests

of the welfare of the person that he should be placed under guardianship; and

(*b*)";

(*c*) in subsection (9) for the word "deficiency" there shall be substituted the word "handicap"; and

(*d*) in subsection (10) after the words "probation order" there shall be inserted the words "or a community service order".

35. In section 377(1) (which makes provision as to the qualifications of medical practitioners) for the word "section" where it first occurs there shall be substituted the words "sections 375A(1) and".

36. In section 379 (which makes provision as to the power of the court to restrict discharge from hospital)—

(*a*) in subsection (2) for the words "" an order restricting discharge "" there shall be substituted the words "" a restriction order "" ; and

(*b*) in subsection (3)—

(i) for the words "an order restricting the discharge of a patient is in force" there shall be substituted the words "a restriction order is in force in respect of a patient";

(ii) for the words "the order restricting discharge" there shall be substituted the words "the restriction order"; and

(iii) for the words "another order restricting discharge" there shall be substituted the words "another restriction order".

37. In section 462(1) (interpretation)—

(*a*) the definition of "order restricting discharge" shall cease to have effect; and

(*b*) after the definition of "responsible medical officer" there shall be inserted the following definition—

""restriction order" has the meaning assigned to it by section 178 or 379 of this Act;".

Employment Protection (Consolidation) Act 1978 (*c.* 44)

38. In Schedule 5 (which names National Health Service employers for the purposes of section 99) at the end there shall be added—

"5. A State Hospital Management Committee.".

Section 39(3).

SCHEDULE 3

REPEALS

Chapter	Short title	Extent of repeal
1960 c. 61.	The Mental Health (Scotland) Act 1960.	In section 2(2), the words " and not more than eleven ". In section 7, subsections (1) and (1A)(*b*), in subsection (2) the words " Notwithstanding anything in subsection (1) of the said section twenty seven," and subsection (3). In section 29(2), the word " medical ". In section 31(2), the words from " Except " to " refers ". Section 34. In section 37, in subsection (1)(*b*) the words " or be transferred to a hospital with the consent of the Mental Welfare Commission and of the board of management of the hospital ", in subsection (3), paragraph (*d*). In section 39, in subsection (4) the words " in the prescribed form " where they first occur and in subsection (7) the words " who has attained the age of sixteen years ". Section 40. In section 41, in subsection (2), the words " or subsection (1) of section forty ", in subsection (3) the words " or section forty ". In section 43, in subsection (3), the word " , forty ", in subsection (4), " —(*a*) " and paragraph (*b*) and the word " or " which precedes it, in subsection (5), the words " or by the local health authority concerned " and " or, as the case may be, to that authority ". In section 44, subsection (1), in subsection (2) the words " or subject to guardianship ", " or, as the case may be, to the local health authority concerned ", " or, as the case may be, to that authority ", in subsection (3) the words " or, as the case may be, the local health authority concerned ".

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Chapter	Short title	Extent of repeal
		In section 58(3), " —(*a*) " and paragraph (*b*) and the word " and " which precedes it. In section 96(7), the definition of " defective " and the word " and " which follows it. In section 111(1), the definitions of a " direction restricting discharge " and an " order restricting discharge ". In Schedule 2, the entry relating to section 34, in the entry relating to section 43, in column 2 the words " or a guardianship application " and " or subject to guardianship ", and in the entry relating to section 51, in column 2 the words " section forty, or ".
1968 c. 49.	The Social Work (Scotland) Act 1968.	In Schedule 8, paragraph 50.
1972 c. 58.	The National Health Service (Scotland) Act 1972.	Section 52(2) to (6).
1975 c. 21.	The Criminal Procedure (Scotland) Act 1975.	Section 184(4). Section 385(4). In section 462(1), the definition of " order restricting discharge ".
1978 c. 29.	The National Health Service (Scotland) Act 1978.	Section 102(2).