

Mental Health Act, 1959 7 & 8 Eliz. 2., Ch. 72 : [Commentary materials included]

Contributors

Great Britain.

Publication/Creation

London : H.M.S.O., [1959]

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Mental Health Act, 1959

7 & 8 ELIZ. 2. CH. 72.

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MENTAL HEALTH ACT 1959

Memorandum on
Parts I, IV to VII and IX

*Ministry of Health, Savile Row
London, W.1*

LONDON
HER MAJESTY'S STATIONERY OFFICE
1960



MENTAL HEALTH ACT, 1959

Memorandum of guidance to local health authorities, hospital authorities and general practitioners on Parts I, IV to VII and IX of the Act and associated Schedules, and on the Mental Health (Hospital and Guardianship) Regulations, 1960

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MENTAL HEALTH ACT, 1959

Parts I, IV to VII and IX

1. This memorandum deals with the bringing into operation of Parts I, IV to VII and IX of the Mental Health Act, 1959, and the associated Schedules to the Act, on 1st November, 1960. It draws attention to the main provisions affecting hospitals and local health authorities, and gives some guidance on them. Separate circulars are being or have been issued on Parts II, III and VIII of the Act.

2. The memorandum is for guidance only, and cannot override the statutory provisions of the Act and Regulations. Nor does it attempt to describe in full detail all their contents. The Act and Regulations themselves must be referred to when necessary.

Appointed Day for Commencement

3. The Minister has decided to appoint 1st November, 1960 as the date of commencement of the Mental Health Act, 1959 (other than those parts already brought into operation by previous commencement orders). On that day, the remaining provisions of the Lunacy and Mental Treatment Acts and Mental Deficiency Acts will be repealed, the Board of Control will be dissolved, the Mental Deficiency Regulations, 1948 and the Mental Treatment Rules, 1948 and all other Regulations made under Acts which are repealed will lapse, and the provisions of the new Act will come into operation.

The Mental Health (Hospital and Guardianship) Regulations, 1960

4. Enclosed is a copy of the Mental Health (Hospital and Guardianship) Regulations, 1960 (S.I. 1960, No. 1241), which will come into force on 1st November, 1960. Guidance on the provisions of these regulations is given later in this memorandum, in which they are referred to, for sake of brevity, simply as "the Regulations". Regulation 3 revokes the Mental Health (Approval of Medical Practitioners) Regulations, 1960, but their substance is re-enacted in Regulation 5, thus consolidating them in the new Regulations.

Abolition of the Term "Mental Deficiency"

5. The Mental Health Act repeals the Mental Deficiency Acts, and also removes the terms "mental deficiency", "mental defectiveness" and "defective" from other Acts in which they now occur. In the National Health Service Act, 1946, the Sections which at present authorise the provision of services for "persons suffering from illness or mental defectiveness" are now amended by deleting the words "or mental defectiveness", and the definition of "illness" in Section 79 is amended to include all forms of mental disorder as defined in Section 4 of the Mental Health Act.

6. The term "mental deficiency" should therefore no longer be used in connection with hospital or local authority services. The new Act introduces the terms "severe subnormality", "subnormality" and "psychopathic disorder", which are defined in Section 4. The term "mental illness" remains unaffected. These terms are used in the Act in connection with compulsory admission to hospital or

guardianship, but are already coming into general use in relation to the administration of hospital and local authority mental health services generally.

CARE OF PATIENTS

Planning of hospital services, and arrangements for admitting patients

7. One of the major changes made by the Mental Health Act is the abolition of the "designation" of hospitals by the Minister. In future, there will be no statutory bar to the admission of mentally disordered patients, whether subject to detention or not, to any hospital. Nor will there be a rigid statutory division between on the one hand hospitals for the mentally ill and on the other hospitals for the patients of different types who have hitherto been grouped together under the term "mental deficiency". This will give hospital Boards greater flexibility in the distribution and allocation of psychiatric beds and in grouping patients according to their clinical needs. Each Board is asked to review the position in their region so as to ensure that the best use is made of this flexibility. In particular, the Minister hopes that there will be a substantial increase in psychiatric facilities at general hospitals—this applies to existing hospitals as well as to new or redeveloped ones—both to secure the better distribution and siting of psychiatric services and to help to ensure that there is the closest possible contact between psychiatric and other hospital services. In the same way, there is a need (as suggested in paragraph 5(d) of HM(59)46) for improved facilities for the admission to geriatric hospitals of some elderly people with mental symptoms. The patients who will be classified in future as subnormal (as distinct from those who come within the definition of severe subnormality in Section 4 of the Act) are intellectually dull, but their main trouble is often emotional instability. Many of them need psychiatric treatment as well as training, and it may be more suitable in some areas to accommodate them, when circumstances permit, in units associated with hospitals for medium-stay mentally ill patients, or in entirely separate units, rather than in the same hospitals as severely subnormal patients.

8. Another important change is that, in cases where the procedures for compulsory admission under Part IV of the Act are used, the documents will give the hospital power to detain and treat the patient, but will not constitute an order to admit him. This again introduces greater flexibility, in that psychiatric hospitals will be under no greater pressure than other hospitals to accept patients for whom some other form of hospital care might be more suitable.

9. Ensuring that, in these new conditions, psychiatric hospitals are used to the best advantage will of course involve the development of the necessary alternative hospital facilities—e.g., geriatric units; and there will have to be machinery for ensuring that the needs of each patient are fully assessed when admission to hospital is being considered. Not until these requirements are satisfied will it be possible to realise the benefits of the increased flexibility provided by the Act. In the meantime, patients who need hospital care must receive it, even if the ideal type of accommodation is not available.

10. There has been some anxiety lest, in the new circumstances, difficulties may arise over the admission of individual patients to

hospital, particularly in emergencies when the patient's immediate removal from his home (or from another hospital) is essential. It is important that general practitioners and local health authorities should know which hospitals have psychiatric beds and to which hospital(s) they should normally look in seeking to arrange the admission of patients from their locality suffering from various forms of mental disorder, and Regional Boards should see that this information is made available. In cases of difficulty it should not be left to a mental welfare officer to find a hospital which is prepared to accept the patient; it is the duty of the Regional Board, as the body responsible for the administration of the hospital service in the region, to make sure that the difficulties are overcome and a bed found.

11. Acute emergencies, when it is essential to remove the patient immediately, can at present often be dealt with by admission to beds designated under Section 20 of the Lunacy Act, 1890. This provision of the Lunacy Act is not being replaced, but Boards are asked to ensure that an adequate number of beds, at mental and other hospitals, are set aside specifically for psychiatric emergencies, irrespective of whether the patient is to be admitted informally or under Part IV of the Act. Such provision may of course be made at teaching hospitals, and Regional Boards will no doubt consult Boards of Governors when planning this part of the service. The number of emergency beds should be sufficient to meet all likely demands, and special regard should be given to their convenient distribution throughout the region. The attention of Boards is particularly drawn to Section 132 of the Act, which places on them a statutory duty to notify all local health authorities partly or wholly within their region of the hospitals administered by them which have arrangements for receiving emergency cases. An initial list should be sent to local health authorities as soon as possible, and should also be sent to local medical committees for the information of general practitioners; any subsequent changes in the list should be notified to local health authorities and to local medical committees at the time when they are made. Any Board of Governors which arranges for beds of this type to be available at one of their hospitals should inform the Regional Hospital Board, who in turn should notify the other authorities.

12. For cases where there is not an acute emergency of this sort, other arrangements will be needed. Boards will no doubt continue their present arrangements for dealing with waiting lists of subnormal and severely subnormal patients. In regard to other forms of mental disorder also, it is the responsibility of Boards to make proper arrangements for dealing with cases where there is difficulty in arranging admission and, where it is clear that admission to hospital is necessary, for ensuring that a bed is secured. It might be convenient for Boards in discharging this responsibility to use machinery on the lines of a bed bureau (or to extend an existing bed bureau to deal with psychiatric as well as other cases), or to designate for this work one or two officers of the necessary seniority on the staff of the Senior Administrative Medical Officer. Boards would have to consider whether such arrangements should apply only to psychiatric beds or whether, since it may not always follow that treatment in a psychiatric bed is needed, they should apply to other types of bed

also. The main needs are that local health authorities and general practitioners should know to what person they should turn in case of difficulty, and that he should have sufficient authority to be able to arrange admission.

Lapsing of statutory provisions as to notices and visiting and space standards

13. Under the Act and Regulations there are fewer statutory requirements than in the past on subjects such as the notification to other persons of patients' admission and discharge, the particulars to be given to hospitals on admission, the keeping of records, etc. It is now assumed that, whether a patient is admitted compulsorily or informally, the clinical and personal information about the patient which the hospital will need will be given by the general practitioner or officers of the local health authority or the relatives, in the usual way. The statutory forms prescribed for use when a patient is admitted compulsorily are therefore restricted to facts which are relevant to the use of powers of detention and do not include other personal information such as has previously been included in the statutory "statements of particulars". When patients leave hospital, whether they have been detained or not, it should be standard practice to notify the general practitioner who will be providing general medical services for the patient after discharge and, in suitable cases and with the patient's consent, the local health authority. The local health authority should normally be informed of the discharge of any patient whose admission was arranged through one of their officers. The general practitioner and local health authority should also, where appropriate, be consulted beforehand about the arrangements for the patient's after-care. The statutory procedures for compulsory admission and the statutory arrangements for discharge and leave of absence for detained patients should be regarded as additional to and not as substitutes for these normal practices.

14. The Act does not require members of Hospital Management Committees to visit the wards or see patients at specified intervals. The Minister expects members to be accessible to patients, to receive and investigate any complaints. In particular, in hospitals where patients are compulsorily detained, members should be prepared to see patients and their relatives who wish to see them to discuss the possibility of discharge, if they are still unsatisfied after discussions with the responsible doctor. Such interviews, when requested, should be arranged with as little delay as possible. The Minister deprecates any routine interviewing by members of committees of patients who have not requested it. It is for committees themselves to decide what arrangements should be made for members to make general visits to the wards, as distinct from interviews with individual patients.

15. The Minister considers it no longer necessary that accommodation in psychiatric hospitals should be subject to statutory requirements, and regulations have accordingly been made (S.I., 1960, No. 1240) rescinding regulation 4(4)(c) of the National Health Service (Functions of Regional Hospital Boards etc.) Regulations, 1948. Paragraph 25(i) and Appendices II and III of the Handbook on Hospital Building Operations, enclosed with RHB(53)108/HMC(53) 102/BG(53)104, will therefore cease to have effect. The Minister is confident that he can rely on Boards to ensure that suitable standards

are maintained in psychiatric as at other hospitals. (It is however proposed to retain the previous space standards for calculating statistics of overcrowding: further advice will be issued about this later).

INFORMAL ADMISSION TO HOSPITAL

16. Arrangements for the informal admission to psychiatric hospitals of patients who are not unwilling to be admitted and can suitably be treated without powers of detention are already in operation. This should continue to be the normal form of admission. The general principles mentioned in paragraphs 2-8, 11, 16 and 18 of H.M.(58)5 still apply, though the references to the Mental Deficiency Acts will be obsolete when the new Act comes into operation. All other paragraphs in H.M.(58)5 will also be obsolete.

17. Certain provisions in Part IX of the Mental Health Act apply both to patients receiving treatment informally and to patients who are subject to compulsory detention. These, and some other matters applying to all patients, are dealt with in paragraphs 269-287 of this memorandum.

18. Circumstances may occasionally arise in which it is necessary to obtain authority for the compulsory detention of a patient who has been admitted informally, or who has remained in hospital for further treatment informally after ceasing to be detained. The fact that the patient is already in hospital is no bar to the making of an application under Part IV of the Act for his admission to and detention in the same or another hospital under the procedures explained in paragraphs 37 to 53 of this memorandum. Pending the making of the application, the patient may be detained for not more than three days in the hospital where he already is if a report is made under Section 30(2) by the medical practitioner in charge of the patient's treatment, i.e., by the doctor who, if the patient were already detained, would be the "responsible medical officer"—see paragraph 29 of this memorandum. The three days for which the patient may be detained comprise the remainder of the day on which the report is made and the two following days; if an application under Part IV has not been completed by then the patient may not be compulsorily detained any longer.

19. A report under Section 30(2) must be on Form 6 as prescribed in the Schedule to the Regulations, or in a form to the like effect. It should be given immediately to an officer who has been authorised under Regulation 20 to receive such reports on behalf of the managers—see paragraph 26 of this memorandum. If the medical officer who has made the report is himself one of the officers authorised to receive documents on behalf of the managers he should give the report signed by him to some other such officer, e.g. the Hospital Secretary or, if the Secretary is not on duty, the nurse in charge of the ward in which the patient is, if this is in accordance with the authority given by the managers under regulation 20. To whatever officer the report is first given, it should eventually be carefully kept in the appropriate office of the hospital in the same way as other documents authorising detention—see paragraph 259 of this memorandum.

COMPULSORY ADMISSION TO HOSPITAL OR GUARDIANSHIP

20. Parts IV, V and VI of the Act deal with compulsory admission and detention in hospital and reception into guardianship, with powers of discharge and other related matters. Special provisions for patients already detained in hospital or under guardianship when the Act comes into force are in Part III of the Sixth Schedule. The Act contains many important differences from the corresponding provisions of the Acts which are now repealed. The Minister wishes to draw attention particularly to the following points.

General

Hospitals and nursing homes in which patients may be detained

21. Any hospital as defined in Section 147(1) may admit and detain patients under the procedures laid down in the Act. The definition covers all hospitals within the National Health Service and those parts of non-transferred local authority accommodation which are used for hospital and specialist services. "Designation" and the special provisions for "deemed institutions" thus disappear. Some hospitals—particularly those which were not previously "designated"—will no doubt normally admit all their patients informally, but there is no statutory bar against the procedures for compulsory admission being used at any hospital when occasion demands.

22. Patients may also be detained in mental nursing homes if, but only if, the home is registered in the separate part of the register provided for in Section 15(1) of the Act, or is treated as so registered under Part II of the Sixth Schedule. The word "hospital" is used in Parts IV, V and VI of the Act—and in this memorandum—to include such mental nursing homes except where the context indicates otherwise.

Functions of "the managers" of hospitals

23. The Act and Regulations give various functions to "the managers" of hospitals. This term is defined in Section 59(1). In relation to hospitals or non-transferred local authority accommodation used for hospital purposes under the National Health Service, it means the Hospital Management Committee or Board of Governors. The power to detain patients admitted under the Act rests with the managers (Sections 31(2) and 63(1)), and they (with others) have power of discharge (Section 47). Various reports and notices have to be furnished to them, and they also have various other powers and duties, which are mentioned later in this memorandum. These functions may be performed on behalf of the managers by members or officers authorised to do so in accordance with the Act and Regulations.

24. Section 47(4) allows the managers' power of discharge to be exercised by any three or more members authorised by them to do so. This function may not be delegated to officers. Hospital Management Committees and Boards of Governors will probably wish to authorise all, or a large number, of their members, any three of whom acting together would then be able to deal with requests for discharge. The same members will be asked to consider reports

renewing the authority for detention under Section 43—see paragraph 120 of this memorandum. A sufficient number of members should be authorised to allow these functions to be carried out without delay when occasion arises. The authorisation should be by a resolution of the Hospital Management Committee or Board of Governors as the case may be.

25. Regulation 24(2) permits the delegation to individual officers or to a class of officers of the particular functions named in the regulation. These relate to the rectification of documents under Section 32 and the retaking of patients under Section 40. Advice as to the categories of officers who might be authorised to perform the functions under Section 32 is given in paragraph 72 of this memorandum.

26. Regulation 20 provides that any document which is to be sent or furnished to the managers may either be sent by post or delivered personally to the managers or to any person authorised by them to receive documents on their behalf. These documents will, among others, include the application and medical recommendations which constitute the authority for a patient's detention; a report under Section 30(2) which authorises the detention of a patient not previously liable to be detained; a report by the responsible medical officer which renews the authority for detention under Section 43; and an order for the discharge of a patient, or a notice of intention to make such an order, given by the nearest relative under Section 47 or 48 of the Act. These documents will often either be delivered by hand or signed on the hospital premises; in such cases they do not take effect until delivered to a person authorised to receive them. Some of the documents—e.g. reports under Section 30(2) and emergency applications for admission under Section 29—may need to be received at night or at other times when the staff who would normally receive them during the day are not on duty. A patient's relative may wish to hand a notice of intention to discharge the patient to a nurse or psychiatric social worker when visiting the hospital (see also paragraph 127 of this memorandum). The managers should ensure that suitable officers or classes of officers are authorised to receive documents, bearing these circumstances in mind.

27. The authorisation of officers to perform the functions covered by Regulations 20 and 24 should be by a resolution of the Hospital Management Committee or Board of Governors. It will probably be found convenient to authorise all officers holding certain posts or types of posts rather than by naming individuals.

28. The necessary resolutions authorising members or officers to act on behalf of the managers for any of the purposes mentioned should be passed before the Act comes into force so that persons are ready to exercise these functions as from the appointed day.

The "responsible medical officer"

29. Certain powers and duties are given to "the responsible medical officer" under Parts IV and V and under Part III of the Sixth Schedule, the chief of which are (in relation to hospital patients) power to grant leave of absence, power of discharge, power to make a report barring discharge by the nearest relative, and power to make the statutory reports which renew the authority for detention. The responsible medical officer is defined in Section 59(1) and in paragraph

23(1) of the Sixth Schedule, in relation to patients detained in hospital, as the medical practitioner in charge of the treatment of the patient. All hospital patients should be under the care of a senior medical officer who is in charge in the sense that he is not responsible or answerable for the patient's treatment to any other doctor. This will usually be a consultant, but in exceptional cases may be a S.H.M.O. It is this doctor who will normally exercise the functions of the responsible medical officer. It may occasionally happen that this doctor is not available (e.g. owing to sickness or absence on annual leave) when one of the functions of the responsible medical officer has to be exercised, e.g. when a decision must be made within 72 hours under Section 48(2) whether or not to make a report barring discharge by the nearest relative. In such circumstances the doctor who is for the time being in charge of the patient's treatment (who should normally be another senior doctor) should exercise the functions of the responsible medical officer. This should however only affect functions which have to be performed within a short, limited period. The examinations and reports authorising renewal under Sections 43 and 44 can be made at any time during a two-month period, and these should normally be undertaken by the patient's usual doctor and not by a doctor only temporarily in charge during his absence.

30. The definition of the "responsible medical officer" and the appointment of a "nominated medical attendant" in relation to patients under guardianship are mentioned in paragraphs 85—86 of this memorandum.

The patient's "nearest relative"

31. Various functions are also conferred on the patient's relatives or nearest relative. These are mentioned in more detail in later paragraphs of this memorandum; they arise in connection with the procedures for admission and powers of discharge under Part IV of the Act and Part III of the Sixth Schedule, and with applications to Mental Health Review Tribunals under Parts IV and V and the Sixth Schedule. The terms "relative" and "nearest relative" are defined for the purposes of the Act in Sections 49 to 51.

32. It is open to the nearest relative as defined to authorise some other person under Regulation 25 to perform his functions under the Act. Such authorisation may be given at any time, whether a question of admission to hospital or guardianship has already arisen or not, and it may be revoked at any time. It lapses on the death of the person who made it. While in force it confers the functions of nearest relative on the person to whom it is given to the exclusion of the person who made it.

33. The functions of the nearest relative may also be removed from the nearest relative as defined and conferred on some other person or on a local health authority by a county court under Section 52 or 53 of the Act—see paragraphs 129-136 of this memorandum.

34. In the remainder of this memorandum the phrase "nearest relative" should be read as meaning the person by whom the functions of the nearest relative are exercisable at any time, and "displaced relative" as a person from whom the functions of the nearest relative have been removed by order of a county court.

Mental welfare officers

35. The functions given under the Act to mental welfare officers may be performed only by officers of local health authorities appointed to act for this purpose, as mentioned in paragraph 4 of Circular 14/60 to local health authorities.

Part IV of the Act

36. Part IV deals with the circumstances in which and procedures through which patients may be compulsorily admitted to and detained in hospital or received into guardianship, otherwise than through the courts or on transfer from prisons, approved schools and other institutions (which is dealt with in Part V) or on removal from Scotland or Northern Ireland (which is dealt with in Part VI).

Admission to hospital for observation (Section 25 or 29) or for treatment (Section 26)

37. Patients may be compulsorily admitted to hospital either "for observation" on the grounds mentioned in Section 25, or "for treatment" on the grounds mentioned in Section 26. In either case there must be an application made either by the patient's nearest relative or by a mental welfare officer, founded on the medical recommendations of two doctors. Section 29 permits an application for admission for observation to be made in case of urgent necessity by any relative of the patient or by a mental welfare officer, with only one medical recommendation before admission. A person authorised to exercise the functions of the nearest relative—by a county court under Section 52 or 53, or by the real nearest relative under Regulation 25—may make an application under Section 25 or 26, but he may not do so under Section 29 unless he is himself a relative as defined in Section 49. The forms of all applications and medical recommendations are prescribed in the Schedule to the Regulations, and printed forms can be obtained from H.M. Stationery Office—see paragraphs 257-8 of this memorandum.

38. A patient of any age thought to be suffering from mental disorder may be admitted for observation under Section 25 or 29 provided the conditions laid down in those Sections and in Sections 27 and 28 are fulfilled. Admission under Section 26 is restricted to the circumstances described in that Section; in particular, patients classified as subnormal or psychopathic may not be admitted if over the age of 21. For the arrangements for determining a patient's age where the precise age is not known, see paragraphs 251-6 of this memorandum.

39. The terms "mental disorder", "severe subnormality", "subnormality" and "psychopathic disorder" are defined in Section 4. Section 59(3) is also of great importance; its effect is that the special provisions for subnormal and psychopathic patients in Section 26 and elsewhere in the Act do not apply if a patient is classified in the application as suffering from mental illness or severe subnormality in addition to psychopathic disorder or subnormality.

40. The term "mental illness" is not defined. Its interpretation is a matter for medical judgment, but it is expected that when it is qualified by the words "of a nature or degree which warrants the

detention of the patient in hospital for medical treatment" (in Section 26 and elsewhere in the Act) it will be taken as equivalent to the phrase "a person of unsound mind" which has been in use hitherto in connection with compulsory detention under the Acts which are now repealed. When it is not qualified by these limiting words, however, the term "mental illness" carries its normal (much wider) meaning.

41. "Medical treatment" is defined in Section 147(1) as including nursing and as including care and training under medical supervision, and may be regarded as wide enough to cover any services provided in hospitals for the care, training or treatment of mental patients.

42. A patient admitted "for observation" under Section 25 may not be compulsorily detained for more than 28 days except in the circumstances described in Section 52(4). Section 25 makes it clear that the patient may receive treatment as well as being under observation. It is hoped that if patients who are unwilling to enter hospital informally are admitted in the first place under this Section, in many—perhaps most—cases a longer period of compulsory detention may be unnecessary. Some patients may not need to remain as in-patients for more than 28 days. Of those who do, some may be content to remain informally, in which case no further compulsory powers will be needed. If further treatment is regarded as necessary and the patient is not willing to remain informally, a new application may be made under Section 26 for a longer period of compulsory detention if the conditions set out in that Section apply. If a patient needs readmission for another period of treatment later, it should be arranged either informally or under Section 25 or 26 as appropriate in the particular case.

43. A patient admitted for observation under the emergency procedure in Section 29 may not be detained for more than 72 hours unless a second medical recommendation is received on behalf of the managers within that period. If the second recommendation is so received, the patient may be detained for up to 28 days from admission as though originally admitted under the normal procedure of Section 25.

44. Section 30(1) provides that an application may be made under Section 25, 26 or 29 in respect of a patient who is already in hospital on an informal basis. An application under Section 26 (but not under Section 25) may be made in respect of a patient who is already detained under Section 25. This allows compulsory admission for treatment to follow immediately on a period of detention for observation, but a period of detention for observation may not be immediately followed by another. If further compulsory detention is needed at the end of the observation period it can only be authorised by a new application under Section 26.

45. Before making an application under Section 26 a mental welfare officer is obliged by Section 27(2) to consult the patient's nearest relative, unless in his opinion such consultation is not reasonably practicable or would involve unreasonable delay. If the nearest relative has notified the mental welfare officer or the local health authority that he objects to the application being made, the mental welfare officer may not make the application.

46. This duty to consult the nearest relative before making an application does not apply to applications for admission for observation under Section 25 or 29, but only to applications under Section 26. Any doctor who wishes to arrange a patient's admission will in any case no doubt normally ensure that the patient's family is consulted, if practicable, and take their views into account before deciding to recommend compulsory admission. If the nearest relative opposes admission but two doctors (or one in a case of urgent necessity) still think it necessary to recommend it in the interests of the patient's health or safety or for the protection of other persons, it is open to the mental welfare officer to proceed to make an application under Section 25 or (in case of urgent necessity) under Section 29 irrespective of the views of the relatives. The nearest relative has no power under Section 47 to order the discharge of a patient who is detained under Section 25 or 29. The mental welfare officer (or any relative of the patient) can also make an application to a county court under Section 52 on the grounds that the nearest relative is unreasonably objecting to the making of an application under Section 26—see paragraphs 129-136 of this memorandum.

47. Section 54 lays on mental welfare officers a duty to make an application for a patient's admission to hospital (or to guardianship), in any case where he considers an application ought to be made and where, after taking the views of the relatives and any other relevant circumstances into account, he thinks it necessary or proper to do so. This does not affect the provisions as to consultation with the nearest relative mentioned in paragraphs 45-46 above, but, subject to those provisions, it lays on mental welfare officers a duty, similar to that hitherto laid on duly authorised officers, to act when necessary if the relatives are unable or unwilling to do so. It is thought that the nearest relative may often prefer that the mental welfare officer should sign the application. Whichever of them does so, it is hoped that mental welfare officers will give the relatives any necessary help by providing the appropriate form and explaining the procedure. It will be noted that the person making the application must have personally seen the patient within the period of fourteen days ending with the date of the signing of the application (Section 27(3)), or within the period of three days in the case of emergency applications (Section 29(4)).

48. An application under Section 26 must specify the form or forms of mental disorder from which the patient is considered to be suffering i.e. mental illness, severe subnormality, subnormality or psychopathic disorder. These should be copied from the medical recommendations, and should include all the forms of disorder specified in the recommendations. No application may be made unless the recommendations agree in specifying at least one form of disorder in common; it does not matter if either recommendation also specifies an additional form not mentioned in the other. All the forms of disorder specified in either or both of the recommendations should be specified in the application.

49. One of the two medical recommendations in support of an application for admission under Section 25 or 26 must be given by a doctor approved by a local health authority under Section 28(2). Either that doctor or the other must if practicable be one who is

already acquainted with the patient; the patient's family doctor or a specialist who has known him as an out-patient or in-patient or a local health authority medical officer may qualify under this heading. Section 28(3) allows one (but only one) of the medical recommendations to be given by a doctor on the staff of the hospital to which the patient is to be admitted, except when the patient is to be treated as a paying patient under Section 5 of the National Health Service Act, 1946 or when he is to be admitted to a mental nursing home. If the patient is not already in hospital when the application is made, the Minister hopes that the two medical recommendations will normally be given by the two doctors who will in any event be concerned with arranging his admission, i.e. his general practitioner (or sometimes a medical officer of the local health authority) and the doctor who will be in charge of his treatment in hospital or by whom he has been seen as an out-patient. If he is already in hospital, one recommendation would normally be given by the doctor in charge of his treatment; the other must come from outside the hospital, either from a general practitioner or local authority doctor, or from a doctor from another hospital.

50. The form of medical recommendations prescribed in the Regulations differs considerably from the certificates which have been required hitherto under the old Acts. The doctor making a recommendation for admission under Section 26 is not required to record particular symptoms observed by himself or reported to him by others. Instead he must give, first, a clinical description of the patient's mental condition, and, secondly, the reasons why he considers compulsory admission necessary in the interests of the patient's health or safety or for the protection of other persons.

51. The clinical description is to indicate the particular grounds for the opinion that the patient is suffering from the form(s) of mental disorder specified in the recommendation. In the case of some mentally ill patients it may be sufficient to name the particular form of illness from which the patient is thought to be suffering, in words which indicate that in his case it is of a nature or degree which warrants detention in hospital (i.e. that it amounts to what has hitherto been called unsoundness of mind). In the case of a severely subnormal, subnormal or psychopathic patient, the clinical description should be a general assessment of the patient's mental condition in terms which indicate that it falls within the relevant definition in Section 4 of the Act. In the case of a psychopathic patient, for example, it should indicate that in the doctor's opinion the patient's abnormally aggressive or seriously irresponsible behaviour is due to a disorder or disability of mind, and that his condition is considered to require or to be susceptible to medical treatment or care and training under medical supervision.

52. The reasons to be given for the opinion that compulsory admission is necessary are to indicate why the patient cannot suitably be cared for outside hospital, or be treated as an out-patient, or be admitted as an in-patient informally without powers of detention.

53. The Seventh Schedule to the Act amends Section 25 of the National Health Service (Amendment) Act, 1949, to take account of the repeal of the Lunacy and Mental Treatment Acts and Mental Deficiency Acts, but makes no change of substance. Local health

authorities will be responsible for paying fees for medical examinations and recommendations required in connection with admission to hospital under Part IV of the Mental Health Act except:—

- (a) for examinations carried out as part of a practitioner's duties to provide general medical services ;
- (b) for examinations or medical recommendations which come within a practitioner's duties as an officer of a Regional Hospital Board or Board of Governors ;
- (c) if any part of the cost of the patient's maintenance and treatment is not to fall on the Exchequer under the National Health Service Act, 1946, or (in special hospitals) under the Mental Health Act.

Revised guidance on the circumstances in which examinations and recommendations are to be regarded as falling within a hospital doctor's National Health Service duties will be issued after consultation with the local authority associations and the medical profession.

Transport to hospital

54. The application, together with the medical recommendations on which it is founded, constitute authority for the compulsory removal of the patient to hospital by the applicant or any person authorised by the applicant, and for his detention in the hospital named in the application. In cases where it is necessary to provide special transport this falls within the duty of the local health authority to provide ambulance services under Section 27 of the National Health Service Act, 1946. If the patient is unwilling to be moved it may be desirable for the applicant to provide the ambulance attendant or other escort with written authority for the removal. Hospitals may be asked to assist by providing nurse escorts when necessary, as at present.

55. If the patient escapes while being removed to the hospital, Sections 139 and 140(1) of the Act authorise him to be retaken by the person who was conveying him or by any mental welfare officer or constable. A patient is not to be regarded as "liable to be detained" in a hospital until he has actually been admitted in pursuance of the application ; Section 140(2) therefore does not apply to a patient who escapes before reaching the hospital. Such a patient may be retaken only during the period within which the application authorises his admission to the hospital under Section 31(1), i.e. the period of 14 days beginning with the date of the later of the two medical examinations by the doctors who gave the recommendations for admission, or in the case of an emergency application the period of 3 days beginning with the date of the (only) medical examination or with the date of the application whichever is the later.

Scrutiny and rectification of documents

56. The persons who sign the applications and medical recommendations should take care to see that they comply with the requirements of the Act. Those who act on the authority of these documents i.e. the applicant and the hospital, should also take care to see that they are in proper form. Otherwise there may be no valid authority for the patient's detention. In addition, Section 32

of the Act contains certain provisions under which documents which are found to be incorrect, defective or insufficient may be rectified after they have been acted on, and under which patients may continue to be detained for a limited period while rectification is sought, so that an error which is capable of rectification need not result in interruption of the patient's treatment. In future, these documents will not be sent to any central department for scrutiny. Responsibility for scrutinizing them and for requesting rectification where necessary will rest with the hospital authorities themselves.

57. The admission documents should therefore be carefully scrutinized as soon as the patient has been admitted (or after the reception of the documents in cases where the patient is already in hospital when the application is made). The faults which should be looked for fall into three categories :—

- (a) those which invalidate the application completely and cannot be rectified :
- (b) those which may be capable of amendment under Section 32(1) and
- (c) those which make a medical recommendation insufficient to warrant the detention of the patient, which may be capable of rectification by the substitution of a fresh medical recommendation under Section 32(2) or (3).

(a) *Faults which invalidate the application*

58. Documents cannot be rectified under Section 32 unless they are documents which can properly be regarded as applications or medical recommendations within the meaning of the Act. A document purporting to be an application or medical recommendation cannot be regarded as such if it is signed by a person who is not empowered under the Act to do so, or if it is not signed at all. The first point to be checked therefore is that each document is signed ; that the application appears to be signed by the patient's nearest relative (or person exercising the functions of the nearest relative) or by a mental welfare officer ; and that each medical recommendation appears to be signed by a medical practitioner who is not one of the persons precluded from doing so under Section 28(4) of the Act. (Unless there is any reason to believe that they are inaccurate, it is safe for the scrutinizing officers at the hospital to accept at their face value the statements made on the forms—e.g. they need not check that the doctor who has stated that he is a registered medical practitioner is so registered, nor that the person who states that he is the nearest relative is actually so. Nor need they make enquiries as to whether he is one of the persons prohibited under Section 28(4) unless there is reason to suspect that this subsection has been contravened.) Another fault which would invalidate the application completely is if the two medical recommendations do not conform with the requirement in Section 26(4) that they must agree in specifying at least one form of mental disorder in common, as mentioned in paragraph 48 of this memorandum.

59. If any fault of this sort is discovered in the documents there is no authority for the patient's detention unless steps are taken for a **new application** to be made based on medical recommendations which

comply with the Act. (This does not exclude the possibility of one of the two existing recommendations being used in support of a new application if the time limits mentioned in paragraph 62 below, and the other provisions of the Act, are complied with.) If the patient is already in hospital he may be detained while a new application is being prepared, if the medical practitioner in charge of his treatment issues the necessary report under Section 30(2)—see paragraph 18 of this memorandum.

(b) Errors which may be amended under Section 32(1)

60. Section 32(1) allows an application or medical recommendation which is found to be in any respect incorrect or defective to be amended by the person by whom it was signed, with the consent of the managers of the hospital, within the period of 14 days from the date of the patient's admission. Errors which may be capable of amendment under this Section include the leaving blank of any spaces in the form which should have been filled in, other than the signature (e.g. omission of the name of the hospital at the head of the application form, or omission of dates), or failure to delete one or more alternatives in places where only one can be correct. The patient's Christian and surnames should agree in all the places where they appear in the application and supporting recommendations.

61. Any document found to contain errors of this sort should be returned to the person who signed it for amendment. When the amended document is returned to the hospital it should again be scrutinized to make sure that it is now in proper form. Consent to the amendment should then be given by a senior officer of the hospital who has been authorised to consent to the amendments on behalf of the managers—see paragraph 72 of this memorandum. The consent should be in writing and might take the form of a suitable endorsement on the document itself. If this is all done within the period of 14 days starting with the date on which the patient was admitted (or the date when the documents were received if the patient was already in hospital when the application was made) the documents are deemed to have had effect as though originally made as amended.

62. Another point which should be checked as soon as the documents are first received is whether the time limits mentioned in Sections 27(3), 28(1) and 31(1) have been complied with. Except on emergency applications under Section 29, these limits are :—

- (a) the date on which the applicant last saw the patient must be within the period of 14 days ending with the date of the application ;
- (b) the dates of the medical examinations of the patient by the two doctors who gave the recommendations (*not* the dates of the recommendations themselves) must be the same or not more than 7 days apart ;
- (c) the dates of signature of both medical recommendations must not be later than the date of the application ;
- (d) the patient's admission to hospital (or if the patient was already in the hospital when the application was made, the reception of the documents by a person authorised to receive them on behalf of the managers—see paragraph 26 of this

memorandum) must take place within the period of 14 days beginning with the date of the later of the two medical examinations (not from the date of signing of the recommendation).

63. When an emergency application is made under Section 29 it is accompanied in the first place by only one medical recommendation. The time limits which apply to emergency applications are :—

- (a) the date on which the applicant last saw the patient must be within the period of three days ending with the date of the application ;
- (b) the patient's admission to hospital (or if the patient was already in the hospital when the application was made, the reception of the documents by a person authorised to receive them on behalf of the managers) must take place within the period of three days starting with the date of the medical examination or with the date of the application whichever is the earlier. An emergency application may be signed either before or after the medical recommendation ;
- (c) a second medical recommendation must be received on behalf of the managers not more than 72 hours after the time of the patient's admission (or if the patient was already in the hospital when the application was made, after the reception of the application). The two medical recommendations together must then comply with all the normal requirements other than the requirement that both recommendations shall be signed before the application.

64. If the dates entered on the application and medical recommendations do not conform with these time limits, the persons who signed them should be asked whether the dates entered are correct. If they are not correct and the correct dates conform with the time limits, the entry on the forms may be amended under Section 32(1). If the time limits have in fact not been complied with, the application is invalid unless the error is capable of rectification by the substitution of one fresh medical recommendation under Section 32(3)—see paragraph 71.

65. Another point to be checked in all cases is that one of the two medical recommendations is given by a practitioner approved by a local health authority under Section 28(2) of the Act. Each doctor is required to state in the medical recommendation whether or not he is so approved. The statement can be taken at its face value if there is no reason to suspect otherwise ; it is not necessary for the hospital staff to check it with the local health authority. But if neither recommendation states that the doctor is so approved, enquiries should be made. If in fact one of the doctors is so approved, the statement in his recommendation may be amended under Section 32(1). If the fact is that neither doctor is approved, but the recommendations are otherwise in proper form, a fresh recommendation may be sought under Section 32(3)—see paragraph 71.

(c) *Medical recommendations which are insufficient to warrant the patient's detention*

66. In addition to scrutiny by clerical or administrative officers for defects of the sort already described, recommendations in support of

an application under Section 26 should be scrutinized by a medical officer at the hospital to make sure that the clinical description of the patient's mental condition in paragraph 4 of Form 5A or 5B is sufficient to support the opinion that the patient is suffering from mental illness, severe subnormality, subnormality or psychopathic disorder (as the case may be) of a nature or degree which warrants the patient's detention in hospital. Regard should be had to the advice given in paragraphs 50-51 of this memorandum.

67. The medical officer scrutinizing the recommendations should also consider whether the reasons entered in paragraph 5 of the form are sufficient to support the opinion that it is necessary in the interests of the patient's health or safety or for the protection of other persons that he should be detained in hospital.

68. Section 28(3) permits one of the two medical recommendations to be given by a doctor on the staff of the hospital to which the patient is to be admitted, except when he is to be treated as a paying patient or when he is to be admitted to a mental nursing home. The scrutiny of any recommendation given by a doctor on the staff of the hospital should be undertaken by some other medical officer even if the doctor who signed the recommendation would normally be the person to scrutinize the documents relating to that patient.

69. Unless the medical recommendation is satisfactory on each of the two points mentioned in paragraphs 66 and 67 above, it should be regarded as insufficient to warrant the detention of the patient. If both recommendations are insufficient, the application must be regarded as invalid. If one is insufficient but the other is satisfactory a further recommendation may be sought under Section 32(2). This subsection empowers the managers, within 14 days of the patient's admission (or of the reception of the application in the case of a patient already in hospital), to give notice to the applicant if one of the two medical recommendations supporting an application is insufficient to warrant the detention of the patient; if a new medical recommendation is supplied within the period of 14 days, and if it and the recommendation which was not rejected together comply with all the provisions of the Act, other than those relating to the time of signature and the interval between the medical examinations on which the recommendations are based, the new recommendation may be accepted and acted on as though it had accompanied the application in the first place. The patient may be detained in the hospital while the fresh recommendation is sought. If a new and satisfactory recommendation is not received within the period of 14 days the patient may not be further detained unless an entirely new application is made.

70. It will be noted that notice of the rejection of a recommendation under Section 32(2) must be sent in writing to the applicant (whereas a request for amendment under Section 32(1) should be sent direct to the person who signed the document in question). It would be advisable at the same time to inform the doctor who gave the recommendation. The applicant—especially when not a mental welfare officer—should be advised that he may submit a fresh recommendation within the 14 days from the patient's admission. In some cases it may

be suitable for the fresh recommendation to be given by a doctor on the staff of the hospital.

71. Section 32(3) allows the procedure described in subsection (2) to be used when both recommendations are good in themselves but taken together are insufficient, e.g. when neither is given by a doctor approved under Section 28, or when the time limits applying to medical examinations mentioned in paragraphs 62-63 above have not been complied with. In such case either recommendation may be replaced by a fresh one under Section 32(2). But this procedure may not be used if the recommendations do not comply with the requirement in Section 26(4) that they must agree in specifying at least one form of mental disorder in common, as mentioned in paragraphs 48 and 58 above.

(d) Authorisation of officers to act on behalf of the managers under Section 32

72. Regulation 24(2) provides for the functions of the managers under Section 32(1) and (2) to be exercised on their behalf by officers authorised to do so. In the Minister's view both medical and senior administrative officers should be so authorised. The function of consenting to the amendment of paragraph 4 or 5 of a medical recommendation on Form 5A or 5B, and of rejecting a recommendation on the grounds that these parts of it are insufficient to warrant the patient's detention, should be exercised only by or in agreement with a senior medical officer; consent to the amendment of other errors or defects, or rejection on other grounds, are functions which seem appropriate to be performed by administrative officers. The initial scrutiny may, of course, be undertaken by more junior officers so long as consent to amendments and the rejection of a recommendation as insufficient are authorised only by the senior officers who have themselves been authorised by the managers under Regulation 24.

Medical examination of the patient after admission

73. The Act does not provide for any statutory report equivalent to the medical statement which has hitherto been furnished to the Board of Control within 7 days of a patient's admission. The Minister considers that it should be normal practice for every patient to be seen by a senior medical officer (usually the responsible medical officer) not more than 2 days after admission. If the responsible medical officer is not satisfied that the patient's detention in hospital is necessary he should use his power to discharge him under Section 47—see paragraph 124. If the responsible medical officer is of the opinion that the patient needs to be detained but is suffering from a form or forms of mental disorder different from the form or forms recorded in the application, he may reclassify the patient under the provisions of Section 38 of the Act—see paragraph 89. This can be done at any time after the patient's admission.

GUARDIANSHIP

74. Guardianship under the Act replaces (with some differences) the provisions for guardianship under the Mental Deficiency Acts, with which local health authorities are already familiar. It may also be used

as a form of control over mentally ill patients who do not need to be in hospital; in this respect it partially replaces the provisions under the Lunacy and Mental Treatment Acts for certified single patients and patients boarded out from hospitals.

75. In almost all cases it should be possible for patients to receive care in the community—from their own families and from the local health authority—without being subjected to the control of guardianship, all necessary services for their care being provided by local health authorities under Section 28 of the National Health Service Act, 1948, or by local or other authorities under other general powers. Placing a patient under guardianship does not confer extra powers to provide services of that sort. It merely provides powers of control—e.g. over the patient's place of residence and his every-day life—which may be necessary in the case of a small minority of patients for their own welfare or for the protection of others.

76. The powers of guardians are described in Section 34 of the Act as equivalent to the powers of a father over a child under the age of fourteen. Other specific powers and duties are conferred on guardians by Section 36 (correspondence), 38 (reclassification) and 40 (absence without leave) and by Regulations 6 to 12.

77. Local health authorities as well as other persons may act as guardians under the Act. A duty was laid on local health authorities in Circular 22/59 to make arrangements for the care of persons suffering from mental disorder who are resident in their area, and for their after-care. It is a necessary part of this duty for the authority either itself to undertake the duties of guardian or to arrange for another person to do so, in any case where guardianship is necessary for the proper care of the patient.

78. Specific duties are also laid on local health authorities, in relation to patients under their own guardianship or that of another guardian resident in their area, by Sections 34 (acceptance of guardianship application) 40 (absence without leave), 42 (transfer of guardianship in case of death, incapacity, etc., of the guardian), 43 (renewal of guardianship) and 47 (discharge) and by Regulations 13 to 16 (transfer) and 7 to 12 (visitation and supervision).

79. Local health authorities' functions may be delegated under Part II of the Fourth Schedule to the National Health Service Act, 1946, to the health committee or to a sub-committee of the health committee. In addition, Section 47(4) of the Mental Health Act allows the power of a local health authority to discharge a patient from guardianship under Section 47 to be exercised by three or more members authorised by the authority for that purpose, and Regulation 24(1) allows any other of the authority's functions in relation to guardianship to be performed by a medical officer authorised by the authority for the purpose. As some of these powers and functions may need to be performed without the delay which might occur if referred to the authority as a whole, the Minister expects that local health authorities will wish to arrange either for delegation to a committee or sub-committee which can be convened at short notice, or to authorise members to act on their behalf under Section 47(4) or medical officers under Regulation 24.

80. The circumstances in which patients may be received into guardianship, and the procedure to be followed, are set out in Sections 33-34 of the Act. The requirements for an application founded on two medical recommendations, the persons who may make the application and recommendations, and the necessity for consultation with the patient's nearest relative are very similar to the provisions which apply to applications for admission to hospital for treatment under Section 26, and the advice in paragraphs 38-41 and 45-52 applies generally to applications for guardianship as to applications under Section 26, with the substitution of the grounds set out in Section 33(2) in place of those in Section 26(2). Special forms are prescribed for the application and recommendations—Forms 7A, 7B, 8A and 8B. It will be noted that the applicant may apply for the patient to be received into his own guardianship.

81. The application and recommendations are to be forwarded to the local health authority named as the proposed guardian, or to the local health authority in whose area the proposed guardian resides. This is the authority which, if the application is accepted, will be "the responsible local health authority" (as defined in Section 59(4) of the Act) holding power of discharge under Section 47, and with duties of visitation and supervision under Regulations 7 to 12. When the guardian is a private individual it will no doubt be usual for the patient to live with or near to him, but if the patient resides temporarily or permanently in another area, e.g. in residential employment, the responsible local health authority is the authority in whose area the guardian resides. Similarly where a local health authority is itself the guardian, it may arrange for the patient to live, temporarily or permanently, outside its own area, but so long as that authority remains guardian it remains responsible for visitation and supervision. In such cases the authority may of course make arrangements with another local authority or other organisation for visits to the patient and reports on his welfare to be made by their officers acting on behalf of the responsible local health authority.

82. If the proposed guardian is not the local health authority, the application must be accompanied by a written statement from the proposed guardian that he is willing to act as guardian. There is no prescribed form for this statement, which may be in the form of a letter.

83. The application does not take effect until it is accepted by the local health authority. When so accepted it confers the powers and duties of guardian on the proposed guardian from the date of acceptance. When the proposed guardian is not the authority itself, the authority should consider the suitability of the proposed guardian before accepting the application. It will be noted that the Regulations do not re-enact the prohibitions hitherto contained in the Mental Deficiency Regulations against mechanical restraint and corporal punishment of patients. The Minister does not think it necessary or appropriate, in present conditions, to prohibit one or two particular forms of possible maltreatment in this way. He expects local health authorities to satisfy themselves that proposed guardians—no less than the persons put in charge of patients who are directly under the authority's own care, whether under guardianship or not—are persons

who understand the need always to bear in mind the special disabilities and special needs of a severely subnormal child, or a mentally infirm person, or any other type of mental patient who is placed in their care, and who will look after the patient with proper knowledge and sympathy. Ill-treatment or wilful neglect of a patient by his guardian is an offence under Section 126 of the Act, but the proper care of patients cannot be based primarily on prohibitions and offences, but must rest on the guardian's understanding of his positive duty to act as a good parent would do, and in particular to promote the patient's physical and mental health and to provide for his occupation, training or employment and general welfare and recreation, in a manner suitable to the individual patient. It is the local health authority's duty to satisfy itself that the proposed guardian is capable of carrying out these functions, and to assist the guardian with the advice of its own staff and the other facilities which it is the local health authority's own duty to provide under Section 28 of the National Health Service Act, 1946.

84. Before accepting the application, the local health authority's officers will no doubt make sure that there are no errors or defects in the application or medical recommendations of the sort mentioned in paragraphs 58-67 of this memorandum. The time limits which apply to guardianship applications are the same as those mentioned at (a), (b) and (c) in paragraph 62; (d) does not apply. The proposed guardian may not give a medical recommendation, though he may be the applicant. If errors are found at this stage they should be corrected, or fresh documents obtained, before the application is accepted. In addition, if a document is found to be incorrect or defective after the application has been accepted, Section 34(4) allows its amendment, within 14 days of the acceptance, by the person who signed it, with the consent of the local health authority or of officers authorised to give such consent under Regulation 24(2). There is no provision equivalent to Section 32(2) for guardianship.

85. Regulation 9 requires the guardian, if not a local health authority, to appoint a doctor to act as the "nominated medical attendant" under the Act. This doctor is given power to reclassify the patient under Section 38—see paragraph 89 of this memorandum—and is responsible under Section 43 for examining the patient when the authority for guardianship is due to expire and for making a report effecting its renewal if he considers this necessary. When the guardian is a local health authority these functions fall to "the responsible medical officer", defined in Section 59(1) as the medical officer of health of the responsible local health authority or any other medical officer authorised by the authority to act as such either generally or in any particular case or for any particular purpose. Power to discharge the patient from guardianship is given under Section 47 to the responsible medical officer in all cases, and not to the nominated medical attendant.

86. It is for the guardian to decide whom to appoint as the nominated medical attendant, but this will no doubt often be done after consultation with the responsible local health authority. Regulation 9 makes it clear that the doctor selected may be one of the authority's medical officers (if the authority are willing); or he might be the

patient's general practitioner. It is for the local health authority to decide who is to act as the responsible medical officer. It must be a medical officer on its own staff, but it may be different medical officers for different patients, or it may be different medical officers for different functions, or one officer for all cases.

87. Regulation 10 requires a guardian who is not a local health authority to comply with directions from the responsible local health authority in exercising his powers and duties. This will, for instance, allow the authority to direct the guardian to allow visits to the patient by a person who has been prohibited from visiting under Regulation 6(2) if the authority considers the prohibition unreasonable. If the local health authority considers that the guardian is acting negligently towards the patient, or contrary to the patient's interest, and the guardian is not willing to relinquish the guardianship, the authority may arrange for an application to be made to the county court under Section 42(3) for the transfer of guardianship to themselves or to some other person approved by them.

OTHER PROVISIONS APPLYING TO PATIENTS DETAINED IN HOSPITAL OR UNDER GUARDIANSHIP UNDER PART IV

Control of Correspondence

88. The provisions of Section 36 are also applied by Section 134 to certain hospital patients who are not compulsorily detained, and are dealt with in paragraphs 269-271 of this memorandum.

Reclassification

89. Section 38 allows (but does not oblige) the responsible medical officer or nominated medical attendant to reclassify a patient detained under Section 26, or under guardianship, if he considers that the patient is suffering from a form or forms of mental disorder (i.e., mental illness, severe subnormality, subnormality or psychopathic disorder) other than the form or forms specified in the application which constitutes the authority for detention or guardianship. Any reclassification must be on Form 9A or 9B or a form to the like effect. It may specify an additional form of disorder which subsists together with the other(s), or it may specify a new form(s) and exclude the form(s) previously recorded. The application then has effect as if the new classification(s) were recorded in the application. This may affect the power to detain the patient, as it may bring him within, or exclude him from, the provisions of Section 44 (which prohibit the detention of a subnormal or psychopathic patient beyond the age of 25 unless dangerous). Because of this, the patient (if aged 16 or over) and his nearest relative are given a right of application to a Mental Health Review Tribunal within 28 days of being informed of reclassification. The Tribunal has power either to reclassify or discharge the patient, if it thinks necessary—see paragraph 239 of this memorandum. The report effecting reclassification must be given to a person authorised to receive it on behalf of the managers of the hospital, or to the guardian, as the case may be. It is their responsibility to cause the patient (unless he is under the age of 16) and the nearest relative to be informed.

90. As the provisions of Section 38 are permissive and not obligatory, the responsible medical officer or nominated medical attendant has discretion to decide when the proper time has come to reclassify a patient. For instance, if a patient admitted as suffering from subnormality or psychopathic disorder is thought after admission to be suffering also from a mental illness serious enough in itself to warrant his detention, the doctor may prefer not to reclassify him at the age of—say—20, when the reclassification would have no practical effect on the authority for detention, but to wait and see if the mental illness clears up later; but if the mental illness is still present when the patient is approaching the age of 25, it may be necessary to reclassify him in order to permit his continued detention for treatment. Similarly with patients on the borderline between subnormality and severe subnormality admitted under the age of 21; if the doctor is in doubt as to the proper classification, there may be no need to reach a final decision until it becomes material to the patient's continued detention or guardianship at age 25. See also paragraph 119 of this memorandum about reclassification in connection with renewal of the authority for detention or guardianship under Section 43.

Leave of absence from hospital

91. Section 39 deals with leave of absence from hospital, and replaces the various provisions for leave and licence under the old Acts. Leave will in all cases be granted by the responsible medical officer, not by the managers.

92. Leave of absence—like leave or licence under the old Acts—may be needed either for temporary absence after which the patient is expected to return to the hospital, or as a period of trial of the patient's suitability for discharge when it is expected that, if all goes well, he will not return. Under the new Act leave of absence may not continue for more than six months. If the patient has not been transferred to guardianship (or to another hospital), the authority to detain the patient in hospital, and the power to recall him from leave, lapse at the end of six months' continuous leave of absence.

93. When a patient is sent on leave of absence on trial for discharge, if he is likely to need prolonged care while living outside hospital, the initial arrangements for his place of residence and employment or occupation should normally be made by or in consultation with the local health authority. The local authority's social workers should get to know the patient and be responsible for visiting him from the time of his leaving hospital or as soon as possible thereafter. If it becomes apparent that greater control than is provided by informal community care will be needed after the maximum period of six months' leave, the patient should be transferred to guardianship during the six months period—see paragraphs 101-104 of this memorandum. (If it becomes necessary, he may later be transferred back from guardianship to hospital.)

94. Subsection (3) of Section 39 allows the responsible medical officer in certain circumstances to make it a condition of leave that the patient remains in custody during his absence. This is intended to facilitate the granting of leave for special purposes—e.g. to attend the funeral of a near relative—to patients who because of their

dangerous propensities or liability to abscond could not appropriately be granted leave without this condition. Where this condition is made the person who is granted custody of the patient may, for instance, arrange for his bedroom to be locked at night or other precautions taken to prevent him from absconding. Hospitals other than special hospitals are not likely to need to use these powers.

95. There are special provisions in the Sixth Schedule of the Act for patients who are already on leave or licence when the Act comes into force—see paragraph 211(ii) of this memorandum.

Absence without leave

96. Section 40 of the Act provides powers for the retaking of patients who are absent without leave from hospital or from the place where they are required to reside during leave of absence, or who fail to return when recalled from leave, and of patients under guardianship who absent themselves without leave from the place at which the guardian requires them to reside. Attention is drawn particularly to the periods specified in subsection (3) within which patients may be retaken. If a patient who is absent without leave is not retaken within these periods he ceases to be liable to be detained and the power to retake lapses. The persons who may retake a hospital patient are described in subsection (1). They include any officer on the staff of the hospital or any mental welfare officer, or a police constable. Other persons may do so if authorised in writing by the managers (or by a person acting on behalf of the managers under Regulation 24(2)—see paragraph 25 of this memorandum). Subsection (2) contains comparable provisions for patients under guardianship. Advice on the circumstances in which the police may be asked to assist in the retaking of a patient is given in paragraphs 246-7 of this memorandum.

97. Section 93 permits patients who are absent without leave from hospitals in England or Wales (but not from guardianship) to be retaken in Scotland, Northern Ireland, the Channel Islands or the Isle of Man. Patients may be retaken in these places by any of the persons who have power to retake them in England or Wales under Section 40, or by persons authorised under the corresponding Scottish and Northern Ireland mental health legislation to retake mental patients in those countries, or by the police of the country in which they are found.

Transfer

98. Sections 41, 42 and 99 of the Act and Regulations 13 to 18 define the circumstances in which patients who are liable to be detained in hospital or under guardianship may be transferred from one hospital to another or from one guardian to another or between hospital and guardianship, and the procedures to be followed.

(a) Patients detained in hospital

99. The hospital in which the patient is to be detained is named in the application for admission which constitutes the authority for detention. Section 41(3) allows the patient's removal to and detention in any other hospital under the management of the same Hospital Management Committee or Board of Governors. There is no

statutory procedure to be followed in these cases, but it is desirable that a note that the removal has taken place should be kept with the documents authorising detention (unless the patient is moved merely to an outlying unit of the same hospital). Section 41(3) does not apply to patients detained in mental nursing homes, but the effect of Regulation 13 is that a patient may similarly be transferred from one mental nursing home to another under the same managers without any formal procedure. In these cases also it would be advisable to put a note of the transfer with the documents authorising the patient's detention. Section 99(1) similarly permits the Minister to direct a patient's removal from one special hospital to another.

100. When a detained patient needs to go to any other hospital which is not under the same managers, it may be suitable in some cases to send him there on leave of absence under Section 39, for a period not exceeding six months. In such a case the power to detain and discharge remains with the managers and responsible medical officer of the first hospital, who also have power to recall him to that hospital under Section 39. Residence in the second hospital may be made a condition of leave of absence, but there is no power actually to detain him in that hospital. If he needs to remain more than six months he should be formally transferred under Section 41, under the procedure laid down in Regulation 13, unless he can be discharged from the authority for detention altogether.

101. If power to detain the patient in the second hospital is necessary he should be transferred under the procedure of Regulation 13. The formal authority for transfer (on Form 16) should not be signed until the arrangements for the patient's removal have been agreed with the other hospital. When transfer to a special hospital is thought necessary, the Ministry of Health (not the hospital itself) should be consulted in the first place. The authority for transfer may be given by the persons mentioned in Regulation 13(2). Hospital authorities will probably wish to give a general authority to senior officers—administrative and medical—to authorise transfers when necessary. From the date on which the patient is actually admitted to the other hospital (or, if he is already in that hospital on leave from the first hospital, from the date on which the authority for transfer is received), the authority to detain and the power of discharge is transferred to the managers and responsible medical officer of the other hospital. This must be within 28 days of the date on which the authority for transfer is signed; after that period the authority is no longer valid.

102. A patient may similarly be transferred to guardianship under the procedure of Regulation 13. The responsible local health authority should be consulted and the necessary arrangements made before the formal authority for transfer (Form 17) is sent to them. The transfer to guardianship takes effect on a date to be specified by the local health authority (or a medical officer authorised under Regulation 24 to act on their behalf) when confirming the transfer. The patient remains liable to be detained in the hospital until the effective date, but he may be given leave under Section 39 to take up residence outside the hospital before that date; in many cases he will already be on leave of absence when the authority for transfer is signed.

103. A transfer may be authorised in respect of a patient detained either under Section 25 for observation or under Section 26 for treatment, and a patient may be transferred while he is on leave of absence from the first hospital.

104. A transfer to another hospital or to guardianship does not affect the date on which the authority for detention expires if not renewed under Section 43.

105. The patient's nearest relative should normally be consulted before a patient is transferred to another hospital or to guardianship, and he should be notified when the transfer has taken place. His consent to the transfer is not a statutory requirement, but he retains his power to discharge the patient under Sections 47 and 48.

(b) Patients under guardianship

106. Transfer from one guardian to another can take place either under Section 42 or under Section 41 using the procedure laid down in Regulation 15. If the guardian wishes to relinquish the guardianship before a new guardian is found, or if an individual guardian wishes to transfer the guardianship to the local health authority, this can be arranged under Section 42(1) by his giving notice in writing to the local health authority. Under Section 42(1) the guardianship also passes immediately and automatically to the local health authority if the guardian dies. Transfer under Section 42 can be followed later if necessary by a further transfer to another guardian under the procedure of Regulation 15.

107. When guardianship is to be transferred to an individual guardian whose identity is already known, or to a local health authority for another area, the procedure under Regulation 15 should be used, the authority for transfer being given by the existing guardian on Form 18. This, like a transfer from hospital to guardianship, is subject to confirmation by the responsible local health authority, and takes effect from a date to be specified by them. As soon as the transfer takes effect, the new guardian, if not a local health authority, must appoint a nominated medical attendant and send the notifications to the responsible local health authority as required by Regulations 9 and 11.

108. Section 42(2) allows the responsible local health authority, or any person authorised by them, to act temporarily on behalf of a guardian who is ill or otherwise incapacitated. The authority or person acting under this subsection acts as an agent for the real guardian and may not act contrary to his expressed wishes or instructions.

109. If the responsible local health authority considers that the patient should be transferred to a new guardian because the present guardian is unsatisfactory on the grounds mentioned in Section 42(3), an application may be made to the county court for an order under that subsection even if the present guardian is unwilling to relinquish the guardianship.

110. If a patient under guardianship needs to go into hospital and there is no need to have power to detain him there, he may be admitted informally. The guardianship then remains in force unless and until the patient is discharged from guardianship under Section

47 or transferred to the hospital under the procedure of Regulation 16. Guardianship also remains in force if the patient is admitted to hospital on an application for observation under Section 25 or 29 of the Act; detention in hospital under those Sections can subsist concurrently with guardianship.

111. If it is necessary to have power to detain the patient in hospital for more than the observation period, an application for admission for treatment may be made under Section 26, or, more usually, he may be transferred under the procedure laid down in Regulation 16. In either of these cases the guardianship comes to an end as soon as the application for admission or the authority for transfer takes effect. The procedure for transfer is in many ways similar to the procedure for admission under Section 26, but there are some important differences. Firstly, a psychopathic or subnormal patient who is already under guardianship may be transferred at any age while the guardianship is in force, which under Part IV of the Act may be up to age 25, as compared with the age-limit of 21 for a new admission under Section 26; detention may not however continue beyond age 25 unless a report is made under Section 44(2)—see paragraph 122 of this memorandum. Secondly, a county court order under Section 52 conferring the functions of the nearest relative on some other person does not expire when a patient is transferred under the Regulations, but it does expire (under Section 53(4) if a patient ceases by any other process to be subject to guardianship or liable to detention; it would thus expire if the guardianship ceased to have effect (under Section 31(5)) on the patient's admission on an application under Section 26. Thirdly, there is no statutory obligation to consult the nearest relative (or person exercising his functions) before authorising a transfer. He should, however, normally be consulted informally.

112. A transfer to hospital must be authorised by the responsible local health authority (or medical officer authorised to act for them under Regulation 24) on Form 19, with two supporting medical recommendations on Form 20A or 20B, and is subject to the conditions set out in Regulation 16(2). The provisions of Sections 27(4) and 28 of the Act are also applied to the authority for transfer and medical recommendations—i.e. one of the doctors must be approved under Section 28 of the Act and one must if practicable have previous acquaintance with the patient; not more than one may be on the staff of the receiving hospital, and neither may be if the patient is to be admitted to a mental nursing home or is to be a paying patient in a national health service hospital; the examinations of the patient by the two doctors must be not more than seven days apart, and the recommendations must be signed on or before the date of the authority for transfer; neither recommendation may be given by the persons described in Section 28(4). The provisions of Section 32 for the rectification of applications and recommendations do not apply to recommendations given in support of a transfer. The recommendations should be carefully scrutinized to make sure they comply with the requirements before the authority for transfer is signed.

113. The authority for transfer to hospital, duly completed, authorises the patient's conveyance to the hospital and detention there, provided that he is admitted within 14 days beginning with the date

of the later of the two medical examinations on which the recommendations were based. Guardianship ceases and the authority for detention in hospital commences on the date of admission, the patient thereafter being in the same position as patients admitted under Section 26. Section 41(5) gives the patient a right of application to a Mental Health Review Tribunal similar to that conferred by Section 31(4) on patients admitted under Section 26.

114. A transfer does not affect the date on which the authority for guardianship or detention expires if not renewed under Section 43. The nearest relative (or person exercising his functions) retains the power of discharge, subject to the provisions of Section 48. He should normally be consulted beforehand, and should be notified when the transfer takes effect.

(c) Documents

115. The Minister considers it important that, in future, the original documents authorising detention should be in the possession of the managers of the hospital in which the patient is for the time being liable to be detained, or of the present guardian (or responsible local health authority). When a patient is transferred under Section 41 or 42, therefore, the documents authorising detention or guardianship, including the authority for transfer, should be sent to the hospital or guardian to which the patient is transferred and should be kept as recommended in paragraphs 259-267 of this memorandum. The hospital or guardian which the patient is leaving should keep copies of the documents. This is similar to the arrangement hitherto in force under the Mental Deficiency Regulations and differs from those hitherto in force under the Lunacy and Mental Treatment Acts.

Expiry and renewal

116. Sections 43 to 45 contain provisions for the expiry and renewal of the authority for the detention of patients admitted under Section 26, or for guardianship.

117. Under Section 43, the authority for detention or guardianship remains in force for a year from the date of admission to hospital or of the acceptance of the guardianship application. It may be renewed for a further period of one year and thereafter for two years at a time.

118. The procedure for renewal requires the responsible medical officer (or, in cases of guardianship where the guardian is not a local health authority, the nominated medical attendant) to examine the patient within two months before the authority is due to expire. (Special provision is made in Section 45 for cases where the examination cannot be made during that period owing to the patient's absence without leave.) If he considers further detention or guardianship necessary, he may make a renewal report on Form 10A or 10B. The furnishing of this report to the managers or, in cases of guardianship, to the guardian and the local health authority (or to an officer authorised to receive documents on their behalf under Regulation 20) renews the authority for detention or guardianship as from the date on which it would otherwise have expired. The report should be kept with the other documents authorising detention or guardianship.

119. The report includes a statement of opinion as to the form or forms of mental disorder from which the patient is suffering at the time of the examination. If this does not include the form or forms specified in the application which is the authority for detention or guardianship (as amended by any subsequent reclassification), the doctor should also make a reclassification report under Section 38 on Form 9A or 9B. The entry of a different form of disorder on the renewal report does not of itself effect an amendment of the classification.

120. Section 43 also requires the managers or local health authority, unless they decide to discharge the patient, to inform him of the renewal, and the patient has the right to apply to a Mental Health Tribunal at any one time within the period for which the authority for detention or guardianship has been renewed. This implies that the managers and the local health authority should make this an occasion for considering whether or not to use their powers (under Section 47) to discharge the patient. For this purpose, the renewal report, after being received on behalf of the managers or local health authority, should be considered by members who are authorised to exercise the power of discharge under Section 47, and their decision should be recorded at the foot of Form 10A or 10B. The patient need not necessarily be seen by the members on this occasion, though they will no doubt do so if the patient himself wishes it. The Minister deprecates any routine interviewing of patients. Interviews should in general be restricted to cases where the patient requests it or the managers after reading the renewal report think an interview desirable.

121. The period of two months before the expiry date within which the doctor's examination may take place should be long enough to allow the whole procedure, including the consideration of the report by the managers or local health authority, normally to be completed before the date from which the renewal takes effect. The Minister hopes that this will in fact be done, so that the patient knows not later than the renewal date whether or not the managers intend to use their power of discharge on this occasion. It is however the report itself which effects the renewal; reference to the managers is a separate and subsequent procedure which creates an occasion on which the question of discharge is to be considered. The renewal is still effective even if the consideration by the managers has not been given by the renewal date. The patient's right of application to a Tribunal also, is not dependent on his being informed of the manager's decision. It is a right which starts on the renewal date in any case.

122. Section 44 contains special provisions relating to patients classified as suffering from psychopathic disorder or subnormality and not from mental illness or severe subnormality. Such patients may not be detained in hospital after their 25th birthday unless the responsible medical officer furnishes a report under sub-section (2) to the effect that the patient if released would be likely to act in a manner dangerous to other persons or himself. The report must be on Form 11 and must be furnished to the managers (or to an officer authorised to receive documents on their behalf) within the two months ending on the patient's 25th birthday (subject to the special provisions in Section 45 for patients who are absent without leave),

and the patient and his nearest relative (or person exercising the functions of nearest relative) must be informed. The patient and the nearest relative have the right to apply to a Mental Health Review Tribunal within the 28 days following the patient's 25th birthday. After the issue of such a report the patient remains liable to be detained in the same way as mentally ill or severely subnormal patients; the arrangements for expiry and renewal under Section 43 continue in force, the date of renewal not being affected by the action taken at the 25th birthday.

123. The provisions for the issue of a report under Section 44(2) do not apply to patients under guardianship. The authority for guardianship expires in all cases on the 25th birthday for any patient classified as suffering from subnormality or psychopathic disorder and not from mental illness or severe subnormality.

Discharge

124. Sub-sections (2) and (3) of Section 47 list the persons who may order the discharge of a patient from detention or guardianship in various circumstances. The order for discharge must be in writing; no standard form is prescribed. See paragraph 24 of this memorandum about the authorisation under sub-section (4) of members of Boards and Committees to exercise the power of discharge conferred on the managers of hospitals by sub-section (2). The same principles apply to the authorisation of members of registration authorities and Regional Hospital Boards to exercise the powers conferred by sub-section (3). Power to order discharge is also held by Mental Health Review Tribunals when determining applications under the Act or references from the Minister under Section 57.

125. The patient's nearest relative (or person exercising the functions of the nearest relative—see paragraphs 31-34) may order the patient's discharge from guardianship or from detention in hospital following admission for treatment under Section 26, but not from detention following admission for observation under Section 25 or 29.

126. The nearest relative's power to discharge a patient from detention in hospital is also subject to the provisions of Section 48. He is required to give the managers of the hospital not less than 72 hours' notice in writing of his intention to order discharge. If within the 72 hours' period the responsible medical officer furnishes to the managers a report that the patient would be dangerous to himself or others if discharged, the nearest relative may not discharge the patient. He must however be informed of the issue of the report, and may apply to a Mental Health Review Tribunal within twenty-eight days of being so informed.

127. The nearest relative's notice of intention to discharge may be delivered in either of the ways described in Regulation 20(1)—i.e. by being handed to any person authorised to receive documents on behalf of the managers (see paragraph 26 of this memorandum), or by delivery by post to the hospital in which the patient is liable to be detained (addressed to the managers or to one of the officers mentioned in paragraph (4) of Regulation 20). The 72 hours' period starts to run when the notice is received by the authorised person, or when it is delivered by post at the hospital correctly addressed. The time

of receipt should be recorded. All hospitals in which patients are detained should ensure that the arrangements for opening the post during weekends and holidays are such that there is no danger of a notice sent by post not being attended to at once; the 72 hours starts to run as soon as the postman delivers it to the hospital. If the notice is delivered by hand to a person not authorised to receive it, the 72 hours starts to run when the notice is handed over to an authorised person. It is of course essential that immediately such a notice is received (either by hand or by post) the responsible medical officer should be informed, so that he can decide whether or not to issue a report barring discharge. Any report by the responsible medical officer barring discharge must be on Form 12 (or to the like effect) and must be given to a person authorised to receive documents on behalf of the managers (see paragraph 26) before the end of the 72 hours. The nearest relative should be informed in writing without delay, and should also be informed of his right to apply to a Tribunal within 28 days.

128. The nearest relative may not give an order for discharge within six months after the making of a report barring discharge on grounds of danger either under Section 44(2) or 48(2).

Applications to county courts for displacement of patient's nearest relative

129. Section 52 empowers county courts to make an order transferring the functions of the patient's nearest relative under Part IV of the Act to some other person on any of the four grounds set out in sub-section (3). These functions are the power to make an application for the patient's admission to hospital under Section 25 or 26 or to guardianship under Section 33, the power to prevent an application being made under Section 26 or 33 by a mental welfare officer, and the power under Section 47 to discharge the patient after admission under Section 26 or 33. An application to the county court for an order transferring these functions to some other person may be made by a mental welfare officer, or by any relative of the patient (as defined in Section 49(1), (2), (5) and (6)), or by any other person with whom the patient is residing (or resided before admission to hospital).

130. One of the grounds on which the nearest relative may be displaced is that he is acting unreasonably in objecting to an application being made under Section 26 or 33 for the patient's admission to hospital or guardianship. It will be for the mental welfare officer who wishes to make such an application, in consultation with his superior officers as necessary and with the two doctors who are prepared to give medical recommendations in support of such an application, to consider whether it is desirable to apply for a county court order in any particular case.

131. Another ground is that the nearest relative has exercised his power of discharge unreasonably, or is likely to do so. This will permit the displacement of a nearest relative who has not objected to the patient's admission under Section 26 or 33, but has later exercised his power of discharge quite unreasonably, and is expected to do so again if the patient is re-admitted. An application to a

county court on this ground should not be used to prevent a patient's discharge on the order of the nearest relative; such an order must be complied with at once unless barred on grounds of danger within the 72 hours preliminary notice under Section 48(2). It may however be used to prevent the power of discharge being used unreasonably a second time. In such cases the staff of the hospital from which the patient has been discharged should consult the local health authority, and if it is decided that an application to the county court is necessary the hospital should provide any necessary evidence to support the application. An application should not be made unless it is in fact desired to take steps to re-admit the patient, as a county court order ceases to have effect under Section 53(4)(b) if the patient is not admitted under Section 26 or 33 within three months of the order being made.

132. Another ground on which a county court order may be made is that the patient has no known nearest relative as defined in Sections 49-51. There is no obligation to seek an order in these circumstances, but this may be done if somebody who does not come within the definition wishes to perform the functions of nearest relative.

133. An application to the county court may be made while the patient is detained for observation after admission under Section 25 or 29—or he may be so admitted while an application to the court is pending. In such cases, the patient may be detained under Section 25 until the county court proceedings are disposed of, including the time allowed for lodging an appeal (which is 21 days after the making of the court's order) and, if an appeal is lodged, the time taken to determine the appeal.

134. The County Court Rule Committee has made rules of procedure The County Court (Amendment) Rules, 1960 (S.I. 1960 No. 1275) for the consideration of applications under Section 42(3), 52 or 53 of the Act. These allow the court to receive in evidence written reports of medical practitioners, probation officers, hospital officers, local authority officers, and officers of voluntary organisations exercising statutory functions on behalf of a local authority. The court is not obliged to show the text of such reports to the respondent(s) (who will usually be the nearest relative and any other person whom the court decides to make a respondent), but is obliged to inform him of the substance of any part of a report which bears on his fitness or conduct and which the judge considers to be material to the manner in which the application should be dealt with. If there is reason to think that such reports will be challenged by the respondent, the author of the report should be available to attend in court. The rules provide that the proceedings are to be heard in Chambers (i.e. in private) unless the court orders otherwise.

135. Section 53 of the Act describes the circumstances in which an order made under Section 52 may be varied or discharged. It is not open to the displaced relative to apply for the discharge of the order unless it was made on grounds (a) or (b) as set out in Section 52(3). The displaced relative may however apply for the patient's discharge to a Mental Health Review Tribunal once a year under Section 52(6).

136. An order under Section 52 expires under Section 53(4)(a) when the patient next ceases to be liable to be detained in hospital or under guardianship under the Act, i.e. when the patient is discharged or if the authority for detention or guardianship lapses under Section 39(5), 40(3), 43, 44 or 46. If it is desired to readmit the patient later, the relative who was displaced resumes his functions unless a new order is obtained under Section 52. A transfer between hospital and guardianship under Section 41 does not bring the county court order to an end, however.

Part V of the Act

137. Part V deals with circumstances in which patients may be admitted to and detained in hospital or received into guardianship on the order of a court, or may be transferred to hospital or guardianship from penal institutions, approved schools or remand homes on the direction of the Home Secretary.

Powers of Courts

138. Section 60 and 61 empower courts to make a "hospital order" or "guardianship order" in respect of certain offenders or children or young persons found to be in need of care or protection or beyond control, provided that the court is satisfied:—

- (a) on the evidence of two doctors, at least one of whom is approved under section 28 of the Act, that the offender or child or young person is suffering from mental illness, severe subnormality, subnormality or psychopathic disorder of a nature or degree which warrants his detention in hospital for medical treatment or his reception into guardianship. (There are no age limits for subnormal or psychopathic patients);
- and (b) that a particular hospital is willing to admit the patient within 28 days, or that a local health authority or other person approved by a local health authority is willing to receive the patient into guardianship;
- and (c) that in the circumstances of the case the making of a hospital order or guardianship order is the most suitable method of disposing of the case.

139. Section 65 empowers superior courts (but not magistrates courts), when making a hospital order, to make a "restriction order" in addition, if the court considers this necessary for the protection of the public having regard to the nature of the patient's offence, the antecedents of the offender and the risk of his committing further offences if set at large.

140. The effect of hospital orders, guardianship orders and restriction orders is described in paragraphs 160-171 of this memorandum.

141. Certain consequential amendments are made in Part I of the 7th Schedule of the Act to Section 4 of the Criminal Justice Act, 1948 (on the operation of which advice was given in RHB(49)112/HMC(49)99/BG(49)104), but there are no changes of principle. In future, a court will be able, on the written or oral evidence of one doctor approved under Section 28 of the Mental Health Act, to make an order requiring a probationer to receive treatment for his mental

condition for a specified period of not more than 12 months from the date of the order, if the court is satisfied that his condition requires and may be susceptible to treatment but is not such as to warrant his detention in hospital in pursuance of an order made under Part V of the Mental Health Act. Any hospital or mental nursing home (other than a special hospital) may in future be specified in a probation order, and no approvals by the Minister will be required. The court must not include such a requirement in a probation order unless satisfied that arrangements have been made for the treatment in question.

142. These provisions, together with their general powers for dealing with offenders and children and young persons, give the courts a wide variety of powers for dealing with mentally disordered persons who appear before them. They will be able, according to their assessment of the case and the nature of the medical evidence which they receive, to make a hospital order authorising detention in a hospital, with or without special restrictions on discharge under Section 65, or a guardianship order, or to make the receiving of treatment in hospital or elsewhere a requirement of a probation order, or they may decide to discharge the patient on finding that he is prepared to accept any necessary treatment informally or that arrangements are in hand for his admission to hospital or reception into guardianship under Part IV of the Act. Or they may decide that normal penal measures—e.g. a fine or imprisonment—are the most suitable.

Medical evidence and arrangements for admission to hospital or guardianship

143. Medical evidence may be called by the defence, or it may be asked for by the court when it comes to consider the most suitable method of dealing with the case. Courts may make a hospital order or a guardianship order or include in a probation order a requirement under Section 4 of the Criminal Justice Act, 1948, on the basis of written medical reports, but they may, if they wish, call the doctors to give oral evidence. If a court proposes to make a restriction order in addition to a hospital order it is required to hear oral evidence from at least one doctor. Medical reports should normally be submitted in writing to the clerk of the court in advance of the hearing, and the doctors should be prepared to give oral evidence if required; they may be asked to do so at comparatively short notice, especially when the court is a court of assize or quarter sessions.

144. In some cases it may be possible for medical reports to be prepared before the hearing of a case begins, for production if required. Otherwise, they will be asked for during remand or committal for trial, in which case the patient will be either in custody or on bail.

145. Section 26 of the Magistrates' Courts Act, 1952, has been amended so that it may be made a condition of bail, whether on remand or on committal, that the patient undergoes a medical examination by two doctors, and for this purpose attends for examination at a specified place, or on a specified doctor, and complies with any instructions given to him so as to ensure that he is subsequently examined by a second doctor. It may also be made a condition

of bail that, for the purpose of the examinations, he remains in the hospital as an in-patient for a specified period or until discharged from the hospital; it will be open to the responsible medical officer, if he is satisfied that further observation is unnecessary, to discharge such a patient from hospital before the expiration of the period specified in the conditions of bail.

146. In some cases—for example, where the offender is known to be under the care of the local health authority—a court which requires medical reports may approach the Medical Officer of Health to advise where the offender should be required to attend for examination as a condition of bail. In other cases, the court will wish to refer the offender to a hospital. For this purpose, Regional Hospital Boards are asked to send to each magistrates' court in their area, before the appointed day, a list of psychiatric clinics at which offenders may be required to attend as a condition of bail. Magistrates' courts will be asked to give any doctor to whom an offender is so referred any information they have about any previous medical treatment. The doctor to whom the offender is first referred will be expected, after examining him, to decide what second doctor he ought to see, making the choice according to the circumstances of the case (e.g. general practitioner, local health authority doctor, doctor on the staff of the hospital to which admission might be desirable), and to make the necessary arrangements. One of the two doctors must be one who is approved under Section 28 of the Act. In cases where there is a considerable interval between the time when the person is committed for trial and the hearing of his case, it may be necessary to arrange for him to come to the clinic for a further examination shortly before the date of the trial.

147. When the remand or committal for trial is in custody, the medical officer of the prison or remand home will normally ask the Regional Hospital Board for the region in which the prison or home is situated to arrange for a doctor, usually from the staff of the local hospital, to visit and examine the patient. (In the case of subnormal patients, however, if the patient has been under the care of a local health authority, possibly for many years, it may be more appropriate for the medical officer of the prison or remand home to approach the medical officer of health of the local health authority concerned.) If the medical officer of the prison or remand home is not himself approved under Section 28 of the Act, the doctor called in to examine the patient must be one who is so approved.

148. Each of the two doctors must make a separate report to the court—though one may, if he wishes, merely express agreement with the views and recommendations of the other. The immediate object of the reports is to give the court the medical evidence on which it may, if it thinks fit, found a hospital or guardianship order, or to inform the court that in the opinion of the reporting doctors the grounds for such an order do not exist. After making the examination and before preparing their reports the two doctors should confer together on whether the conditions specified in Section 60(1)(a) are satisfied. If they do not consider detention in hospital or guardianship necessary they should say so, and may indicate for the assistance of the court any other form of care or treatment which, if the court did not impose a sentence involving detention, they would consider

useful—e.g. informal hospital treatment as an in-patient or out-patient, with or without a requirement in a probation order under Section 4 of the Criminal Justice Act, or informal care from a local health authority without powers of guardianship. If the doctors recommend a hospital order they should indicate in their reports, in order to help the court to decide whether to make a restriction order, whether they consider the offender's mental condition to be such that there is a risk of his committing further offences if at large. If admission to hospital, guardianship or informal community care is recommended, acceptance from a hospital or local health authority must be sought—see paragraphs 150-153 below. The doctors' reports should be sent to the court before the date on which the offender is bailed to appear.

149. In some cases, even after conferring together, the two reporting doctors may not agree. Where this happens, the doctor who wishes to report that the patient's mental condition justifies the making of a hospital order or guardianship order—which can only be made if two doctors give evidence in this sense to the court—may call in a third doctor with the patient's consent. All three doctors would report to the court.

150. If the doctors wish to recommend admission to hospital, either on a hospital order, or probation order, or informally, one of them should first ascertain that a bed is actually available for that patient in a suitable hospital, or will be available within 28 days of the date on which the court will determine the case. (When the patient is examined in custody, it should normally be the responsibility of the doctor called in from outside to seek this acceptance from a hospital.) The doctor responsible for seeking a vacancy is also responsible for ensuring that the court is informed whether a bed is available. He may either obtain a written statement from a doctor on the staff of the hospital and send it in with his report, or he may obtain the necessary undertaking informally and include it as part of his own report. In practice, this will often be a hospital at which the reporting doctor is himself on the staff. If admission to a special hospital is thought necessary, application should be made to the Ministry of Health, not direct to the hospital.

151. If the hospital can admit the patient within 28 days of the court's sitting, but not immediately on that date, the court may make a hospital order and also make an order under Section 64(1) for the patient to be detained in a place of safety while waiting admission to the hospital. "Place of safety" is defined to include any hospital the managers of which are willing to receive the patient. In such a case, the doctor seeking a bed should, if possible, secure an undertaking from another hospital (e.g. a hospital with beds set aside for emergency cases) to accept the patient for the interim period.

152. If there is difficulty in obtaining a bed, the doctor may need to seek the help of the regional organisation mentioned in paragraph 12 of this memorandum. Every effort should be made to secure admission, but occasionally it may be decided that, although the offender needs hospital treatment, his need is less urgent than that of other patients awaiting admission, so that an immediate vacancy cannot be offered. In that event, the doctors should explain the

position to the court, indicating whether, if the court decided not to impose a sentence involving detention, they would consider any other form of treatment suitable until admission became possible—e.g. out-patient treatment or local authority care. If the court cannot make a hospital order because there is no suitable vacancy, it will have to dispose of the case under its normal penal powers. It may be willing to make an order of absolute or conditional discharge or impose a nominal penalty on the understanding that admission will be arranged as soon as possible under Part IV of the Act or that the offender will receive out-patient treatment or be under informal supervision by the local authority during the interim period. The court may however in some cases consider it wiser to impose a sentence of detention with a view to the Home Secretary making a direction for the offender's transfer to hospital when a vacancy becomes available.

153. If the reporting doctors wish to recommend community care from the local health authority with or without guardianship, they should consult the Medical Officer of Health for the patient's home area, or a member of his staff. It will be for the local health authority to inform the court whether it is prepared to provide community care, including, if necessary, itself acting as guardian; if a private guardian is proposed it will be for the local health authority to inform the court that it has approved the proposed guardian and to send a statement signed by him that he is willing to act.

Committal to quarter sessions for a restriction order

154. A magistrates' court has no power to make a restriction order. If such a court is satisfied that the conditions exist in which it could make a hospital order, but also feels that a restriction order should be made in addition, it may commit an offender (if over 14 years old) to quarter sessions under Section 67 of the Act. Section 68 provides that the magistrates may direct his detention, pending the hearing of the case by quarter sessions, in any hospital to which arrangements have been made to admit him. This will normally be the hospital which had already agreed to admit the patient in the event of the magistrates' court itself making a hospital order.

155. A patient admitted to hospital under Section 68 is to be detained as if he were subject to a hospital order with a restriction order (see paragraphs 162-171 below), and is to be produced from the hospital to attend the court of quarter sessions in due course. The clerk of the peace will inform the hospital managers when the patient is required to appear before the court of quarter sessions, and it will be the managers' duty to arrange for his attendance with an appropriate escort. It will not be necessary to obtain the Home Secretary's consent to leave of absence from the hospital for this purpose. If a considerable time elapses between the hearing by the magistrates and the hearing by quarter sessions, the hospital authorities should arrange for two fresh medical reports to be submitted to quarter sessions (one by a doctor approved under Section 28). They should also arrange for at least one doctor to be available to give oral evidence. After appearing before the court of quarter sessions, the patient will not be liable to be taken back to the hospital compulsorily unless that court makes a hospital order.

156. If while the patient is detained under Section 68 his mental condition deteriorates to such an extent that he is unlikely to be fit to appear before quarter sessions on the day of the hearing, the clerk of the peace should be notified immediately. In those circumstances the court may either adjourn the case to a later sitting or, if the patient is suffering from mental illness or severe subnormality, it may make a hospital order, with or without a restriction order, in his absence. The court can make a hospital order in the patient's absence only if it is satisfied on the oral evidence of at least two doctors that the patient is suffering from mental illness or severe subnormality of a nature or degree which warrants the detention of the patient in hospital for medical treatment. In informing the clerk of the peace of a patient's unfitness to appear, the hospital authorities should enquire whether the court is likely to wish to proceed in the patient's absence, and if so they should arrange for two doctors, one of whom must be a doctor approved under Section 28 of the Act, to attend at the court to give evidence of the patient's mental state.

Conveyance to hospital or place of safety

157. The patient may be conveyed to the hospital named in a hospital order, or to a place of safety, or to a hospital to which he is committed under Section 68, by a constable, a mental welfare officer or any person directed by the court to do so. The conveyance of patients in these circumstances is within the duties of local health authorities to provide ambulance services under Section 27 of the National Health Service Act, 1946.

Detention in a place of safety

158. If an order is made for a patient's detention in a hospital as a place of safety under Section 64(1) while awaiting admission to the hospital named in a hospital order, he may be detained there for not more than 28 days. There are no provisions for discharge or leave of absence. If the patient escapes, Section 140 allows him to be retaken by the person who had his custody immediately before his escape or by a constable or mental welfare officer, or by any member of the staff of, or person authorised in writing by the managers of, the hospital named in the hospital order. If the hospital order was not accompanied by a restriction order, he may not be retaken after the time limits described in Section 40(3). If the hospital order was accompanied by a restriction order, he may be retaken without limit of time. If he is retaken, the time during which he was absent does not count towards the 28 days for which he may be detained in the place of safety.

159. It may exceptionally happen that the hospital named in the hospital order, which has undertaken to admit the patient within the 28 days from the making of the order, becomes unable to do so—for example, if there is an epidemic at the hospital or if the patient has an accident and cannot be moved. In such a case the Minister has power under Section 64(2) to give directions for the patient to be admitted to some other hospital than the one specified in the order. Where such action is likely to be needed, the Ministry should be informed at once.

Effect of hospital order without a restriction order or of a guardianship order

160. Except where a restriction order is also made, a hospital order has the same effect as an application for admission for treatment under Part IV of the Act, subject to two exceptions. The first exception is that the nearest relative has no power of discharge; instead Section 63(4) gives him the right to apply to a Mental Health Review Tribunal once a year. Secondly, the provisions of Section 44 for the discharge of psychopathic or subnormal patients at the age of 25 do not apply, even if the patient is under 21 when the hospital order is made. Section 63(4) gives the patient the right to apply to a Mental Health Review Tribunal at any one time during the six months following the making of the hospital order, corresponding to the right given by Section 31(4) to patients admitted under Part IV of the Act.

161. Similarly, patients received into guardianship on a guardianship order are in exactly the same position as patients received into guardianship under Part IV of the Act, except that the nearest relative does not hold the power of discharge but instead has a right to apply to a Mental Health Review Tribunal once a year under Section 63(4), and Section 44 does not apply. Section 63(4) gives the patient the right to apply to a Mental Health Review Tribunal at any one time during the six months following the making of the guardianship order, corresponding to the right given by Section 34(5) to patients received into guardianship under Part IV.

Effect of a hospital order with a restriction order

162. Orders restricting discharge may be made under Section 65 only when a hospital order is also made, not when a guardianship order is made. When a patient is admitted to hospital on a hospital order accompanied by a restriction order, Part IV of the Act applies to him subject to the special restrictions described and modifications in Section 65(3) and the 3rd Schedule.

163. Neither the patient nor his nearest relative may apply to a Mental Health Review Tribunal while the restriction order is in force, but the Home Secretary may refer the patient's case to a Tribunal at any time for advice under Section 66(6), and the patient may require him to do so in the circumstances described in Section 66(6) and (7).

164. The patient may not be given leave of absence or be transferred to another hospital or to guardianship or discharged except with the Home Secretary's consent. Requests for consent should be sent to the Home Office by the responsible medical officer or the managers, as the case may be, when they wish to exercise their powers to grant leave, to authorise transfer or to order discharge. When consent to a transfer is given, the document in which consent is given should be attached to the authority for transfer and sent with it to the receiving hospital, a copy being kept by the hospital which the patient is leaving.

165. The authority for detention does not expire while the restriction order is in force. It does not, for instance, expire if a patient absents himself without leave and is not returned to hospital within the periods mentioned in Section 40; the patient may be returned

to the hospital under that Section at any time so long as the restriction order is in force. Similarly, the six months limit on leave of absence, at the end of which the authority for detention expires under Section 39, does not apply. The provisions for expiry and renewal under Section 43 also do not apply; (nor do the provisions for reclassification under Section 38).

166. It is however the duty of the responsible medical officer to keep continually under review the suitability for discharge of all patients who are subject to restriction on discharge, as of all other patients. In addition, an undertaking was given to Parliament during the passage of the Mental Health Bill that formal reports on these patients' suitability for discharge would be made by the responsible medical officer to the managers not less frequently than reports are made under Section 43 on other patients. The Minister asks all hospital authorities to arrange for this to be done.

167. The initiative in seeking the Home Secretary's consent to discharge lies with the responsible medical officer and the managers, and they should not hesitate to seek consent when they consider the patient's condition warrants it. The Home Secretary may sometimes think it necessary in view of his special responsibility for the protection of the public, to refuse or postpone his consent to discharge, but he will rely on the hospital authorities to bring cases to his notice. Hospital authorities should not assume that consent to discharge will not be given before the end of the period named in a restriction order made for a limited time, since the Home Secretary has discretion to consent to discharge at any time.

168. In addition to his power to consent to discharge by the responsible medical officer or by the managers, the Home Secretary is given power under Section 66(2) to discharge patients subject to restriction orders himself. Under the Act he will not receive regular reports on individual patients (as he has in the past on Broadmoor patients), but he may from time to time ask responsible medical officers to send him special reports to assist him in considering representations from patients or their relatives that he should either exercise his own power to discharge or refer cases to the Mental Health Review Tribunal for advice.

169. If the Home Secretary discharges a patient himself he may do so either conditionally or absolutely, and in some cases he may consider conditional discharge more appropriate than discharge by the hospital authorities with his consent. A patient who is conditionally discharged may be recalled to hospital by the Home Secretary at any time during the currency of the restriction order. The conditions which the Home Secretary would normally think it appropriate to attach to a conditional discharge are that the patient should live in a particular household and be under the supervision of a responsible person, usually a near relative, who would undertake to submit reports to the Home Secretary on the patient's progress from time to time and to inform the Home Secretary and the responsible medical officer if the patient's mental condition appeared to be deteriorating. It would be open to the hospital authorities to suggest other conditions, such as attendance at a psychiatric out-patient clinic or supervision by the local health authority, and if the hospital authorities think that discharge on such conditions as these

would be more appropriate than full discharge with the Home Secretary's consent it is open to them to recommend conditional discharge instead.

170. When a patient is admitted on a hospital order with a restriction order, the hospital is asked to send to the Home Office a copy of each order, and also to inform the Home Office—if this is known to the hospital—of the magistrates' court from which the patient was committed to the court which made the order.

171. If a patient subject to a restriction order is absent from the hospital without leave for more than 24 hours the Home Office should be informed, and also told when he returns. The local police should also be notified—see paragraph 247 of this memorandum.

172. A restriction order ceases to have effect at the end of any period named in the order by the court or may be brought to an end at any time on the direction of the Home Secretary under Section 66(1). When this happens, Section 65(5) provides that the patient is to be treated as though he had been admitted to hospital in pursuance of a hospital order without a restriction order made on the date on which the restriction order ceased to have effect. The situation described in paragraph 160 above will then apply. The patient and his nearest relative will have the right to apply to a Mental Health Review Tribunal under Section 63(4).

Rights of appeal against conviction and sentence

173. All patients admitted to hospital on a hospital order will have certain rights of appeal either to the Court of Criminal Appeal or the appeal committee of quarter sessions. A leaflet describing the rights of appeal and the appeal procedure is being prepared by the Home Office, and copies will be sent to the hospitals concerned, so that they can advise any patient who wishes to appeal of the procedure to be followed. If a patient appeals from the decision of a magistrates' court to the appeal committee of quarter sessions, he must be present in court when his appeal is heard. On the day of the hearing, of which the hospital authorities will be notified by the clerk of the peace, he should be taken to the court with an escort. If the patient appeals to the Court of Criminal Appeal, he will not necessarily have to appear before the court, but if the court orders him to be present he should similarly be taken with an escort. If he is subject to a restriction order, the Home Office should be notified as soon as it is known that the Court of Criminal Appeal wishes him to be present in court; the Home Secretary will then issue a direction under Section 66(5) authorising his production before the Court. If any patient who is required to appear before the court is, in the opinion of the responsible medical officer, unfit to appear, the clerk of the peace or the Registrar of the Court of Criminal Appeal, as the case may be, should be notified immediately. If on appeal the patient's conviction is quashed or another sentence is substituted for the hospital order the authority for his detention in hospital lapses automatically.

Transfer of patients from penal institutions, approved schools or remand homes

174. Sections 71 to 79 of the Act contain various provisions for the transfer of patients from penal institutions, approved schools or

remand homes to hospital, or from approved schools to guardianship, on the direction of the Home Secretary.

175. Except in the case of patients who have been found insane on arraignment or guilty but insane, the Home Secretary must first be satisfied, by reports from at least two doctors, one of whom must be approved under Section 28 of the Act, that the prisoner or child or young person is suffering from mental illness, psychopathic disorder, subnormality or severe subnormality (as the case may be) of a nature or degree which warrants the patient's detention in hospital for medical treatment. And similarly when transfer from an approved school to guardianship is contemplated. The medical officer of the prison or other institution will ask the Regional Hospital Board for the area in which the institution is situated (or occasionally in the case of a subnormal patient, the local health authority for the patient's home area) to arrange for a second doctor to be called in to examine and report on the patient.

176. If transfer to a hospital (other than a special hospital) is recommended, the Regional Hospital Board for the patient's home area will be sent copies of the medical reports and will be asked to say which hospital can admit the patient. In the case of a prisoner suffering from mental illness, this will be done by the prison governor at the same time as he sends the reports to the Home Office; the Board should notify both the Home Office and the prison which hospital will take the patient. In the case of prisoners suffering from other forms of mental disorder, and in all approved school and remand home cases, the approach to the Board will be made by the Home Office itself after preliminary consideration of the reports; the notification of the vacancy should be sent to the Home Office. If the Board consider that admission to a special hospital is necessary, they should consult the Ministry of Health. On being informed that a vacancy is available, the Home Office will issue a "transfer direction", i.e. a warrant directing the patient's transfer. The transfer direction will indicate whether the patient is to be subject to restriction on discharge and, if so, whether this is for a fixed or indefinite period. Local health authorities may be asked to provide an ambulance for the conveyance of the patient to hospital.

177. If the transfer direction does not impose restrictions on discharge, the position of the patient will be the same as that of a patient admitted on a hospital order made by a court without an order restricting discharge, as described in paragraph 160 above.

178. Where (as will apply in most cases) the transfer direction indicates that the patient is subject to restriction on discharge, his position, while the restriction remains in force, will be similar to that of a patient admitted on a hospital order with a restriction order made by a court, as described in paragraphs 162-171 above.

179. If the patient was transferred under Section 72 while serving a sentence of imprisonment or other period of detention (e.g. in a borstal institution or approved school), the restriction on discharge expires at the end of the period of sentence. But if a patient has been absent without leave during that period, the period of absence does not count towards the period of sentence. If any such patient is absent without leave for more than 24 hours, the hospital should

inform the Home Office of the absence and when he returns to the hospital. The Home Office will then advise the hospital of the effect on the period of restriction on discharge.

180. A patient transferred under Section 72 with a restriction on discharge is liable to be returned to a prison or other appropriate establishment to complete his sentence if it is found during the currency of the restriction on discharge that he no longer requires treatment for mental disorder. The responsible medical officer should notify the Home Office at once in writing if he considers that such a patient no longer requires such treatment. If the Home Secretary decides that the patient should be returned to a prison or other institution he will issue a warrant directing the patient's removal from the hospital.

181. The restriction on discharge on any patient transferred under Section 71 or 72 may be terminated any time by the Home Secretary. When this is done, or when the period of restriction indicated in the transfer direction expires, the position of the patient and his nearest relative will be as described in paragraph 172 above.

182. Special provisions apply to patients who are transferred under Section 73 who, before transfer to hospital, were civil prisoners, or were in custody on remand or while awaiting trial or sentence or under the Aliens Order. These cases will be rare, and the Home Office will draw the hospital's attention to the special provisions whenever such a patient is transferred.

183. Except when the Home Secretary's direction is made under Section 71 (after the patient has been found insane on arraignment or guilty but insane), the transfer direction will include a statement of the patient's mental classification i.e. whether he is suffering from mental illness, psychopathic disorder, subnormality or severe subnormality. A classification will not be given when a patient is removed to hospital under Section 71. All patients entering hospital under Section 71 will be subject to restriction on discharge when first entering the hospital; if the Home Secretary later terminates the restrictions on discharge and if the patient is not at that time discharged from hospital his mental classification should be recorded by the responsible medical officer at that time, on a form similar to that prescribed for use under paragraph 17 of the 6th Schedule (Form 15).

184. When a patient is found insane on arraignment or guilty but insane by a court other than a court martial, Section 71(1) also allows the court itself to order his immediate conveyance to and detention in a place of safety as defined in Section 80 of the Act. The place of safety may be a hospital if the managers are willing temporarily to receive him. When a patient is admitted in this way a copy of the court order should be sent immediately to the Home Office so that the Home Secretary may be aware that a direction under Section 71(2) is required. In sending the copy of the order to the Home Office, the hospital authorities should indicate whether they are willing to continue to detain the patient.

185. Sections 71 to 78 do not permit the transfer of a patient from a penal institution, approved school or remand home to a mental

nursing home. But patients who are transferred under these Sections to a hospital other than a mental nursing home, may be transferred later to a mental nursing home under Section 41 of the Act, subject of course, to the consent of the Home Secretary if the patient is at that time subject to restriction on discharge.

186. Section 79 empowers the Home Secretary to direct the transfer to guardianship of a child or young person detained in an approved school (but not of persons detained in prison or other penal institution). When such a transfer is contemplated the Home Office will write to the local health authority for the patient's home area to ascertain whether the authority will itself act as guardian or whether it will approve any other person so to act. A patient transferred to guardianship under Section 79 will be in exactly the same position as a patient received into guardianship on a guardianship order made by a court, as described in paragraph 161 above.

Scrutiny of documents

187. The provisions of Section 32 of the Act under which errors in applications and recommendations made under Part IV may be rectified do not apply to orders or transfer directions made under Part V. These documents should, however, be scrutinized when received. If a hospital order or guardianship order does not specify the form or forms of mental disorder from which the patient is suffering, or if it contains any other omission, it should be returned to the clerk of the court for the omission to be corrected. If there is any difficulty over this, or if an order or direction appears to be defective in any other way, the Ministry of Health should be consulted at once.

Notification to the Criminal Record Office

188. Whenever a patient is admitted to hospital on a hospital order made by a court (except in the case of a child or young person found to be in need of care or protection or beyond control), the hospital should notify the Criminal Record Office of the patient's full name and age, the name of the court which made the order, the date of the order, and the offence of which the patient has been found guilty. Similar notifications will be sent by the Home Office in respect of patients transferred to hospital by the Home Secretary. If the Criminal Record Office wish to be kept informed of any of these patients' subsequent movements, they will notify the hospital. Except where so notified, no further information need be sent to them.

Part VI of the Act

189. Part VI of the Act provides powers under which certain categories of detained patients and patients under guardianship may be moved between England and Wales and other parts of the United Kingdom, the Channel Islands and the Isle of Man, while remaining under detention or guardianship, or may be retaken in those places when absent without leave from hospitals or institutions. It also provides powers for moving mentally ill aliens from hospitals in England and Wales to countries abroad.

Removal between England and Wales, Scotland, Northern Ireland, the Channel Islands and the Isle of Man

190. If arrangements are made at the request of a patient or his relatives for him to go to another part of the United Kingdom, and if it is not necessary to keep the authority for detention in operation while he is being moved, he may be discharged before leaving and enter hospital or community care on the other side of the border under the admission procedures of that country, either compulsorily or voluntarily. On the other hand, if it is necessary to have powers of control over the patient while on the journey and immediately on arrival in the other country, the procedures described in Sections 81 to 90 may be used. These Sections define the categories of patients who may be moved without a break in the powers of detention or guardianship, and how they are to be treated as regards powers of detention, guardianship, and discharge after arriving in the receiving country. It will be noted that there is no provision for moving patients in this way from Scotland to England and Wales (apart from state mental patients who may be moved under Section 64(2) of the Criminal Justice (Scotland) Act, 1949); this is being dealt with in the Mental Health (Scotland) Act, 1960. Removals between the Channel Islands or Isle of Man and England and Wales are limited to the circumstances described in Section 89.

191. The suggestion that a patient should be moved may originate from the patient himself or his relatives or friends or from the hospital or other authority in whose care he is. Preliminary enquiries about arrangements for his care in the other country should be made before an approach is made to the Minister or Secretary of State whose authority for the removal is required under the relevant Section of the Act. The views of the person exercising the functions of the nearest relative should be ascertained and reported to the Minister whenever it is desired to remove a patient under Section 81 or 85. If the patient is to be moved to Northern Ireland, under Section 85 or 86, the authority in Northern Ireland with whom preliminary arrangements should be made is the Northern Ireland Hospitals Authority, both for hospital and for guardianship cases.

192. When a patient is moved to England or Wales under Section 87, he is to be treated on arrival as though admitted to hospital on an application made under Section 26 of the Act, or as though received into guardianship under Sections 33-34. This gives him the right of application to a Mental Health Review Tribunal within six months under Section 31(4) or 34(5). The written authority for removal given under Section 87 by the Ministry of Health and Local Government for Northern Ireland will be sent to the receiving hospital or guardian, and should be kept as the document authorising the patient's detention or guardianship in England and Wales. With it should be kept the record of the date of arrival at the hospital or other place where he is to reside, which is required by Regulation 19(4). The authority for detention or guardianship will expire if not renewed at the end of one year from that date under Section 43, and all the other relevant provisions of Part IV of the Act also apply. Section 96(3) and Regulation 19(2) require the responsible medical officer (or nominated medical attendant) to record the form of mental disorder from which the patient is suffering, in accordance with the

classifications recognised under the Act in England and Wales, on Form 15, as soon as may be after his arrival. In cases of reception into the guardianship of a person other than a local health authority, the date of arrival is to be notified by the guardian to the responsible local health authority, as well as the other notifications required under Regulations 9 and 11.

193. When a patient is moved to England and Wales under Section 88 or 89 of the Mental Health Act or Section 64(2) of the Criminal Justice (Scotland) Act, 1949, Sections 84, 88 and 89 of the Mental Health Act provide that he is to be treated on arrival as though admitted under Part V of the Act. Where such patients are moved from Northern Ireland, the Channel Islands or the Isle of Man, they are automatically subject to restriction on discharge and paragraphs 177 to 181 apply accordingly. Patients removed from Scotland under Section 64(2) of the 1949 Act are also automatically subject to restriction if, in Scotland, they have been ordered to be detained during Her Majesty's pleasure. (This will be indicated on the face of the order.) In other cases of removal from Scotland, the Home Secretary may, under Section 84(2)(b), render the patient subject to restriction on discharge by giving a direction under Section 74 of the Act. Where such a patient is removed to England and Wales, the hospital will be informed of the Home Secretary's decision whether or not to give such a direction, and the direction, if any, will be sent to the hospital. Regulation 19 requires the responsible medical officer to record the patient's mental classification on his arrival (if he is not subject to restriction on discharge) or (if he is so subject) when the restriction ceases to have effect.

Removal of mentally ill aliens

194. The provisions of Section 90 (removal of alien patients) apply to mentally ill patients whether detained or not and are dealt with in paragraphs 277 to 278 of this memorandum.

Retaking of patients

195. Sections 91 and 92 permit patients who are absent without leave from mental hospitals or institutions in Scotland or Northern Ireland to be retaken if found in England and Wales. The persons authorised to retake such patients include mental welfare officers of local health authorities in England and Wales, who may be asked to co-operate with the Scottish or Irish authorities in such cases. Section 93 permits patients from England and Wales to be retaken in Scotland, Northern Ireland, the Channel Islands or the Isle of Man as mentioned in paragraph 97 of this memorandum. All these provisions are subject to any time limits which apply to the retaking of patients in the country from which the patient is absent.

196. None of these Sections apply to patients under guardianship. The powers of guardians are in abeyance while a patient is not in the part of the United Kingdom in which the guardianship is in force. They revive if the patient returns while the authority for guardianship is still in force, i.e. if it has not lapsed under Section 40, 43, 44 or 46, or been discharged under Section 47.

Special Hospitals

197. Part VII of the Act lays on the Minister a duty to provide such institutions as he considers necessary for persons detained under the Act who in his opinion require treatment under conditions of special security on account of their dangerous, violent or criminal propensities. These are to be known as "special hospitals". The present State Institutions (Rampton Hospital, Moss Side Hospital and Broadmoor Institution) become special hospitals.

198. Special hospitals are included in the definition of hospital in Section 147(1), and the provisions of Parts IV, V, VI and IX of the Act apply to their patients in the same way as to patients in other hospitals. The functions of the managers of the hospital devolve on the Minister. Any request for the admission or transfer of a patient to a special hospital should be made to the Ministry of Health, not direct to the special hospital.

199. The transfer of patients between special hospitals and other hospitals will normally be arranged under the procedures described in paragraphs 100 and 101 of this memorandum. Under Section 99(2) the Minister also has power to direct a patient's transfer out of, but not into, a special hospital.

Transitional Provisions for Patients Already Detained in Hospital, or in Guardianship or single care when the Act comes into Operation

200. Part III of the 6th Schedule to the Act contains transitional provisions relating to the continued detention in hospital or guardianship of patients who, when Parts IV and V of the Act come into operation, are already subject to detention or guardianship under Acts which are repealed by the new Act.

201. There are no special transitional provisions for voluntary patients received under Section 1 of the Mental Treatment Act, 1930. They come automatically on to the same footing as patients admitted informally.

202. This Schedule distinguishes three categories of detained patients :—

- (a) patients other than those referred to in the Schedule as "transferred patients" and "short period patients";
- (b) "transferred patients" i.e. those whose discharge is subject to control by the Home Secretary or who are detained or under guardianship while on remand by a court;
- (c) "short period patients" i.e. those detained under one of the provisions in the repealed Acts for the temporary detention of patients in cases of emergency.

203. The Schedule applies to these patients the provisions of Parts IV, V, VI and IX of the Act with some modifications, the chief of which are :—

- (a) special arrangements during the "initial period" of six months from the appointed day;
- (b) the detention beyond the age of 25 of certain subnormal or psychopathic patients;

- (c) special limitations on the powers of discharge exercisable by the patient's nearest relative ;
- (d) special arrangements for renewal of the authority for detention or guardianship ;
- (e) special rights of application to Mental Health Review Tribunals.

204. Paragraphs 205-227 below deal with the Schedule as it applies to patients who on the appointed day are detained in hospitals or mental nursing homes (including those on leave or licence and Broadmoor patients who have been conditionally discharged). Paragraphs 228-9 deal with patients who are under guardianship under the Mental Deficiency Acts, and paragraphs 230-5 with single patients and patients boarded out from hospitals under the Lunacy and Mental Treatment Acts.

Hospital patients other than transferred patients and short period patients

205. Paragraphs 7-13 and 22-23 of the 6th Schedule apply to the categories of patients listed in paragraph 7(1) of the Schedule. They are:—

- (a) patients who are the subject of reception orders under the Lunacy Act, 1890 (other than urgency orders) or of orders under other Acts which have the same effect as reception orders ;
- (b) temporary patients under the Mental Treatment Act, 1930, and
- (c) patients detained under the Mental Deficiency Act, 1913, other than those detained under Section 15 or any who are detained on remand under Section 8(4) or those detained under Section 9 whose period of detention in a penal establishment or approved school has not yet expired.

206. All the patients covered by paragraph 7(1) continue to be liable to be detained for a period of six months from the appointed day (which is called "the initial period"), even if the authority for detention would have been due to expire if not renewed during that period under the old Acts. Paragraphs 7-8 of the Schedule contain provisions which apply during the initial period. Paragraph 9 describes the circumstances in which patients may continue to be detained beyond the initial period. Paragraphs 10-12 contain provisions which apply to patients who are to be detained after the initial period.

207. During the initial period it is the duty of the responsible medical officer to review each patient and to record (on Form 13A or B) his opinion whether the patient is suffering from mental illness, sever subnormality, subnormality or psychopathic disorder of a nature or degree which warrants his detention in hospital for medical treatment. Except where such an opinion is recorded, the patient may not be detained beyond the end of the initial period.

208. There are further limitations on the detention beyond the end of the initial period of patients who are recorded as suffering from psychopathic disorder or subnormality and not from mental

illness or severe subnormality, and who either were aged 21 or over when first detained or will be aged 25 or over at the end of the initial period. Such patients may not be detained beyond the initial period unless:—

- either (i) at the appointed day the patient was detained on an order under Section 8(1)(b) or Section 9 of the Mental Deficiency Act, 1913, or Section 30 of the Magistrates' Courts Act, 1952, or Section 24 of the Criminal Justice Act, 1948 ;
- or (ii) during the initial period the responsible medical officer records his opinion that the patient is unfit for discharge on one of the grounds specified in paragraph 13(1) of the Schedule.

209. The Minister hopes that by the appointed day all hospitals will have reviewed their detained patients and discharged from the authority for detention those suitable to remain informally (as recommended in HM(58)5 and HM(59)92). If in the course of the review required by this Schedule it appears to the responsible medical officer that any patient either does not satisfy the conditions for further detention described above, or could suitably remain in hospital informally, he should discharge the patient under Section 47 of the Act.

210. The responsible medical officer should record his opinion on the questions mentioned in paragraphs 207 and 208 on Form 13A or 13B before the end of the initial period. When a patient is reported as unfit for discharge under paragraph 13(1) of the Schedule, he must be informed of this on behalf of the managers, and he is entitled to apply to a Mental Health Review Tribunal within 28 days of being so informed.

211. During the initial period Part IV of the Act applies to the patients covered by paragraph 7(1) of the Schedule as if they had been admitted on an application made under Section 26, subject to the exceptions and modifications set out in paragraph 8 of the Schedule. These are:—

- (i) *Reclassification.* The provisions of Section 38 for reclassification do not apply until the patient has been given a classification in terms of the Act as described in paragraph 207 above.
- (ii) *Leave.* Section 39 applies without modification to patients who are actually in the hospital on the appointed day. Where a patient is on leave, trial or licence on the appointed day Section 39 applies as if he had been granted leave under that Section on the appointed day for an indefinite period. He may, therefore, be recalled to hospital or be transferred to guardianship at any time within the initial period. He may also remain on leave during the initial period. At the end of that period, unless he has returned to hospital, or been transferred to another hospital or to guardianship, or is absent without leave having failed to return when recalled, the authority for detention lapses. Except in cases where the absence was intended to be temporary, or where the patient's condition makes his return to hospital necessary, these patients should be transferred to guardianship or discharged, after consultation with the local health authority, during the initial period.

- (iii) *Absence without leave.* If a patient is absent without leave on the appointed day, or if during the initial period he absents himself or fails to return when recalled, he may be retaken in accordance with Section 40. If the absence occurs before the patient has been classified as described in paragraph 207 of this memorandum, the time-limits in Section 40(3)—which are linked to the patient's classification—are replaced by those set out in paragraphs 8(3) and 21(3) of the Schedule—i.e. the patient may be retaken within a period of six months if he was previously detained under the Mental Deficiency Acts, and within 28 days in other cases. Where the patient is absent without leave on the appointed day, these periods run from the appointed day.
- (iv) *Expiry and renewal.* Sections 43-45 do not apply, except in so far as Section 43 is applied by paragraph 11 of the Schedule—see paragraph 212 below.
- (v) *Powers of discharge.* Section 47 applies as for patients admitted under Section 26, except that the nearest relative of patients previously detained under Section 6, 8 or 9 of the Mental Deficiency Act, 1913, has no power of discharge. For the special arrangements for single patients and patients boarded out under the Lunacy Act, 1890, see paragraph 231 of this memorandum.

212. If the authority for a patient's detention would have been due for renewal under the old Acts on a date falling within the initial period, he may not be detained beyond the end of the initial period unless the authority is renewed at the end of that period as provided in paragraph 11 of the Schedule. The procedure for renewal is the same as under Section 43 (see paragraphs 116-121 of this memorandum), but the periods for which the renewal lasts are one year if the period for which the patient will have already been detained (from admission to hospital to the end of the initial period) is one year or less, and two years in all other cases. The responsible medical officer's report to the managers on Form 10A which effects the renewal (as under Section 43(3)) must be made within the last two months of the initial period. This does not replace the classification report on Form 13A or 13B, which must be made before the renewal report. All the provisions of Section 43(3) to (6) apply, including the patient's right to apply to a Mental Health Review Tribunal at any one time during the period for which the authority for detention is renewed. The renewal of the authority for detention dates from the end of the initial period. Subsequent renewals take place under the same procedure.

213. If the authority for detention would not have been due for renewal under the old Acts until a date after the end of the initial period, the patient continues to be liable to be detained until that date, provided that the opinion mentioned in paragraph 207 above has been recorded and that the conditions mentioned in paragraph 208 are complied with where applicable. At that date the authority for detention lapses unless it is renewed as provided in paragraph 11 of the Schedule, i.e. under the same procedure and for the same periods as described in paragraph 212 above.

214. If the date for renewal is more than two years after the appointed day the patient may apply to a Mental Health Review Tribunal at any time between the end of the second year from the appointed day and the date for renewal. This special right of application does not affect the duration of the authority for detention, nor the patient's right to apply to a Tribunal again after any renewal.

215. Subsequent renewals may be made at intervals of two years after the first renewal, under the procedure laid down in Section 43(3) to (6), which is applied to these cases by paragraph 11 of the Schedule.

216. After the end of the initial period, Section 44 continues not to apply to patients covered by the Schedule. Instead there are special provisions for patients classified as suffering from subnormality or psychopathic disorder and not from mental illness or severe subnormality who were under the age of 21 when first detained and who reach the age of 25 after the end of the initial period. The authority for detention lapses on the patient's 25th birthday unless:—

either (i) at the appointed day the patient was detained on an order under Section 8(1)(b) or Section 9 of the Mental Deficiency Act, 1913, or Section 30 of the Magistrates' Courts Act, 1952, or Section 24 of the Criminal Justice Act, 1948 ;

or (ii) during the two months ending with the patient's 25th birthday the responsible medical officer records an opinion on Form 14 that the patient is unfit for discharge on one of the grounds specified in paragraph 13(1) of the Schedule. If such an opinion is recorded the patient must be informed and may apply to a Mental Health Review Tribunal within 28 days of being so informed.

217. After the end of the initial period the nearest relatives of patients who before the appointed day were detained under Section 6, 8 or 9 of the Mental Deficiency Act, 1913, continue not to have power of discharge, but may apply to a Mental Health Review Tribunal once in any period of twelve months beginning with the end of the initial period. The nearest relatives of patients detained under Section 3 of the Act of 1913 acquire the power of discharge at the end of the initial period, subject to the provisions of Section 48 of the new Act.

218. Subject to the modifications mentioned in paragraphs 212-217 above, Part IV of the Act applies after the end of the initial period as to patients admitted on an application made under Section 26.

“ Transferred patients ”

219. Paragraphs 15-17 and 22-23 of the 6th Schedule apply to “ transferred patients ”, who are defined in paragraph 15(1) of the Schedule. They include all “ Broadmoor patients ” (whether in Broadmoor or elsewhere), patients detained under Section 9 of the Mental Deficiency Act, 1913, whose discharge is still subject to the Home Secretary's consent, and patients detained in mental deficiency hospitals on remand on the order of a magistrates' court.

220. Paragraph 15(2) deals with patients who are liable to be detained during Her Majesty's Pleasure. Part V of the Act is to

apply to them as if they were detained under a transfer direction under Section 71, which has the effect of a hospital order accompanied by an order restricting discharge without limit of time. The advice given in paragraphs 178, 180, 181 and 162-171 of this memorandum applies.

221. Paragraph 15(3) deals with patients who were transferred to hospital while serving a sentence of imprisonment as defined in Section 72(6) of the Act (which includes detention in a Borstal or approved school), and whose period of sentence has not expired on the appointed day. Part V of the Act is to apply to them as if a transfer direction had been given under Section 72 with restriction on discharge. The restriction on discharge ceases to have effect at the end of the period of sentence or other period of detention. The advice given in paragraphs 178-181 and 162-171 of this memorandum applies. It will be noted that while the restriction on discharge remains in force, Section 43 will not apply even to patients previously detained under Section 9 of the Mental Deficiency Act, 1913, whose orders were previously subject to periodical renewal under that Act.

222. Sub-paragraphs (4) and (5) of paragraph 15 deal with patients who have been transferred from Scotland, the Channel Islands or the Isle of Man to England and Wales to be treated as Broadmoor patients. Sub-paragraph (6) deals with Broadmoor patients who were moved to hospital while in custody awaiting the decision of a court, and patients detained under Section 8(4) of the Mental Deficiency Act, 1913. Patients in these categories will be few in number. If hospital authorities are in any doubt about the effect of these sub-paragraphs on individual patients, they should consult the Ministry of Health or the Home Office.

223. Paragraph 15 deals with patients who on the appointed day were Broadmoor patients on conditional discharge.

224. One result of the application of Part V of the Act to "transferred patients" is that any such patient who on the appointed day has already been detained in hospital for 12 months or more will be able to require the Home Secretary to refer his case to a Tribunal for advice under Section 66 at any one time during the first 12 months after the appointed day, and once in any subsequent period of two years. "Transferred patients" who on the appointed day have been detained for less than 12 months will have similar rights dating from the end of the first year of their detention in hospital.

225. In deciding when the formal reports mentioned in paragraph 166 of this memorandum should be made in respect of "transferred patients" hospital authorities will no doubt have regard to the length of time that the patient has been detained and the time which has elapsed since the last report on the patient was made under the old Acts to the Home Secretary or Board of Control. In general, reports should be considered at intervals not greater than two years.

226. When a "transferred patient" ceases to be subject to restriction on discharge, paragraph 17 of the Schedule requires the responsible medical officer to record his opinion whether the patient is suffering from mental illness, severe subnormality, psychopathic disorder or subnormality. This should be on Form 15. The

position of the patient and his nearest relative will then be as described in paragraph 172 of this memorandum.

"Short-period patients"

227. Paragraphs 18 and 19 of the 6th Schedule deal with patients who on the appointed day were detained under Sections 11, 20, 21 or 21A of the Lunacy Act, 1890 or Sections 8(3) or 15 of the Mental Deficiency Act, 1913. These patients may continue to be detained for the remainder of the period for which they could have been detained under the old Acts, up to a maximum of 28 days from the appointed day, or until they become liable to be detained or subject to guardianship under the new Act, whichever is the earlier. Where necessary, steps should be taken during that period to obtain authority for further detention or guardianship by an application under Part IV of the Act. No action can be taken after the appointed day to extend the period of detention under the old Acts—e.g. no certificate may be issued under Section 21A of the 1890 Act after the appointed day.

Patients under guardianship

228. Paragraphs 7-13 and 22-23 of the 6th Schedule apply to patients who on the appointed day are under guardianship under the Mental Deficiency Acts. The provisions are similar to those which apply to hospital patients, except that the special grounds on which patients may be declared to be unfit for discharge under paragraph 13(1) of the Schedule do not apply to patients under guardianship. The advice given in paragraphs 205-218 above applies *mutatis mutandis*. The classification of these patients during the initial period (see paragraphs 207-208) is to be done by the responsible medical officer as defined in paragraph 23 of the Schedule, not by the nominated medical attendant. No patients under guardianship fall within the definitions of "transferred patients" or "short-period patients".

229. Paragraph 14 puts the existing guardians of these patients into the same position as guardians acting under Part IV of the Act. The relevant parts of the Mental Health (Hospital and Guardianship) Regulations will also apply to them from the appointed day, including the duty of guardians other than local health authorities to appoint a nominated medical attendant under Regulation 9. The Department is not sending copies of this memorandum to individual guardians. The responsible local health authority (who will already know their names under the Mental Deficiency Acts) is asked to give them any necessary information and advice. In some cases the guardian may wish to transfer the guardianship to the local authority itself; this can be done at any time after the appointed day under the procedures mentioned in paragraphs 106-109 of this memorandum.

Single patients, and patients boarded out from mental hospitals

230. Under paragraph 4 in Part II of the 6th Schedule, persons with whom patients were boarded out on the appointed day under Section 57 of the Lunacy Act, 1890, and persons in charge of certified or temporary single patients are treated for six months from the appointed day as if registered as the managers of a mental nursing home (see the Minister's Circular 18/60 to local authorities and H.M.(60)71).

231. In relation to the patient himself, paragraph 8(6) and (7) of the Schedule give to those persons during the initial six months period all the functions of the managers under Part IV of the Act, except the power of discharge. In the case of patients boarded-out under Section 57 of the 1890 Act, the power of discharge is held during the initial period by the managers of the hospital from which the patient was boarded out. The power to discharge "single patients" during the initial period is held only by the other persons named in Section 47 of the Act as having power to discharge patients from mental nursing homes, i.e. the responsible medical officer, the nearest relative and the registration authority.

232. The classification of all these patients during the initial period (see paragraph 207 above) is to be done by the medical practitioner in charge of the patient's treatment. In the case of boarded-out patients, this may be a doctor in the hospital or some other doctor according to the arrangements which have been made in each individual case for the patient's treatment.

233. With these modifications, the advice in paragraphs 205-218 applies to these patients in the same way as to patients in hospital.

234. During the initial period it will be decided whether the premises in which these patients reside are to be registered thereafter as nursing homes or residential homes or not, and whether any patient should be transferred to guardianship or discharged—see paragraph 10 of Circular 18/60 and paragraph 3 of H.M.(60)71. If it is decided to transfer to guardianship a patient who was a single patient, the authority for transfer may be given by the person having charge of the patient, under Regulation 13(2) read with Regulation 2(3) of the Mental Health (Hospital and Guardianship) Regulations. This applies even if the patient is to be transferred to that person's guardianship. The authority for transfer must be confirmed by the local health authority under Regulation 13(5). In the case of a boarded-out patient, the authority for transfer may be given by the managers of the hospital from which the patient was boarded out, or by one of their officers who has been authorised to do so, under Regulation 13(2).

235. The powers of the Hospital Management Committee to order a boarded-out patient's return to hospital under Section 63 of the Lunacy Act, 1890, lapses on the appointed day. If such a patient needs to re-enter the hospital after that date it must be either informally, or on transfer under Section 41 and Regulations 13-17.

Mental Health Review Tribunals

236. A Mental Health Review Tribunal is to be appointed for each of the 15 regional hospital areas in England and Wales, and will be constituted in accordance with Section 3 of the Act and the First Schedule. Offices and staff for the Tribunals are to be provided by the Minister. The addresses of the offices of each Tribunal are set out at the end of this memorandum.

237. Patients under guardianship or detained in hospital after admission under Section 26 (but not patients detained for observation after admission under Section 25 or 29) may apply to a Tribunal on the occasions or during the periods specified in the Act. These

are mentioned in the relevant paragraphs of this memorandum, and are listed in the notices to be given to patients on admission—see paragraph 245 of this memorandum. Applications may also be made once a year by a nearest relative displaced by a county court order under Section 52, and by the nearest relative (or person exercising his functions) at times when he is precluded from discharging the patient himself, and after any reclassification under Section 38. These occasions are listed in the notices to be given to relatives—see paragraph 245. Section 122(2) makes it clear that where the Act provides that a person may apply to a Tribunal during a stated period of time (e.g. during the six months following admission), that person may make only one application during that period.

238. Patients and relatives may not apply to a Tribunal except on these specific occasions. The Minister has power however under Section 57 to refer a patient's case to a Tribunal at any time.

239. Under Section 123, the Tribunals have power, when they have considered any application or any reference from the Minister, either to discharge or to reclassify the patient. If satisfied on the points described in paragraphs (a) to (c) of subsection (1) or paragraphs (a) and (b) of subsection (2) they are obliged to direct discharge. Their power to discharge or reclassify applies in all cases, e.g. they can discharge even if the application is made under Section 38, and they can reclassify (if they do not discharge) on any application.

240. Rules of procedure have been made by the Lord Chancellor under Section 124 of the Act—the Mental Health Review Tribunal Rules, 1960, S.I. (1960 No. 1139). These give various functions to "the responsible authority", which in the case of a patient detained in a hospital or mental nursing home means the managers of the hospital or home, and in the case of a patient under guardianship means the responsible local health authority. Copies of the Rules can be obtained from H.M. Stationery Office.

241. The Rules require an application to the Tribunal to be made on a prescribed form, and require the Tribunal or the responsible authority to supply a form on request to any patient or relative who has a right to make an application. Hospitals in which patients are detained, and local health authorities in whose area there are patients under guardianship, should hold stocks of these forms, which can be obtained from the Stationery Office under the arrangements described in paragraph 257 of this memorandum or (if only a small number is required) from the Clerk of the Tribunal. The Minister hopes that hospital and local authority staff will give patients and their relatives any assistance they need in filling up the form. There is a space on the form in which the name of the regional hospital area has to be filled in; it would be helpful if the hospital or local authority would insert this before supplying the form to patients or relatives.

242. The responsible authority will be sent a copy of the application by the Tribunal, and will be asked to submit a statement containing certain factual information and opinions. If the purported application is from a patient who has no right to apply (e.g. if he is not subject to detention under the Act, or is subject to a restriction order or direction) the authority should inform the Tribunal at once, and a detailed statement may not then be necessary. In the normal case, on

receiving the authority's statement, the Tribunal will arrange to determine the application in accordance with the Rules. If the applicant in his application has requested a formal hearing, this will be arranged unless the applicant is the patient and the Tribunal are satisfied that a formal hearing would be detrimental to the patient's health. In all other cases, the Tribunal will determine the application in whatever manner they consider appropriate, subject to the right of the applicant, the responsible authority, the patient, the nearest relative and certain other persons (including the registration authority when the patient is detained in a mental nursing home, and the Regional Hospital Board when the patient is maintained in such a home at their expense) to be seen by the Tribunal and/or make written representations. The Tribunals also themselves have powers under the Rules to obtain any other information they think necessary. A medical member of the Tribunal will in all cases be required to examine the patient or take such other steps as he considers necessary to form an opinion on the patient's mental condition.

243. The responsible authority may be represented by any person whom they authorise for this purpose. The Minister expects that hospital authorities will usually wish to be represented by the responsible medical officer, who should be ready to answer any questions the Tribunal put to him about the patient's suitability for discharge and his home circumstances and see that the authority's views are fully explained to the Tribunal. Other persons, e.g. social workers, may be brought as witnesses when necessary. Legal representation is not likely to be necessary, except perhaps if there is to be a formal hearing and if it is known that the applicant intends to be legally represented.

244. It is expected that the Tribunals will usually wish to meet to deal with applications (whether informally or formally) at the hospital in which the patient is detained, or in a place convenient for seeing a patient under guardianship; occasionally it may be convenient for a patient to be seen at another hospital in the neighbourhood at which there are other applications to be heard on the same day. Hospitals and local health authorities are asked to make suitable rooms available for the use of the Tribunals and persons attending as witnesses, when asked to do so by the Clerk of the Tribunal.

Information to be given to the Patient and his Nearest Relative

245. Section 56(2)(c) of the Act gives the Minister power to make regulations requiring hospital managers and local health authorities to provide patients and their relatives with statements of their rights and powers under the Act. The Minister informed Parliament, when this provision was under consideration, that he thought it appropriate to rely in the first place on administrative arrangements for this purpose, and that regulations would not be made unless experience showed it to be necessary. He has accordingly not included any regulation on this subject in the Mental Health (Hospital and Guardianship) Regulations. He relies on the managers of hospitals and mental nursing homes, and local health authorities in relation to patients under guardianship, to ensure that patients and their relatives are informed in an appropriate manner, and in simple language, of their rights of application to Mental Health Review Tribunals and

of the steps to be taken to obtain a patient's discharge. A series of leaflets has been prepared by the Department containing the information which the Minister wishes to be given to patients admitted under Parts IV, V and VI of the Act, and to patients already detained in hospital or under guardianship on the appointed day, and to their nearest relatives. The appropriate leaflet might be inserted in any hospital pamphlet giving patients and their relatives general information such as arrangements for visiting. Copies of the leaflets are being sent to psychiatric hospitals and local health authorities; further copies can be obtained from the Ministry on request (in Wales, from the Welsh Board of Health).

Miscellaneous

Assistance from the police

246. Police constables are included among the persons authorised by Section 40 of the Act to retake patients who are liable to be detained in hospital or subject to guardianship and who are absent without leave. They are also included among the persons authorised by Section 140 to retake patients who escape while being conveyed from one place to another under the Act, or who escape from a place of safety or from custody under the Act.

247. Calls on the police for this purpose should be kept to a minimum, but the police should always be informed at once of the escape or absence without leave of a patient who is dangerous or who is subject to restriction on discharge under Part V of the Act. In addition there may be other cases in which, although it may not be necessary to seek police assistance to retake the patient, his history or proclivities make it desirable that the police should be aware that he may be at large in the neighbourhood. Whenever the police are asked to help in retaking a patient, they should be informed of any time limit on the powers to retake him, e.g. under Section 40(3) or Section 140(2) or (3).

248. Section 135 provides powers of entry, on a justice's warrant to obtain access to a patient in the circumstances described in subsection (1) or (2). Such a warrant will be addressed to a police constable. Subsection (4) requires a constable entering on a warrant issued under subsection (1) to be accompanied by a mental welfare officer and a doctor, who will be able to advise whether any patient found on the premises should be removed to a place of safety in order that arrangements may be made for his care either informally or under Part IV of the Act. If the patient is removed to a place of safety, he may be kept there for not more than 72 hours while other arrangements are made. A place of safety is defined as including police stations as well as hospitals, local authority residential homes and other types of premises. Only exceptionally should police stations be used for this purpose. If a police station is so used, the patient should not remain there longer than the period (normally a matter of hours only) which may be needed for the mental welfare officer to make arrangements for his removal elsewhere, either informally or under Part IV of the Act.

249. When a constable enters premises on a warrant issued under subsection (2) (when a patient is absent without leave or has escaped while being conveyed from one place to another under the Act) he may be accompanied by a doctor and/or any person who is already authorised to convey or retake the patient under the Act. The mental welfare officer or other person who was conveying the patient or is authorised to return him to the place from which he is absent without leave should normally accompany the constable and then take the patient direct to the hospital or other place to which he was being conveyed or from which he is absent. If exceptionally it is necessary for the patient to be taken first to a police station, he should stay there for as short a time as possible.

250. Police constables also have power under Section 136 to remove to a place of safety a person whom they find in a public place and who appears to be suffering from mental disorder and to be in immediate need of care or control in his own interests or for the protection of others. The object is to take the patient to the nearest convenient place (within the definition of place of safety as set out in Section 135(6)) where he can be medically examined and suitable arrangements made for his care. In such cases the police, unless they take the patient direct to a hospital, will immediately get in touch with a mental welfare officer of the local authority. Such officers are asked to co-operate by making suitable arrangements (including, if necessary, emergency admission to a hospital either informally or under Section 29 of the Act) as soon as practicable.

Determination of age

251. Regulation 26 provides a procedure for the determination of a patient's age where this is material for the purposes of the Act or Regulations but is not known and cannot be ascertained by reference to the registers of births.

252. Age is material for the purposes of the Act in the following cases only:—

- (i) patients classified as suffering from subnormality or psychopathic disorder and not from mental illness or severe subnormality may not be admitted to hospital under Section 26 or received into guardianship under Section 33, unless they are under the age of 21, nor thereafter be detained or kept under guardianship beyond their 25th birthday (except as provided in Section 44(2)). The provisions of Section 44 apply also to patients who are so classified through reclassification (under Section 38 or by a Mental Health Review Tribunal) after admission;
- (ii) patients who are under the age of 16 on admission or reception acquire rights of application to a Mental Health Review Tribunal as from their 16th birthday under Sections 31(4), 34(5) and 63(4);
- (iii) Part III of the 6th Schedule of the Act contains certain special provisions for patients of certain ages who are already detained or under guardianship when the Act comes into force and who are classified as suffering from subnormality

or psychopathic disorder and not from mental illness or severe subnormality—see paragraphs 208 and 216 of this memorandum.

253. In these cases it is essential for the hospital managers or the guardian to know the patient's date of birth. Any information given by the patient or his relatives or obtained from other sources may be accepted at its face value unless challenged or conflicting. In the case of patients to whom the 6th Schedule applies, the date of birth as recorded in the statutory statement of particulars accompanying the order for admission under the old Acts may be accepted as accurate unless challenged. It will be noted that when the admission of a subnormal or psychopathic patient under Section 26 or 33 is desired, if the applicant does not know the patient's exact age but believes him to be under 21, Section 26(5) enables the application to be made without a statement of the exact date of birth at that stage. If however the opinion that the patient is under 21 is itself disputed by the patient or any other person concerned in the admission procedure, the date of birth should be ascertained before the application is made.

254. In any case of dispute, or where there is no information, the patient or his nearest relative should be asked (although they cannot be required) to produce a birth certificate. If they are unable to do so, in the case of any patient born in England or Wales, enquiries should be made from the General Register Office. That Office is willing to search for the record of a patient's birth, in these circumstances, if requested to do so by a hospital or local health authority on a special form, without making a charge in each case. (Arrangements will be made by the Ministry for an annual lump-sum payment for this service.) A small stock of the appropriate forms will be sent to psychiatric hospitals and local health authorities. Further copies may be obtained from the Ministry of Health (in Wales, from the Welsh Board of Health). The General Register Office's reply notifying the details of the relevant entry in the register of births will no doubt normally be accepted by all concerned as sufficiently conclusive; an actual certificate would however be necessary in the event of its accuracy being challenged.

255. A certificate of birth in England or Wales may be taken as conclusive, unless successfully challenged in a court of law. In any other case, where the only information available is disputed, the appropriate local health authority (as defined in Regulation 26(2)) may be asked to make a determination of age in accordance with Regulation 26.

256. The hospital managers or other person requesting a determination of age should supply the determining authority with any relevant information in their possession, and should inform them whether this information is challenged by the patient or his nearest relative. It will be for the determining authority to decide what further enquiries should be made having regard to Regulation 26(3). When age has been determined, the determining authority is required to give a certificate of age in the form prescribed as Form 22. A copy of the certificate is to be sent to the persons listed in Regulation 26(5). The patient and his nearest relative should have their attention drawn to the fact that they may appeal to the Minister against this determination under Regulation 27(3), and to the circumstances

in which the determination may be revoked or varied under Regulation 26(4).

Supply of statutory forms

257. Copies of the forms prescribed under the Regulations (apart from Forms 21 and 22) can be obtained from H.M. Stationery Office. Hospital authorities can order them from H.M. Stationery Office distribution depots under the normal arrangements for supply of hospital stationery. Local health authorities, mental nursing homes and other persons who wish to do so may purchase them through H.M. Stationery Office in the same way as other statutory publications.

258. Hospitals whose staff are called on to give medical recommendations in support of applications for admission under Part IV of the Act are asked to supply them with the necessary forms. Local health authorities are asked to supply these forms on request to general practitioners, as well as to their own medical staff. It may be convenient for mental welfare officers to have small stocks of the forms which they can give to general practitioners who require them.

Preservation, production and destruction of statutory documents

259. The documents which authorise a patient's detention in hospital or guardianship should of course be very carefully preserved. They should be kept separate from the patient's clinical records. Some individual guardians may prefer the responsible local health authority to keep these documents on their behalf, and authorities are asked to offer to do so where appropriate.

260. For patients admitted under the new Act, these documents consist of the application for admission and supporting medical recommendations under Part IV of the Act, or the court order or Home Secretary's direction under Part V, or an authority for removal to England and Wales under Part VI, or under the Criminal Justice (Scotland) Act, 1949, together with any report or direction effecting reclassification under Section 38 or Section 123(3), any renewal reports under Section 43, any report under Section 44(2), any report barring discharge by the nearest relative under Section 48(2), and any authority for transfer given under the Regulations. The notification of any decision of a Mental Health Review Tribunal relating to the patient (other than a reclassification), although not part of the authority for detention or guardianship, should also be kept with these documents.

261. For patients already detained in hospital or under guardianship when the Act comes into force, the documents consist of the orders and certificates relating to the patient's detention or guardianship under the old Acts, together with any records of opinion or reports required under paragraphs 7(3), 9(2), 9(3), 11(2), 12(3) or 17 of the 6th Schedule to the Act, and any documents subsequently issued under Part IV of the Act as applied by the 6th Schedule.

262. For patients admitted under the Mental Health Act, the managers of the hospital where the patient is, or the present guardian or local health authority, will hold all these documents in original. For patients admitted under the old Acts, they will hold some of the original documents and only copies of others of which the originals will be in the possession of the Ministry (as successors to the Board

of Control) or of another hospital from which the patient was transferred under the Lunacy and Mental Treatment Acts.

263. Requests for information or for copies of statutory documents may be received from solicitors, and in particular from the Official Solicitor, acting for parties in divorce proceedings, either commenced or contemplated, in which the mental condition of one party is a relevant issue. While there is no legal obligation to furnish such information or documents before trial, and then only upon subpoena, the Court has indicated that, subject to considerations of public interest in particular cases, disclosure of statutory documents before trial to both parties where the respondent patient is alleged to be incurably of unsound mind is unquestionably in the interests of justice.

264. Acting on this principle generally, information and copy documents have been supplied in the past to solicitors who have satisfied the Board of Control that they are relevant to the proposed or actual proceedings, and hospitals should in future comply with all reasonable requests of this kind.

265. Where information only is requested, it will normally be sufficient to give particulars of the dates of and the authority for the patients' admissions to and discharges or departures from hospital over a period covering the last five years' treatment for mental illness. Any absence from hospital of more than twenty-eight days during that period should be stated; this information should be available from hospital records; an officer of the hospital may be required to swear an affidavit to that effect or, possibly, to give evidence at the hearing.

266. Where copies of the documents authorising detention or guardianship are requested in divorce or other proceedings, copies of the relevant statutory documents should be supplied. If some of the original documents are in the possession of other hospitals or of the Ministry of Health (see paragraph 262 above), the Official or other solicitor should be so informed in order that he may get in touch with them. No hospital or guardian should supply copies of documents of which they do not hold the original.

267. As was indicated in paragraph 7 of HM(60)2, hospitals may not destroy any documents other than those the destruction of which is, after various periods, specifically authorised in the Schedule to HM(56)103. Thus, many records kept under the Lunacy and Mental Treatment Acts and the Mental Deficiency Acts, and all documents under the Mental Health Act, must be retained for the time being. The position will be reviewed and further advice issued as to the destruction or retention of these documents.

268. Documents held by the Ministry may be destroyed in certain circumstances after certain periods of time. No statutory documents will be destroyed which relate to a patient who is still subject to detention or guardianship, but arrangements must be made for their destruction after the passage of a reasonable period after the patient's discharge or death. The Ministry will not receive regular notification of discharge or death of all patients in future, as the Board of Control has in the past. In order that the Department may judge

when it is reasonable to destroy these statutory records, hospitals and local health authorities are asked to send the following notifications :—

- (i) As a once-for-all operation ; hospitals are asked to notify :—
 - (a) the names of all patients who were detained under the Lunacy and Mental Treatment Acts at any date during or after 1953 and who were, before 1st November, 1960, discharged from order so as to remain in hospital on an informal basis, and who left hospital or died in hospital before that date ;
 - (b) the names of all patients detained under the Mental Deficiency Acts who were, between 15th January, 1958 and 1st November, 1960, discharged from order so as to remain in hospital on an informal basis, and who left hospital or died in hospital during that period.
- (ii) At quarterly intervals, hospitals are asked to notify :—
 - (a) the death in hospital of any patient who was detained under the Lunacy and Mental Treatment Acts or the Mental Deficiency Acts at any date during or after 1953, and who, whether still detained or not, had not left hospital when the Mental Health Act came into effect ;
 - (b) the discharge from hospital of any such patients.
- (iii) At quarterly intervals, local health authorities are asked to notify :—
 - (a) the death of any patients subject to guardianship orders, who had been subject to such orders before Parts IV and V of the Mental Health Act came into effect ;
 - (b) the discharge of any such patients from guardianship.

These notifications should give the patient's surname and full Christian names, the date of his admission to hospital or guardianship and the date of his death or discharge.

OTHER GENERAL MATTERS AFFECTING PATIENTS WHETHER DETAINED OR NOT

Control of correspondence

269. Sections 36 and 134 of the Act and Regulation 23 contain certain provisions for the control of the incoming and outgoing correspondence of patients who are detained or under guardianship and of other (non-detained) in-patients in hospitals and mental nursing homes who are receiving treatment for mental disorder, having been admitted for that purpose. These provisions do not apply to non-detained patients who receive some psychiatric treatment while in hospital but were admitted primarily for other treatment. The term "postal packet" includes letters, postcards and parcels which might be sent by post, even if in fact delivered or sent by hand ; it also includes telegrams.

270. The right to withhold patients' outgoing correspondence from the post is limited to the circumstances described in paragraphs (a) and (b) of subsection (2) of Section 36. The right to open corres-

pondence in order to decide whether a letter should be withheld under paragraph (b) is specifically limited by subsection (3) to cases where the responsible medical officer (or guardian or person authorised by him) believes the patient to be suffering from disorder of a kind which is likely to lead him to send the sort of communications which may be withheld under that paragraph. Other patients' letters may not be opened. The assumption therefore is that no outgoing letters are read by the hospital staff unless there are special reasons for doing so, within the terms of subsection (2), in the case of individual patients. In view of this, the Minister considers it no longer suitable that there should be general notices in the wards listing persons to whom letters must be sent unopened; the assumption is that all letters will be sent unopened unless exceptionally it is necessary to use the limited powers conferred by subsection (2). In any case where it is found necessary to do so, the individual patient should then be informed of the right to send letters unopened to the persons named in the proviso to subsection (2) as extended by Regulation 23; he may be told at the same time that the Court of Protection are concerned only with the protection and management of patients' property and affairs.

271. The opening of in-coming correspondence for the purposes of subsection (1) should also be limited to those cases where the responsible medical officer (or guardian or person authorised by him) considers it necessary in the interests of the individual patient. The Minister expects such cases to be extremely rare among mentally ill patients, as distinct from subnormal patients, except in the special hospitals.

Offences against patients

272. Sections 126, 127 and 128 deal with offences against mental patients (ill treatment and sexual offences). These Sections differ in some respects from the corresponding provisions hitherto in force under enactments now to be repealed or amended.

273. In particular, the effect of Sections 127 and 128 is that:—

- (a) It is an offence for any man to have unlawful sexual intercourse with any woman who is severely subnormal within the meaning of the Mental Health Act, unless the man does not know and has no reason to suspect that she is severely subnormal. This applies whether or not the woman is a hospital patient and whether or not she is under guardianship and whether or not the man has care or charge of her. (Section 7 of the Sexual Offences Act, 1956, as amended.)
- (b) Unlawful sexual intercourse with a women suffering from other forms of mental disorder is an offence only in the circumstances described in Section 128(1) and subject to the exception in Section 128(2).
- (c) The definition of "defective" for the purposes of the Sexual Offences Act, 1956, has been amended so that the provisions of that Act which relate specifically to defectives, e.g. Section 9 (procurement), Section 21 (abduction), Section 27 (permitting a defective to use premises for intercourse), Section 29 (causing or encouraging prostitution), will apply

only when the person against whom the offence is committed is severely subnormal within the meaning of the Mental Health Act.

274. Whenever there is reason to believe that an offence under Sections 126 or 128 of the Mental Health Act, or Section 7 of the Sexual Offences Act as amended by Section 127 of the Mental Health Act, has been committed, it is desirable that the Chief Constable should be informed as soon as possible, so as to enable the police (in consultation with the doctor in charge of the patient's treatment, where the patient is resident in or on leave of absence from a hospital) to decide what is the proper course to take in the circumstances.

275. In all cases where there is reason to believe that an offence has been committed under any of these Sections against

- (i) a hospital in-patient or out-patient by a member of the hospital staff or by one of the managers or
- (ii) a patient who is on leave of absence from hospital by a person in whose care or custody the patient is

the hospital should also at once report the matter to the Ministry of Health (in Wales, the Welsh Board of Health), giving brief particulars of the case and of the action which it is proposed to take.

Pocket money

276. Since 1948 it has been the practice for psychiatric hospitals to be responsible for the payment of pocket money to patients without resources of their own, whereas in other hospitals the National Assistance Board has made the payments. The statutory basis of this arrangement is put beyond doubt by Section 133 of the Act, which empowers the Minister to pay pocket money to any patients in hospitals being used wholly or mainly for the treatment of persons suffering from mental disorder. In all other hospitals (including general hospitals with psychiatric departments) the National Assistance Board will continue to be responsible for the payments. Advice on the principles which should be borne in mind when making these payments was given in H.M.(59)46. It is important that they should be closely observed because there is a clear obligation to ensure that patients are not financially worse off merely because the Minister, rather than the National Assistance Board, is responsible for their pocket money. Paragraph 11(d) of H.M.(59)46 said that patients should not normally be allowed to build up unspent balances of pocket money and that the payments should be reduced or stopped if this is happening. This is directed against the purposeless accumulation of money, not against saving for a purpose. It is not intended, for example, to prevent the saving of pocket money for the purchase of some expensive item e.g. a suit of clothes, and, indeed, there would be no objection in selected cases to the hospital holding back part of the pocket money for such a purpose. This might be done by making a reduced weekly payment and crediting the balance for payment to him at longer intervals.

Removal of mentally ill aliens

277. Section 90 of the Mental Health Act (which replaces with modifications Section 71 of the Lunacy Act, 1890) empowers the Home Secretary to authorise the removal to any country abroad of

an alien who is receiving inpatient treatment for mental illness in England and Wales or Northern Ireland if he is satisfied that proper arrangements have been made for his care or treatment in the country to which he is to be moved. This applies whether or not the patient is subject to detention before removal. Proposals for the removal of an alien from a hospital or mental nursing home should be made in the first place to the Home Office (Aliens Department). Details should be given of any arrangements which have been or could be made for the patient's care and treatment in the receiving country. The Home Office will, in consultation with the Ministry of Health, decide whether an authority under Section 90 should be issued or whether the patient should be repatriated under other powers. Application to the Home Office will not be necessary if the patient, whether or not accompanied by an escort, is able and willing to travel without powers of detention, and suitable arrangements have been made.

278. The types of cases in which it might be appropriate to propose repatriation include :

- (a) those where repatriation would be in the alien's interest ;
- (b) those where the alien has been in hospital in this country for a considerable period (6 months or more), where there is little prospect of a substantial improvement in his condition and where repatriation would not be detrimental to him.

National Service Act, 1948

279. Local health authorities have hitherto notified the Ministry of Labour of male mental defectives of national service age who are under statutory supervision or guardianship and thus excepted from national service under the provisions of the National Service Act, 1948 Circulars 17/57 of 5th December, 1957, and 14/53 of 3rd July, 1953). Hospitals and other institutions have similarly sent notifications of patients of national service age detained under the provisions of the Lunacy and Mental Treatment Acts and the Mental Deficiency Acts. The National Service Act is amended by Part I of the Seventh Schedule of the Mental Health Act, 1959, so as to re-define the categories of mentally disordered persons who will be excepted from national service after the repeal of the Lunacy and Mental Treatment Acts and Mental Deficiency Acts.

280. As, however, the arrangements for call-up under the National Service Acts are nearly at an end, the Ministry of Labour has agreed that notifications to them by local health authorities and hospitals can cease when the Mental Health Act comes into force.

Patients requiring care or treatment for mental disorder on discharge from H.M. Forces

(a) Patients needing in-patient treatment

281. Part II of the Seventh Schedule to the Mental Health Act makes amendments to the Naval Enlistment Act, 1884, the Army Act, 1955 and the Air Force Act, 1955, which bring to an end the procedures whereby the service authorities have been able to order the admission to hospital of mentally ill patients discharged from H.M. Forces. In future such patients will be admitted to hospital under the same procedures as all other patients.

282. As at present, the service hospital will ask the Regional Hospital Board for the patient's home area to find a bed. When a vacancy has been found informal admission will be arranged where possible, but in circumstances where at present an order would be made under the repealed provisions (i.e. where the patient is unwilling to enter hospital and the nearest relative is unwilling to make an application for compulsory admission), the service hospital will, on being notified of the vacancy, ask the local health authority for its own area to arrange for an application to be made under Part IV of the Mental Health Act.

283. It is important that the discharge from the services of persons who are unfit for further service should not be unduly delayed. Hospital authorities are asked to co-operate in finding vacancies promptly for those who require in-patient psychiatric treatment on discharge from the Services. The number of such cases is likely to be very small.

(b) Patients needing other care or treatment

284. If the patient is being discharged from a service hospital, particulars will, as at present, be sent to the Regional Hospital Board for the area where the patient will be residing. It will be for the Board to arrange out-patient treatment if that is needed, and to pass on particulars to the local health authority, if their services are needed. If admission to local health authority residential accommodation would be appropriate but is not immediately available, Regional Boards are asked to arrange admission to hospital as an interim measure. This again is likely to arise only rarely.

285. If the patient is being discharged from a service unit (not from a service hospital), medical reports on Form F Med. 133 will continue to be sent to the Medical Officer of Health of the local health authority for the area in which the patient will reside (through the appropriate Service Records Office and the Ministry of Health). A copy will also go to the general practitioner on whose list the patient is placed. Local health authorities are asked to arrange for the patient to be visited as early as possible after the report is received, and for any necessary services to be provided.

Notification of deaths

286. There will no longer be special arrangements (such as were hitherto prescribed in the Mental Treatment Rules and Mental Deficiency Regulations) for notifying and reporting the death of patients who die in psychiatric hospitals. The ordinary medical certificate of cause of death should be used, and the coroner need be notified only in circumstances which may require the holding of an inquest or inquiry e.g. where the death is sudden and the cause unknown or where there are suspicious circumstances or there is reason to suspect that the death was unnatural or directly or indirectly caused by any sort of accident, violence or neglect. If there is doubt whether a particular death should be notified, the coroner himself should be consulted.

Statistics

287. Separate advice will be issued about changes to be made in statistical returns to the Ministry of Health and General Register Office.

APPENDIX

Addresses of Mental Health Review Tribunals

<i>Regional Hospital Board Area</i>	<i>Address</i>
1. Newcastle	Government Buildings, Kenton Bar, Newcastle-upon-Tyne, 3
2. Leeds	Government Buildings, Lawnswood, Leeds, 6
3. Sheffield	Government Buildings, Chalfont Drive, Western Boulevard, Nottingham
4. East Anglia	Noverre House, Theatre Street, Norwich.
5. North West Metropolitan	York House, 37, Queen Square, London, W.C.1.
6. North East Metropolitan	
7. South East Metropolitan	
8. South West Metropolitan	
9. Oxford	
10. South Western	Government Buildings, Flowers Hill, Brislington, Bristol, 4
11. Wales	59, Park Place, Cardiff
12. Birmingham	Five Ways House, Islington Row, Birmingham, 15
13. Manchester	Government Buildings, Warwick Road South, Old Trafford, Manchester, 16
14. Liverpool	Royal Liver Buildings (Fourth Floor), Liverpool
15. Wessex	York House, 37, Queen Square, London, W.C.1.



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THE
MENTAL HEALTH ACT
1959

A PRACTITIONERS' GUIDE

Reprinted from the BRITISH MEDICAL JOURNAL
December 26, 1959, vol. ii, pp. 1478-1480

LONDON
BRITISH MEDICAL ASSOCIATION
TAVISTOCK SQUARE, W.C.1
1960



THE MENTAL HEALTH ACT, 1959

A PRACTITIONERS' GUIDE

BY

A SPECIAL CORRESPONDENT

The Mental Health Act* reached the statute book on July 29, 1959, but, owing to the reorganization needed to implement its provisions, it will not come into operation until a date appointed by the Minister of Health. This date is not yet known, but may be in the summer of 1960. However, by Commencement Order No. 1, 1959, hospitals, licensed houses, and nursing-homes may already receive mentally ill patients informally without powers of detention. This early arrangement clearly indicates the Act's emphasis on voluntary, rather than compulsory, treatment.

To the medical practitioner this 154-section Act might seem a formidable production. Fortunately for him, much in it is pure administration, dealing with, for example, guardianship, transfers of patients, and management of property and affairs. Part V, dealing with the disposal of criminals with mental disorder, is long and interesting, but not important to the ordinary practitioner. Less than 20 of the sections concern medical men directly, and, really, the trend is towards simplification. The general practitioner would be well advised to master Sections 25 to 29 thoroughly.

The theme of the Act is mental disorder as a matter for treatment and not custodianship. The board of Control is dissolved and its members and officials become officers of the Ministry of Health. Informal, rather than compulsory, treatment is emphasized, and nothing in the Act is to interfere with this principle. When compulsory treatment becomes inevitable there are many safeguards against wrongful detention.

**Mental Health Act, 1959.* H.M.S.O., London. Price 8s. net.

Definitions

Treatment of lunacy and mental deficiency in the past has been governed by a patchwork of statutes, and these are all now repealed, being replaced by the Mental Health Act, 1959. No distinction is made, as regards administration, between psychosis and mental defect, all disorders of the mind coming under the heading of "mental disorder." The oligophrenic groups are "subnormality" and "severe subnormality." A notable innovation is the recognition of the important group of psychopaths, which the Act courageously defines in Section 4(4).

In this Act "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the patient, and requires or is susceptible to medical treatment.†

Compulsory Admission

The magistrate no longer has any part in the certification of insane persons. This again lays stress on the medical, as opposed to the administrative, outlook on mental disorder. The duly authorized officer takes the name of mental welfare officer, but his duties will, no doubt, remain much the same and he is still appointed by the local authority.

The procedure for compulsory admission to hospital is by application, with the recommendation of two doctors. One doctor must have special psychiatric experience and the other, if possible, previous acquaintance with the patient—obviously the family doctor. The psychiatric practitioner must have been approved by a local health authority as having special experience in the diagnosis or treatment of mental disorder. The criteria are not yet known, but he will probably have consultant, or at least senior registrar, status. This means that everyone seriously mentally ill will be more likely than at present to have the advantage of a psychiatric opinion.

The application for admission is made by the nearest relative if available, otherwise by the mental welfare officer, who again must try to consult a near relative. A safeguard

†The phrase "medical treatment" in the Act is defined (Section 147 (1)) as including nursing and also "care and training under medical supervision."

to the public is already apparent here; under the present law a magistrate and any doctor can certify a person as insane.

Compulsory admission is for 28 days for observation. This gives ample time for reaching a diagnosis, or, in many acute psychoses, for recovery. The decision for longer detention can be taken after deliberate assessment and can be extended for yearly periods. An emergency application may be made on the recommendation of one doctor only, and is valid for 72 hours.

Sections on Compulsory Admission

The sections of the Act relating to compulsory admission are here set forth and are worth filing:

Section 25

(2) An application for admission for observation may be made in respect of a patient on the grounds (a) that he is suffering from mental disorder of a nature or degree which warrants the detention of the patient in a hospital under observation (with or without other medical treatment) for at least a limited period: and (b) that he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons.

(3) An application for admission for observation shall be founded on the written recommendations in the prescribed form of two medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in paragraphs (a) and (b) of subsection (2) of this section are complied with.

(4) Subject to the provisions of Section 52 of this Act (in a case where an application is made under that section for transferring the functions of the nearest relative of the patient), a patient admitted to hospital in pursuance of an application for admission for observation may be detained for a period not exceeding 28 days beginning with the day on which he is admitted, but shall not be detained thereafter unless, before the expiration of that period, he has become liable to be detained by virtue of a subsequent application, order or direction under any of the following provisions of this Act.

Section 26

(2) An application for admission for treatment may be made in respect of a patient on the grounds (a) that he is suffering from mental disorder, being (i) in the case of a patient of any age, mental illness or severe abnormality ; (ii) in the case of a patient under the age of 21 years, psychopathic disorder or subnormality ; and that the said disorder is of a nature or degree which warrants the detention of the patient in a hospital for medical treatment under this section ; and (b) that it is necessary in the interests of the patient's health or safety or for the protection of other persons that the patient should be so detained.

(3) An application for admission for treatment shall be founded on the written recommendations in the prescribed form of two medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in paragraphs (a) and (b) of subsection (2) of this section are complied with ; and each such recommendation shall include (a) such particulars as may be prescribed of the grounds for that opinion so far as it relates to the conditions set out in the said paragraph (a) ; and (b) a statement of the reasons for that opinion so far as it relates to the conditions set out in the said paragraph (b), specifying whether other methods of dealing with the patient are available, and if so why they are not appropriate.

(5) An application for admission for treatment made on the ground that the patient is suffering from psychopathic disorder or subnormality and no other form of mental disorder referred to in subsection (2) of this section, shall state the age of the patient, or, if his exact age is not known to the applicant, shall state (if it be the fact) that the patient is believed to be under the age of 21 years.

Section 27

(1) Subject to the provisions of this section, an application for the admission of a patient for observation or treatment may be made either by the nearest relative of the patient or by a mental welfare officer ; and every such application shall be addressed to the managers of the hospital to which admission is sought, and shall specify the qualification of the applicant to make the application.

(2) An application for admission for treatment shall not be made by a mental welfare officer if the nearest relative of the patient has notified that officer, or the local health authority by whom that officer is appointed, that he objects to the application being made, and, without prejudice to the foregoing provision, shall not be made by such an officer except after consultation with the person (if any) appearing to be the nearest relative of the patient unless it appears to that officer that in the circumstances such consultation is not reasonably practicable or would involve unreasonable delay.

(3) No application for admission of a patient shall be made by any person unless that person has personally seen the patient within the period of 14 days ending with the date of the application.

(4) An application for the admission of a patient shall be sufficient if the recommendations on which it is founded are given either as separate recommendations, each signed by a medical practitioner, or as a joint recommendation signed by two such practitioners.

Section 28

(1) The recommendations required for the purposes of an application for the admission of a patient under this part of this Act (in this Act referred to as "medical recommendations") shall be signed on or before the date of the application, and shall be given by practitioners who have personally examined the patient either together or at an interval of not more than seven days.

(2) Of the medical recommendations given for the purposes of any such application, one shall be given by a practitioner approved for the purposes of this section by a local health authority as having special experience in the diagnosis or treatment of mental disorder ; and, unless that practitioner has previous acquaintance with the patient, the other such recommendation shall, if practicable, be given by a medical practitioner who has such previous acquaintance.

(3) Where the application is for the admission of the patient to a hospital not being a mental nursing-home, one (but not more than one) of the medical recommendations may be given by a practitioner on the staff of that hospital, except where the patient is proposed to be accommodated under Section 5 of

the National Health Service Act, 1946 (which relates to accommodation for private patients).

(4) A medical recommendation for the purposes of an application for the admission of a patient under this part of this Act shall not be given by any of the following persons, that is to say (a) the applicant; (b) a partner of the applicant or of a practitioner by whom another medical recommendation is given for the purposes of the same recommendation; (c) a person employed as an assistant by the applicant or by any such practitioner as aforesaid; (d) a person who receives or has an interest in the receipt of any payments made on account of the maintenance of the patient; or (e) except as provided by subsection (3) of this section, a practitioner on the staff of the hospital to which the patient is to be admitted.

Near relatives of the patient are also excluded from making such a recommendation.

Section 29

(1) In any case of urgent necessity, an application for admission for observation may be made in respect of a patient in accordance with the following provisions of this section, and any application so made is in this Act referred to as an emergency application.

(3) An emergency application shall be sufficient in the first instance if founded on one of the medical recommendations required by Section 25 of this Act, given, if practicable, by a practitioner who has previous acquaintance with the patient and otherwise complying with the requirements of Section 28 of this Act so far as applicable to a single recommendation, but shall cease to have effect on the expiration of a period of 72 hours from the time when the patient is admitted to hospital unless (a) the second medical recommendation required as aforesaid is given and received by the managers within that period; and (b) that recommendation and the recommendation first referred to in this subsection together comply with all the requirements of the said Section 28 (other than the requirement as to the time or signature of the second recommendation).

(4) . . . Section 27 of this Act shall have effect as if . . . for "14 days" there were substituted "three days."

Mental Health Review Tribunals

These bodies will be set up in each regional hospital board area to deal with applications. These will mostly be claims that a patient is not mentally disordered, or that, for various reasons, detention is unnecessary. The Minister may direct that a case be brought before a review tribunal. The tribunals will consist of one medical, one lay, and one legal member at least. Medical members are likely to have a long experience of psychiatry, and lay members will probably come from those with a record of public service, especially on hospital management committees. If satisfied with the evidence, the tribunal will have power to discharge patients from hospital.

Section 31 (4).—A patient . . . will apply to a Tribunal within a period of six months beginning with the day on which he is so admitted. . . .

Section 37 (1).—For the purpose of advising whether an application to a Mental Health Review Tribunal should be made . . . any medical practitioner authorized by or on behalf of the patient . . . may, at any reasonable time, visit the patient and examine him in private.

Any medical practitioner authorized under this section may inspect documents and medical records relating to the case.

Criminal Cases

If a person is convicted of a criminal offence and the court is satisfied on the evidence of two medical practitioners that the offender is suffering from mental disorder, the court may make a "hospital order" for admission for treatment. The doctor may have to give oral evidence, but there is provision for his report to be received without proof of signature. The effect of a hospital order is the same as that of an ordinary compulsory admission, but it cannot be terminated on application of a near relative.

Where it appears necessary for the protection of the public that discharge of the offender should be restricted, the court has power to do so. Discharge can then only be obtained by consent of the Home Secretary.

There is a curious provision in Section 36 of the Act which permits withholding of letters to and from the patient in

certain circumstances. This applies if the medical officer thinks they might be harmful to the patient's progress or offensive to other people. The Minister, patient's Member of Parliament, and those having power over the patient are excluded from this potential censorship. Apart from ease of evasion, such interference with correspondence will be distasteful to most doctors. If a patient wants to write offensive letters, the recipient must make allowances for his mental state, and surely the risk to health from this cause could be dealt with informally.

It is only possible to give the provisions of the Act at the moment; when it has been in operation for a year or two modifications will soon suggest themselves. It is a sign of enlightenment, and an important landmark in our treatment of mental illness. It is a full Act, but it is not unduly complicated.



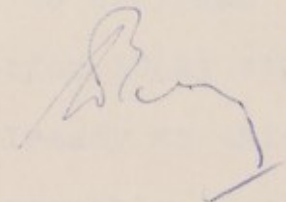


A brief note covering medico-legal problems arising out of the Mental Health Act, 1959.

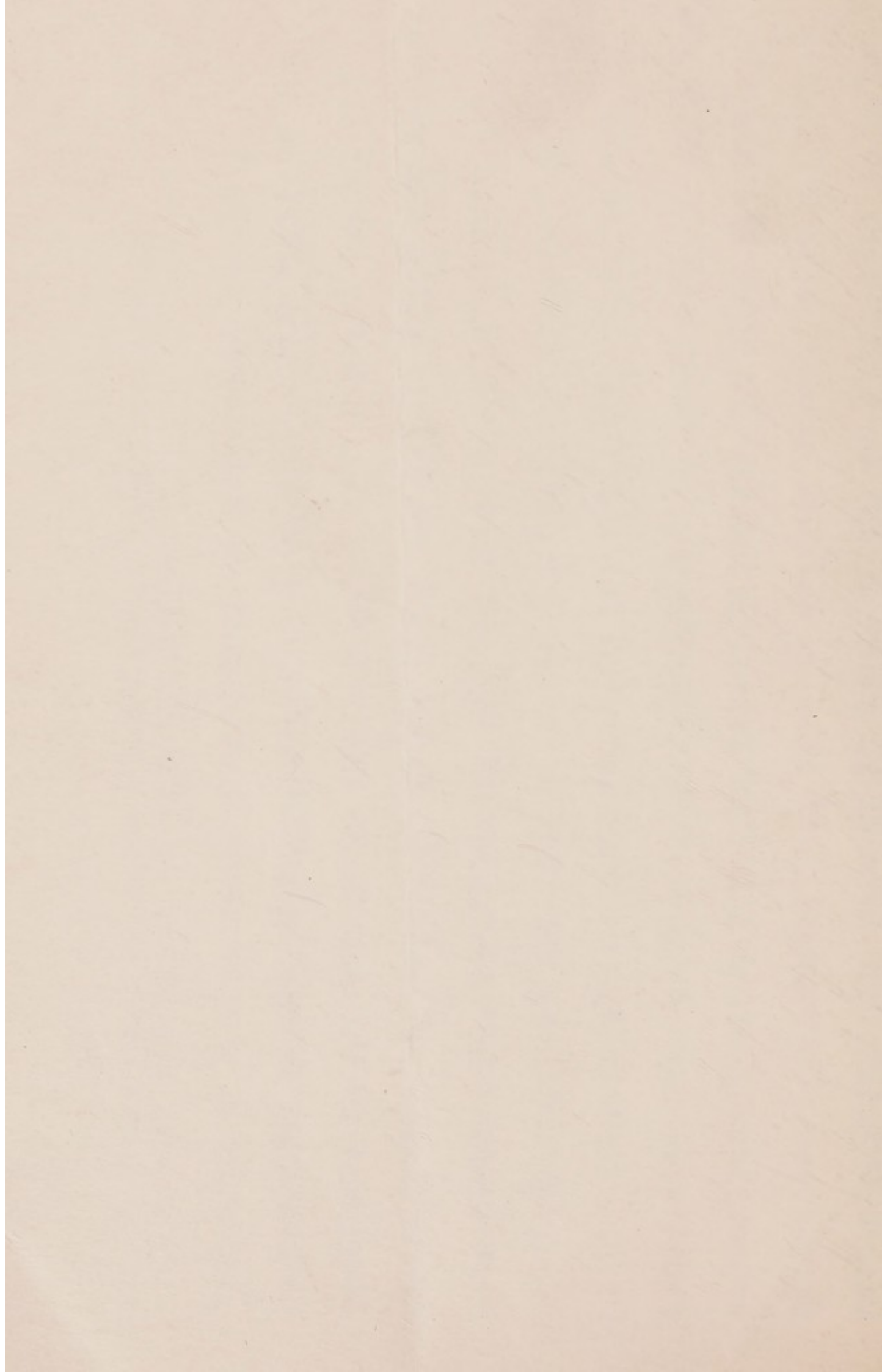
1. Discharge of all patients admitted under statutory order can only be done by Responsible Medical Officers (R.M.O). This amounts to about 70-80% of admissions.
2. Informal patients already in the Unit, refusing to stay and considered unfit to be discharged, require Section 30(2) signed by the R.M.O. We have dealt with three cases already of this kind but have applied Section 25, as the M.W.O has been able to come at short notice to sign an application. As the proportion of informal admissions is rapidly increasing from 16% to 31% these may become an increasing problem.
3. At the present time the Junior Staff sign the forms giving their address as Maudsley Hospital, not St. Francis'. This logically means that St. Francis has no medical staff ! If the Staff were to sign themselves "of St. Francis'" then an outside doctor would be needed to complete Section 25. The former procedure which we are now practising is, of course, most desirable.
4. With regard to the patient accepted for informal admission and refusing to enter the Unit - almost all patients in this group will have arrived by ambulance - I suggest that no coercion into the Unit is practicable. That the alternatives are (a) to allow the patient to remain in the ambulance and interview them briefly there; (b) to see them in the P.S.W Office during working hours only, as the



Offices are locked at night. That the M.W.O be asked to come urgently and the Registrar to make a Section 29; (c) to be returned to their source of referral for compulsory recommendation.



M.D.EILENBERG



Please address any reply to:
THE UNDER SECRETARY OF STATE,
quoting:

H.O.89/60
D.3

HOME OFFICE,
CHILDREN'S DEPARTMENT,
HORSEFERRY HOUSE,
THORNEY STREET,
LONDON, S.W.1.

11th July, 1960.

Sir,

HOME OFFICE CIRCULAR NO.89/1960

Mental Health Act, 1959.

1 I am directed by the Secretary of State to refer to the Mental Health Act, 1959, and to invite the Council's attention to sections 9 and 10 in Part II of the new Act. These sections come into operation on 15th July, 1960, and the Ministry of Health will despatch copies of the relevant commencement order as soon as it is available.

Section 9

2 The Royal Commission on the Law relating to Mental Illness and Mental Deficiency, while recommending that neither the law nor administrative practice should rigidly exclude mentally sub-normal children from the general child care service if they could suitably mix with other children, also recommended that most of these children needed specialised care which it would be more suitable to provide through the mental health services than through the child care services. The effect of section 9 of the Act is to give local authorities discretion to provide residential services for mentally disordered children within the framework of their child care services or health services as seems appropriate to the circumstances of any individual case. While the care of mentally disordered children will be primarily the responsibility of the local health authority, the Act will make possible co-operation and flexibility of arrangements between local authority children and health services.

3 Subsection (1) of section 9 enables local authorities to accommodate in children's homes or other accommodation provided by them under section 15 of the Children Act, 1948, mentally disordered children who are not in their care under that Act, but who are receiving care from a local health authority under section 28 of the National Health Service Act, 1946. Previously only children who were in the care of local authorities for the purposes of Part II of the Children Act, 1948, could be accommodated in such homes. "Mental disorder" is defined by section 4(1) of the new Act.

4 Subsection (2) of section 9 enables adjustment to be made of accounts as between the health and children's departments of the same local authority in respect of placements of children by the local health authority in children's homes belonging to the children's department. If a local health authority places children in children's homes belonging to another authority, the local health authority's powers under section 28 of the National Health Service Act, 1946 will enable them to meet any charges that may be made by the children's department of the other authority.

5 Subsection (3) of section 9 removes any doubt which might otherwise exist about the power of children authorities to receive mentally disordered children into care under section 1 of the Children Act, 1948, provided the child is eligible for care under that section. It also removes any doubt about the power of local health authorities to provide accommodation under section 28 of the National Health Service Act, 1946, for mentally disordered children who are in the care of a local authority as a children authority. By subsection (4) "child" for the purpose of the section is a person under the age of eighteen years.

Section 10

6 Section 10 gives effect to the Royal Commission's recommendation that a local authority which has been exercising parental rights should have a duty to continue to act as a good parent while a mentally disordered child is in a hospital. Subsection (1) provides that a local authority who is acting as parent to a mentally disordered patient under the powers referred to in paragraph (a) of the subsection shall arrange visits to the patient on the authority's behalf, and shall generally act towards the patient while in hospital as would be expected of a parent. This refers to mentally disordered patients in hospitals or nursing homes whether they are receiving treatment for their mental disorder or for any other reason.

7 It will be seen that subsection (1) of section 10 does not impose a duty on local authorities to perform the functions under the subsection in relation to patients who, before admission to hospital, were in care under the Children Act, 1948 (or were receiving care from the authority under section 28 of the National Health Service Act, 1946) but were not subject to any of the "parental" arrangements mentioned in paragraph (a), (b) or (c) of section 10(1). Local health authorities under section 28 of the Act of 1946 (as clarified by section 6 of the present Act) have, however, a general discretionary power to make such visits, as have also children authorities under the Children Act, 1948 following the repeal of section 8 of that Act (see paragraph 8 of this circular). The use of these powers will no doubt partly depend on the extent to which the patient receives visits from his family or friends.

8 Subsection (2) of section 10 repeals both section 8 of the Children Act, 1948, and subsection (6) of section 5 of the Matrimonial Proceedings (Children) Act, 1958. The effect of these repeals is that, on the admission to a hospital for treatment for mental disorder of a child in care, the child will not, subject to the provisions of the Children Act, cease to be in the local authority's care.

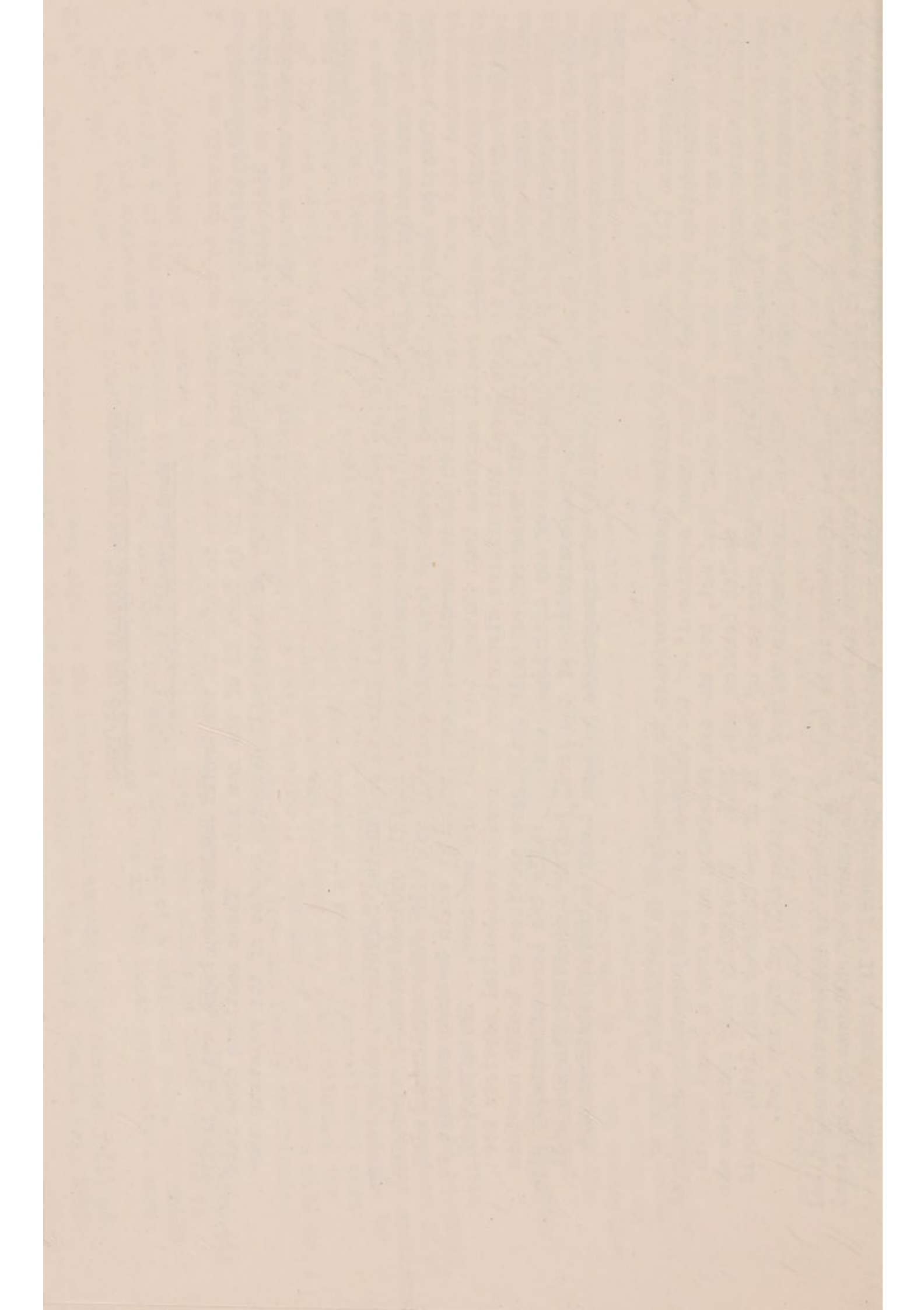
9 The attention of the Council is drawn also to the consequential amendment to section 39(1) of the Children Act, 1948 specified in Part II of the Seventh Schedule to the Mental Health Act, 1959.

10 Copies of this Circular are enclosed for the Children's Officer and the Chief Financial Officer.

I am, Sir,
Your obedient Servant,

The Clerk of the County Council.
The Town Clerk.

E. N. Kent.



PROCEDURE FOR ADMISSION OF PATIENTS

(A). INFORMAL - NO DOCUMENTS REQUIRED

(B). ADMISSION FOR OBSERVATION

(i) 3 days - Section 29 - APPLICATION - Form 2
(Single) Medical Recommendation - Form 3A

(ii) 28 days - Section 25 - APPLICATION - Form 1
(Single) Medical Recommendation - Form 3A
(Joint) Medical Recommendation - Form 3B

The above forms should either accompany the patient or be received beforehand; a supply of blank forms is also held in the ward.

MEDICAL RECOMMENDATION/S in the form provided (1 Practitioner for Section 29; 2 for Section 25) must accompany the application.

ACCEPTANCE OF PATIENT. Applications for admission should not be refused other than by the medical staff.

RECORD OF ADMISSION OF PATIENTS AND RECEIPT OF FORMS.

- (1). There is a legal obligation to complete the "Record of Admission" at the foot of Forms 1 or 2 immediately the patient is admitted. The same applies to the "Record of Receipt" at the foot of Form 3A and Form 6.
- (2) The Managers (The Camberwell Group H.M.C) have authorised the nurse in charge of the ward (and their recognised Medical Officers and registered nurses) to sign these documents on their behalf.
- (3) DURING OFFICE HOURS the forms should be referred for scrutiny to the Deputy Hospital Secretary (or when absent from the hospital, the Hospital Secretary) within 3 hours of receipt. If the patient's documents require scrutiny outside office hours it is the responsibility of the Duty Doctor. Forms of week-end admissions to be sent to the General Office for scrutiny on Monday morning.

If one of the following is found on Section 29 only, the patient's detention, other than as an informal patient, is illegal.

- (1). If the official form is not used the application should be an exact copy of the official application.
- (2). Not signed by nearest relative or Mental Welfare Officer.
- (3). Not signed by the Doctor.
- (4). Medical recommendation cannot be given by the applicant, partner of the applicant, partner employed as assistant by the applicant, husband, wife, mother, mother-in-law, father, father-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister, sister-in-law.

In the case of the above, the doctor in charge of the Unit (Dr.Eilenberg) should be contacted, or in his absence Dr.Shepherd.

СТЕПЕНЬ ПО ПОСЛЕДОВАТЕЛЬНОСТИ

ПОСЛЕДОВАТЕЛЬНОСТЬ ПОСЛЕДОВАТЕЛЬНОСТИ - (A)

ПОСЛЕДОВАТЕЛЬНОСТЬ ПОСЛЕДОВАТЕЛЬНОСТИ - (B)

АКЦИЯ - ПОСЛЕДОВАТЕЛЬНОСТЬ ПОСЛЕДОВАТЕЛЬНОСТИ (сигнал)

АКЦИЯ - ПОСЛЕДОВАТЕЛЬНОСТЬ ПОСЛЕДОВАТЕЛЬНОСТИ (сигнал)

АКЦИЯ - ПОСЛЕДОВАТЕЛЬНОСТЬ ПОСЛЕДОВАТЕЛЬНОСТИ (сигнал)

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АКЦИЯ - ПОСЛЕДОВАТЕЛЬНОСТЬ ПОСЛЕДОВАТЕЛЬНОСТИ (сигнал)

NATIONAL HEALTH SERVICE

MENTAL HEALTH SERVICES

Summary: This memorandum informs hospital authorities of advice which has been given to local health authorities about the implementation of sections 6 to 10 of the Mental Health Act, 1959.

1. Section 4 and sections 6 to 10 of the Mental Health Act, 1959, have been brought into effect as from 15th July 1960. Copies are enclosed of explanatory circulars which have been sent to local health authorities by the Ministry of Health and the Home Office. (Copies of the Mental Health Act, 1959 (Commencement No. 2) Order, 1960, will follow shortly.)
2. Attention is particularly drawn to paragraphs 14-16 of the circular from the Ministry of Health, and hospitals are asked to give every help to local authorities in discharging the duty imposed on them by section 10 of the Act to arrange visits to certain hospital patients.

MINISTRY OF HEALTH,
SAVILE ROW,
LONDON, W.1.

11th July, 1960.

95202/1/1.

*To: Regional Hospital Boards,
Hospital Management Committees,
Boards of Governors.*

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MINISTRY OF HEALTH,
SAVILE ROW,
LONDON, W.1.

11th July, 1960.
95202/1.

To: Regional Hospital Boards,
Hospital Management Committees,
Boards of Governors.

Tel. No. REGent 8444.

MINISTRY OF HEALTH,
SAVILE ROW,
LONDON, W.1.
11th July 1960.

To: Local Health Authorities (England).

Sir,

MENTAL HEALTH SERVICES

1. I am directed by the Minister of Health to state that he has to-day made an Order under the Mental Health Act, 1959, bringing into effect from 15th July, 1960, Sections 4 and Sections 6 to 10 of the Act together with certain consequential sections. A copy of the Order (The Mental Health Act, 1959 (Commencement No. 2) Order, 1960) will be forwarded to you as soon as possible.

Definition of Mental Disorder

2. Section 4 of the Act defines "mental disorder" for the purposes of the Act and thus defines the various categories of mentally disordered persons for whom local authorities are responsible for providing appropriate services under the National Health Service and National Assistance Acts. The new terms defined in Section 4 of the Mental Health Act should from now on be used in relation to procedures under the sections of the Act which have been brought into force. It should be noted that, until the repeal of the Lunacy and Mental Treatment Acts and the Mental Deficiency Acts, it will be necessary to continue to use the terminology of those Acts in relation to procedures under them. It will probably, however, be convenient from now on to use the terminology of the Mental Health Act in all other contexts.

Functions of Local Health Authorities

3. Section 6 sets out a number of services which, by virtue of the direction issued by the Minister in Circular 22/59, local health authorities have a duty to provide as part of their arrangements for prevention, care and after care under Section 28 of the National Health Service Act. These arrangements are described more fully in the proposals by individual authorities which were submitted to the Minister for approval in accordance with Circular 28/59.

4. Paragraph (c) of Section 6(2) refers to the appointment of officers to act as mental welfare officers under other provisions of the Act. "Mental welfare officer" is defined in Section 147 (1) as an officer of a local health authority appointed to act as mental welfare officer for the purposes of the Act. It will therefore be necessary for local health authorities to make formal appointments of those of their officers who are to exercise the functions given to mental welfare officers by Sections 22, 135 and 140 and Parts IV and V of the Act. The Minister has announced that these Parts and Sections of the Act will come into operation on 1st November, 1960, and further advice will be issued before then on these functions of mental welfare officers, which are in many ways comparable to those of

The Clerk of the County Council.
The Town Clerk.

95202/1/1.

duly authorised officers and authorised officers under the present Lunacy and Mental Treatment Acts and Mental Deficiency Acts. It is essential that the appointment of these officers should be made in time for them to exercise their new functions from 1st November and it is open to authorities to make the necessary appointment at any time from now on.

5. Further advice will also be issued to authorities on their functions in relation to patients under guardianship before the parts of the Act dealing with guardianship are brought into operation.

6. Section 6 (3) of the Act removes the present prohibition on the payment of money to persons by an authority so far as this relates to payments to meet occasional personal expenses to persons under age 16 and resident in accommodation provided by the authority. This is intended to allow the payment of small sums as pocket money to children who are being provided with care in residential accommodation and whose parents or others responsible are unable to provide such sums. For those age 16 and over, the payment of remuneration by the authority for any work which may be done at a training centre remains unaffected.

Charges by Local Health Authorities

7. The Minister indicated in paragraph 12 of Circular 9/59 the extent to which he was prepared to approve the making of charges for the provision of residential accommodation under Section 28 (2) of the National Health Service Act, as applied by Section 6 (2) of the Mental Health Act. The Minister accordingly hereby approves the making of charges to persons aged 16 and over resident in such accommodation. As indicated in paragraph 11 of Circular 9/59, the residential accommodation provided may be in premises provided by the authority itself, in a home provided by a voluntary organisation or otherwise or by boarding out in a private household. It should be noted that the power to charge also relates to accommodation provided for "short term" care on holidays arranged by the authority.

8. The Minister understands that the County Councils Association and the Association of Municipal Corporations, in consultation with the London County Council, have under consideration the issue of some guidance as to the charges for residential accommodation that may be appropriate.

9. Approval was given by the Minister in Circular 100/48, dated 10th June, 1948, to the making of charges for all articles of extra nourishment or clothing. This would include meals or refreshment provided for persons attending day training centres or social clubs. As indicated in Circular 12/56, dated 2nd July, 1956, the Minister would not expect a charge to be made for milk provided for children under age 16 attending training centres.

10. The information in paragraph 12 of Circular 9/59 about the payment of national assistance grants to persons not in employment for whom residential accommodation is provided requires some clarification. In the case of persons accommodated in the premises provided by the authority or in premises provided by a voluntary or other organisation, national assistance grants will be made on the same basis as for residents in accommodation under Part III of the National Assistance Act, 1948. Local health authorities should, however, consult the local manager of the National Assistance Board about the appropriate arrangements to be made in the case of each person boarded out in a private household.

Conduct of Premises of Local Health Authorities

11. Section 7 of the Act empowers the Minister to make regulations as to the conduct of any premises in which residential accommodation or facilities for training or occupation are provided by local health authorities. The Minister has no present intention of making regulations on this subject and he relies on authorities to secure and maintain proper standards of accommodation and staffing in premises where residential accommodation or training are provided. To assist in this, authorities may wish to consider arranging for regular visits to be paid to each centre by a named member or officer (or, if on occasion the member or officer is unable to visit, by some other suitable person). The Minister's officers will always be glad to offer any help or advice to an individual authority.

12. Section 7 also empowers the Minister to make regulations conferring on his officers the power of inspection of premises provided by authorities. (Similar powers already exist in the case of residential accommodation provided and welfare arrangements made by local authorities under Part III of the National Assistance Act, 1948.) The Minister is making regulations under this Section which are intended to provide a statutory basis on which visits can be made as part of the Minister's overall responsibility for the National Health Service. A copy of the regulations will be sent to you as soon as possible.

Functions of Welfare Authorities

13. Section 8, as explained in paragraph 4 of Circular 28/59, removes prohibitions on the use of Sections 21 and 29 of the National Assistance Act, 1948, for the provision by local authorities of services for mentally disordered persons for whom they, as local health authorities, have a power or a duty to provide corresponding services under Section 28 of the National Health Service Act, 1946. It also extends the class of mentally disordered persons for whom services may be provided under Section 29 of the 1948 Act.

Child Care Services

14. Sections 9 and 10 of the Act, although relating mainly to the functions of children authorities, are also of concern to local health authorities. A copy is enclosed of a Home Office circular to County Councils and County Borough Councils. It is not intended that the usual provision by a local authority for mentally disordered children in need of residential care should be in accommodation provided under the Children Act. Where, however, it is reasonable to make provision in this way in the circumstances of an individual case, Section 9 provides the necessary power to do so. The Section also makes clear that a local authority is empowered, as children authority, to receive into their care mentally disordered children who are eligible for care under Section 1 of the Children Act, 1948. While it may be appropriate in certain circumstances to place some of these children in accommodation for normal children in care, and for the local health authority to fulfil their duty by making arrangements with the children authority accordingly, the Minister hopes that in all cases where suitable care cannot be provided in this way, the local health authority will assume responsibility as quickly as possible for admitting the children to more appropriate accommodation provided under the mental health services.

Welfare of Certain Hospital Patients

15. Section 10 imposes a duty on local authorities to arrange visits to certain hospital patients. The enclosed Home Office circular deals with the provisions relating to children in respect of whom the rights and powers

of a parent are vested in the local authority. The duty to arrange visits applies also to patients in hospital or nursing homes who are subject to the guardianship of the local health authority under the Mental Health Act (when the relevant Parts of the Act come into operation) and also to patients for whom the local health authority is acting in the place of the nearest relative by order of the court under Sections 52 and 53 of the Act. (These Sections are not yet in operation.) This situation only arises when the patient requires to be detained for treatment in hospital or to be received into guardianship.

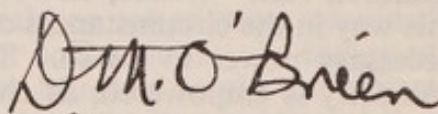
16. It is the intention that the local health authority which has any of these statutory responsibilities towards a patient should maintain its interest by visits or other suitable means while the patient is in hospital, whether he is in hospital for treatment for his mental disorder or for any other reason. It is open to authorities to arrange for visits to be made by their own officers, or by officers of another local authority, or by a voluntary organisation or by any other suitable person.

17. Apart from the statutory requirement to arrange visits on behalf of the authority in these particular cases, the Minister hopes that it will be the general practice of authorities to maintain appropriate contact with mentally disordered persons in hospital whose homes are in the authority's area. In co-operation with the hospital authority, patients in locally situated hospitals may for instance be visited by the local health authority's staff to discuss arrangements for after care on discharge from hospital, or be similarly visited to maintain contact with their home if they have no friends or relatives who can do this. In many areas persons in hospital who, because of additional handicaps such as blindness or deafness, are eligible to receive services under Section 29 of the National Assistance Act, 1948, are already visited by home teachers or welfare officers. The Minister hopes that all local authorities will, in appropriate cases, adopt this practice.

18. A copy of this Circular is enclosed for the Chief Welfare Officer. Copies have been sent to the Medical Officer of Health and to the Clerks and Medical Officer of Health of Authorities exercising delegated health and welfare functions.

I am, Sir,

Your obedient Servant,

A handwritten signature in dark ink, appearing to read 'J. M. O'Brien'. The signature is fluid and cursive, with a large initial 'J' and 'M'.

Mental Health Act, 1959

7 & 8 ELIZ. 2 CH. 72

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Repeal of Lunacy and Mental Treatment Acts and Mental Deficiency Acts.
2. Dissolution of Board of Control.
3. Mental Health Review Tribunals.
4. Definition and classification of mental disorder.
5. Informal admission of patients.

PART II

LOCAL AUTHORITY SERVICES

General provisions

6. Functions of local health authorities.
7. Conduct of premises of local health authorities.
8. Functions of welfare authorities.
9. Functions of children authorities.
10. Welfare of certain hospital patients.

Provision for care and training of children in lieu of education

11. Examination and classification under Education Act, 1944.
12. Power to compel attendance at training centres.
13. Provisions as to regular attendance for training.

PART III

MENTAL NURSING HOMES, RESIDENTIAL HOMES, ETC.

Nursing Homes

14. Registration of nursing homes under Public Health Act.
15. Special provisions as to registration of nursing homes.
16. Conduct of mental nursing homes.
17. Inspection of mental nursing homes and visiting of patients.
18. Continuance of special registration on cancellation or death.



Transfer to hospital or guardianship of prisoners, etc.

Section

72. Removal to hospital of persons serving sentences of imprisonment etc.
73. Removal to hospital of other prisoners.
74. Restriction on discharge of prisoners removed to hospital.
75. Further provisions as to prisoners under sentence.
76. Further provisions as to persons committed for trial or sentence, etc.
77. Further provisions as to persons remanded by magistrates' courts.
78. Further provisions as to civil prisoners.
79. Reception into guardianship of persons sent to approved schools.

Supplemental

80. Interpretation of Part V.

PART VI

REMOVAL AND RETURN OF PATIENTS WITHIN
UNITED KINGDOM, ETC.*Removal to and from Scotland*

81. Removal to Scotland of patients not subject to restriction.
82. Removal to Scotland of patients subject to restriction on discharge.
83. Application of Scottish enactments to patients removed under s. 82.
84. Removal to England and Wales of state mental patients.

Removal to and from Northern Ireland

85. Removal to Northern Ireland of patients not subject to restriction.
86. Removal to Northern Ireland of patients subject to restriction on discharge.
87. Removal to England and Wales of patients other than criminal patients.
88. Removal to England and Wales of criminal patients.

Other provisions as to removal

89. Removal of certain patients from Channel Islands and Isle of Man to England and Wales.
90. Removal of alien patients.

Return of patients absent without leave

91. Persons absent from Scottish institutions.
92. Patients absent from Northern Irish institutions.
93. Patients absent from hospitals in England and Wales.

Supplemental

Section

94. Regulations for purposes of Part VI.
95. General provisions as to patients removed from England and Wales.
96. Interpretation of Part VI.

PART VII

SPECIAL HOSPITALS

97. Provision of institutions for treatment under conditions of special security.
98. Administrative provisions.
99. Transfers to and from special hospitals.

PART VIII

MANAGEMENT OF PROPERTY AND AFFAIRS OF PATIENTS

100. Judicial authorities and Court of Protection.
101. Persons within the jurisdiction of the judge: "the patient".
102. General functions of the judge with respect to property and affairs of patient.
103. Powers of the judge as to patient's property and affairs.
104. Judge's powers in cases of emergency.
105. Power to appoint receiver.
106. Vesting of stock in curator appointed outside England and Wales.
107. Preservation of interests in patient's property.
108. Lord Chancellor's Visitors.
109. Functions of Visitors.
110. General powers of the judge with respect to proceedings.
111. Appeals.
112. Rules of procedure.
113. Security and accounts.
114. General provisions as to rules under Part VIII.
115. Supplementary provisions as to Court of Protection.
116. Effect and proof of orders, etc.
117. Reciprocal arrangements in relation to Scotland and Northern Ireland as to exercise of powers.
118. Construction of references in other Acts to judge or authority having jurisdiction under Part VIII.
119. Interpretation of Part VIII.
120. Modifications of Lunacy Regulation (Ireland) Act, 1871.
121. Repeal of certain enactments in relation to persons within the jurisdiction of the judge.

SCHEDULES:

- First Schedule—Mental Health Review Tribunal.
- Second Schedule—Sections substituted for Education Act, 1944, s. 27.
- Third Schedule—Application of Part IV to patients admitted to hospital or placed under guardianship under Part V.
- Fourth Schedule—Modifications of provisions of Lunacy Regulation (Ireland) Act, 1871.
- Fifth Schedule—General enactments ceasing to have effect in relation to persons within jurisdiction under Part VIII.
- Sixth Schedule—Transitional provisions.
- Seventh Schedule—Minor and consequential amendments.
- Eighth Schedule—Enactments repealed.

TRANSITIONAL PROVISIONS

- 131. Provisions of Lunacy Regulation (Ireland) Act, 1871, in relation to persons liable to be detained in hospital or in custody of a person subject to a guardianship order.
- 132. Provisions of Lunacy Regulation (Ireland) Act, 1871, in relation to persons liable to be detained in hospital or in custody of a person subject to a guardianship order.
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- 135. Provisions of Lunacy Regulation (Ireland) Act, 1871, in relation to persons liable to be detained in hospital or in custody of a person subject to a guardianship order.

GENERAL

- 136. Provisions of Lunacy Regulation (Ireland) Act, 1871, in relation to persons liable to be detained in hospital or in custody of a person subject to a guardianship order.
- 137. Provisions of Lunacy Regulation (Ireland) Act, 1871, in relation to persons liable to be detained in hospital or in custody of a person subject to a guardianship order.
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- 149. Provisions of Lunacy Regulation (Ireland) Act, 1871, in relation to persons liable to be detained in hospital or in custody of a person subject to a guardianship order.
- 150. Provisions of Lunacy Regulation (Ireland) Act, 1871, in relation to persons liable to be detained in hospital or in custody of a person subject to a guardianship order.
- 151. Provisions of Lunacy Regulation (Ireland) Act, 1871, in relation to persons liable to be detained in hospital or in custody of a person subject to a guardianship order.
- 152. Provisions of Lunacy Regulation (Ireland) Act, 1871, in relation to persons liable to be detained in hospital or in custody of a person subject to a guardianship order.
- 153. Provisions of Lunacy Regulation (Ireland) Act, 1871, in relation to persons liable to be detained in hospital or in custody of a person subject to a guardianship order.
- 154. Provisions of Lunacy Regulation (Ireland) Act, 1871, in relation to persons liable to be detained in hospital or in custody of a person subject to a guardianship order.



CHAPTER 72

An Act to repeal the Lunacy and Mental Treatment Acts, 1890 to 1930, and the Mental Deficiency Acts, 1913 to 1938, and to make fresh provision with respect to the treatment and care of mentally disordered persons and with respect to their property and affairs; and for purposes connected with the matters aforesaid.

[29th July, 1959]

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:—

PART I

PRELIMINARY

1. Subject to the transitional provisions contained in this Act, the Lunacy and Mental Treatment Acts, 1890 to 1930, and the Mental Deficiency Acts, 1913 to 1938, shall cease to have effect, and the following provisions of this Act shall have effect in lieu of those enactments with respect to the reception, care and treatment of mentally disordered patients, the management of their property, and other matters related thereto.

Repeal of
Lunacy and
Mental
Treatment
Acts and
Mental
Deficiency
Acts.

2.—(1) The following provisions of this section shall have effect on the repeal by this Act of the enactments constituting the Board of Control.

Dissolution
of Board of
Control.

(2) The persons who, immediately before the dissolution of the Board by virtue of the said repeal, were members of the Board or then held office under the Board as commissioners or inspectors shall become officers of the Ministry of Health.

PART I
—cont.

(3) The dissolution of the Board shall not affect any rights, liabilities or obligations of the Board; but all such rights, liabilities and obligations, and any property held by the Board immediately before the dissolution, shall be transferred to and vest in the Minister, and any proceedings then pending to which the Board was a party may be continued by or against the Minister.

Mental
Health
Review
Tribunals.

3.—(1) For every area for which a Regional Hospital Board is constituted under section eleven of the National Health Service Act, 1946, there shall be constituted a Tribunal, to be called a Mental Health Review Tribunal, for the purpose of dealing with applications and references by and in respect of patients under the following provisions of this Act.

(2) The provisions of the First Schedule to this Act shall have effect with respect to the constitution of Mental Health Review Tribunals.

(3) Subject to the provisions of the said First Schedule, and to rules made by the Lord Chancellor under this Act, the jurisdiction of a Mental Health Review Tribunal may be exercised by any three or more of its members, and references in this Act to a Mental Health Review Tribunal shall be construed accordingly.

(4) The Minister may pay to the members of Mental Health Review Tribunals such remuneration and allowances as he may with the consent of the Treasury determine, and defray the expenses of such Tribunals to such amount as he may with the like consent determine, and may provide for each such Tribunal such officers and servants, and such accommodation, as the Tribunal may require.

(5) Part II of the First Schedule to the House of Commons Disqualification Act, 1957 (which specifies certain commissions, tribunals and other bodies all members of which are disqualified under that Act) shall have effect, in its application to the House of Commons of the Parliament of the United Kingdom, as if after the entry relating to Medical Practices Committees there were inserted the following entry:—

“A Mental Health Review Tribunal constituted under the Mental Health Act, 1959.”

Definition and
classification
of mental
disorder.

4.—(1) In this Act “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder, and any other disorder or disability of mind; and “mentally disordered” shall be construed accordingly.

(2) In this Act “severe subnormality” means a state of arrested or incomplete development of mind which includes subnormality of intelligence and is of such a nature or degree that the patient is incapable of living an independent life or of guarding himself against serious exploitation, or will be so incapable when of an age to do so.

(3) In this Act “subnormality” means a state of arrested or incomplete development of mind (not amounting to severe subnormality) which includes subnormality of intelligence and is of a nature or degree which requires or is susceptible to medical treatment or other special care or training of the patient.

(4) In this Act “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the patient, and requires or is susceptible to medical treatment.

(5) Nothing in this section shall be construed as implying that a person may be dealt with under this Act as suffering from mental disorder, or from any form of mental disorder described in this section, by reason only of promiscuity or other immoral conduct.

5.—(1) Nothing in this Act shall be construed as preventing a patient who requires treatment for mental disorder from being admitted to any hospital or mental nursing home in pursuance of arrangements made in that behalf and without any application, order or direction rendering him liable to be detained under this Act, or from remaining in any hospital or mental nursing home in pursuance of such arrangements after he has ceased to be so liable to be detained. Informal admission of patients.

(2) In the case of an infant who has attained the age of sixteen years and is capable of expressing his own wishes, any such arrangements as are mentioned in the foregoing subsection may be made, carried out and determined notwithstanding any right of custody or control vested by law in his parent or guardian.

PART II

LOCAL AUTHORITY SERVICES

General Provisions

6.—(1) In relation to persons who are or have been suffering from mental disorder, section twenty-eight of the National Health Service Act, 1946 (which relates to functions of local health authorities with respect to the prevention of illness and the care and after-care of patients) shall have effect subject to the following provisions of this section. Functions of local health authorities.

(2) The purposes for which arrangements are authorised or may be required to be made by a local health authority under

PART II
—cont.

subsection (1) of the said section twenty-eight for the care or after-care of such persons as aforesaid shall include the following, that is to say:—

- (a) the provision, equipment and maintenance of residential accommodation, and the care of persons for the time being resident in accommodation so provided;
- (b) the provision of centres or other facilities for training or occupation, and the equipment and maintenance of such centres;
- (c) the appointment of officers to act as mental welfare officers under the following provisions of this Act;
- (d) the exercise by the local health authority of their functions under the following provisions of this Act in respect of persons placed under guardianship thereunder (whether so placed under the guardianship of the local health authority or of other persons); and
- (e) the provision of any ancillary or supplementary services for or for the benefit of any such persons as are referred to in subsection (1) of this section;

and subsections (2) and (3) of the said section twenty-eight shall have effect accordingly.

(3) Notwithstanding anything in subsection (1) of the said section twenty-eight, the reference in paragraph (a) of subsection (2) of this section to the care of persons for the time being resident in accommodation provided by a local health authority includes, in the case of persons so resident who are under the age of sixteen years, the payment to those persons of such amounts as the local health authority think fit in respect of their occasional personal expenses where it appears to that authority that no such payment would otherwise be made.

Conduct of
premises of
local health
authorities.

7.—(1) The Minister may make regulations as to the conduct of any premises in which residential accommodation or facilities for training or occupation are provided by local health authorities under section twenty-eight of the National Health Service Act, 1946, for persons who are or have been suffering from mental disorder.

(2) Regulations made under this section may in particular confer upon officers of the Minister authorised thereunder such powers of inspection as may be prescribed by the regulations.

Functions
of welfare
authorities.

8.—(1) For the purposes of subsection (8) of section twenty-one of the National Assistance Act, 1948 (which restricts the duties of local authorities in respect of the provision of accommodation under that section by reference to the provision authorised or required to be made under other enactments) no account shall be taken of the provision authorised or required to be made

by local health authorities under section twenty-eight of the National Health Service Act, 1946, with respect to residential accommodation for persons who are or have been suffering from mental disorder.

PART II
—cont.

(2) The persons referred to in subsection (1) of section twenty-nine of the said Act of 1948 (which section enables local authorities to make arrangements for promoting the welfare of blind persons and other disabled persons described in the said subsection (1)) shall include mentally disordered persons of any description; and for the purposes of subsection (6) of that section (which, among other things, excludes from that section the provision of accommodation or services required to be provided under the National Health Service Act, 1946), no account shall be taken of the provisions of Part III of the National Health Service Act, 1946, with respect to the provision of accommodation or services for such persons.

(3) Subsection (2) of this section shall not affect the operation of the provisions of Part IV of the National Assistance Act, 1948, relating to disabled persons' homes or charities for disabled persons, but without prejudice to the provisions of Part III of this Act with respect to the registration of such homes.

(4) Nothing in this section shall be construed as requiring a local authority to make provision for the same purposes both under Part III of the National Health Service Act, 1946, and under Part III of the National Assistance Act, 1948.

9.—(1) Any local authority for the purposes of the Children Act, 1948 (in this section referred to as a children authority) may accommodate in homes or other accommodation provided by that authority under section fifteen of that Act any child who, not being in their care within the meaning of Part II of that Act, is a person whose care or after-care is for the time being undertaken by that or any other authority as local health authority in pursuance of arrangements made under section twenty-eight of the National Health Service Act, 1946, for the care or after-care of persons who are or have been suffering from mental disorder.

Functions of
children
authorities.

(2) Where a child whose care or after-care is for the time being undertaken by a local health authority in pursuance of such arrangements as aforesaid is accommodated in a home or other accommodation provided under the said section fifteen by the same authority as children authority, the authority may make such adjustments as appear to them to be appropriate between the accounts kept by them as local health authority and the accounts kept by them as children authority.

(3) Nothing in this Act, or in any other enactment, shall be construed as preventing a children authority from receiving into their care under section one of the Children Act, 1948, a child

PART II
—cont

who is mentally disordered, nor as preventing a local health authority from accommodating in pursuance of such arrangements as aforesaid any child who is in the care of that or any other authority as a children authority.

(4) In this section "child" has the same meaning as in the Children Act, 1948.

Welfare of
certain
hospital
patients.

10.—(1) Subject to the provisions of this section, where a mentally disordered patient being—

(a) a child or young person in respect of whom the rights and powers of a parent are vested in a local authority by virtue of—

(i) section seventy-five of the Children and Young Persons Act, 1933 (which relates to children and young persons committed to the care of fit persons under that Act);

(ii) section seventy-nine of the Children and Young Persons (Scotland) Act, 1937 (which makes corresponding provision in Scotland); or

(iii) section three of the Children Act, 1948 (which relates to children in respect of whom parental rights have been assumed by a local authority under section two of that Act);

(b) a person who is subject to the guardianship of a local health authority under the following provisions of this Act; or

(c) a person the functions of whose nearest relative under this Act are for the time being transferred to a local health authority,

is admitted to a hospital or nursing home in England and Wales (whether for treatment for mental disorder or for any other reason) then, without prejudice to their duties in relation to the patient apart from the provisions of this section, the authority shall arrange for visits to be made to him on behalf of the authority, and shall take such other steps in relation to the patient while in the hospital or nursing home as would be expected to be taken by his parents.

(2) Section eight of the Children Act, 1948, and subsection (6) of section five of the Matrimonial Proceedings (Children) Act, 1958 (which provide for the removal from the care of local authorities of children who come under control under the enactments relating to mental deficiency or to lunacy and mental treatment) shall cease to have effect.

Provision for care and training of children in lieu of education

PART II

—cont.

11. The sections set out in the Second Schedule to this Act, and therein numbered fifty-seven, fifty-seven A and fifty-seven B, shall be substituted for section fifty-seven of the Education Act, 1944; and section eight of the Education (Miscellaneous Provisions) Act, 1948 (which amended section fifty-seven of the said Act of 1944 as originally enacted) shall cease to have effect.

Examination
and
classification
under
Education
Act, 1944.

12.—(1) Where it appears to the local health authority to be appropriate that a child of compulsory school age who is the subject of a decision recorded under section fifty-seven of the Education Act, 1944, should receive training at a centre provided or made available under arrangements made by that authority under section twenty-eight of the National Health Service Act, 1946, the authority may give notice in writing to the parent of the child requiring him to cause the child to attend, either by the day or, if the notice so directs, as a resident, at such centre, being a centre provided or made available as aforesaid, as may be specified in the notice at such times or for such periods as may be so specified.

Power to
compel
attendance
at training
centres.

(2) Before giving a notice under this section, the local health authority shall satisfy themselves that the child is not receiving adequate training comparable with the training which he would receive at the centre; and if any person to whom such a notice is given is aggrieved by the notice on the ground that the child is receiving such training, he may require the local health authority to refer the question to the Minister of Health, and that Minister may either confirm the notice or direct that it be amended or withdrawn.

(3) Subject to subsection (2) of this section, if any person fails to comply with a notice given to him under subsection (1) of this section, he shall, unless the child is receiving adequate training comparable with the training which he would receive at the centre, be guilty of an offence and shall be liable on summary conviction, in the case of a first offence to a fine not exceeding one pound, in the case of a second offence to a fine not exceeding five pounds, and in the case of a third or subsequent offence to a fine not exceeding ten pounds or to imprisonment for a term not exceeding one month, or to both.

(4) It shall be the duty of the local health authority to institute proceedings for an offence under this section wherever, in their opinion, the institution of such proceedings is necessary, and no such proceedings shall be instituted except by or on behalf of a local health authority.

(5) For the purposes of this section a child shall be treated as of compulsory school age so long as, under the Education

PART II
—cont.

Provisions
as to regular
attendance
for training.

Act, 1944, he would be deemed to be of compulsory school age if he were a registered pupil at a special school, and "parent" has the same meaning as in that Act.

13.—(1) For the purposes of any proceedings under section twelve of this Act, the parent of a child of compulsory school age shall be deemed to have failed to cause the child to attend at a training centre on any occasion on which the child has failed without leave to attend at the centre, but the child shall not be deemed to have so failed—

(a) at any time when prevented from attending by reason of sickness or any unavoidable cause ;

(b) on any day exclusively set apart for religious observance by the religious body to which the parent belongs ; or

(c) if it is not reasonably practicable for the child to make his own way, or to be taken by or on behalf of his parent, to and from the centre, and no suitable arrangements have been made by the local health authority either for his transport to and from the centre or for residential accommodation for him at or near the centre.

(2) If in any such proceedings it is proved that the child has no fixed abode, subsection (1) of this section shall have effect as if paragraph (c) were omitted ; but if the parent proves that he is engaged in a trade or business of such a nature as to require him to travel from place to place, and that the child has attended at the training centre as regularly as the nature of the trade or business of the parent permits, the parent shall be acquitted.

(3) For the purposes of any such proceedings as aforesaid in respect of a child who is residing at a training centre, the parent shall be deemed to have failed to cause the child to attend the centre if the child is absent without leave during any part of the period during which the training is given unless prevented from being present by reason of sickness or any unavoidable cause.

(4) In this section "child of compulsory school age" and "parent" have the same meaning as in section twelve of this Act, and "leave", in relation to a training centre, means leave granted by any person authorised in that behalf by the local health authority by whom the training centre is provided.

PART III

MENTAL NURSING HOMES, RESIDENTIAL HOMES, ETC.

Nursing Homes

Registration of
nursing homes
under Public
Health Act.

14.—(1) Part VI of the Public Health Act, 1936 (which relates, among other things, to the registration of nursing homes) shall apply in relation to mental nursing homes as it applies to nursing homes to which the said Part VI applied immediately before the commencement of this Act, not being maternity homes, but shall so apply subject to the following provisions of this Part of this Act.

(2) In this Part of this Act “mental nursing home” means any premises used or intended to be used for the reception of, and the provision of nursing or other medical treatment for, one or more mentally disordered patients (whether exclusively or in common with other persons), not being—

(a) a hospital as defined by this Act ;

(b) any other premises managed by a Government department or provided by a local authority ;

(3) In this Part of this Act “registration authority”, in relation to a mental nursing home, means the council of the county or county borough in which the home is situated ; and the power of a county council under section one hundred and ninety-four of the Public Health Act, 1936, to delegate its functions under Part VI of that Act relating to nursing homes to the council of a county district shall include power to delegate its functions under this Part of this Act relating to mental nursing homes.

(4) Section one hundred and ninety-two of the Public Health Act, 1936 (which enables the registration authority to exempt certain voluntary institutions from the provisions of Part VI of that Act relating to nursing homes) shall not apply to mental nursing homes.

(5) Subject to the next following section, the registers to be kept by the registration authority under the said Part VI as applied by this Part of this Act shall be in such form, and shall contain such particulars as may be prescribed by regulations made by the Minister ; and such regulations may make provision as to the information to be supplied on applications for registration in respect of mental nursing homes.

15.—(1) Any application for registration under the said Part VI in respect of a mental nursing home shall specify whether or not it is proposed to receive therein patients who are liable to be detained under the following provisions of this Act ; and where any person is so registered in pursuance of an application stating that it is proposed to receive such patients, that fact shall be specified in the certificate of registration, and the particulars of the registration shall be entered by the registration authority in a separate part of the register.

Special provisions as to registration of nursing homes.

(2) It shall be a condition of the registration of any person in respect of a mental nursing home that the number of persons kept at any one time in the home (excluding persons carrying on or employed in the home and their families) does not exceed such number as may be specified in the certificate of registration ; and without prejudice to the foregoing provision, the registration may be effected subject to such conditions (to be specified in the certificate) as the registration authority consider appropriate for regulating the age, sex or other category of persons who may be received in the home.

PART III
—cont.

(3) If any condition imposed by or under subsection (2) of this section is not complied with, the person carrying on the home shall be guilty of an offence and liable on summary conviction, in the case of a first offence, to a fine not exceeding five pounds and in the case of a second or subsequent offence, to a fine not exceeding twenty pounds; and without prejudice to the foregoing provision, the power of the registration authority to cancel registration under section one hundred and eighty-eight of the Public Health Act, 1936, shall include power to cancel the registration on the ground that any such condition has not been complied with.

Conduct
of mental
nursing homes.

16.—(1) The Minister may make regulations as to the conduct of mental nursing homes, and such regulations may in particular—

- (a) make provision as to the facilities and services to be provided in such homes; and
- (b) provide that a contravention or failure to comply with any specified provision of the regulations shall be an offence against the regulations.

(2) Any person guilty of an offence against regulations made under subsection (1) of this section shall be liable on summary conviction, in the case of a first offence, to a fine not exceeding five pounds and in the case of a second or subsequent offence, to a fine not exceeding twenty pounds; and without prejudice to the foregoing provision, the power of the registration authority to cancel registration under section one hundred and eighty-eight of the Public Health Act, 1936, shall include power to cancel the registration of any person on the ground that he has been convicted of such an offence.

(3) A registration authority may, and shall if so required by the Minister, make separate byelaws in respect of mental nursing homes under section one hundred and ninety of the Public Health Act, 1936 (which enables byelaws to prescribe the records to be kept and notices to be given in respect of patients in nursing homes).

Inspection
of mental
nursing homes
and visiting
of patients.

17.—(1) Subject to the provisions of this section, any person authorised in that behalf by the Minister or by the registration authority may, at any time, after producing, if asked to do so, some duly authenticated document showing that he is so authorised, enter and inspect any premises in the area of the authority which are used, or which that person has reasonable cause to believe to be used, for the purposes of a mental nursing home, and may inspect any records kept in accordance with byelaws made under section one hundred and ninety of the Public Health Act, 1936.

(2) A person authorised under subsection (1) of this section to inspect a mental nursing home may visit and interview in private any mentally disordered patient residing in the home—

- (a) for the purpose of investigating any complaint as to his treatment made by or on behalf of the patient ; or
- (b) in any case where the person so authorised has reasonable cause to believe that the patient is not receiving proper care ;

and where the person so authorised is a medical practitioner, he may examine the patient in private and may require the production of and inspect any medical records relating to the treatment of the patient in the nursing home.

(3) Regulations under subsection (1) of section sixteen of this Act may make provision with respect to the exercise on behalf of registration authorities of the powers conferred by this section ; and such regulations may in particular provide—

- (a) for imposing conditions or restrictions with respect to the exercise of those powers in relation to mental nursing homes which, immediately before the commencement of this Act, were registered hospitals ; and
- (b) subject as aforesaid, for requiring the inspection of mental nursing homes under subsection (1) of this section to be carried out on such occasions, or at such intervals, as may be prescribed by the regulations.

(4) In this section “registered hospital” means a hospital registered as mentioned in subsection (9) of section two hundred and thirty-one of the Lunacy Act, 1890.

(5) Section one hundred and ninety-one of the Public Health Act, 1936 (which relates to inspection) shall not apply to mental nursing homes or any premises used or believed to be used as such.

18.—(1) If in the case of a mental nursing home the particulars of the registration of which are entered in the separate part of the register referred to in subsection (1) of section fifteen of this Act the registration is cancelled under section one hundred and eighty-eight of the Public Health Act, 1936, at a time when any patient is liable to be detained in the home under any of the following provisions of this Act, the registration shall, notwithstanding the cancellation, continue in force until the expiration of the period of two months beginning with the date of the cancellation, or until every such patient has ceased to be so liable, whichever first occurs.

Continuance of special registration on cancellation or death.

(2) If the person registered in respect of any such mental nursing home as aforesaid (not being one of two or more persons so registered) dies at a time when any patient is liable to be

PART III
—cont.

detained therein as aforesaid, the registration shall continue in force—

- (a) as from the grant of representation to the estate of the deceased, for the benefit of the personal representative of the deceased ; and
- (b) pending the grant of such representation, for the benefit of any person approved for the purpose by the registration authority,

until the expiration of the period of two months beginning with the death, or until every such patient has ceased to be so liable, or until a person other than the deceased has been registered in respect of the home, whichever first occurs ; and for the purposes of Part VI of the Public Health Act, 1936, and of this Act any person for whose benefit the registration continues in force under this subsection shall be treated as registered in respect of the home.

Residential Homes

Registration
of residential
homes under
National
Assistance
Act, 1948.

19.—(1) Subject to the provisions of this and the next following section, sections thirty-seven to forty of the National Assistance Act, 1948 (which relate to the registration, inspection and conduct of homes for disabled persons and old persons) shall apply in relation to a residential home for mentally disordered persons as they apply in relation to homes to which those enactments applied immediately before the commencement of this Act.

(2) In this Part of this Act “residential home for mentally disordered persons” means an establishment the sole or main object of which is, or is held out to be, the provision of accommodation, whether for reward or not, for persons suffering from mental disorder, not being—

- (a) a mental nursing home ;
- (b) a hospital as defined by this Act ; or
- (c) any other premises managed by a Government department or provided by a local authority ;

and “registration authority”, in relation to a residential home for mentally disordered persons, has the meaning assigned thereto by subsection (2) of section thirty-seven of the National Assistance Act, 1948.

(3) A residential home for mentally disordered persons shall be deemed not to be a voluntary home within the meaning of Part V of the Children and Young Persons Act, 1933, or Part IV of the Children Act, 1948 ; and a child who is resident in a residential home for mentally disordered persons shall not be a foster child within the meaning of Part I of the Children Act, 1958, or a protected child within the meaning of Part IV of the Adoption Act, 1958.

20.—(1) It shall be a condition of the registration of any person in respect of a residential home for mentally disordered persons that the number of persons kept at any one time in the home (excluding persons carrying on or employed in the home and their families) does not exceed such number as may be specified in the certificate of registration; and without prejudice to the foregoing provision, the registration may be effected subject to such conditions (to be specified in the certificate) as the registration authority consider appropriate for regulating the age, sex or other category of persons who may be received in the home.

PART III
—cont.

Special provisions as to registration of residential homes.

(2) If any condition imposed by or under subsection (1) of this section is not complied with, the person carrying on the home shall be guilty of an offence and liable on summary conviction, in the case of a first offence, to a fine not exceeding five pounds and in the case of a second or subsequent offence, to a fine not exceeding twenty pounds; and without prejudice to the foregoing provision the power of the registration authority to cancel registration under subsection (4) of section thirty-seven of the National Assistance Act, 1948, shall include power to cancel the registration on the ground that any such condition has not been complied with.

(3) In relation to residential homes for mentally disordered persons, section forty of the National Assistance Act, 1948, shall have effect as if paragraph (a) of subsection (1) of that section (which enables the Minister to make regulations for purposes corresponding with subsection (1) of this section) were omitted.

21.—(1) The power of the Minister to make regulations under section forty of the National Assistance Act, 1948, with respect to the conduct of residential homes for mentally disordered persons shall include power to make regulations as to the records to be kept and notices to be given in respect of persons received in such homes.

Records and inspection of residential homes.

(2) The powers of inspection conferred by section thirty-nine of the said Act, in its application to residential homes for mentally disordered persons, shall include power to inspect any records required to be kept in accordance with regulations made by virtue of subsection (1) of this section under section forty of that Act.

Miscellaneous

22. A mental welfare officer of a local health authority may, at all reasonable times, after producing, if asked to do so, some duly authenticated document showing that he is such an officer, enter and inspect any premises (not being a hospital) in the area of that authority in which a mentally disordered patient is living, if he has reasonable cause to believe that the patient is not under proper care.

Powers of entry and inspection of other premises.

PART III
—cont.
Prosecution
of offences.

23.—(1) The registration authority may prosecute for any offence under this Part of this Act, or any enactment thereby applied.

(2) Section two hundred and ninety-eight of the Public Health Act, 1936 (which restricts the right to prosecute for offences under that Act) shall not apply to offences under Part VI of that Act in respect of mental nursing homes.

Application
to London.

24. In relation to the administrative county of London the provisions of this Part of this Act shall have effect subject to the following modifications, that is to say—

(a) for any reference to Part VI of the Public Health Act, 1936, there shall be substituted a reference to Part XI of the Public Health (London) Act, 1936 ;

(b) for references to sections one hundred and eighty-eight, one hundred and ninety, one hundred and ninety-one and one hundred and ninety-two of the Public Health Act, 1936, there shall be substituted respectively references to sections two hundred and forty-two, two hundred and forty-four, two hundred and forty-five and two hundred and forty-six of the Public Health (London) Act, 1936 ; and

(c) for subsection (3) of section fourteen there shall be substituted the following subsection :—

“(3) In this Part of this Act ‘registration authority’, in relation to a mental nursing home, means the local supervising authority as defined by section two hundred and forty of the Public Health (London) Act, 1936 ; and section two hundred and forty-nine of that Act (which enables the London County Council to delegate to the council of a metropolitan borough certain powers exercisable under Part XI of that Act) shall have effect as if the reference to the said Part XI included a reference to this Part of this Act so far as it relates to mental nursing homes.”

PART IV

COMPULSORY ADMISSION TO HOSPITAL AND GUARDIANSHIP

Procedure for hospital admission

25.—(1) A patient may be admitted to a hospital, and there detained for the period allowed by this section, in pursuance of an application (in this Act referred to as an application for admission for observation) made in accordance with the following provisions of this section.

(2) An application for admission for observation may be made in respect of a patient on the grounds—

- (a) that he is suffering from mental disorder of a nature or degree which warrants the detention of the patient in a hospital under observation (with or without other medical treatment) for at least a limited period ; and
- (b) that he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons.

(3) An application for admission for observation shall be founded on the written recommendations in the prescribed form of two medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in paragraphs (a) and (b) of subsection (2) of this section are complied with.

(4) Subject to the provisions of section fifty-two of this Act (in a case where an application is made under that section for transferring the functions of the nearest relative of the patient), a patient admitted to hospital in pursuance of an application for admission for observation may be detained for a period not exceeding twenty-eight days beginning with the day on which he is admitted, but shall not be detained thereafter unless, before the expiration of that period, he has become liable to be detained by virtue of a subsequent application, order or direction under any of the following provisions of this Act.

26.—(1) A patient may be admitted to a hospital, and there detained for the period allowed by the following provisions of this Act, in pursuance of an application (in this Act referred to as an application for admission for treatment) made in accordance with the following provisions of this section.

(2) An application for admission for treatment may be made in respect of a patient on the grounds—

- (a) that he is suffering from mental disorder, being—
 - (i) in the case of a patient of any age, mental illness or severe subnormality ;
 - (ii) in the case of a patient under the age of twenty-one years, psychopathic disorder or subnormality ;

PART IV
—cont.

and that the said disorder is of a nature or degree which warrants the detention of the patient in a hospital for medical treatment under this section ; and

(b) that it is necessary in the interests of the patient's health or safety or for the protection of other persons that the patient should be so detained.

(3) An application for admission for treatment shall be founded on the written recommendations in the prescribed form of two medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in paragraphs (a) and (b) of subsection (2) of this section are complied with ; and each such recommendation shall include—

(a) such particulars as may be prescribed of the grounds for that opinion so far as it relates to the conditions set out in the said paragraph (a) ; and

(b) a statement of the reasons for that opinion so far as it relates to the conditions set out in the said paragraph (b), specifying whether other methods of dealing with the patient are available, and if so why they are not appropriate.

(4) An application for admission for treatment, and any recommendation given for the purposes of such an application, may describe the patient as suffering from more than one of the forms of mental disorder referred to in subsection (2) of this section ; but the application shall be of no effect unless the patient is described in each of the recommendations as suffering from the same one of those forms of mental disorder, whether or not he is also described in either of those recommendations as suffering from another of those forms.

(5) An application for admission for treatment made on the ground that the patient is suffering from psychopathic disorder or subnormality, and no other form of mental disorder referred to in subsection (2) of this section, shall state the age of the patient, or, if his exact age is not known to the applicant, shall state (if it be the fact) that the patient is believed to be under the age of twenty-one years.

General
provisions as to
applications.

27.—(1) Subject to the provisions of this section, an application for the admission of a patient for observation or for treatment may be made either by the nearest relative of the patient or by a mental welfare officer ; and every such application shall be addressed to the managers of the hospital to which admission is sought and shall specify the qualification of the applicant to make the application.

(2) An application for admission for treatment shall not be made by a mental welfare officer if the nearest relative of the patient has notified that officer, or the local health authority by

whom that officer is appointed, that he objects to the application being made, and, without prejudice to the foregoing provision, shall not be made by such an officer except after consultation with the person (if any) appearing to be the nearest relative of the patient unless it appears to that officer that in the circumstances such consultation is not reasonably practicable or would involve unreasonable delay.

(3) No application for the admission of a patient shall be made by any person unless that person has personally seen the patient within the period of fourteen days ending with the date of the application.

(4) An application for the admission of a patient shall be sufficient if the recommendations on which it is founded are given either as separate recommendations, each signed by a medical practitioner, or as a joint recommendation signed by two such practitioners.

28.—(1) The recommendations required for the purposes of an application for the admission of a patient under this Part of this Act (in this Act referred to as “medical recommendations”) shall be signed on or before the date of the application, and shall be given by practitioners who have personally examined the patient either together or at an interval of not more than seven days.

General provisions as to medical recommendations.

(2) Of the medical recommendations given for the purposes of any such application, one shall be given by a practitioner approved for the purposes of this section by a local health authority as having special experience in the diagnosis or treatment of mental disorder; and unless that practitioner has previous acquaintance with the patient, the other such recommendation shall, if practicable, be given by a medical practitioner who has such previous acquaintance.

(3) Where the application is for the admission of the patient to a hospital not being a mental nursing home, one (but not more than one) of the medical recommendations may be given by a practitioner on the staff of that hospital, except where the patient is proposed to be accommodated under section five of the National Health Service Act, 1946 (which relates to accommodation for private patients).

(4) A medical recommendation for the purposes of an application for the admission of a patient under this Part of this Act shall not be given by any of the following persons, that is to say—

(a) the applicant;

(b) a partner of the applicant or of a practitioner by whom another medical recommendation is given for the purposes of the same application;

PART IV
—cont.

PART IV
—cont.

(c) a person employed as an assistant by the applicant or by any such practitioner as aforesaid ;

(d) a person who receives or has an interest in the receipt of any payments made on account of the maintenance of the patient ; or

(e) except as provided by subsection (3) of this section, a practitioner on the staff of the hospital to which the patient is to be admitted,

or by the husband, wife, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister or sister-in-law of the patient, or of any such person as aforesaid, or of a practitioner by whom another medical recommendation is given for the purposes of the same application.

Admission
for observation
in case of
emergency.

29.—(1) In any case of urgent necessity, an application for admission for observation may be made in respect of a patient in accordance with the following provisions of this section, and any application so made is in this Act referred to as an emergency application.

(2) An emergency application may be made either by a mental welfare officer or by any relative of the patient ; and every such application shall include a statement (to be verified by the medical recommendation first referred to in subsection (3) of this section) that it is of urgent necessity for the patient to be admitted and detained under section twenty-five of this Act, and that compliance with the foregoing provisions of this Part of this Act relating to applications for admission for observation would involve undesirable delay.

(3) An emergency application shall be sufficient in the first instance if founded on one of the medical recommendations required by section twenty-five of this Act, given, if practicable, by a practitioner who has previous acquaintance with the patient and otherwise complying with the requirements of section twenty-eight of this Act so far as applicable to a single recommendation, but shall cease to have effect on the expiration of a period of seventy-two hours from the time when the patient is admitted to the hospital unless—

(a) the second medical recommendation required as aforesaid is given and received by the managers within that period ; and

(b) that recommendation and the recommendation first referred to in this subsection together comply with all the requirements of the said section twenty-eight (other than the requirement as to the time of signature of the second recommendation).

(4) In relation to an emergency application, section twenty-seven of this Act shall have effect as if in subsection (3) of that section for the words “ fourteen days ” there were substituted the words “ three days ”.

30.—(1) An application for the admission of a patient to a hospital may be made under this Part of this Act—

PART IV
—cont.

- (a) in any case, notwithstanding that the patient is already an in-patient in that hospital, not being liable to be detained in pursuance of an application under this Part of this Act ;
- (b) in the case of an application for admission for treatment, notwithstanding that the patient is for the time being liable to be detained in the hospital in pursuance of an application for his admission for observation ;

Applications
in respect of
patients
already in
hospital.

and where an application is so made the patient shall be treated for the purposes of this Part of this Act as if he had been admitted to the hospital at the time when that application was received by the managers.

(2) If, in the case of a patient who is an in-patient in a hospital, not being liable to be detained therein under this Part of this Act, it appears to the medical practitioner in charge of the treatment of the patient that an application ought to be made under this Part of this Act for the admission of the patient to hospital, he may furnish to the managers a report in writing to that effect ; and in any such case the patient may be detained in the hospital for a period of three days beginning with the day on which the report is so furnished.

31.—(1) An application for the admission of a patient to a hospital under this Part of this Act, duly completed in accordance with the foregoing provisions of this Part of this Act, shall be sufficient authority for the applicant, or any person authorised by the applicant, to take the patient and convey him to the hospital at any time within the following period, that is to say—

Effect of
application
for admission.

- (a) in the case of an application other than an emergency application, the period of fourteen days beginning with the date on which the patient was last examined by a medical practitioner before giving a medical recommendation for the purposes of the application ;
- (b) in the case of an emergency application, the period of three days beginning with the date on which the patient was examined by the practitioner giving the medical recommendation first referred to in subsection (3) of section twenty-nine of this Act, or with the date of the application, whichever is the earlier.

(2) Where a patient is admitted within the said period to the hospital specified in such an application as aforesaid, or, being within that hospital, is treated by virtue of section thirty of this Act as if he had been so admitted, the application shall be sufficient authority for the managers to detain the patient in the hospital in accordance with the provisions of this Act.

(3) Any application for the admission of a patient under this Part of this Act which appears to be duly made and to be founded on the necessary medical recommendations may be acted

PART IV
—cont.

upon without further proof of the signature or qualification of the person by whom the application or any such medical recommendation, is made or given, or of any matter of fact or opinion stated therein.

(4) A patient who is admitted to a hospital in pursuance of an application for admission for treatment may apply to a Mental Health Review Tribunal within the period of six months beginning with the day on which he is so admitted, or with the day on which he attains the age of sixteen years, whichever is the later.

(5) Where a patient is admitted to a hospital in pursuance of an application for admission for treatment, any previous application under this Part of this Act by virtue of which he was liable to be detained in a hospital or subject to guardianship shall cease to have effect.

Rectification
of application
and recom-
mendations.

32.—(1) If within the period of fourteen days beginning with the day on which a patient has been admitted to a hospital in pursuance of an application for admission for observation or for treatment the application, or any medical recommendation given for the purposes of the application, is found to be in any respect incorrect or defective, the application or recommendation may, within that period and with the consent of the managers of the hospital, be amended by the person by whom it was signed; and upon such amendment being made the application or recommendation shall have effect and shall be deemed to have had effect as if it had been originally made as so amended.

(2) Without prejudice to the provisions of the foregoing subsection, if within the period therein mentioned it appears to the managers of the hospital that one of the two medical recommendations on which an application for the admission of a patient is founded is insufficient to warrant the detention of the patient in pursuance of the application, they may, within that period, give notice in writing to that effect to the applicant; and where any such notice is given in respect of a medical recommendation, that recommendation shall be disregarded, but the application shall be, and shall be deemed always to have been, sufficient if—

(a) a fresh medical recommendation complying with the relevant provisions of this Part of this Act (other than the provisions relating to the time of signature and the interval between examinations) is furnished to the managers within that period; and

(b) that recommendation, and the other recommendation on which the application is founded, together comply with those provisions.

(3) Where the medical recommendations upon which an application for admission is founded are, taken together, insufficient to warrant the detention of the patient in pursuance of the application, a notice under subsection (2) of this section may be given

in respect of either of those recommendations; but this subsection shall not apply in a case where the application is of no effect by virtue of subsection (4) of section twenty-six of this Act.

PART IV
—cont.

(4) Nothing in this section shall be construed as authorising the giving of notice in respect of an application made as an emergency application under section twenty-nine of this Act, or the detention of a patient admitted in pursuance of such an application, after the period of seventy-two hours referred to in subsection (3) of that section, unless the conditions set out in paragraphs (a) and (b) of that subsection are complied with or would be complied with apart from any error or defect to which this section applies.

Procedure for reception into guardianship

33.—(1) A patient may be received into guardianship, for the period allowed by the following provisions of this Act, in pursuance of an application (in this Act referred to as a guardianship application) made in accordance with the following provisions of this section.

Application for guardianship.

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

(a) that he is suffering from mental disorder, being—

(i) in the case of a patient of any age, mental illness or severe subnormality;

(ii) in the case of a patient under the age of twenty-one years, psychopathic disorder or subnormality;

and that his disorder is of a nature or degree which warrants the reception of the patient into guardianship under this section; and

(b) that it is necessary in the interests of the patient or for the protection of other persons that the patient should be so received.

(3) The person named as guardian in a guardianship application may be either a local health authority or any other person (including the applicant himself); but a guardianship application in which a person other than a local health authority is named as guardian shall be of no effect unless it is accepted on behalf of that person by the local health authority for the area in which he resides.

(4) Every such application shall be forwarded to the local health authority therein named as guardian, or, as the case may be, to the local health authority for the area in which the person so named resides, and, except where the person so named is the local health authority, shall be accompanied by a statement in writing by the person so named that he is willing to act as guardian.

(5) Subsections (3) to (5) of section twenty-six and sections twenty-seven and twenty-eight of this Act shall apply in relation

PART IV
—cont.

to a guardianship application as they apply in relation to an application for admission for treatment, but subject to the following modifications, that is to say—

- (a) in section twenty-six, references to subsection (2) of that section, and to paragraph (a) or paragraph (b) of that subsection, shall be construed as references to subsection (2) of this section and to paragraph (a) or paragraph (b) of that subsection, and in paragraph (b) of subsection (3) of that section the words from “specifying” to the end of the paragraph shall be omitted;
- (b) in subsection (1) of section twenty-seven, the words “shall be addressed to the managers of the hospital to which admission is sought, and” shall be omitted;
- (c) subsection (3) of section twenty-eight shall be omitted and for paragraph (e) of subsection (4) of that section there shall be substituted the following paragraph:—
“(e) the person named as guardian in the application”.

Effect of
guardianship
application,
etc.

34.—(1) Where a guardianship application, duly made under the foregoing provisions of this Act and forwarded to the local health authority within the period allowed by subsection (2) of this section, is accepted by that authority, the application shall, subject to regulations made by the Minister, confer on the authority or person therein named as guardian, to the exclusion of any other person, all such powers as would be exercisable by them or him in relation to the patient if they or he were the father of the patient and the patient were under the age of fourteen years.

(2) The period within which a guardianship application is required for the purposes of this section to be forwarded to the local health authority is the period of fourteen days beginning with the date on which the patient was last examined by a medical practitioner before giving a medical recommendation for the purposes of the application.

(3) A guardianship application which appears to be duly made and to be founded on the necessary medical recommendations may be acted upon without further proof of the signature or qualification of the person by whom the application or any such medical recommendation is made or given, or of any matter of fact or opinion stated therein.

(4) If within the period of fourteen days beginning with the day on which a guardianship application has been accepted by the local health authority the application, or any medical recommendation given for the purposes of the application, is found to be in any respect incorrect or defective, the application or recommendation may, within that period and with the consent of that authority, be amended by the person by whom it was signed; and upon such amendment being made the application or recommendation shall have effect and shall be deemed to have had effect as if it had been originally made as so amended.

(5) A patient who is received into guardianship in pursuance of a guardianship application may apply to a Mental Health Review Tribunal within the period of six months beginning with the day on which the application is accepted, or with the day on which he attains the age of sixteen years, whichever is the later.

PART IV
—cont.

(6) Where a patient is received into guardianship in pursuance of a guardianship application, any previous application under this Part of this Act by virtue of which he was subject to guardianship or liable to be detained in a hospital shall cease to have effect.

Care and treatment of patients

35.—(1) Subject to the provisions of this Part of this Act, the Minister may make regulations for regulating the exercise by the guardians of patients received into guardianship under this Part of this Act of their powers as such, and for imposing on such guardians, and upon local health authorities in the case of patients under the guardianship of persons other than local health authorities, such duties as he considers necessary or expedient in the interests of the patients.

Regulations
as to
guardianship.

(2) Regulations under this section may in particular make provision for requiring the patients to be visited, on such occasions or at such intervals as may be prescribed by the regulations, on behalf of such local health authorities as may be so prescribed, and shall provide for the appointment, in the case of every patient subject to the guardianship of a person other than a local health authority, of a medical practitioner to act as the nominated medical attendant of the patient.

36.—(1) Any postal packet addressed to a patient detained in a hospital under this Part of this Act may be withheld from the patient if, in the opinion of the responsible medical officer, the receipt of the packet would be calculated to interfere with the treatment of the patient or to cause him unnecessary distress; and any packet so withheld shall, if the name and address of the sender are sufficiently identified therein, be returned to him by post.

Correspon-
dence of
patients.

(2) Subject to the provisions of this section, any postal packet addressed by a patient so detained and delivered by him for dispatch may be withheld from the Post Office—

(a) if the addressee has given notice in writing to the managers of the hospital or to the responsible medical officer requesting that communications addressed to him by the patient should be withheld; or

PART IV
—CONT.

- (b) if it appears to that officer that the packet would be unreasonably offensive to the addressee, or is defamatory of other persons (other than persons on the staff of the hospital) or would be likely to prejudice the interests of the patient:

Provided that this subsection does not apply to any postal packet addressed as follows, that is to say—

- (i) to the Minister;
- (ii) to any Member of the Commons House of Parliament;
- (iii) to the Master or Deputy Master or any other officer of the Court of Protection;
- (iv) to the managers of the hospital;
- (v) to any other authority or person having power to discharge the patient under this Part of this Act;
- (vi) at any time when the patient is entitled to make application to a Mental Health Review Tribunal, to that tribunal,

and regulations made by the Minister may except from this subsection, subject to such conditions or limitations (if any) as may be prescribed by the regulations, postal packets addressed to such other classes of person as may be so prescribed.

(3) Nothing in paragraph (b) of subsection (2) of this section shall be construed as authorising a responsible medical officer to open or examine the contents of any postal packet unless he is of opinion that the patient is suffering from mental disorder of a kind calculated to lead him to send such communications as are referred to in that paragraph.

(4) Except as provided by this section, it shall not be lawful to prevent or impede the delivery to a patient detained as aforesaid of any postal packet addressed to him and delivered by the Post Office, or the delivery to the Post Office of any postal packet addressed by such a patient and delivered by him for dispatch.

(5) This section shall apply in relation to a patient who is subject to guardianship under this Part of this Act as it applies in relation to a patient who is detained in a hospital thereunder, and as if—

- (a) for any reference to the managers of the hospital there were substituted a reference to the guardian; and
- (b) for any reference to the responsible medical officer there were substituted a reference to the guardian or any person authorised by the guardian to act for the purposes of this subsection.

NATIONAL HEALTH SERVICE

MENTAL HEALTH ACT, 1959

Summary. This memorandum announces the bringing into operation of the remaining provisions of the Mental Health Act, 1959, and the Mental Health (Hospital and Guardianship) Regulations, 1960. It encloses a memorandum giving guidance on Parts I, IV to VII and IX of the Act and on the Regulations. Many previous memoranda are cancelled.

1. The Minister has decided to appoint 1st November, 1960, as the date of commencement of the Mental Health Act, 1959, other than those parts of the Act which are already in operation. The Mental Health (Hospital and Guardianship) Regulations, 1960, will come into force on the same date.

2. The enclosed memorandum gives guidance on Parts I, IV to VII and IX of the Act, and the associated Schedules and Regulations. Separate circulars and memoranda are being or have been issued on Parts II, III and VIII of the Act.

3. Action by hospital Boards and Committees which is required *before the appointed day* is mentioned in paragraphs 11, 28, 101 and 146 of the memorandum.

4. The following memoranda are cancelled with effect from the date of commencement of the Act:—

- R.H.B. (47) 13.
 - R.H.B. (48) 12.
 - R.H.B. (48) 17.
 - R.H.B. (48) 21.
 - R.H.B. (48) 26.
 - R.H.B. (48) 27.
 - R.H.B. (48) 32.
 - R.H.B. (48) 67.
 - R.H.B. (48) 69.
 - R.H.B. (48) 87.
 - R.H.B. (49) 10/H.M.C. (49) 8.
 - R.H.B. (49) 16/H.M.C. (49) 10/B.G. (49) 12.
 - R.H.B. (49) 22/H.M.C. (49) 14.
 - R.H.B. (49) 67/H.M.C. (49) 55.
 - R.H.B. (49) 96/H.M.C. (49) 78.
 - R.H.B. (49) 136/H.M.C. (49) 115.
 - R.H.B. (50) 95/H.M.C. (50) 93.
 - R.H.B. (51) 30/H.M.C. (51) 28.
 - R.H.B. (52) 86/H.M.C. (52) 79.
 - R.H.B. (53) 108/H.M.C. (53) 102/B.G. (53) 104—Paragraph 25 (i) and Appendices II and III *only*.
 - H.M. (55) 46.
 - H.M. (56) 25.
 - H.M. (58) 5, paragraphs 1, 9-10, 12-15, 17, 19-22.
 - H.M. (59) 92.
- All Board of Control circulars.

29th August, 1960.

95204/1/2.

MINISTRY OF HEALTH,
SAVILE ROW,
LONDON, W.1.

NATIONAL HEALTH SERVICE

MENTAL HEALTH ACT, 1959

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- R.H.B. (48) 37
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- R.H.B. (48) 47
- R.H.B. (48) 57
- R.H.B. (48) 67
- R.H.B. (48) 77
- R.H.B. (48) 87
- R.H.B. (48) 107
- R.H.B. (48) 107/M.C. (48) 12
- R.H.B. (48) 107/M.C. (48) 107/B.G. (48) 12
- R.H.B. (48) 107/M.C. (48) 14
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- R.H.B. (48) 107/M.C. (48) 25
- R.H.B. (48) 107/M.C. (48) 28
- R.H.B. (48) 107/M.C. (48) 38
- R.H.B. (48) 107/M.C. (48) 112
- R.H.B. (48) 107/M.C. (48) 92
- R.H.B. (48) 107/M.C. (48) 97
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(6) In this section "postal packet" has the same meaning as in the Post Office Act, 1953; and the provisions of this section shall have effect notwithstanding anything in section fifty-six of that Act.

PART IV
—cont.

37.—(1) For the purpose of advising whether an application to a Mental Health Review Tribunal should be made by or in respect of a patient who is liable to be detained or subject to guardianship under this Part of this Act, or of furnishing information as to the condition of a patient for the purposes of such an application, or of advising as to the exercise by the nearest relative of any such patient of any power to order his discharge, any medical practitioner authorised by or on behalf of the patient or other person who is entitled to make or has made the application, or by the nearest relative of the patient, as the case may be, may, at any reasonable time, visit the patient and examine him in private.

Visiting and
examination
of patients.

(2) Where application is made to a registration authority or regional hospital board to exercise, in respect of a patient liable to be detained in a mental nursing home, any power to make an order for his discharge, the following persons, that is to say—

- (a) any medical practitioner authorised by that authority or board; and
- (b) any other person (whether a medical practitioner or not) authorised under Part III of this Act to inspect the home,

may at any reasonable time visit the patient and interview him in private.

(3) Any person authorised for the purposes of subsection (2) of this section to visit a patient may require the production of and inspect any documents constituting or alleged to constitute the authority for the detention of the patient under this Part of this Act; and any person so authorised, being a medical practitioner, may examine the patient in private, and may require the production of and inspect any other medical records relating to the treatment of the patient in the home.

38.—(1) If in the case of a patient who is for the time being detained in a hospital in pursuance of an application for admission for treatment, or subject to guardianship in pursuance of a guardianship application, it appears to the responsible medical officer that the patient is suffering from a form of mental disorder other than the form or forms specified in the application, he may furnish to the managers of the hospital, or to the guardian, as the case may be, a report to that effect; and where a report is so furnished, the application shall have effect as if that other form of mental disorder were specified therein.

Re-classifica-
tion of
patients.

PART IV
—cont.

(2) Where a report is furnished under this section, in respect of a patient who has attained the age of sixteen years, the managers or guardian shall cause the patient and the nearest relative to be informed, and the patient or that relative may, within the period of twenty-eight days beginning with the day on which he is so informed, apply to a Mental Health Review Tribunal.

(3) In relation to a patient who is subject to the guardianship of a person other than a local health authority, this section shall have effect as if for any reference to the responsible medical officer there were substituted a reference to the nominated medical attendant of the patient.

Leave of
absence from
hospital.

39.—(1) The responsible medical officer may grant to any patient who is for the time being liable to be detained in a hospital under this Part of this Act leave to be absent from the hospital subject to such conditions (if any) as that officer considers necessary in the interests of the patient or for the protection of other persons.

(2) Leave of absence may be granted to a patient under this section either indefinitely or on specified occasions or for any specified period; and where leave is so granted for a specified period, that period may be extended by further leave granted in the absence of the patient.

(3) Where it appears to the responsible medical officer that it is necessary so to do in the interests of the patient or for the protection of other persons, he may, upon granting leave of absence under this section, direct that the patient remain in custody during his absence; and where leave of absence is so granted the patient may be kept in the custody of any officer on the staff of the hospital, or of any other person authorised in writing by the managers of the hospital.

(4) In any case where a patient is absent from a hospital in pursuance of leave of absence granted under this section, and it appears to the responsible medical officer that it is necessary so to do in the interests of the patient's health or safety or for the protection of other persons, that officer may, subject to subsection (5) of this section, by notice in writing given to the patient or to the person for the time being in charge of the patient, revoke the leave of absence and recall the patient to the hospital.

(5) A patient to whom leave of absence is granted under this section shall not be recalled under subsection (4) of this section after he has ceased to be liable to be detained under this Part of this Act; and without prejudice to any other provision of this Part of this Act any such patient shall cease to be so liable at

the expiration of the period of six months beginning with the first day of his absence on leave unless either—

PART IV
—cont.

- (a) he has returned to the hospital, or has been transferred to another hospital under the following provisions of this Act, before the expiration of that period; or
- (b) he is absent without leave at the expiration of that period.

40.—(1) Where a patient who is for the time being liable to be detained under this Part of this Act in a hospital—

Return and
re-admission of
patients absent
without leave.

- (a) absents himself from the hospital without leave granted under section thirty-nine of this Act; or
- (b) fails to return to the hospital on any occasion on which, or at the expiration of any period for which, leave of absence was granted to him under that section, or upon being recalled thereunder; or
- (c) absents himself without permission from any place where he is required to reside in accordance with conditions imposed on the grant of leave of absence under that section,

he may, subject to the provisions of this section, be taken into custody and returned to the hospital or place by any mental welfare officer, by any officer on the staff of the hospital, by any constable, or by any person authorised in writing by the managers of the hospital.

(2) Where a patient who is for the time being subject to guardianship under this Part of this Act absents himself without the leave of the guardian from the place at which he is required by the guardian to reside, he may, subject to the provisions of this section, be taken into custody and returned to that place by any officer on the staff of a local health authority, by any constable, or by any person authorised in writing by the guardian or a local health authority.

(3) A patient shall not be taken into custody under this section after the expiration of the following period (beginning with the first day of his absence without leave), that is to say—

- (a) in the case of a patient over the age of twenty-one years on that day who is liable to be detained by virtue of an application for admission for treatment or is subject to guardianship by virtue of a guardianship application, and is so liable or subject as a psychopathic or subnormal patient, six months;
- (b) in any other case, twenty-eight days;

and a patient who has not returned or been taken into custody under this section within the said period shall cease to be liable to be detained or subject to guardianship, as the case may be, at the expiration of that period.

PART IV
—cont.

(4) In this Act “absent without leave” means absent from any hospital or other place and liable to be taken into custody and returned under this section, and kindred expressions shall be construed accordingly.

Regulations
as to transfer
of patients.

41.—(1) In such circumstances and subject to such conditions as may be prescribed by regulations made by the Minister—

- (a) a patient who is for the time being liable to be detained in a hospital by virtue of an application under this Part of this Act may be transferred to another hospital or into the guardianship of a local health authority or of any person approved by such an authority;
- (b) a patient who is for the time being subject to the guardianship of a local health authority or other person by virtue of an application under this Part of this Act may be transferred into the guardianship of another local health authority or person, or be transferred to a hospital.

(2) Where a patient is transferred in pursuance of regulations under this section, the provisions of this Part of this Act (including this subsection) shall apply to him as follows, that is to say—

- (a) where the patient, being liable to be detained in a hospital by virtue of an application for admission for observation or for treatment, is transferred to another hospital, as if the application were an application for admission to that other hospital and as if the patient had been admitted to that other hospital at the time when he was originally admitted in pursuance of the application;
- (b) where the patient, being liable to be detained as aforesaid, is transferred into guardianship, as if the application were a guardianship application duly accepted at the time aforesaid;
- (c) where the patient, being subject to guardianship by virtue of a guardianship application, is transferred into the guardianship of another authority or person, as if the application were for his reception into the guardianship of that authority or person and had been accepted at the time when it was originally accepted;
- (d) where the patient, being subject to guardianship as aforesaid, is transferred to a hospital, as if the guardianship application were an application for admission to that hospital (being an application for admission for treatment) and as if the patient had been admitted to the hospital at the time when the application was originally accepted.

PART IV
—cont.

(3) Without prejudice to the foregoing provisions of this section, any patient who is for the time being liable to be detained under this Part of this Act in a hospital vested in the Minister under the National Health Service Act, 1946, or any accommodation used under Part II of that Act by the managers of such a hospital, may at any time be removed to any other such hospital or accommodation for which the managers of the first mentioned hospital are also the managers; and paragraph (a) of subsection (2) of this section shall apply in relation to a patient so removed as it applies in relation to a patient transferred in pursuance of regulations made under this section.

(4) Regulations made under this section may make provision for regulating the conveyance to their destination of patients authorised to be transferred or removed in pursuance of the regulations or under subsection (3) of this section.

(5) A patient who, having attained the age of sixteen years, is transferred from guardianship to a hospital in pursuance of regulations made under this section may, within the period of six months beginning with the day on which he is so transferred, apply to a Mental Health Review Tribunal.

42.—(1) If any person (other than a local health authority) having the guardianship of a patient received into guardianship under this Part of this Act—

Transfer of guardianship in case of death, incapacity, etc., of guardian.

(a) dies; or

(b) gives notice in writing to the local health authority that he desires to relinquish the functions of guardian,

the guardianship of the patient shall thereupon vest in the local health authority, but without prejudice to any power to transfer the patient into the guardianship of another person in pursuance of regulations under section forty-one of this Act.

(2) If any such person, not having given notice under paragraph (b) of subsection (1) of this section, is incapacitated by illness or any other cause from performing the functions of guardian of the patient, those functions may, during his incapacity, be performed on his behalf by the local health authority or by any other person approved for the purpose by that authority.

(3) If it appears to the county court, upon application made by a mental welfare officer, that any person other than a local health authority having the guardianship of a patient received into guardianship under this Part of this Act has performed his functions negligently or in a manner contrary to the interests of the patient, the court may order that the guardianship of the patient be transferred to the local health authority or to any other person approved for the purpose by that authority.

PART IV
—cont.

(4) Where the guardianship of a patient is transferred to a local health authority or other person by or under this section, paragraph (c) of subsection (2) of section forty-one of this Act shall apply as if the patient had been transferred into the guardianship of that authority or person in pursuance of regulations under that section.

*Duration of authority for detention or guardianship and
discharge of patients*

Duration of
authority.

43.—(1) Subject to the following provisions of this Part of this Act, a patient admitted to hospital in pursuance of an application for admission for treatment, and a patient placed under guardianship in pursuance of a guardianship application, may be detained in a hospital or kept under guardianship for a period not exceeding one year beginning with the day on which he was so admitted, or the day on which the guardianship application was accepted, as the case may be, but shall not be so detained or kept for any longer period unless the authority for his detention or guardianship is renewed under the following provisions of this section.

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

(a) from the expiration of the period referred to in subsection (1) of this section, for a further period of one year;

(b) from the expiration of any period of renewal under paragraph (a) of this subsection, for a further period of two years,

and so on for periods of two years at a time.

(3) Within the period of two months ending on the day on which a patient who is liable to be detained in pursuance of an application for admission for treatment would cease under this section to be so liable in default of the renewal of the authority for his detention, it shall be the duty of the responsible medical officer to examine the patient; and if it appears to him that it is necessary in the interests of the patient's health or safety or for the protection of other persons that the patient should continue to be liable to be detained, he shall furnish to the managers of the hospital where the patient is liable to be detained a report to that effect in the prescribed form.

(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) where the patient is subject to the guardianship of a local health authority, of the responsible medical officer;

(b) in any other case, of the nominated medical attendant of the patient,

to examine the patient; and, if it appears to him that it is necessary in the interests of the patient or for the protection of other persons that the patient should remain under guardianship, he shall furnish to the guardian and, where the guardian is a person other than a local health authority, to the responsible local health authority a report to that effect in the prescribed form.

(5) Where a report is duly furnished under subsection (3) or subsection (4) of this section, the authority for the detention or guardianship of the patient shall be thereby renewed for the period prescribed in that case by subsection (2) of this section.

(6) Where a report under this section is furnished in respect of a patient who has attained the age of sixteen years, the managers or the local health authority, as the case may be, shall, unless they discharge the patient, cause him to be informed, and the patient may, within the period for which the authority for his detention or guardianship is renewed by virtue of the report, apply to a Mental Health Review Tribunal.

44.—(1) Notwithstanding anything in section forty-three of this Act, a patient who is subject to guardianship by virtue of a guardianship application as a psychopathic or subnormal patient shall cease to be so subject on attaining the age of twenty-five years; and a patient who is liable to be detained by virtue of an application for admission for treatment as a psychopathic or subnormal patient shall cease to be so liable on attaining that age unless the authority for his detention is renewed under the following provisions of this section.

Special provisions as to psychopathic and subnormal patients.

(2) Within the period of two months ending on the day on which a patient would cease under this section to be liable to be detained in a hospital in default of the renewal of the authority for his detention, the responsible medical officer shall examine the patient, and if it appears to him that the patient, if released from the hospital upon attaining the age of twenty-five years, would be likely to act in a manner dangerous to other persons or to himself, shall furnish to the managers a report to that effect in the prescribed form; and where a report is duly furnished under this subsection the authority for the detention of the patient shall be thereby renewed, and shall continue in force accordingly after the patient attains the said age, but without prejudice to the application to the patient of the provisions of section forty-three of this Act.

(3) Where a report under subsection (2) of this section is furnished in respect of a patient, the managers shall cause the patient and the nearest relative of the patient to be informed,

PART IV
—cont.

and the patient and that relative may, at any time before the expiration of the period of twenty-eight days beginning with the day on which the patient attains the age of twenty-five years, apply to a Mental Health Review Tribunal.

Special provisions as to patients absent without leave.

45.—(1) If on the day on which, apart from this section, a patient would cease to be liable to be detained or subject to guardianship under this Part of this Act or, within the period of one week ending with that day, the patient is absent without leave, he shall not cease to be so liable or subject—

- (a) in any case, until the expiration of the period during which he can be taken into custody under section forty of this Act, or the day on which he is returned or returns himself to the hospital or place where he ought to be, whichever is the earlier; and
- (b) if he is returned or returns himself as aforesaid within the period first mentioned in the foregoing paragraph, until the expiration of the period of one week beginning with the day on which he is returned or returns as aforesaid.

(2) Where the period for which a patient is liable to be detained or subject to guardianship is extended by virtue of this section, any examination and report to be made and furnished under subsection (3) or subsection (4) of section forty-three or subsection (2) of section forty-four of this Act may be made and furnished within that period as so extended.

(3) Where the authority for the detention or guardianship of a patient is renewed by virtue of this section after the day on which, apart from this section, that authority would have expired under section forty-three or section forty-four of this Act, the renewal shall take effect as from that day.

Special provisions as to patients sentenced to imprisonment, etc.

46.—(1) Where a patient who is liable to be detained by virtue of an application for admission for treatment or is subject to guardianship by virtue of a guardianship application is detained in custody in pursuance of any sentence or order passed or made by a court in the United Kingdom (including an order committing or remanding him in custody), and is so detained for a period exceeding, or for successive periods exceeding in the aggregate, six months, the application shall cease to have effect at the expiration of that period.

(2) Where any such patient is detained in custody as aforesaid but the application does not cease to have effect under subsection (1) of this section, then—

- (a) if apart from this subsection the patient would have ceased to be liable to be detained or subject to guardianship as aforesaid on or before the day on which he is

discharged from custody, he shall not cease and shall be deemed not to have ceased to be so liable or subject until the end of that day ; and

- (b) in any case, sections forty and forty-five of this Act shall apply in relation to the patient as if he had absented himself without leave on that day.

PART IV
—cont.

47.—(1) Subject to the provisions of this and the next following section, a patient who is for the time being liable to be detained or subject to guardianship under this Part of this Act shall cease to be so liable or subject if an order in writing discharging him from detention or guardianship (in this Act referred to as an order for discharge) is made in accordance with the following provisions of this section.

Discharge
of patients.

(2) An order for discharge may be made in respect of a patient—

- (a) where the patient is liable to be detained in a hospital in pursuance of an application for admission for observation, by the responsible medical officer or by the managers of the hospital ;
- (b) where the patient is liable to be so detained in pursuance of an application for admission for treatment, by the responsible medical officer, by the managers or by the nearest relative of the patient ; and
- (c) where the patient is subject to guardianship, by the responsible medical officer, by the responsible local health authority or by the nearest relative of the patient.

(3) Where the patient is liable to be detained in a mental nursing home in pursuance of an application for admission for observation or for treatment, an order for his discharge may, without prejudice to subsection (2) of this section, be made by the registration authority within the meaning of Part III of this Act and, if the patient is maintained under a contract with a regional hospital board, by that board.

(4) The powers conferred by this section on any authority or body of persons may be exercised by any three or more members of that authority or body authorised by them in that behalf.

48.—(1) Where a report under subsection (2) of section forty-four of this Act has been furnished in respect of a patient, an order for discharge shall not be made by the nearest relative of the patient during the period of six months beginning with the date of the report.

Restrictions on
discharge by
nearest
relative.

(2) An order for the discharge of a patient who is liable to be detained in a hospital shall not be made by his nearest

PART IV
—cont.

relative except after giving not less than seventy-two hours' notice in writing to the managers of the hospital; and if, within seventy-two hours after such notice has been given, the responsible medical officer furnishes to the managers a report certifying that in the opinion of that officer the patient, if discharged, would be likely to act in a manner dangerous to other persons or to himself,—

- (a) any order for the discharge of the patient made by that relative in pursuance of the notice shall be of no effect; and
- (b) 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 of the report.

(3) In any case where a report under subsection (2) of this section is furnished in respect of a patient, the managers shall cause the nearest relative of the patient to be informed, and that relative may, within the period of twenty-eight days beginning with the day on which he is so informed, apply to a Mental Health Review Tribunal in respect of the patient.

Functions of relatives of patients

Definition of
relative and
nearest
relative.

49.—(1) In this Part of this Act “relative”, means any of the following, that is to say—

- (a) husband or wife;
- (b) son or daughter;
- (c) father;
- (d) mother;
- (e) brother or sister;
- (f) grandparent;
- (g) grandchild;
- (h) uncle or aunt;
- (i) nephew or niece.

(2) In deducing relationships for the purposes of this section, an adopted person shall be treated as the child of the person or persons by whom he was adopted and not as the child of any other person; and subject as aforesaid, any relationship of the half-blood shall be treated as a relationship of the whole blood, and an illegitimate person shall be treated as the legitimate child of his mother.

(3) In this Part of this Act, subject to the provisions of this section and to the following provisions of this Part of this Act, the “nearest relative” means the person first described in subsection (1) of this section who is for the time being surviving, relatives of the whole blood being preferred to relatives of the same description of the half-blood and the elder or eldest of

two or more relatives described in any paragraph of that subsection being preferred to the other or others of those relatives, regardless of sex.

PART IV
—cont.

(4) Where the person who, under subsection (3) of this section, would be the nearest relative of a patient—

(a) is not ordinarily resident within the United Kingdom ; or

(b) being the husband or wife of the patient, is permanently separated from the patient, either by agreement or under an order of a court, or has deserted or has been deserted by the patient for a period which has not come to an end ; or

(c) not being the husband, wife, father or mother of the patient, is for the time being under twenty-one years of age ; or

(d) is a man against whom an order divesting him of authority over the patient has been made under section thirty-eight of the Sexual Offences Act, 1956 (which relates to incest with a girl under twenty-one) and has not been rescinded,

the nearest relative of the patient shall be ascertained as if that person were dead.

(5) In this section “ adoption order ” means an order for the adoption of any person made under Part I of the Adoption Act, 1958, or any previous enactment relating to the adoption of children, or any corresponding enactment of the Parliament of Northern Ireland, and “ court ” includes a court in Scotland or Northern Ireland.

(6) In this section “ husband ” and “ wife ” include a person who is living with the patient as the patient’s husband or wife, as the case may be (or, if the patient is for the time being an in-patient in a hospital, was so living until the patient was admitted), and has been or had been so living for a period of not less than six months ; but a person 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.

50. In any case where the rights and powers of a parent of a patient, being a child or young person, are vested in a local authority or other person by virtue of—

Children and
young persons
in care of local
authority.

(a) section seventy-five of the Children and Young Persons Act, 1933 (which relates to children and young persons committed to the care of fit persons under that Act) ;

(b) section seventy-nine of the Children and Young Persons (Scotland) Act, 1937 (which makes corresponding provision in Scotland) ; or

PART IV
—cont.

- (c) section three of the Children Act, 1948 (which relates to children in respect of whom parental rights have been assumed under section two of that Act),

that authority or person shall be deemed to be the nearest relative of the patient in preference to any person except the patient's husband or wife (if any) and except, in a case where the said rights and powers are vested in a local authority by virtue of subsection (2) of the said section three, any parent of the patient not being the person on whose account the resolution mentioned in that subsection was passed.

Nearest
relative of
infant under
guardianship,
etc.

51.—(1) Where a patient who has not attained the age of twenty-one years—

- (a) is, by virtue of an order made by a court in the exercise of jurisdiction (whether under any enactment or otherwise) in respect of the guardianship of infants (including an order under section thirty-eight of the Sexual Offences Act, 1956), or by virtue of a deed or will executed by his father or mother, under the guardianship of a person not being his nearest relative under the foregoing provisions of this Act, or is under the joint guardianship of two persons of whom one is such a person as aforesaid ; or
- (b) is, by virtue of an order made by a court in the exercise of such jurisdiction as aforesaid or in matrimonial proceedings, or by virtue of a separation agreement between his father and mother, in the custody of any such person,

the person or persons having the guardianship or custody of the patient shall, to the exclusion of any other person, be deemed to be his nearest relative.

(2) Subsection (4) of section forty-nine of this Act shall apply in relation to a person who is, or who is one of the persons, deemed to be the nearest relative of a patient by virtue of this section as it applies in relation to a person who would be the nearest relative under subsection (3) of that section.

(3) A patient shall be treated for the purposes of this section as being in the custody of another person if he would be in that other person's custody apart from section thirty-four of this Act.

(4) In this section "court" includes a court in Scotland or Northern Ireland, and "enactment" includes an enactment of the Parliament of Northern Ireland.

52.—(1) The county court may, upon application made in accordance with the provisions of this section in respect of a patient, by order direct that the functions under this Part of this Act of the nearest relative of the patient shall, during the continuance in force of the order, be exercisable by the applicant, or by any other person specified in the application, being a person who, in the opinion of the court, is a proper person to act as the patient's nearest relative and is willing to do so.

PART IV
—cont.

Appointment
by court
of acting
nearest
relative.

(2) An order under this section may be made on the application of—

- (a) any relative of the patient ;
- (b) any other person with whom the patient is residing (or, if the patient is then an in-patient in a hospital, was last residing before he was admitted) ; or
- (c) a mental welfare officer,

but in relation to an application made by such an officer subsection (1) of this section shall have effect as if for the words "the applicant" there were substituted the words "the local health authority".

(3) An application for an order under this section may be made upon any of the following grounds, that is to say—

- (a) that the patient has no nearest relative within the meaning of this Act, or that it is not reasonably practicable to ascertain whether he has such a relative, or who that relative is ;
- (b) that the nearest relative of the patient is incapable of acting as such by reason of mental disorder or other illness ;
- (c) that the nearest relative of the patient unreasonably objects to the making of an application for admission for treatment or a guardianship application in respect of the patient ; or
- (d) that the nearest relative of the patient has exercised without due regard to the welfare of the patient or the interests of the public his power to discharge the patient from hospital or guardianship under this Part of this Act, or is likely to do so.

(4) If immediately before the expiration of the period for which a patient is liable to be detained by virtue of an application for admission for observation, an application under this section, being an application made on the ground specified in paragraph (c) or paragraph (d) of the last foregoing subsection, is pending in respect of the patient, that period shall be extended—

- (a) in any case, until the application under this section has been finally disposed of ; and

PART IV
—cont.

- (b) if an order is made in pursuance of the application under this section, for a further period of seven days ;

and for the purposes of this subsection an application under this section shall be deemed to have been finally disposed of at the expiration of the time allowed for appealing from the decision of the court or, if notice of appeal has been given within that time, when the appeal has been heard or withdrawn, and "pending" shall be construed accordingly.

(5) While an order made under this section is in force, the provisions of this Part of this Act (other than this and the next following section) shall apply in relation to the patient as if for any reference to the nearest relative of the patient there were substituted a reference to the person having the functions of that relative and (without prejudice to the next following section) shall so apply notwithstanding that the person who was the patient's nearest relative when the order was made is no longer his nearest relative.

(6) Where an order is made under this section in respect of a patient who is or subsequently becomes liable to be detained or subject to guardianship under this Part of this Act, the nearest relative of the patient may make an application to a Mental Health Review Tribunal in respect of the patient within the period of twelve months beginning with the date of the order, and in any subsequent period of twelve months during which the order continues in force.

Discharge
and variation
of orders
under s. 52.

53.—(1) An order made under section fifty-two of this Act in respect of a patient may be discharged by the county court upon application made—

- (a) in any case, by the person having the functions of the nearest relative of the patient by virtue of the order ;

- (b) where the order was made on the ground specified in paragraph (a) or paragraph (b) of subsection (3) of the said section fifty-two, or where the person who was the nearest relative of the patient when the order was made has ceased to be his nearest relative, on the application of the nearest relative of the patient.

(2) An order made under the said section fifty-two in respect of a patient may be varied by the county court, on the application of the person having the functions of the nearest relative by virtue of the order or on the application of a mental welfare officer, by substituting for the first-mentioned person a local health authority or any other person who in the opinion of the court is a proper person to exercise those functions, being an authority or person who is willing to do so.

(3) If the person having the functions of the nearest relative of a patient by virtue of an order under the said section fifty-two dies, the foregoing provisions of this section shall apply as if for any reference to that person there were substituted a reference to any relative of the patient, and until the order is discharged or varied under those provisions the functions of the nearest relative under this Part of this Act shall not be exercisable by any person.

(4) An order under section fifty-two of this Act shall, unless previously discharged under subsection (1) of this section, cease to have effect—

- (a) if the patient was on the date of the order liable to be detained in pursuance of an application for admission for treatment or subject to guardianship under this Part of this Act, or becomes so liable or subject within the period of three months beginning with that date, when he ceases to be so liable or subject (otherwise than on being transferred in pursuance of regulations under section forty-one of this Act);
- (b) if the patient was not on the date of the order, and has not within the said period become, so liable or subject, at the expiration of that period.

(5) The discharge or variation under this section of an order made under the said section fifty-two shall not affect the validity of anything previously done in pursuance of the order.

Supplemental

54.—(1) It shall be the duty of a mental welfare officer to make an application for admission to hospital or a guardianship application in respect of a patient within the area of the local authority by whom that officer is appointed in any case where he is satisfied that such an application ought to be made and is of opinion, having regard to any wishes expressed by relatives of the patient or any other relevant circumstances, that it is necessary or proper for the application to be made by him.

(2) Nothing in this section shall be construed as authorising or requiring an application to be made by a mental welfare officer in contravention of the provisions of subsection (2) of section twenty-seven of this Act, or of that subsection as applied by section thirty-three of this Act, or as restricting the power of a mental welfare officer to make any application under this Act.

55. County court rules which relate to applications authorised by this Part of this Act to be made to a county court may make provision—

- (a) for the hearing and determination of such applications otherwise than in open court;

PART IV
—cont.

- (b) for the admission on the hearing of such applications of evidence of such descriptions as may be specified in the rules notwithstanding anything to the contrary in any enactment or rule of law relating to the admissibility of evidence ;
- (c) for the visiting and interviewing of patients in private by or under the directions of the court.

Regulations
for purposes
of Part IV

56.—(1) The Minister may make regulations for prescribing anything which, under this Part of this Act, is required or authorised to be prescribed, and otherwise for carrying this Part of this Act into full effect.

(2) Regulations under this section may in particular make provision—

- (a) for prescribing the form of any application, recommendation, report, order, notice or other document to be made or given under this Part of this Act ;
- (b) for prescribing the manner in which any such application, recommendation, report, order, notice or other document may be proved, and for regulating the service of any such application, report, order or notice ;
- (c) for requiring the managers of hospitals and local health authorities to keep such registers or other records as may be prescribed by the regulations in respect of patients liable to be detained or subject to guardianship under this Part of this Act, and to furnish or make available to those patients, and their relatives, such written statements of their rights and powers under this Act as may be so prescribed ;
- (d) for requiring local health authorities to consult such bodies or persons as may be prescribed by or determined under the regulations in connection with the approval of medical practitioners for the purposes of section twenty-eight of this Act, and for confining approval to such practitioners as may be agreed upon between those authorities and any bodies or persons required to be consulted by them respectively ;
- (e) for the determination in accordance with the regulations of the age of any person whose exact age cannot be ascertained by reference to the registers kept under the Births and Deaths Registration Act, 1953 ; and
- (f) for enabling the functions under this Part of this Act of the nearest relative of a patient to be performed, in such circumstances and subject to such conditions (if any) as may be prescribed by the regulations, by any person authorised in that behalf by that relative ;

and for the purposes of this Part of this Act any application, report or notice the service of which is regulated under paragraph

(b) of this subsection shall be deemed to have been received by or furnished to the authority or person to whom it is authorised or required to be furnished, addressed or given if it is duly served in accordance with the regulations.

PART IV
—cont.

(3) Without prejudice to the foregoing provisions of this section, but subject to subsection (4) of section forty-seven of this Act, regulations under this section may determine the manner in which functions under this Part of this Act of the managers of hospitals, local health authorities or regional hospital boards are to be exercised, and such regulations may in particular specify the circumstances in which, and the conditions subject to which, any such functions may be performed by officers of or other persons acting on behalf of those managers, authorities or boards.

57. The Minister may, if he thinks fit, at any time refer to a Mental Health Review Tribunal the case of any patient who is liable to be detained or subject to guardianship under this Part of this Act.

Power of
Minister to
refer to
Tribunal.

58.—(1) An application for the admission to hospital of an infant who is a ward of court may be made under this Part of this Act with the leave of the court; and subsection (2) of section twenty-seven of this Act shall not apply in relation to an application so made.

Special
provisions as
to wards of
court.

(2) Where an infant being a ward of court is liable to be detained in a hospital by virtue of an application for admission under this Part of this Act, any power exercisable under this Part of this Act in relation to the patient by his nearest relative shall be exercisable by or with the leave of the court.

(3) Nothing in this Part of this Act shall be construed as authorising the making of a guardianship application in respect of an infant who is a ward of court, or the transfer into guardianship of any such infant.

59.—(1) In this Part of this Act the following expressions have the meanings hereby respectively assigned to them, that is to say:—

Interpretation
of Part IV.

“the managers” means—

(a) in relation to a hospital vested in the Minister under the National Health Service Act, 1946, and in relation to any accommodation provided by a local authority and used for hospital and specialist services under Part II of that Act, the hospital management committee or board of governors;

(b) in relation to a special hospital, the Minister;

PART IV
—cont.

(c) in relation to a mental nursing home registered in pursuance of Part III of this Act, the person or persons registered in respect of the home ;

“ the nominated medical attendant ”, in relation to a patient who is subject to the guardianship of a person other than a local health authority, means the person appointed in pursuance of regulations made under subsection (2) of section thirty-five of this Act to act as the medical attendant of the patient ;

“ the responsible medical officer ” means—

(a) in relation to a patient liable to be detained by virtue of an application for admission for observation or an application for admission for treatment, the medical practitioner in charge of the treatment of the patient ;

(b) in relation to a patient subject to guardianship, the medical officer of health of the responsible local health authority or any other medical officer authorised by that authority to act (either generally or in any particular case or for any particular purpose) as the responsible medical officer.

(2) Except where otherwise expressly provided, this Part of this Act applies in relation to a mental nursing home, being a home in respect of which the particulars of registration are for the time being entered in the separate part of the register kept for the purposes of subsection (1) of section fifteen of this Act, as it applies in relation to a hospital, and references in this Part of this Act to a hospital, and any reference in this Act to a hospital to which this Part of this Act applies, shall be construed accordingly.

(3) For the purposes of this Part of this Act a patient who is liable to be detained or subject to guardianship by virtue of an application for admission for treatment or a guardianship application shall be treated as being so liable or subject as a psychopathic or subnormal patient if the form of disorder specified in the application, or in the application as amended under section thirty-eight of this Act, is psychopathic disorder or subnormality, or psychopathic disorder and subnormality, and no other form of mental disorder.

(4) In relation to a patient who is subject to guardianship in pursuance of a guardianship application, any reference in this Part of this Act to the responsible local health authority is a reference—

(a) where the patient is subject to the guardianship of a local health authority, to that authority ;

(b) where the patient is subject to the guardianship of a person other than a local health authority, to the local health authority for the area in which that person resides.

PART V

ADMISSION OF PATIENTS CONCERNED IN CRIMINAL PROCEEDINGS,
ETC., AND TRANSFER OF PATIENTS UNDER SENTENCE*Provisions for compulsory admission or guardianship of patients
convicted of criminal offences, etc.*

60.—(1) Where a person is convicted before a court of assize or quarter sessions of an offence other than an offence the sentence for which is fixed by law, or is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment, and the following conditions are satisfied, that is to say—

Powers of
courts to
order hospital
admission or
guardianship.

(a) the court is satisfied, on the written or oral evidence of two medical practitioners (complying with the provisions of section sixty-two of this Act),—

(i) that the offender is suffering from mental illness, psychopathic disorder, subnormality or severe subnormality; and

(ii) that the mental disorder is of a nature or degree which warrants the detention of the patient in a hospital for medical treatment, or the reception of the patient into guardianship under this Act; and

(b) the court is of opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the offender, and to the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of an order under this section,

the court may by order authorise his admission to and detention in such hospital as may be specified in the order or, as the case may be, place him under the guardianship of a local health authority or of such other person approved by a local health authority as may be so specified.

(2) Where a person is charged before a magistrates' court with any act or omission as an offence and the court would have power, on convicting him of that offence, to make an order under subsection (1) of this section in his case as being a person suffering from mental illness or severe subnormality, then, if the court is satisfied that the accused did the act or made the omission charged, the court may, if it thinks fit, make such an order without convicting him.

(3) An order for the admission of an offender to a hospital (in this Part of this Act referred to as a hospital order) shall not be made under this section unless the court is satisfied that arrangements have been made for the admission of the offender to that hospital in the event of such an order being made by

PART V
—cont.

the court, and for his admission thereto within a period of twenty-eight days beginning with the date of the making of such an order.

(4) An order placing an offender under the guardianship of a local health authority or of any other person (in this Part of this Act referred to as a guardianship order) shall not be made under this section unless the court is satisfied that that authority or person is willing to receive the offender into guardianship.

(5) A hospital order or guardianship order shall specify the form or forms of mental disorder referred to in paragraph (a) of subsection (1) of this section from which, upon the evidence taken into account under that paragraph, the offender is found by the court to be suffering; and no such order shall be made unless the offender is described by each of the practitioners whose evidence is taken into account as aforesaid as suffering from the same one of those forms of mental disorder, whether or not he is also described by either of them as suffering from another of those forms.

(6) Where an order is made under this section, the court shall not pass sentence of imprisonment or impose a fine or make a probation order in respect of the offence, but may make any other order which the court has power to make apart from this section; and for the purposes of this subsection "sentence of imprisonment" includes any sentence or order for detention, including an order sending an offender to an approved school.

Additional
powers in
respect of
children and
young persons.

61.—(1) If in the case of a child or young person brought before a juvenile court under section sixty-two or section sixty-four of the Children and Young Persons Act, 1933,—

(a) the court is satisfied that the child or young person is in need of care or protection, or that his parent or guardian is unable to control him, as the case may be; and

(b) the conditions which, under section sixty of this Act, are required to be satisfied for the making of a hospital order or guardianship order in respect of a person convicted as therein mentioned are so far as applicable satisfied in the case of the child or young person,

the court shall have the like power to make a hospital order or guardianship order as if the child or young person had been convicted by the court of an offence punishable on summary conviction with imprisonment; and the provisions of the said section sixty shall with the necessary modifications apply accordingly.

(2) A juvenile court shall not make a hospital order or guardianship order in respect of a person brought before the

court under section sixty-four of the Children and Young Persons Act, 1933, as being beyond the control of his parent or guardian unless the court is satisfied that the parent or guardian understands the results which will follow from the order and consents to its being made.

(3) Where a hospital order is made by virtue of this section in respect of a child or young person, the court may also make an order committing him to the care of a fit person under the Children and Young Persons Act, 1933; but except as aforesaid no order shall be made under section sixty-two or sixty-four of that Act in conjunction with a hospital order or guardianship order.

62.—(1) Of the medical practitioners whose evidence is taken into account under paragraph (a) of subsection (1) of section sixty of this Act, at least one shall be a practitioner approved for the purposes of section twenty-eight of this Act by a local health authority as having special experience in the diagnosis or treatment of mental disorders.

PART V
—cont.

Requirements
as to medical
evidence.

(2) For the purposes of the said paragraph (a) a report in writing purporting to be signed by a medical practitioner may, subject to the provisions of this section, be received in evidence without proof of the signature or qualifications of the practitioner; but the court may in any case require that the practitioner by whom such a report was signed be called to give oral evidence.

(3) Where, in pursuance of directions of the court, any such report as aforesaid is tendered in evidence otherwise than by or on behalf of the accused, then—

- (a) if the accused is represented by counsel or solicitor, a copy of the report shall be given to his counsel or solicitor;
- (b) if the accused is not so represented, the substance of the report shall be disclosed to the accused or, where he is a child or young person, to his parent or guardian if present in court;
- (c) in any case, the accused may require that the practitioner by whom the report was signed be called to give oral evidence, and evidence to rebut the evidence contained in the report may be called by or on behalf of the accused.

(4) In relation to a child or young person brought before a juvenile court under section sixty-two or section sixty-four of the Children and Young Persons Act, 1933, subsection (3) of this section shall have effect as if for references to the accused there were substituted references to the child or young person; and in the case of a child or young person brought before the

PART V
—cont.Effects of
hospital
orders and
guardianship
orders.

court under the said section sixty-four paragraphs (a) to (c) of that subsection shall have effect as if those references included references to his parent or guardian, and as if in the said paragraph (b) the words from “or, where” to the end of the paragraph were omitted.

63.—(1) A hospital order shall be sufficient authority—

- (a) for a constable, a mental welfare officer or any other person directed to do so by the court to convey the patient to the hospital specified in the order within a period of twenty-eight days ; and
- (b) for the managers of the hospital to admit him at any time within that period and thereafter detain him in accordance with the provisions of this Act.

(2) A guardianship order shall confer on the authority or person therein named as guardian the like powers as a guardianship application made and accepted under Part IV of this Act.

(3) A patient who is admitted to a hospital in pursuance of a hospital order, or placed under guardianship by a guardianship order, shall be treated for the purposes of Part IV of this Act (other than sections thirty-one and thirty-two, or section thirty-four, as the case may be) as if he had been so admitted or placed on the date of the order in pursuance of an application for admission for treatment or a guardianship application, as the case may be, duly made under the said Part IV, except that—

- (a) the power to order the discharge of the patient under section forty-seven shall not be exercisable by his nearest relative ; and
- (b) the special provisions relating to the expiration and renewal of authority for detention and guardianship in the case of psychopathic and subnormal patients shall not apply ;

and accordingly the provisions of the said Part IV specified in the first column of the Third Schedule to this Act shall apply in relation to him subject to the exceptions and modifications set out in the second column of that Schedule and the remaining provisions of the said Part IV shall not apply.

(4) Without prejudice to any provision of Part IV of this Act as applied by this section, an application to a Mental Health Review Tribunal may be made in respect of a patient admitted to a hospital in pursuance of a hospital order, or placed under guardianship by a guardianship order, as follows, that is to say—

- (a) by the patient, within the period of six months beginning with the date of the order or with the day on which he attains the age of sixteen years, whichever is the later ;

- (b) by the nearest relative of the patient, within the period of twelve months beginning with the date of the order, and in any subsequent period of twelve months.

(5) Where a patient is admitted to a hospital in pursuance of a hospital order, or placed under guardianship by a guardianship order, any previous application, hospital order or guardianship order by virtue of which he was liable to be detained in a hospital or subject to guardianship shall cease to have effect:

Provided that if the first-mentioned order, or the conviction on which it was made, is quashed on appeal, this subsection shall not apply and section forty-six of this Act shall have effect as if during any period for which the patient was liable to be detained or subject to guardianship under the order, he had been detained in custody as mentioned in that section.

64.—(1) The court by which a hospital order is made may give such directions as it thinks fit for the conveyance of the patient to a place of safety and his detention therein pending his admission to the hospital within the period of twenty-eight days referred to in subsection (1) of section sixty-three of this Act. Supplementary provisions as to hospital orders.

(2) If within the said period of twenty-eight days it appears to the Minister that by reason of an emergency or other special circumstances it is not practicable for the patient to be received into the hospital specified in the order, he may give directions for the admission of the patient to such other hospital as appears to be appropriate in lieu of the hospital so specified; and where such directions are given the Minister shall cause the person having the custody of the patient to be informed, and the hospital order shall have effect as if the hospital specified in the directions were substituted for the hospital specified in the order.

65.—(1) Where a hospital order is made in respect of an offender by a court of assize or quarter sessions, and it appears to the court, having regard to the nature of the offence, the antecedents of the offender and the risk of his committing further offences if set at large, that it is necessary for the protection of the public so to do, the court may, subject to the provisions of this section, further order that the offender shall be subject to the special restrictions set out in this section, either without limit of time or during such period as may be specified in the order. Power of higher courts to restrict discharge from hospital.

(2) An order under this section (in this Act referred to as an order restricting discharge) shall not be made in the case of any person unless at least one of the medical practitioners whose evidence is taken into account by the court under paragraph (a) of subsection (1) of section sixty of this Act has given evidence orally before the court.

PART V
—cont.

(3) The special restrictions applicable to a patient in respect of whom an order restricting discharge is in force are as follows, that is to say—

(a) none of the provisions of Part IV of this Act relating to the duration, renewal and expiration of authority for the detention of patients shall apply, and the patient shall continue to be liable to be detained by virtue of the relevant hospital order until he is duly discharged under the said Part IV or absolutely discharged under the next following section ;

(b) no application shall be made to a Mental Health Review Tribunal in respect of the patient under section sixty-three of this Act or under any provision of the said Part IV ;

(c) the following powers shall be exercisable only with the consent of the Secretary of State, that is to say—

(i) power to grant leave of absence to the patient under section thirty-nine of this Act ;

(ii) power to transfer the patient in pursuance of regulations under section forty-one of this Act ; and

(iii) power to order the discharge of the patient under section forty-seven of this Act ;

and if leave of absence is granted under the said section thirty-nine the power to recall the patient under that section shall be vested in the Secretary of State as well as the responsible medical officer ; and

(d) the power of the Secretary of State to recall the patient under the said section thirty-nine, and the power to take the patient into custody and return him under section forty of this Act, may be exercised at any time ;

and in relation to any such patient the provisions of the said Part IV described in the first column of the Third Schedule to this Act shall have effect subject to the exceptions and modifications set out in the third column of that Schedule in lieu of those set out in the second column of that Schedule.

(4) A hospital order shall not cease to have effect under subsection (5) of section sixty-three of this Act if an order restricting the discharge of the patient is in force at the material time.

(5) Where an order restricting the discharge of a patient ceases to have effect while the relevant hospital order continues in force, the provisions of section sixty-three of this Act and the Third Schedule to this Act shall apply to the patient as if he had been admitted to the hospital in pursuance of a hospital order (without an order restricting his discharge) made on the date on which the order restricting his discharge ceased to have effect.

66.—(1) If the Secretary of State is satisfied that an order restricting the discharge of a patient is no longer required for the protection of the public, he may direct that the patient shall cease to be subject to the special restrictions set out in section sixty-five of this Act; and where the Secretary of State so directs, the order restricting the discharge of the patient shall cease to have effect, and subsection (5) of the last foregoing section shall apply accordingly.

PART V
—cont.
Powers of
Secretary of
State in respect
of patients
subject to
restriction
orders.

(2) At any time while an order restricting the discharge of a patient is in force, the Secretary of State may, if he thinks fit, by warrant discharge the patient from hospital, either absolutely or subject to conditions; and where a person is absolutely discharged under this subsection, he shall thereupon cease to be liable to be detained by virtue of the relevant hospital order, and the order restricting his discharge shall cease to have effect accordingly.

(3) The Secretary of State may at any time during the continuance in force of an order restricting the discharge of a patient who has been conditionally discharged under the last foregoing subsection, by warrant recall the patient to such hospital as may be specified in the warrant; and thereupon—

(a) if the hospital so specified is not the hospital from which the patient was conditionally discharged, the hospital order and the order restricting his discharge shall have effect as if the hospital specified in the warrant were substituted for the hospital specified in the hospital order;

(b) in any case, the patient shall be treated for the purposes of section forty of this Act as if he had absented himself without leave from the hospital specified in the warrant, and if the order restricting his discharge was made for a specified period, that period shall not in any event expire until the patient returns to the hospital or is returned to the hospital under that section.

(4) If an order restricting the discharge of a patient ceases to have effect after the patient has been conditionally discharged under this section, the patient shall, unless previously recalled under the last foregoing subsection, 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 accordingly.

(5) The Secretary of State may, if satisfied that the attendance at any place in Great Britain of a patient who is subject to an order restricting discharge is desirable in the interests of justice or for the purposes of any public inquiry, direct him to be taken to that place; and where a patient is directed under this subsection to be taken to any place he shall, unless the Secretary of

PART V
—*cont.*

State otherwise directs, be kept in custody while being so taken, while at that place and while being taken back to the hospital in which he is liable to be detained.

(6) The Secretary of State may at any time refer to a Mental Health Review Tribunal for their advice the case of a patient who is for the time being subject to an order restricting his discharge, and, where so requested in writing in accordance with the following provisions of this section by such a patient who is detained in hospital, shall do so within the period of two months beginning with the receipt of the request unless during that period the patient is discharged absolutely or conditionally under subsection (2) of this section or the order restricting his discharge ceases to have effect.

(7) A patient shall not be entitled to make a request to the Secretary of State under the last foregoing subsection before the expiration of the period of one year beginning with the date of the relevant hospital order, but subject as aforesaid may make one such request during each period during which he could have made an application to a Mental Health Review Tribunal if he had been subject to a hospital order without an order restricting his discharge and the authority for his detention had been renewed at the requisite intervals.

(8) Where a patient subject to an order restricting his discharge has been conditionally discharged under subsection (2) of this section and subsequently recalled to hospital, the last foregoing subsection shall apply as if the relevant hospital order had been made on the day on which he returns or is returned to hospital, but he may also make one such request as aforesaid between the expiration of the period of six months and the expiration of the period of one year beginning with that day.

Power of
magistrates'
courts to
commit for
restriction
order.

67.—(1) If in the case of a person of or over the age of fourteen years who is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment—

- (a) the conditions which, under subsection (1) of section sixty of this Act, are required to be satisfied for the making of a hospital order are satisfied in respect of the offender ; but
- (b) it appears to the court, having regard to the nature of the offence, the antecedents of the offender and the risk of his committing further offences if set at large, that if a hospital order is made an order restricting his discharge should also be made,

the court may, instead of making a hospital order or dealing with him in any other manner, commit him in custody to quarter sessions to be dealt with in respect of the offence.

(2) Subsection (2) of section twenty-nine of the Criminal Justice Act, 1948 (which specifies the court of quarter sessions by which an offender committed to quarter sessions for sentence is to be dealt with) shall apply in relation to the committal of an offender under this section as it applies in relation to the committal of an offender for sentence under section twenty-nine of the Magistrates' Courts Act, 1952.

(3) Where an offender is committed to quarter sessions under this section, the court of quarter sessions shall inquire into the circumstances of the case and may—

(a) if that court would have power so to do under the foregoing provisions of this Part of this Act upon the conviction of the offender before that court of such an offence as is described in subsection (1) of section sixty of this Act, make a hospital order in his case, with or without an order restricting his discharge ;

(b) if the court does not make such an order, deal with the offender in any other manner in which the magistrates' court might have dealt with him ;

and the Poor Prisoners Defence Act, 1930, shall apply as if the offender were committed for trial for an indictable offence, subject to the modifications specified in subsections (4) and (5) of section eighteen of the Legal Aid and Advice Act, 1949.

(4) The power of a magistrates' court under section twenty-nine of the Magistrates' Courts Act, 1952 (which enables such a court to commit an offender to quarter sessions where the court is of opinion that greater punishment should be inflicted for the offence than the court has power to inflict) shall also be exercisable by a magistrates' court where it is of opinion that greater punishment should be inflicted as aforesaid on the offender unless a hospital order is made in his case with an order restricting his discharge.

(5) The power of a court of quarter sessions to make a hospital order, with or without an order restricting discharge, in the case of a person convicted before that court of an offence may, in the like circumstances and subject to the like conditions, be exercised by such a court in the case of a person committed to the court under section five of the Vagrancy Act, 1824 (which provides for the committal to quarter sessions of persons being incorrigible rogues within the meaning of that section).

68.—(1) Where an offender is committed under subsection (1) of section sixty-seven of this Act and the magistrates' court by which he is committed is satisfied that arrangements have been made for the admission of the offender to a hospital in the event of an order being made under this section, the court may, instead of committing him in custody, by order direct him to

Committal to hospital under s. 67.

PART V
—cont.

be admitted to that hospital, specifying it, and to be detained there until the case is disposed of by quarter sessions, and may give such directions as it thinks fit for his production from the hospital to attend the court of quarter sessions by which his case is to be dealt with.

(2) Subsection (1) of section sixty-three and section sixty-four of this Act shall apply in relation to an order under this section as they apply in relation to a hospital order, but as if references to the period of twenty-eight days mentioned in the said subsection (1) were omitted; and subject as aforesaid an order under this section shall, until the offender's case is disposed of by quarter sessions, have the like effect as a hospital order together with an order restricting his discharge, made without limitation of time.

(3) Where an order has been made under this section in respect of an offender, the notice of the date on which the case will be dealt with required by subsection (2) of section twenty-nine of the Criminal Justice Act, 1948, to be given by the clerk of the peace to the governor of the prison or remand centre shall instead be given to the managers of the hospital in which he is detained.

Appeals from
assizes and
quarter
sessions.

69.—(1) Where an order restricting discharge is made by a court of quarter sessions in respect of a person committed under section twenty-nine of the Magistrates' Courts Act, 1952, under section five of the Vagrancy Act, 1824, or under section sixty-seven of this Act, that person may appeal to the Court of Criminal Appeal against the order in like manner as against an order made on his conviction on indictment, and the provisions of the Criminal Appeal Act, 1907, shall apply accordingly.

(2) On any appeal to the Court of Criminal Appeal against an order restricting the discharge of an offender (including an appeal under subsection (1) of this section) the court shall have the like powers under subsection (3) of section four of the Criminal Appeal Act, 1907, as if the appeal were an appeal against the hospital order in respect of him as well as against the order restricting his discharge.

(3) On any appeal to the Court of Criminal Appeal by an offender against a hospital order or guardianship order, the court shall have the like powers under subsection (3) of the said section four as if the appeal were an appeal against any further order made by the court which made the hospital order or guardianship order, as well as against the hospital order or guardianship order.

Appeals from
magistrates'
courts.

70.—(1) Where on the trial of an information charging a person with an offence a magistrates' court makes a hospital order or guardianship order in respect of him without convicting him,

he shall have the like right of appeal against the order as if it had been made on his conviction; and on any such appeal quarter sessions shall have the like powers as if the appeal had been against both conviction and sentence.

(2) Where a juvenile court, on being satisfied that a child or young person brought before the court is in need of care or protection or that his parent or guardian is unable to control him, makes such an order as aforesaid, the child or young person may appeal to quarter sessions against the order.

(3) An appeal by a child or young person with respect to whom any such order has been made, whether the appeal is against the order or against the finding upon which the order was made, may be brought by him or by his parent or guardian on his behalf.

(4) Section two of the Summary Jurisdiction (Appeals) Act, 1933 (which relates to legal aid) shall with the necessary modifications apply in relation to an appeal against a hospital order or guardianship order made by a magistrates' court (whether or not brought under this section) as it applies in relation to an appeal against sentence.

71.—(1) Where under any enactment to which this subsection applies any person is ordered to be kept in custody during Her Majesty's pleasure, that person shall, until detained in pursuance of any directions under subsection (2) of this section, be detained in such place of safety as the court may order, and the order shall be sufficient authority for his conveyance to that place.

Persons
ordered to
be kept in
custody during
Her Majesty's
pleasure.

(2) The Secretary of State may by warrant direct that any person who, by virtue of any enactment to which this subsection applies, is required to be kept in custody during Her Majesty's pleasure or until the directions of Her Majesty are known shall be detained in such hospital (not being a mental nursing home) as may be specified in the warrant and, where that person is not already detained in the hospital, give directions for his removal there.

(3) The enactments to which subsection (1) of this section applies are section two of the Criminal Lunatics Act, 1800, section two of the Trial of Lunatics Act, 1883, and subsection (4) of section five of the Criminal Appeal Act, 1907; and the enactments to which subsection (2) of this section applies are the aforementioned enactments and subsection (4) of section six of the Courts-Martial (Appeals) Act, 1951, section one hundred and sixteen of the Army Act, 1955, section one hundred and sixteen of the Air Force Act, 1955, and section sixty-three of the Naval Discipline Act, 1957.

(4) A direction under this section in respect of any person shall have the like effect as a hospital order together with an order restricting his discharge, made without limitation of time; and where such a direction is given in respect of a person while he

PART V
—cont.

PART V
—cont.

is in the hospital, he shall be deemed to be admitted in pursuance of, and on the date of, the direction.

(5) Where the Secretary of State is notified by the responsible medical officer that a person detained in a hospital, being a person ordered under section two of the Criminal Lunatics Act, 1800, to be kept in custody, no longer requires treatment for mental disorder, the Secretary of State may remit that person to prison, or to a remand centre provided under section forty-three of the Prison Act, 1952, for trial at the next quarter sessions or, as the case may be, assizes for the place where, but for the order, he would have been tried, and on his arrival at the prison or remand centre the direction under this section shall cease to have effect.

Transfer to hospital or guardianship of prisoners, etc.

Removal to
hospital of
persons
serving
sentences of
imprisonment,
etc.

72.—(1) If in the case of a person serving a sentence of imprisonment the Secretary of State is satisfied, by reports from at least two medical practitioners (complying with the provisions of this section)—

- (a) that the said person is suffering from mental illness, psychopathic disorder, subnormality or severe subnormality; and
- (b) that the mental disorder is of a nature or degree which warrants the detention of the patient in a hospital for medical treatment;

the Secretary of State may, if he is of opinion having regard to the public interest and all the circumstances that it is expedient so to do, by warrant direct that that person be removed to and detained in such hospital (not being a mental nursing home) as may be specified in the direction.

(2) A direction under this section (in this Act referred to as a transfer direction) shall cease to have effect at the expiration of the period of fourteen days beginning with the date on which it is given unless within that period the person with respect to whom it was given has been received into the hospital specified therein.

(3) A transfer direction with respect to any person shall have the like effect as a hospital order made in his case.

(4) Of the medical practitioners whose reports are taken into account under subsection (1) of this section, at least one shall be a practitioner approved for the purposes of section twenty-eight of this Act by a local health authority as having special experience in the diagnosis or treatment of mental disorders.

(5) A transfer direction shall specify the form or forms of mental disorder referred to in paragraph (a) of subsection (1) of this section from which, upon the reports taken into account

under that subsection, the patient is found by the Secretary of State to be suffering ; and no such direction shall be given unless the patient is described in each of those reports as suffering from the same one of those forms, whether or not he is also described in either of them as suffering from another of those forms.

PART V
—cont.

(6) References in this section to a person serving a sentence of imprisonment include references—

- (a) to a person detained in pursuance of any sentence or order for detention made by a court in criminal proceedings, or made or having effect as if made in any proceedings under the Children and Young Persons Act, 1933 (other than an order under any enactment to which section seventy-one of this Act applies or an order for detention in a remand home under section fifty-four or in a place of safety under section sixty-seven of the said Act of 1933) ;
- (b) to a person committed to custody under subsection (3) of section ninety-one of the Magistrates' Courts Act, 1952 (which relates to persons who fail to comply with an order to enter into recognisances to keep the peace or be of good behaviour) ; and
- (c) to a person committed by a court to a prison or other institution to which the Prison Act, 1952, applies in default of payment of any sum adjudged to be paid on his conviction.

73.—(1) If in the case of a person to whom this section applies the Secretary of State is satisfied by the like reports as are required for the purposes of the last foregoing section that that person is suffering from mental illness or severe subnormality of a nature or degree which warrants the detention of the patient in a hospital for medical treatment, the Secretary of State shall have the like power of giving a transfer direction in respect of him under that section as if he were serving a sentence of imprisonment.

Removal to
hospital of
other
prisoners.

(2) This section applies to the following persons, that is to say—

- (a) persons committed in custody for trial at assizes or quarter sessions ;
- (b) persons committed in custody to quarter sessions under section twenty-eight or section twenty-nine of the Magistrates' Courts Act, 1952, section five of the Vagrancy Act, 1824, or section sixty-seven of this Act ;
- (c) persons remanded in custody by a court of assize or quarter sessions to await a judgment or sentence which has been respited ;

PART V
—cont.

- (d) persons remanded in custody by a magistrates' court ;
- (e) civil prisoners, that is to say, persons committed by a court to prison for a limited term (including persons committed to prison in pursuance of a writ of attachment), not being persons falling to be dealt with under section seventy-two of this Act ;
- (f) aliens detained in a prison or other institution to which the Prison Act, 1952, applies, in pursuance of the Aliens Order 1953, or any order amending or replacing that Order.

(3) Subsections (2) to (5) of the last foregoing section shall apply for the purposes of this section and of any transfer direction given by virtue of this section as they apply for the purposes of that section and of any transfer direction thereunder.

Restriction on discharge of prisoners removed to hospital.

74.—(1) Where a transfer direction is given in respect of any person, the Secretary of State, if he thinks fit, may by warrant further direct that that person shall be subject to the special restrictions set out in section sixty-five of this Act ; and where the Secretary of State gives a transfer direction in respect of any such person as is described in paragraphs (a) to (d) of subsection (2) of the last foregoing section, he shall also give a direction under this section applying the said restrictions to him.

(2) A direction under this section (in this Act referred to as a direction restricting discharge) shall have the like effect as an order restricting the discharge of the patient made under the said section sixty-five.

Further provisions as to prisoners under sentence.

75.—(1) Where a transfer direction and a direction restricting discharge have been given in respect of a person serving a sentence of imprisonment (other than a person detained in a remand home) and the Secretary of State is notified by the responsible medical officer at any time before the expiration of that person's sentence that that person no longer requires treatment for mental disorder, the Secretary of State may—

- (a) by warrant direct that he 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, or authorise the Prison Commissioners or, as the case may be, the managers of any approved school to which he might have been remitted to exercise, any power of releasing him on licence or discharging him under supervision which would have been exercisable if he had been remitted to such a prison or institution as aforesaid,

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 direction restricting discharge shall cease to have effect.

PART V
—cont.

(2) A direction restricting the discharge of a person serving a sentence of imprisonment (including an order for detention in a remand home under section sixty-nine of the Children and Young Persons Act, 1933), shall cease to have effect on the expiration of the sentence.

(3) Subject to the next following subsection, references in this section to the expiration of a person's sentence are references to the expiration of the period during which he would have been liable to be detained in a prison or other institution if the transfer direction had not been given.

(4) For the purposes of subsection (2) of section forty-nine of the Prison Act, 1952 (which provides for discounting from the sentence of certain prisoners periods while they are unlawfully at large) a patient who, having been transferred in pursuance of a transfer direction from any such institution as is referred to in that subsection, is at large in circumstances in which he is liable to be taken into custody under any provision of this Act, shall be treated as unlawfully at large and absent from that institution.

76.—(1) Any transfer direction given in respect of any such person as is described in paragraphs (a) to (c) of subsection (2) of section seventy-three of this Act shall cease to have effect when his case is disposed of by the court to which he was committed or by which he was remanded, as the case may be, but without prejudice to any power of that court to make a hospital order or other order under this Part of this Act in his case.

Further provisions as to persons committed for trial or sentence, etc.

(2) Where a transfer direction has been given in respect of any such person as aforesaid, then—

- (a) if the Secretary of State is notified by the responsible medical officer at any time before that person is brought before the court to which he was committed or by which he was remanded that he no longer requires treatment for mental disorder, the Secretary of State may by warrant direct that he be remitted to any place where 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, and on his arrival at the place to which he is so remitted the transfer direction shall cease to have effect ;

PART V
—cont.

(b) if (no direction having been given under paragraph (a) of this subsection) it appears to that court that it is impracticable or inappropriate to bring that person before the court and the conditions set out in the next following subsection are satisfied, the court may make a hospital order (with or without an order restricting discharge) in his case in his absence and, in the case of a person committed for trial, without convicting him.

(3) A hospital order may be made in respect of a person under paragraph (b) of the last foregoing subsection if the court is satisfied, on the oral evidence of at least two medical practitioners (complying with subsection (1) of section sixty-two of this Act), that that person is suffering from mental illness or severe subnormality of a nature or degree which warrants the detention of the patient in a hospital for medical treatment, and is of opinion, after considering any depositions or other documents required to be sent to the proper officer of the court, that it is proper to make such an order.

(4) Where a person committed to quarter sessions to be dealt with under section sixty-seven of this Act is admitted to a hospital in pursuance of an order under section sixty-eight of this Act, paragraph (b) of subsection (2) and subsection (3) of this section shall apply as if he were a person subject to a transfer direction.

Further
provisions
as to persons
remanded by
magistrates'
courts.

77.—(1) A transfer direction given in respect of a person remanded in custody by a magistrates' court shall cease to have effect on the expiration of the period of remand unless, upon his being brought before the magistrates' court, he is committed in custody for trial at assizes or quarter sessions.

(2) Where, on the expiration of the period of remand of any such person, he is committed in custody for trial as aforesaid, section seventy-six of this Act shall apply as if the transfer direction given in his case were a direction given in respect of a person so committed.

(3) Where a transfer direction has been given in respect of a person remanded as aforesaid, the power of further remanding him under section one hundred and five of the Magistrates' Courts Act, 1952, may be exercised by the court without his being brought before the court; and if the court further remands such a person in custody (whether or not he is brought before the court) the period of remand shall, for the purposes of this section, be deemed not to have expired.

(4) Where a transfer direction in respect of any person ceases to have effect under this section, then unless the court before which he is brought on the expiration of the period of remand—

(a) passes a sentence of imprisonment (within the meaning of subsection (6) of section sixty of this Act) on him ; or

PART V
—cont.

(b) makes a hospital order or guardianship order in his case, he shall continue to be liable to be detained in the hospital in which he was detained under the transfer direction as if he had been admitted thereto, on the date on which that direction ceased to have effect, in pursuance of an application for admission for treatment made under Part IV of this Act, and the provisions of this Act shall apply accordingly.

78.—(1) Any transfer direction given in respect of a civil prisoner shall cease to have effect on the expiration of the period during which he would, but for his removal to hospital, be liable to be detained in prison.

Further provisions as to civil prisoners.

(2) Where a transfer direction given in respect of any person ceases to have effect by virtue of this section, he shall continue to be liable to be detained in the hospital in which he was detained under that direction as if he had been admitted thereto, on the date on which the direction ceased to have effect, in pursuance of an application for admission for treatment made under Part IV of this Act, and the provisions of this Act shall apply accordingly.

79.—(1) If in the case of a child or young person detained in an approved school the Secretary of State is satisfied by the like reports as are required for the purposes of section seventy-two of this Act—

Reception into guardianship of persons sent to approved schools.

(a) that the child or young person is suffering from mental illness, psychopathic disorder, subnormality or severe subnormality ; and

(b) that the mental disorder is of a nature or degree which warrants the reception of the patient into guardianship under this Act ;

the Secretary of State may, if he is of opinion having regard to the public interest and to all the circumstances that it is expedient so to do, by warrant direct that he be placed under the guardianship of a local health authority or of any such other person approved by a local health authority as may be specified in the direction.

(2) A direction shall not be given under this section placing a person under the guardianship of a local health authority or other person unless the Secretary of State is satisfied that that authority or person is willing to receive that person into guardianship.

(3) A direction under this section with respect to any person shall have the like effect as a guardianship order made in his case.

PART V

—cont.

Interpretation
of Part V.*Supplemental*

80.—(1) In this Part of this Act the following expressions have the meanings hereby respectively assigned to them, that is to say:—

“approved school” means a school approved under section seventy-nine of the Children and Young Persons Act, 1933;

“child” and “young person” have the same meaning as in the Children and Young Persons Act, 1933;

“civil prisoner” has the meaning assigned to it by paragraph (e) of subsection (2) of section seventy-three of this Act;

“guardian”, in relation to a child or young person, has the same meaning as in the Children and Young Persons Act, 1933;

“place of safety”, in relation to a person not being a child or young person, means any police station, prison or remand centre, or any hospital the managers of which are willing temporarily to receive him, and in relation to a child or young person means a place of safety within the meaning of the Children and Young Persons Act, 1933;

“remand home” means premises established or used by the council of a county or county borough under section seventy-seven of the Children and Young Persons Act, 1933;

“responsible medical officer”, in relation to a person liable to be detained in a hospital within the meaning of Part IV of this Act, means the medical practitioner in charge of the treatment of the patient.

(2) Any reference in this Part of this Act to an offence punishable on summary conviction with imprisonment shall be construed without regard to any prohibition or restriction imposed by or under any enactment on the imprisonment of young offenders.

(3) Where a patient who is liable to be detained in a hospital in pursuance of an order or direction under this Part of this Act is treated by virtue of any provision of this Part of this Act as if he had been admitted to the hospital in pursuance of a subsequent order or direction under this Part of this Act or a subsequent application for admission for treatment under Part IV thereof, he shall be treated as if the subsequent order, direction or application had described him as suffering from the form or forms of mental disorder specified in the earlier order or direction or, where he is treated as if he had been so admitted by virtue of a direction under subsection (1) of section sixty-six of this Act, such form of mental disorder as may be specified in the direction under that subsection.

(4) In the following provisions of this Part of this Act, that is to say—

PART V
—cont.

subsections (2) to (5) of section sixty-three ;
subsections (3) to (5) of section sixty-five ; and
section sixty-six,

any reference to a hospital order, a guardianship order or an order restricting the discharge of a patient subject to a hospital order shall be construed as including a reference to any order or direction under this Part of this Act having the like effect as the first-mentioned order ; and the exceptions and modifications set out in the Third Schedule to this Act in respect of the provisions of Part IV of this Act described in that Schedule accordingly include those which are consequential on the provisions of this subsection.

(5) Subsection (2) of section fifty-nine of this Act shall apply for the purposes of this Part of this Act as it applies for the purposes of Part IV of this Act.

(6) References in this Part of this Act to a court of quarter sessions include references to an appeal committee of quarter sessions.

(7) References in this Part of this Act to persons serving a sentence of imprisonment shall be construed in accordance with subsection (6) of section seventy-two of this Act.

(8) Section ninety-nine of the Children and Young Persons Act, 1933 (which relates to the presumption and determination of age) shall apply for the purposes of this Part of this Act as it applies for the purposes of that Act.

PART VI

REMOVAL AND RETURN OF PATIENTS WITHIN UNITED KINGDOM, ETC.

Removal to and from Scotland

81.—(1) If it appears to the Minister, in the case of a patient who is for the time being liable to be detained or subject to guardianship under this Act, being—

Removal to
Scotland of
patients not
subject to
restriction.

- (a) a patient who is so liable or subject by virtue of an application under Part IV of this Act ;
- (b) a patient who is so liable or subject by virtue of a hospital order or transfer direction without an order or direction restricting discharge ;
- (c) a patient who is so liable or subject by virtue of a guardianship order or a direction under section seventy-nine of this Act,

that it is in the patient's interests to remove him to Scotland, and that arrangements have been made for his reception into a mental hospital, asylum or house in Scotland where persons of unsound mind may be detained under the Lunacy (Scotland) Acts, 1857

PART VI
—cont.

to 1913, or for placing him in an institution for defectives or under guardianship within the meaning of the Mental Deficiency and Lunacy (Scotland) Act, 1913, the Minister may authorise the removal of the patient to Scotland and give any necessary directions for his conveyance to his destination.

(2) Where a person removed in pursuance of an authority under this section is received into any such hospital, asylum or house as is mentioned in subsection (1) of this section, then—

(a) if, immediately before his removal, he was liable to be detained in a hospital within the meaning of Part IV of this Act, he shall on his reception be treated for all purposes as having been so received by virtue of an order under section fourteen of the Lunacy (Scotland) Act, 1862 ;

(b) if, immediately before his removal, he was subject to guardianship under this Act, he shall on his reception be treated for all purposes as a person in whose case an order under section thirteen of the Lunacy (Scotland) Act, 1866 is in force ;

and for the purposes of paragraph (b) of subsection (1) of section nine of the said Act of 1866 the person entitled to discharge a patient transferred to Scotland under the foregoing provisions of this section shall be ascertained as if the person at whose instance he is detained were dead.

(3) Where a person removed in pursuance of an authority under this section is placed in an institution for defectives or under guardianship within the meaning of the Mental Deficiency and Lunacy (Scotland) Act, 1913, then—

(a) if before the removal the patient was liable to be detained or subject to guardianship as mentioned in paragraph (a) of subsection (1) of this section, he shall on being so placed be treated for all purposes as having been so placed by his parent or guardian under section four of that Act ;

(b) if before the removal the patient was liable to be detained or subject to guardianship as mentioned in paragraph (b) or paragraph (c) of the said subsection (1), he shall on being so placed be treated for all purposes as if he were detained in the institution or placed under guardianship in pursuance of a judicial order under section seven of the Mental Deficiency and Lunacy (Scotland) Act, 1913, made on the date on which he is so placed.

Removal to
Scotland of
patients
subject to
restriction on
discharge.

82.—(1) If it appears to the Secretary of State, in the case of a patient who is for the time being liable to be detained by virtue of an order or direction under Part V of this Act, not being a patient to whom section eighty-one of this Act applies, that it

is in the patient's interests to remove him to Scotland and that arrangements have been made for him in accordance with the following provisions of this section, the Secretary of State may by warrant authorise the removal of the patient to Scotland, and may give any necessary directions for his conveyance to his destination.

PART VI
—cont.

(2) Where the patient is liable to be detained by virtue of a hospital order and an order restricting his discharge is in force, arrangements may be made for his reception into a State Mental Hospital within the meaning of the Criminal Justice (Scotland) Act, 1949, or a mental hospital, asylum or house where persons of unsound mind may be detained in pursuance of an order under section fourteen of the Lunacy (Scotland) Act, 1862, or for placing him in a State institution within the meaning of section twenty-eight of the Mental Deficiency and Lunacy (Scotland) Act, 1913.

(3) Where the patient is liable to be detained by virtue of a transfer direction and a direction restricting his discharge is in force, arrangements may be made for his reception into a hospital eligible to receive patients under section six of the Criminal and Dangerous Lunatics (Scotland) Amendment Act, 1871, or under subsection (1) of section four of the Criminal Lunatics (Scotland) Act, 1935, or for placing him in an institution for defectives within the meaning of the Mental Deficiency and Lunacy (Scotland) Act, 1913.

(4) Where the patient is liable to be detained in a hospital by virtue of a direction under section seventy-one of this Act, arrangements may be made for his reception into a State Mental Hospital within the meaning of the Criminal Justice (Scotland) Act, 1949, or a mental hospital, asylum or house where persons of unsound mind may be detained in pursuance of an order under section fourteen of the Lunacy (Scotland) Act, 1862.

83.—(1) Where a patient is removed to Scotland in pursuance of such arrangements as are mentioned in subsection (2) of section eighty-two of this Act, then—

Application
of Scottish
enactments
to patients
removed
under s. 82.

- (a) if in pursuance of those arrangements he is received into a mental hospital, asylum or house where persons of unsound mind may be detained in pursuance of an order under section fourteen of the Lunacy (Scotland) Act, 1862, subsection (2) of section eighty-one of this Act shall apply to him as it applies to a patient removed under that section to such a hospital, asylum or house as aforesaid, but, unless the Secretary of State otherwise directs, any power to discharge the patient, to grant him leave of absence or to transfer him from the hospital, asylum or house shall, so long as the order

PART VI
—cont.

restricting the discharge of the patient would have continued in force apart from his removal, be exercisable only with the consent of the Secretary of State ;

- (b) if in pursuance of those arrangements he is placed in a State institution, he shall be treated as if he were detained therein in pursuance of a judicial order under section seven of the Mental Deficiency and Lunacy (Scotland) Act, 1913, made on the date on which he is so placed ;

and for the purposes of paragraph (a) of this subsection any reference in section fourteen of the Lunacy (Scotland) Act, 1862, to a mental hospital shall be construed as including a reference to a State Mental Hospital.

(2) Where a patient is removed in pursuance of such arrangements as are mentioned in subsection (3) of the said section eighty-two, then—

- (a) if in pursuance of those arrangements he is received into a hospital being a State Mental Hospital, he shall be treated as if he had been ordered to be detained therein under subsection (1) of section four of the Criminal Lunatics (Scotland) Act, 1935 ;
- (b) if in pursuance of those arrangements he is detained in any other hospital described in that subsection, he shall be treated as if he had been ordered to be removed to that hospital under section six of the Criminal and Dangerous Lunatics (Scotland) Amendment Act, 1871 ;
- (c) if in pursuance of those arrangements he is removed to an institution for defectives, he shall be treated as if he were detained under an order for his transfer to that institution made under section ten of the Mental Deficiency and Lunacy (Scotland) Act, 1913, on the date of his removal ;

and in any such case the patient shall be treated as if the sentence or order by virtue of which he was detained before the transfer direction was given had been imposed or made by a court in Scotland.

(3) Where a patient is removed in pursuance of such arrangements as are mentioned in subsection (4) of the said section eighty-two, the patient shall be treated as if he had been ordered by a court in Scotland to be kept in strict custody until Her Majesty's pleasure shall be known in pursuance of section eighty-seven or section eighty-eight of the Lunacy (Scotland) Act, 1857, and as if an order for his safe custody in the place of reception had been made on behalf of Her Majesty under the said section eighty-seven or the said section eighty-eight.

84.—(1) In subsection (2) of section sixty-four of the Criminal Justice (Scotland) Act, 1949 (which provides for the removal of state mental patients from mental hospitals in Scotland to mental hospitals in England and Wales) the reference to a mental hospital in England shall be construed as a reference to any hospital within the meaning of this Act.

PART VI
—cont.

Removal to
England and
Wales of state
mental
patients.

(2) Where, under the said subsection (2) an order is made by the Secretary of State for the removal of a state mental patient from a mental hospital in Scotland to a hospital in England and Wales, then—

(a) if the patient is a person ordered to be kept in safe custody during Her Majesty's pleasure in pursuance of section eighty-seven or section eighty-eight of the Lunacy (Scotland) Act, 1857, the patient shall, on his reception into the hospital in England and Wales, be treated as if he had been removed to that hospital in pursuance of a direction of the Secretary of State under section seventy-one of this Act ;

(b) in any other case, the patient shall be treated, on his reception into the hospital in England and Wales, as if he had been removed to that hospital in pursuance of a transfer direction under Part V of this Act, and a direction restricting his discharge may be given under section seventy-four of this Act accordingly ;

and in any such case the patient shall be treated as if the sentence or order by virtue of which he was detained before being removed under this section had been imposed or made by a court in England and Wales.

Removal to and from Northern Ireland

85.—(1) If it appears to the Minister, in the case of a patient who is for the time being liable to be detained or subject to guardianship as mentioned in subsection (1) of section eighty-one of this Act, that it is in the patient's interest to remove him to Northern Ireland and that arrangements have been made—

Removal to
Northern
Ireland of
patients not
subject to
restriction.

(a) for his reception into a mental hospital within the meaning of the Mental Health Act (Northern Ireland), 1948 ; or

(b) for his reception into an institution within the meaning of that Act or for placing him under the guardianship of the Northern Ireland Hospitals Authority ;

the Minister may authorise the removal of the patient to Northern Ireland and give any necessary directions for his conveyance to his destination.

(2) Where a person is removed under this section to Northern Ireland, and is received in pursuance of the arrangements into

PART VI
—cont.

a mental hospital, he shall, on his reception, be treated for all purposes as having been so received in pursuance of a judicial order made under Part II of the Mental Health Act (Northern Ireland), 1948, on the date on which he is so received.

(3) Where a person is removed under this section to Northern Ireland, and is received in pursuance of the arrangements into an institution within the meaning of the said Act of 1948, or is placed under the guardianship of the Northern Ireland Hospitals Authority, he shall, on being so received or placed, be treated for all purposes as if he had been so received or placed in pursuance of a judicial order made under Part III of that Act on the date on which he is so received or placed.

Removal to
Northern
Ireland
of patients
subject to
restriction
on discharge.

86.—(1) If it appears to the Secretary of State, in the case of a patient who is for the time being liable to be detained by virtue of an order or direction under Part V of this Act, not being a patient to whom section eighty-five of this Act applies, that it is in the patient's interests to remove him to Northern Ireland and that arrangements have been made—

(a) for his reception into a mental hospital within the meaning of the Mental Health Act (Northern Ireland), 1948 ; or

(b) for his reception into an institution within the meaning of that Act,

the Secretary of State may by warrant authorise the removal of the patient to Northern Ireland, and may give any necessary directions for his conveyance to his destination.

(2) Where a patient liable to be detained by virtue of a hospital order and subject to an order restricting his discharge is removed under this section, then—

(a) if in pursuance of the arrangements he is received into a mental hospital, he shall be treated as if he were subject to a judicial order made under Part II of the said Act of 1948 on the date of his reception and continued under section fourteen of that Act on any occasion on which it would otherwise have expired during the continuance of the order restricting his discharge ;

(b) if in pursuance of the arrangements he is received into an institution within the meaning of that Act, he shall be treated as if he were subject to a judicial order made under Part III of the said Act on the date of his reception and continued under section thirty-nine of that Act on any occasion on which it would otherwise have expired during the continuance of the order restricting his discharge, and section thirty-four of that Act (which provides for the revocation or variation of judicial orders) shall have effect accordingly ;

but in either case, unless the Ministry of Home Affairs for Northern Ireland otherwise directs, any power to discharge the patient, to grant him leave of absence or to transfer him from the hospital or institution shall, during the continuance of the order restricting the discharge of the patient, be exercisable only with the consent of that Ministry.

(3) Where a patient liable to be detained by virtue of a transfer direction and subject to a direction restricting his discharge is removed under this section, he shall, upon being received into such a hospital or institution as aforesaid in pursuance of the arrangements, be treated as if the sentence or order by virtue of which he was detained before the transfer direction was given had been imposed or made by a court in Northern Ireland, and as if—

- (a) where the patient is received into such a mental hospital as aforesaid, he had been transferred to that hospital under section sixteen of the Prison Act (Northern Ireland) 1953 ;
- (b) where he is received into such an institution as aforesaid, he had been transferred to that institution under section thirty-seven of the said Act of 1948.

(4) Where a patient who is liable to be detained by virtue of a direction under section seventy-one of this Act is removed under this section, he shall, on his reception into a mental hospital or institution in pursuance of the arrangements, be treated as if he had been ordered by a court in Northern Ireland to be kept in safe custody during the pleasure of the Governor of Northern Ireland in pursuance of section seventeen of the Lunacy (Ireland) Act, 1821, or of section two of the Trial of Lunatics Act, 1883, as the case may be, and as if—

- (a) where he is received into a mental hospital, an order had been made by or on behalf of the Governor of Northern Ireland for his safe custody in that hospital ;
- (b) where he is received into an institution within the meaning of the said Act of 1948, he had been transferred to that institution under section thirty-seven of that Act.

(5) References in this section to the continuance of the order restricting the discharge of a patient are references to the time for which that order would have continued in force apart from removal of the patient under this section.

87.—(1) If it appears to the Ministry of Health and Local Government for Northern Ireland, in the case of a patient being—

- (a) a certified patient within the meaning of the Mental Health Act (Northern Ireland), 1948, or

Removal to
England and
Wales of
patients
other than
criminal
patients.

PART VI
—cont.

- (b) a person declared under Part III of that Act to be a person requiring special care (other than a person to whom section eighty-eight of this Act applies),

that it is in the patient's interests to remove him to England and Wales, and that arrangements have been made for his admission to a hospital or for placing him under guardianship there, the Ministry may authorise his removal to England and Wales, and may give any necessary directions for his conveyance to his destination.

(2) Where a patient removed under this section is received into a hospital in pursuance of such arrangements as aforesaid, this Act shall apply to him as if he had been admitted to the hospital in pursuance of an application for admission for treatment under Part IV of this Act, and had been so admitted on the date on which he is so received.

(3) Where a patient so removed is received into guardianship in pursuance of such arrangements as aforesaid, this Act shall apply to him as if he had been received into guardianship in pursuance of a guardianship application under the said Part IV accepted on the date on which he is so received.

Removal to
England
and Wales
of criminal
patients.

88.—(1) If it appears to the Ministry of Home Affairs for Northern Ireland, in the case of a patient being a criminal lunatic within the meaning of this section, that it is in the patient's interests to remove him to England and Wales, and that arrangements have been made for his admission to a hospital there, the Ministry may authorise his removal to England and Wales, and may give any necessary directions for his conveyance to his destination.

(2) Where a patient removed under this section is received into a hospital in England and Wales in pursuance of such arrangements as aforesaid, then—

- (a) if the patient is a person ordered to be kept in custody under section seventeen of the Lunacy (Ireland) Act, 1821, or under section two of the Trial of Lunatics Act, 1883, he shall, on his reception into the hospital in England and Wales, be treated as if he had been removed to that hospital in pursuance of a direction under section seventy-one of this Act ;
- (b) in any other case, the patient shall be treated, on his reception into the hospital in England and Wales, as if he had been removed to that hospital in pursuance of a transfer direction under Part V of this Act, and as if a direction restricting his discharge had been given under section seventy-four of this Act ;

and in any such case the patient shall be treated as if the sentence or order by virtue of which he was detained before being

removed under this section had been imposed or made by a court in England and Wales.

PART VI
—cont.

(3) In this section "criminal lunatic" means a criminal lunatic within the meaning of the Lunacy (Ireland) Act, 1901, or a person detained in a mental hospital or institution within the meaning of the Mental Health Act (Northern Ireland), 1948, in pursuance of an order made by the Governor of Northern Ireland or the Minister of Home Affairs for Northern Ireland under section thirty-seven of that Act, or of directions given by the Ministry of Home Affairs for Northern Ireland under section sixteen of the Prison Act (Northern Ireland), 1953.

Other provisions as to removal

89.—(1) The Secretary of State may by warrant direct that any offender found by a court in any of the Channel Islands or in the Isle of Man to be insane or to have been insane at the time of the alleged offence, and ordered to be detained during Her Majesty's pleasure, be removed to a hospital in England and Wales.

Removal of certain patients from Channel Islands and Isle of Man to England and Wales.

(2) A patient removed under this section shall, on his reception into the hospital in England and Wales, be treated as if he had been removed to that hospital in pursuance of a direction under section seventy-one of this Act.

(3) The Secretary of State may by warrant direct that any patient removed under this section from any of the Channel Islands or from the Isle of Man be returned to the Island from which he was so removed, there to be dealt with according to law in all respects as if he had not been removed under this section.

90. If it appears to the Secretary of State, in the case of any patient being an alien who is receiving treatment for mental illness as an in-patient—

Removal of alien patients.

(a) in a hospital in England and Wales; or

(b) in a mental hospital or institution within the meaning of the Mental Health (Northern Ireland) Act, 1948,

that proper arrangements have been made for the removal of the patient to a country or territory outside the United Kingdom, the Isle of Man and the Channel Islands and for his care or treatment there, the Secretary of State may by warrant authorise the removal of the patient from the place where he is receiving treatment as aforesaid, and may give such directions as the Secretary of State thinks fit for the conveyance of the patient to his destination in that country or territory and for his detention in any place or on board any ship or aircraft until his arrival at any specified port or place in any such country or territory.

PART VI
—cont.

Return of patients absent without leave

Persons absent
from Scottish
institutions.

91.—(1) Where a lunatic, defective, or state mental patient liable to detention under the Lunacy (Scotland) Acts, 1857 to 1913, the Mental Deficiency (Scotland) Acts, 1913 and 1940, the Criminal Lunatics (Scotland) Act, 1935, or the Criminal Justice (Scotland) Act, 1949, in an institution to which this section applies is absent from the institution without leave, he may, not later than the expiration of any period within which he might be retaken in Scotland under the said enactments, be retaken in England or Wales by a mental welfare officer, by any constable or by any person for the time being authorised by or by virtue of any such enactment to apprehend him without warrant and may be returned to that institution by any person so authorised.

(2) The institutions to which this section applies are mental hospitals, institutions for mental defectives and State Mental Hospitals within the meaning of the enactments specified in the foregoing subsection, and private asylums licensed thereunder.

Patients absent
from Northern
Irish
institutions.

92.—(1) Any person who, under section sixty-three of the Mental Health Act (Northern Ireland), 1948 (which provides for the retaking of patients absent without leave), is liable to be retaken in Northern Ireland may, within the period within which he might be so retaken, be taken into custody in England or Wales by a mental welfare officer, by any constable or by any person for the time being authorised by or by virtue of that section to retake him, and may be returned by any person so authorised to any hospital, institution or place to which he could lawfully be returned if retaken under that enactment.

(2) Any person being a criminal lunatic within the meaning of section eighty-eight of this Act who is unlawfully at large in England or Wales may be taken into custody in England or Wales by a mental welfare officer, by any constable or by any person authorised by subsection (1) of section thirty-eight of the Prison Act (Northern Ireland), 1953, to arrest him without warrant, and may be returned by any person so authorised to the place in which he is required by the law in force in Northern Ireland to be detained.

Patients absent
from
hospitals
in England
and Wales.

93.—(1) Subject to the provisions of this section, any person who, under section forty or section one hundred and forty of this Act or under the said section forty as applied by section forty-six of this Act, may be taken into custody in England and Wales may be taken into custody in, and returned to England and Wales from, any other part of the United Kingdom or the Channel Islands or the Isle of Man.

(2) For the purposes of the enactments referred to in subsection (1) of this section, in their application by virtue of this

section to Scotland, Northern Ireland, the Channel Islands or the Isle of Man, the expression "constable" includes a Scottish constable, an officer or constable of the Royal Ulster Constabulary, a member of the police in Jersey, an officer of police within the meaning of section forty-three of the Larceny (Guernsey) Law, 1958, or any corresponding law for the time being in force, or a constable in the Isle of Man, as the case may be.

PART VI
—cont.

(3) For the purposes of the said enactments in their application by virtue of this section to Scotland or Northern Ireland, any reference to a mental welfare officer shall be construed as including a reference—

(a) in Scotland, to any person (other than a constable) who, under the Lunacy (Scotland) Acts, 1857 to 1913, the Mental Deficiency (Scotland) Acts, 1913 and 1940, or the Criminal Lunatics (Scotland) Act, 1935, would have power to apprehend a person absent without leave from an institution to which section ninety-one of this Act applies;

(b) in Northern Ireland, to any person (other than a constable) who, under section sixty-three of the Mental Health Act (Northern Ireland) 1948, would be authorised to retake a patient absent without leave from a hospital to which that section applies.

(4) This section shall not apply to any person who is subject to guardianship.

Supplemental

94. Section fifty-six of this Act shall have effect as if references therein to Part IV of this Act included references to this Part of this Act so far as it applies to patients removed to England and Wales thereunder or under subsection (2) of section sixty-four of the Criminal Justice (Scotland) Act, 1949.

Regulations
for purposes
of Part VI.

95. Where a patient liable to be detained or subject to guardianship by virtue of an application, order or direction under Part IV or Part V of this Act is removed from England and Wales in pursuance of arrangements under this Part of this Act, the application, order or direction shall cease to have effect when he is duly received into a hospital or other institution, or placed under guardianship, in pursuance of those arrangements.

General
provisions
as to patients
removed from
England
and Wales.

96.—(1) References in this Part of this Act to a hospital, being a hospital in England and Wales, shall be construed as references to a hospital within the meaning of Part IV of this Act.

Interpretation
of Part VI.

(2) Where a patient is treated by virtue of this Part of this Act as if he had been removed to a hospital in England and

PART VI
—cont.

Wales in pursuance of a direction under Part V of this Act, that direction shall be deemed to have been given on the date of his reception into the hospital.

(3) A patient removed to England and Wales under this Part of this Act or under subsection (2) of section sixty-four of the Criminal Justice (Scotland) Act, 1949, shall be treated for the purposes of this Act as suffering from such form of mental disorder as may be recorded in his case in pursuance of regulations made by virtue of section ninety-four of this Act, and references in this Act to the form or forms of mental disorder specified in the relevant application, order or direction shall be construed as including references to the form or forms of mental disorder so recorded.

PART VII**SPECIAL HOSPITALS****Provision of
institutions
for treatment
under
conditions
of special
security.**

97.—(1) The Minister shall provide such institutions as appear to him to be necessary for persons subject to detention under this Act, being persons who, in the opinion of the Minister, require treatment under conditions of special security on account of their dangerous, violent or criminal propensities.

(2) The institutions vested in the Minister by subsection (3) of section sixty-two of the Criminal Justice Act, 1948, and by subsection (4) of section forty-nine of the National Health Service Act, 1946, shall be deemed to be institutions provided by the Minister under this section.

(3) Institutions provided, or deemed to be provided, by the Minister under this section are in this Act referred to as special hospitals.

**Administrative
provisions.**

98.—(1) The special hospitals shall be under the control and management of the Minister, and the provisions of Part II of the National Health Service Act, 1946, relating to the local administration of hospital and specialist services shall not apply to those hospitals.

(2) Subsection (1) of section fifty-eight of the National Health Service Act, 1946 (which enables the Minister to acquire land for the purposes of that Act) shall have effect as if the reference to the purposes of that Act included a reference to the purposes of this Part of this Act and as if the reference to any hospital vested in the Minister included a reference to any special hospital.

**Transfers to
and from
special
hospitals.**

99.—(1) Without prejudice to any other provisions of this Act with respect to the transfer of patients, any patient who is for the time being liable to be detained under this Act in a special hospital may, upon the directions of the Minister, at any time be removed into any other special hospital.

(2) Without prejudice to any such provision as aforesaid, the Minister may give directions for the transfer of any patient who is for the time being liable to be detained under this Act in a special hospital into a hospital not being a special hospital.

PART VII
—cont.

(3) Subsections (2) and (4) of section forty-one of this Act shall apply in relation to the transfer or removal of a patient under this section as they apply in relation to the transfer or removal of a patient from one hospital to another under that section.

PART VIII

MANAGEMENT OF PROPERTY AND AFFAIRS OF PATIENTS

100.—(1) The Lord Chancellor shall from time to time nominate one or more judges of the Supreme Court (hereinafter referred to as “nominated judges”) to act for the purposes of this Part of this Act.

Judicial
authorities^r and
Court of
Protection.

(2) There shall continue to be an office of the Supreme Court, called the Court of Protection, for the protection and management, as provided by this Part of this Act, of the property of persons under disability; and there shall be a Master and a Deputy Master of the Court of Protection appointed by the Lord Chancellor.

(3) The Lord Chancellor may nominate other officers of the Court of Protection to act for the purposes of this Part of this Act.

(4) The functions expressed to be conferred by this Part of this Act on the judge shall be exercisable by the Lord Chancellor or by any nominated judge, and shall also be exercisable by the Master or Deputy Master of the Court of Protection or by any officer nominated under the foregoing subsection, but—

- (a) in the case of the Master, Deputy Master or any such nominated officer, subject to any express provision to the contrary in this Part of this Act or any rules thereunder,
- (b) in the case of the Deputy Master or any such nominated officer, subject to any directions of the Master,
- (c) in the case of any such nominated officer, so far only as may be provided by the instrument by which he is nominated;

and references in this Part of this Act to the judge shall be construed accordingly.

101. The functions of the judge under this Part of this Act shall be exercisable where, after considering medical evidence, he is satisfied that a person is incapable, by reason of mental

Persons
within the
jurisdiction
of the judge:
“the patient”.

PART VIII
—cont.

disorder, of managing and administering his property and affairs ; and a person as to whom the judge is so satisfied is in this Part of this Act referred to as a patient.

General
functions of
the judge with
respect to
property and
affairs of
patient.

102.—(1) The judge may, with respect to the property and affairs of a patient, do or secure the doing of all such things as appear necessary or expedient—

- (a) for the maintenance or other benefit of the patient,
- (b) for the maintenance or other benefit of members of the patient's family,
- (c) for making provision for other persons or purposes for whom or which the patient might be expected to provide if he were not mentally disordered, or
- (d) otherwise for administering the patient's affairs.

(2) In the exercise of the powers conferred by this section regard shall be had first of all to the requirements of the patient, and the rules of law which restricted the enforcement by a creditor of rights against property under the control of the judge in lunacy shall apply to property under the control of the judge ; but subject to the foregoing provisions of this subsection the judge shall, in administering a patient's affairs, have regard to the interests of creditors and also to the desirability of making provision for obligations of the patient notwithstanding that they may not be legally enforceable.

Powers of the
judge as to
patient's
property and
affairs.

103.—(1) Without prejudice to the generality of the foregoing section, the judge shall have power to make such orders and give such directions and authorities as he thinks fit for the purposes of that section, and in particular may for those purposes make orders or give directions or authorities for—

- (a) the control (with or without the transfer or vesting of property or the payment into or lodgment in court of money or securities) and management of any property of the patient ;
- (b) the sale, exchange, charging or other disposition of or dealing with any property of the patient ;
- (c) the acquisition of any property in the name or on behalf of the patient ;
- (d) the settlement of any property of the patient, or the gift of any property of the patient to any such persons or for any such purposes as are mentioned in paragraphs (b) and (c) of subsection (1) of the foregoing section, so however that in such cases as a nominated judge may direct the powers conferred by this paragraph shall not be exercisable except by the Lord Chancellor or a nominated judge ;
- (e) the carrying on by a suitable person of any profession, trade or business of the patient ;

- (f) the dissolution of a partnership of which the patient is a member;
- (g) the carrying out of any contract entered into by the patient;
- (h) the conduct of legal proceedings in the name of the patient or on his behalf, so however that an order, direction or authority to present a petition in the name or on behalf of the patient for divorce or nullity of marriage, for presumption of death and dissolution of marriage, or for judicial separation shall be made or given only by the Lord Chancellor or a nominated judge;
- (i) the reimbursement out of the property of the patient, with or without interest, of money applied by any person either in payment of the patient's debts (whether legally enforceable or not) or for the maintenance or other benefit of the patient or members of his family or in making provision for other persons or purposes for whom or which he might be expected to provide if he were not mentally disordered;
- (j) the exercise of any power (including a power to consent) vested in the patient, whether beneficially, or as guardian or trustee, or otherwise, so however that the powers of a patient as patron of a benefice shall be exercisable by the Lord Chancellor only.

(2) If under the foregoing subsection provision is made for the settlement of any property of a patient, or the exercise of a power vested in a patient of appointing trustees or retiring from a trust, the judge may also make as respects the property settled or trust property such consequential vesting or other orders as the case may require, including (in the case of the exercise of such a power as aforesaid) any order which could have been made in such a case under Part IV of the Trustee Act, 1925.

(3) The power of the judge to provide for the settlement of the property of a patient shall not be exercisable at any time when the patient is an infant.

(4) Where under this section a settlement has been made of any property of a patient, and the Lord Chancellor or a nominated judge is satisfied, at any time before the death of the patient, that any material fact was not disclosed when the settlement was made, or that there has been any substantial change in circumstances, he may by order vary the settlement in such manner as he thinks fit, and give any consequential directions.

104. Where it is represented to the judge, and he has reason to believe, that a person may be incapable, by reason of mental disorder, of managing and administering his property and affairs, and the judge is of opinion that it is necessary to make

Judge's powers
in cases of
emergency.

PART VIII
—cont.

immediate provision for any of the matters referred to in section one hundred and two of this Act, then pending the determination of the question whether the said person is incapable as aforesaid the judge may exercise in relation to the property and affairs of that person any of the powers conferred on him in relation to the property and affairs of a patient by this Part of this Act so far as is requisite for enabling that provision to be made.

Power to
appoint
receiver.

105.—(1) The judge may by order appoint as receiver for a patient a person specified in the order or the holder for the time being of an office so specified; and the receiver shall do all such things in relation to the property and affairs of the patient as the judge, in the exercise of the powers conferred on him by sections one hundred and two and one hundred and three of this Act, orders or directs him to do and may do any such thing in relation thereto as the judge, in the exercise of those powers, authorises him to do.

(2) A receiver appointed for any person shall be discharged by order of the judge on the judge being satisfied that that person has become capable of managing and administering his property and affairs, and may be discharged by order of the judge at any time if the judge considers it expedient to do so; and a receiver shall be discharged (without any order) on the death of the patient.

Vesting of
stock in
curator
appointed
outside
England and
Wales.

106.—(1) Where the judge is satisfied—

- (a) that under the law prevailing in a place outside England and Wales a person has been appointed to exercise powers with respect to the property or affairs of any other person on the ground (however formulated) that that other person is incapable, by reason of mental disorder, of managing and administering his property and affairs, and
- (b) that having regard to the nature of the appointment and to the circumstances of the case it is expedient that the judge should exercise his powers under this section,

the judge may direct any stock standing in the name of the said other person or the right to receive the dividends thereof to be transferred into the name of the person so appointed or otherwise dealt with as requested by that person, and may give such directions as the judge thinks fit for dealing with accrued dividends thereof.

(2) In this section “stock” includes shares and also any fund, annuity or security transferable in the books kept by any body corporate or unincorporated company or society, or by an instrument of transfer either alone or accompanied by other formalities, and “dividends” shall be construed accordingly.

PART VIII
—cont.Preservation
of interests in
patient's
property.

107.—(1) Where any property of a person has been disposed of under this Part of this Act, and under his will or any codicil thereto or his intestacy, or by any gift perfected or nomination taking effect on his death, any other person would have taken an interest in the property but for the disposal, he shall take the like interest, if and so far as circumstances allow, in any property belonging to the estate of the deceased which represents the property disposed of; and if the property disposed of was real property any property representing it shall so long as it remains part of his estate be treated as if it were real property.

(2) The judge, in ordering, directing or authorising under this Part of this Act any disposal of property which apart from this section would result in the conversion of personal property into real property, may direct that the property representing the property disposed of shall, so long as it remains the property of the patient or forms part of his estate, be treated as if it were personal property.

(3) In the foregoing subsections references to the disposal of property are references to the sale, exchange, charging or other dealing with property other than money, the removal of property from one place to another, the application of money in acquiring property or the transfer of money from one account to another, and references to property representing property disposed of shall be construed accordingly and as including the result of successive disposals.

(4) The judge may give such directions as appear to him necessary or expedient for the purpose of facilitating the operation of subsection (1) of this section, including the carrying of money to a separate account and the transfer of property other than money.

(5) Where the judge has ordered, directed or authorised the expenditure of money for the carrying out of permanent improvements on, or otherwise for the permanent benefit of, any property of the patient, he may order that the whole or any part of the money expended or to be expended shall be a charge upon the property, whether without interest or with interest at a specified rate; and—

- (a) a charge under this subsection may be made in favour of such person as may be just, and in particular, where the money charged is paid out of the patient's general estate, may be made in favour of a person as trustee for the patient;
- (b) an order under this subsection may provide for excluding or restricting the operation of subsection (1) of this section:

Provided that a charge created under this subsection shall not confer any right of sale or foreclosure during the lifetime of the patient.

PART VIII

—cont.

Lord
Chancellor's
Visitors.

108.—(1) There shall continue to be Medical and Legal Visitors of patients, appointed by the Lord Chancellor, and the Visitors shall be known as the Lord Chancellor's Visitors.

(2) As respects appointments of Lord Chancellor's Visitors made after the commencement of this Act, the concurrence of the Treasury shall be required as to numbers.

(3) A person shall not be qualified to be appointed a Medical Visitor unless he is a medical practitioner who appears to the Lord Chancellor to have special knowledge and experience of cases of mental disorder.

(4) Subsection (3) of section one hundred and sixteen of the Supreme Court of Judicature (Consolidation) Act, 1925 (which precludes the appointment as deputy in any office of the Supreme Court of a person who is not qualified for appointment to that office) shall not prevent a person who has previously held an appointment as Medical Visitor or as Legal Visitor being appointed as deputy for a Medical Visitor or, as the case may be, a Legal Visitor.

(5) The Lord Chancellor may, with the concurrence of the Treasury as to numbers, appoint persons to be clerks and other officers of the Lord Chancellor's Visitors.

Functions of
Visitors.

109.—(1) It shall be the duty of the Lord Chancellor's Visitors to visit patients in accordance with the directions of the judge for the purpose of investigating matters relating to the capacity of any patient to manage and administer his property and affairs or otherwise relating to the exercise, in relation to him, of the functions of the judge under this Part of this Act; and the Visitors shall make such reports on their visits as the judge may direct.

(2) A Visitor making a visit under this section may interview the patient in private.

(3) A Medical Visitor making a visit under this section may carry out in private a medical examination of the patient and may require the production of and inspect any medical records relating to the patient.

(4) The Master or Deputy Master of the Court of Protection may visit any patient for the purpose mentioned in subsection (1) of this section, and subsection (2) thereof shall have effect accordingly.

(5) A report made by a Visitor under this section, and information contained in such a report, shall not be disclosed except to the judge and any person authorised by the judge to receive the disclosure.

(6) If any person discloses any report or information in contravention of the last foregoing subsection, he shall be guilty of an offence and shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred pounds or both.

(7) In this section references to patients include references to persons alleged to be incapable, by reason of mental disorder, of managing and administering their property and affairs.

PART VIII

—cont.

110.—(1) For the purposes of any proceedings before him with respect to persons suffering or alleged to be suffering from mental disorder, the judge shall have the like powers as are vested in the High Court in respect of securing the attendance of witnesses and the production of documents.

General powers of the judge with respect to proceedings.

(2) Subject to the provisions of this section, any act or omission in the course of such proceedings as aforesaid which, if occurring in the course of proceedings in the High Court would have been a contempt of the Court, shall be punishable by the judge in any manner in which it could have been punished by the High Court.

(3) The foregoing subsection shall not authorise the Master or Deputy Master, or any other officer, of the Court of Protection to exercise any power of attachment or committal, but the Master, Deputy Master or officer may certify any such act or omission to the Lord Chancellor or a nominated judge, and the Lord Chancellor or judge may thereupon inquire into the alleged act or omission and take any such action in relation thereto as he could have taken if the proceedings had been before him.

(4) Subsections (1) to (4) of section forty-nine of the Supreme Court of Judicature (Consolidation) Act, 1925 (which provides a special procedure for the issue of writs of subpoena ad testificandum and duces tecum so as to be enforceable throughout the United Kingdom) shall apply in relation to proceedings under this Part of this Act with the substitution for references to the High Court of references to the judge and for references to such writs as aforesaid of references to such document as may be prescribed by rules under this Part of this Act for issue by the judge for securing the attendance of witnesses or the production of documents.

111.—(1) Subject to and in accordance with rules under this Part of this Act, an appeal shall lie to a nominated judge from any decision of the Master or Deputy Master of the Court of Protection or any officer of the Court of Protection nominated under subsection (3) of section one hundred of this Act.

(2) The Court of Appeal shall have the like jurisdiction as to appeals from any decision of the Lord Chancellor or from any decision of a nominated judge, whether given in the exercise of his original jurisdiction or on the hearing of an appeal under the foregoing subsection, as they had immediately before the coming into operation of this Part of this Act as to appeals from orders in lunacy made by the Lord Chancellor or

PART VIII
—cont.

any other person having jurisdiction in lunacy, and the provisions of the Supreme Court of Judicature (Consolidation) Act, 1925, relating to appeals shall have effect accordingly.

Rules of
procedure.

112.—(1) Proceedings before the judge with respect to persons suffering or alleged to be suffering from mental disorder (in this section referred to as “proceedings”) shall be conducted in accordance with the provisions of rules made under this Part of this Act.

(2) Rules under this Part of this Act may make provision as to the carrying out of preliminary or incidental inquiries, as to the persons by whom and manner in which proceedings may be instituted and carried on, as to the persons who are to be entitled to be notified of, to attend, or to take part in proceedings, as to the evidence which may be authorised or required to be given in proceedings and the manner (whether on oath or otherwise and whether orally or in writing) in which it is to be given, as to the administration of oaths and taking of affidavits for the purposes of proceedings, and as to the enforcement of orders made and directions given in proceedings.

(3) Without prejudice to the provisions of subsection (1) of section one hundred and ten of this Act, rules under this Part of this Act may make provision for authorising or requiring the attendance and examination of persons suffering or alleged to be suffering from mental disorder, the furnishing of information and the production of documents.

(4) Rules under this Part of this Act may make provision as to the termination of proceedings, whether on the death or recovery of the person to whom the proceedings relate or otherwise, and for the exercise, pending the termination of the proceedings, of powers exercisable under this Part of this Act in relation to the property or affairs of a patient.

(5) Rules under this Part of this Act made with the consent of the Treasury may make provision as to the scale of costs, fees and percentages payable in relation to proceedings, and as to the manner in which and funds out of which such costs, fees and percentages are to be paid, may contain provision for charging any percentage upon the estate of the person to whom the proceedings relate and for the payment of costs, fees and percentages within such time after the death of the person to whom the proceedings relate or the termination of the proceedings as may be provided by the rules, and may provide for the remission of fees and percentages.

(6) A charge upon the estate of a person created by virtue of the foregoing subsection shall not cause any interest of that person in any property to fail or determine or to be prevented from recommencing.

(7) Rules under this Part of this Act may authorise the making of orders for the payment of costs to or by persons attending, as well as persons taking part in, proceedings.

PART VIII
—cont.

113.—(1) Rules under this Part of this Act may make provision as to the giving of security by a receiver and as to the enforcement and discharge of the security. Security and accounts.

(2) It shall be the duty of a receiver to render accounts in accordance with the requirements of rules under this Part of this Act, as well after his discharge as during his receivership; and rules under this Part of this Act may make provision for the rendering of accounts by persons, not being receivers, ordered, directed or authorised under this Part of this Act to carry out any transaction.

114.—(1) Any power to make rules conferred by this Part of this Act shall be exercisable by the Lord Chancellor. General provisions as to rules under Part VIII.

(2) Rules under this Part of this Act may contain such incidental and supplemental provisions as appear requisite for the purposes of the rules.

115.—(1) The Master of the Court of Protection shall take in the presence of the Lord Chancellor the oath of allegiance and judicial oath; and the Promissory Oaths Act, 1868, shall have effect as if the officers named in the Second Part of the Schedule to that Act included the Master of the Court of Protection. Supplementary provisions as to Court of Protection.

(2) A person shall not be qualified for appointment as Deputy Master of the Court of Protection unless at the time of his appointment he is a barrister or solicitor of not less than five years' standing or is an officer of the Court of Protection who for not less than five years (whether continuously or not) has been an officer nominated under subsection (3) of section one hundred of this Act.

(3) The Lord Chancellor may, with the concurrence of the Treasury as to numbers, appoint persons to be clerks and other officers of the Court of Protection.

116.—(1) Section two hundred and four of the Law of Property Act, 1925 (by which orders of the High Court are made conclusive in favour of purchasers) shall apply in relation to orders made and directions and authorities given by the judge as it applies in relation to orders of the High Court. Effect and proof of orders, etc.

(2) Office copies of orders made, directions or authorities given, or other instruments issued by the judge and sealed with the official seal of the Court of Protection shall be admissible in all legal proceedings as evidence of the originals without any further proof.

PART VIII
—cont.

Reciprocal
arrangements
in relation to
Scotland and
Northern
Ireland as to
exercise of
powers.

117.—(1) This Part of this Act shall apply in relation to the property and affairs in Scotland or Northern Ireland of a patient in relation to whom powers have been exercised under this Part of this Act, or a person as to whom powers are exercisable and have been exercised under section one hundred and four of this Act, as it applies in relation to his property and affairs in England and Wales unless a curator bonis, tutor, judicial factor, committee, receiver or guardian has been appointed for him in Scotland or, as the case may be, Northern Ireland.

(2) Where under the law in force in Scotland or Northern Ireland with respect to the property and affairs of persons suffering from mental disorder a curator bonis, tutor, judicial factor, committee, receiver or guardian has been appointed for any person, the provisions of that law shall apply in relation to that person's property and affairs in England and Wales unless he is a patient in relation to whom powers have been exercised under this Part of this Act, or a person as to whom powers are exercisable and have been exercised under section one hundred and four of this Act.

(3) In this section references to property do not include references to land or interests in land:

Provided that this subsection shall not prevent the receipt of rent or other income arising from land or interests in land.

Construction
of references
in other Acts
to judge or
authority
having
jurisdiction
under
Part VIII.

118.—(1) The functions expressed to be conferred by any enactment not contained in this Part of this Act on the judge having jurisdiction under this Part of this Act shall be exercisable by the Lord Chancellor or by a nominated judge.

(2) The functions expressed to be conferred by any such enactment on the authority having jurisdiction under this Part of this Act shall, subject to any express provision to the contrary, be exercisable by the Lord Chancellor, a nominated judge, the Master or Deputy Master of the Court of Protection or any officer nominated under subsection (3) of section one hundred of this Act:

Provided that the exercise of those functions by the Deputy Master or any such nominated officer shall be subject to any directions of the Master, and the said functions shall be exercisable by any such nominated officer so far only as may be provided by the instrument by which he is nominated.

(3) Subject to the provisions of the foregoing subsections,—

(a) references in any enactment not contained in this Part of this Act to the judge having jurisdiction under this Part of this Act shall be construed as references to the Lord Chancellor or a nominated judge, and

(b) references in any such enactment to the authority having jurisdiction under this Part of this Act shall be con-

strued as references to the Lord Chancellor, a nominated judge, the Master or Deputy Master of the Court of Protection or any officer nominated under subsection (3) of section one hundred of this Act.

PART VIII
—cont.

119.—(1) In this Part of this Act, unless the context otherwise requires,—

Interpretation
of Part VIII.

“nominated judge” means a judge nominated in pursuance of subsection (1) of section one hundred of this Act;

“patient” has the meaning assigned to it by section one hundred and one of this Act;

“property” includes any thing in action, and any interest in real or personal property;

“the judge” shall be construed in accordance with section one hundred of this Act.

(2) Any power conferred by this Part of this Act to make an order shall be construed as including a power, exercisable in like manner and subject to the like conditions if any, to revoke or vary the order.

120. The provisions of the Lunacy Regulation (Ireland) Act, 1871, described in the Fourth Schedule to this Act (which relate to the management and protection of the property of mentally disordered persons and to the procedure on inquisitions) shall have effect subject to the modifications specified in that Schedule.

Modifications
of Lunacy
Regulation
(Ireland) Act,
1871.

121. The provisions of the Acts described in the Fifth Schedule to this Act which are specified in the third column of that Schedule, so far as they make special provision for persons suffering from mental disorder, shall cease to have effect in relation to patients and to persons as to whom powers are exercisable and have been exercised under section one hundred and four of this Act.

Repeal of
certain
enactments in
relation to
persons within
the jurisdiction
of the judge.

PART IX

MISCELLANEOUS AND GENERAL

Powers and proceedings of Mental Health Review Tribunals

122.—(1) Where, under any provision of this Act, an application to a Mental Health Review Tribunal is authorised to be made by or in respect of a patient, the application shall be made by notice in writing addressed to the tribunal for the area in which the hospital or nursing home in which the patient is detained is situated or in which the patient is residing under guardianship, as the case may be.

Applications
to tribunals.

(2) Except in such cases and at such times as are expressly provided by this Act, no application shall be made to a Mental Health Review Tribunal by or in respect of a patient; and where, under any provision of this Act, any person is authorised to make an application to such a tribunal within a specified period, not more than one such application shall be made by that person within that period.

PART IX
—cont.Powers of
tribunals.

123.—(1) Where application is made to a Mental Health Review Tribunal by or in respect of a patient who is liable to be detained under this Act, the tribunal may in any case direct that the patient be discharged, and shall so direct if they are satisfied—

- (a) that he is not then suffering from mental illness, psychopathic disorder, subnormality or severe subnormality; or
- (b) that it is not necessary in the interests of the patient's health or safety or for the protection of other persons that the patient should continue to be liable to be detained; or
- (c) in the case of an application under subsection (3) of section forty-four or subsection (3) of section forty-eight of this Act, that the patient, if released, would not be likely to act in a manner dangerous to other persons or to himself.

(2) Where application is made to a Mental Health Review Tribunal by or in respect of a patient who is subject to guardianship under this Act, the tribunal may in any case direct that the patient be discharged, and shall so direct if they are satisfied—

- (a) that he is not then suffering from mental illness, psychopathic disorder, subnormality or severe subnormality; or
- (b) that it is not necessary in the interests of the patient, or for the protection of other persons, that the patient should remain under such guardianship.

(3) Where application is made to a Mental Health Review Tribunal under any provision of this Act by or in respect of a patient and the tribunal do not direct that the patient be discharged, the tribunal may, if satisfied that the patient is suffering from a form of mental disorder other than the form specified in the relevant application, order or direction, direct that that application, order or direction be amended by substituting for the form of mental disorder specified therein such other form of mental disorder as appears to the tribunal to be appropriate.

(4) This section applies in relation to any reference to a Mental Health Review Tribunal made by the Minister under section fifty-seven of this Act as it applies in relation to an application made to such tribunal by or in respect of a patient, but does not apply in relation to any reference by the Secretary of State under subsection (6) of section sixty-six of this Act.

Rules as to
procedure.

124.—(1) The Lord Chancellor may make rules with respect to the making of applications to Mental Health Review Tribunals, and with respect to the proceedings of such tribunals and matters incidental to or consequential on such proceedings.

(2) Rules made under this section may in particular make provision—

PART IX
—cont.

- (a) for enabling a tribunal, or the chairman of a tribunal, to postpone the consideration of any application by or in respect of a patient, or of any such application of any specified class, until the expiration of such period (not exceeding twelve months) as may be specified in the rules from the date on which an application by or in respect of the same patient was last considered and determined by that or any other tribunal under this Act;
- (b) for the transfer of proceedings from one tribunal to another in any case where, after the making of the application, the patient is removed out of the area of the tribunal to which it was made;
- (c) for restricting the persons qualified to serve as members of a tribunal for the consideration of any application, or of an application of any specified class;
- (d) for enabling a tribunal to dispose of an application without a formal hearing where such a hearing is not requested by the applicant or it appears to the tribunal that such a hearing would be detrimental to the health of the patient;
- (e) for enabling a tribunal to exclude members of the public, or any specified class of members of the public, from any proceedings of the tribunal, or to prohibit the publication of reports of any such proceedings or the names of any persons concerned in such proceedings;
- (f) for regulating the circumstances in which, and the persons by whom, applicants and patients in respect of whom applications are made to a tribunal may, if not desiring to conduct their own case, be represented for the purposes of those applications;
- (g) for regulating the methods by which information relevant to an application may be obtained by or furnished to the tribunal, and in particular for authorising the members of a tribunal, or any one or more of them, to visit and interview in private any patient by or in respect of whom an application has been made;
- (h) for making available to any applicant, and to any patient in respect of whom an application is made to a tribunal, copies of any documents obtained by or furnished to the tribunal in connection with the application, and a statement of the substance of any oral information so obtained or furnished except where the tribunal considers it undesirable in the interests of the patient or for other special reasons;
- (i) for requiring a tribunal, if so requested in accordance with the rules, to furnish such statements of the

PART IX
—cont.

reasons for any decision given by the tribunal as may be prescribed by the rules, subject to any provision made by the rules for withholding such a statement from a patient or any other person in cases where the tribunal considers that furnishing it would be undesirable in the interests of the patient or for other special reasons ;

- (j) for conferring on the tribunals such ancillary powers as the Lord Chancellor thinks necessary for the purposes of the exercise of their functions under this Act.

(3) The foregoing provisions of this section apply in relation to references to Mental Health Review Tribunals as they apply in relation to applications to such tribunals by or in respect of patients.

(4) Rules under this section may be so framed as to apply to all applications or references or to applications or references of any specified class and may make different provision in relation to different cases.

(5) A Mental Health Review Tribunal may, and if so required by the High Court shall, state in the form of a special case for determination by the High Court any question of law which may arise before them.

(6) The Arbitration Act, 1950, shall not apply to any proceedings before a Mental Health Review Tribunal except so far as any provisions of that Act may be applied, with or without modifications, by rules made under this section.

Offences

Forgery, false
statements, etc.

125.—(1) Any person who, with intent to deceive, forges any of the following documents, that is to say :—

- (a) any application under Part IV of this Act ;
- (b) any medical recommendation or report under this Act ;
- or
- (c) any other document required or authorised to be made for any of the purposes of this Act,

or who uses, allows another person to use or makes or has in his possession any such document which he knows to have been forged or any document so closely resembling any such document as to be calculated to deceive, shall be guilty of an offence.

(2) Any person who wilfully makes a false entry or statement in any application, recommendation, report, record or other document required or authorised to be made for any of the purposes of this Act or, with intent to deceive, makes use of any such entry or statement which he knows to be false, shall be guilty of an offence.

(3) Any person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds, or to both ; or

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

PART IX
—cont.

(4) In this section "forge" has the same meaning as in the Forgery Act, 1913.

126.—(1) It shall be an offence for any person being an officer on the staff of or otherwise employed in, or being one of the managers of, a hospital or mental nursing home—

(a) to ill-treat or wilfully neglect a patient for the time being receiving treatment for mental disorder as an in-patient in that hospital or home; or

(b) to ill-treat or wilfully neglect, on the premises of which the hospital or home forms part, a patient for the time being receiving such treatment there as an out-patient.

(2) It shall be an offence for any individual to ill-treat or wilfully neglect a mentally disordered patient who is for the time being subject to his guardianship under this Act or otherwise in his custody or care (whether by virtue of any legal or moral obligation or otherwise).

(3) Any person guilty of an offence under this section shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

(4) No proceedings shall be instituted for an offence under this section except by or with the consent of the Director of Public Prosecutions.

127.—(1) The Sexual Offences Act, 1956, shall be amended as follows:—

Amendment
of Sexual
Offences Act,
1956.

(a) for section seven there shall be substituted the following section:—

"Intercourse
with defective.

7.—(1) It is an offence, subject to the exception mentioned in this section, for a man to have unlawful sexual intercourse with a woman who is a defective.

(2) A man is not guilty of an offence under this section because he has unlawful sexual intercourse with a woman if he does not know and has no reason to suspect her to be a defective."

(b) for section forty-five there shall be substituted the following section:—

"Meaning of
'defective'.

45. In this Act 'defective' means a person suffering from severe subnormality within the meaning of the Mental Health Act, 1959."

and section eight of that Act shall cease to have effect.

PART IX
—cont.

(2) An order under section thirty-eight of the said Act made on conviction of an offence against a girl under the age of twenty-one who is a defective within the meaning of that Act may, so far as it has effect for any of the purposes of this Act, be rescinded under that section either before or after the girl has attained that age.

Sexual
intercourse
with patients.

128.—(1) Without prejudice to section seven of the Sexual Offences Act, 1956, it shall be an offence, subject to the exception mentioned in this section,—

(a) for a man who is an officer on the staff of or is otherwise employed in, or is one of the managers of, a hospital or mental nursing home to have unlawful sexual intercourse with a woman who is for the time being receiving treatment for mental disorder in that hospital or home, or to have such intercourse on the premises of which the hospital or home forms part with a woman who is for the time being receiving such treatment there as an out-patient ;

(b) for a man to have unlawful sexual intercourse with a woman who is a mentally disordered patient and who is subject to his guardianship under this Act or is otherwise in his custody or care under this Act or in pursuance of arrangements under the National Health Service Act, 1946, or Part III of the National Assistance Act, 1948, or as a resident in a residential home for mentally disordered persons within the meaning of Part III of this Act.

(2) It shall not be an offence under this section for a man to have sexual intercourse with a woman if he does not know and has no reason to suspect her to be a mentally disordered patient.

(3) Any person guilty of an offence under this section shall be liable on conviction on indictment to imprisonment for a term not exceeding two years.

(4) No proceedings shall be instituted for an offence under this section except by or with the consent of the Director of Public Prosecutions.

(5) This section shall be construed as one with the Sexual Offences Act, 1956 ; and section forty-seven of that Act (which relates to the proof of exceptions) shall apply to the exception mentioned in this section.

Assisting
patients to
absent
themselves
without leave,
etc.

129.—(1) Any person who induces or knowingly assists any other person—

(a) being liable to be detained in a hospital within the meaning of Part IV of this Act, or being subject to guardianship under this Act, to absent himself without leave ; or

- (b) being in legal custody by virtue of section one hundred and thirty-eight of this Act, to escape from such custody ;

shall be guilty of an offence.

(2) Any person who knowingly harbours a patient who is absent without leave or is otherwise at large and liable to be retaken under this Act, or gives him any assistance with intent to prevent, hinder or interfere with his being taken into custody or returned to the hospital or other place where he ought to be, shall be guilty of an offence.

(3) Any person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds, or to both ;
- (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine, or to both.

130.—(1) Any person who refuses to allow the inspection of any premises, or without reasonable cause refuses to allow the visiting, interviewing or examination of any person by a person authorised in that behalf by or under this Act or to produce for the inspection of any person so authorised any document or record the production of which is duly required by him, or otherwise obstructs any such person in the exercise of his functions, shall be guilty of an offence. Obstruction.

(2) Without prejudice to the generality of the foregoing subsection, any person who insists on being present when requested to withdraw by a person authorised as aforesaid to interview or examine a person in private, shall be guilty of an offence.

(3) Any person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred pounds, or to both.

131.—(1) A local health authority may institute proceedings for any offence under this Part of this Act, but without prejudice to any provision of this Part of this Act requiring the consent of the Director of Public Prosecutions for the institution of such proceedings. Prosecutions by local authorities.

(2) In relation to an offence under section one hundred and thirty of this Act in connection with the inspection of any premises, or the visiting, interviewing or examination of any patient, by a person authorised in that behalf by a registration authority within the meaning of Part III of this Act, subsection (1) of this section shall have effect as if the reference to a local health authority included a reference to that authority.

PART IX

—cont.

Miscellaneous provisions

Notification of hospitals having arrangements for reception of urgent cases.

132. It shall be the duty of every Regional Hospital Board to give notice to every local health authority for an area wholly or partly comprised within the area of the Board specifying the hospital or hospitals administered by the Board in which arrangements are from time to time in force for the reception, in case of special urgency, of patients requiring treatment for mental disorder.

Provision of pocket money for in-patients in hospital.

133.—(1) The Minister may pay to persons who are receiving treatment as in-patients (whether liable to be detained or not) in special hospitals or other hospitals, being hospitals wholly or mainly used for the treatment of persons suffering from mental disorder, such amounts as he thinks fit in respect of their occasional personal expenses where it appears to him that they would otherwise be without resources to meet those expenses.

(2) For the purposes of the National Health Service Act, 1946, the making of payments under this section to persons for whom hospital and specialist services are provided under Part II of that Act shall be treated as included among those services.

(3) In the application of this section to Scotland—

- (a) for any reference to the Minister there shall be substituted a reference to the Secretary of State;
- (b) for the words from “special hospitals” to “mental disorder” there shall be substituted the words “institutions to which section ninety-one of this Act applies”;
- (c) for the reference to the National Health Service Act, 1946, there shall be substituted a reference to the National Health Service (Scotland) Act, 1947.

Correspondence of patients not subject to detention.

134.—(1) Section thirty-six of this Act shall apply in relation to any patient who is receiving treatment for mental disorder in a hospital or mental nursing home, having been admitted for that purpose but not being liable to be detained therein, as it applies in relation to a patient detained in a hospital under Part IV of this Act.

(2) In relation to any patient to whom it applies by virtue of this section, the said section thirty-six shall have effect as if for any reference to the responsible medical officer there were substituted a reference to the medical practitioner in charge of the treatment of the patient.

Warrant to search for and remove patients

135.—(1) If it appears to a justice of the peace, on information on oath laid by a mental welfare officer, that there is reasonable cause to suspect that a person believed to be suffering from mental disorder—

- (a) has been, or is being, ill-treated, neglected or kept otherwise than under proper control, in any place within the jurisdiction of the justice, or

- (b) being unable to care for himself, is living alone in any such place,

the justice may issue a warrant authorising any constable named therein to enter, if need be by force, any premises specified in the warrant in which that person is believed to be, and, if thought fit, to remove him to a place of safety with a view to the making of an application in respect of him under Part IV of this Act, or of other arrangements for his treatment or care.

(2) If it appears to a justice of the peace, on information on oath laid by any constable or other person who is authorised by or under this Act to take a patient to any place, or to take into custody or retake a patient who is liable under this Act to be so taken or retaken,—

- (a) that there is reasonable cause to believe that the patient is to be found on premises within the jurisdiction of the justice ; and

- (b) that admission to the premises has been refused or that a refusal of such admission is apprehended,

the justice may issue a warrant authorising any constable named therein to enter the premises, if need be by force, and remove the patient.

(3) A patient who is removed to a place of safety in the execution of a warrant issued under this section may be detained there for a period not exceeding seventy-two hours.

(4) In the execution of a warrant issued under subsection (1) of this section, the constable to whom it is addressed shall be accompanied by a mental welfare officer and by a medical practitioner, and in the execution of a warrant issued under subsection (2) of this section the constable to whom it is addressed may be accompanied—

- (a) by a medical practitioner ;

- (b) by any person authorised by or under this Act to take or retake the patient.

(5) It shall not be necessary in any information or warrant under subsection (1) of this section to name the patient concerned.

(6) In this section “place of safety” means residential accommodation provided by a local authority under Part III of the National Health Service Act, 1946, or under Part III of the National Assistance Act, 1948, a hospital as defined by this Act, a police station, a mental nursing home or residential home for mentally disordered persons or any other suitable place the occupier of which is willing temporarily to receive the patient.

136.—(1) If a constable finds in a place to which the public have access a person who appears to him to be suffering from mental disorder and to be in immediate need of care or control, the constable may, if he thinks it necessary to do so in the

Mentally disordered persons found in public places.

PART IX
—cont.

interests of that person or for the protection of other persons, remove that person to a place of safety within the meaning of the last foregoing section.

(2) A person removed to a place of safety under this section may be detained there for a period not exceeding seventy-two hours for the purpose of enabling him to be examined by a medical practitioner and to be interviewed by a mental welfare officer and of making any necessary arrangements for his treatment or care.

Amendment
of provisions
as to members
of Parliament.

137.—(1) The following provisions shall have effect in substitution for the provisions of the Lunacy (Vacating of Seats) Act, 1886.

(2) Where a member of the House of Commons is authorised to be detained on the ground (however formulated) that he is suffering from mental illness, it shall be the duty of the court, authority or person on whose order or application, and of any medical practitioner upon whose recommendation or certificate, the detention was authorised, and of the person in charge of the hospital or other place in which the member is authorised to be detained, to notify the Speaker of the House of Commons that the detention has been authorised.

(3) Where the Speaker receives a notification under the foregoing subsection, or is notified by two members of the House of Commons that they are credibly informed that such an authorisation has been given, the Speaker shall cause the member to whom the notification relates to be visited and examined by two medical practitioners appointed as follows, that is to say—

(a) where the member is to be visited in England and Wales or in Northern Ireland, by the President of the Royal College of Physicians of London ;

(b) where the member is to be visited in Scotland, by the President of the Royal College of Physicians of Edinburgh and the President of the Royal Faculty of Physicians and Surgeons of Glasgow, acting jointly,

being in either case practitioners appearing to the President or Presidents to have special experience in the diagnosis or treatment of mental disorders ; and the medical practitioners so appointed shall report to the Speaker whether the member is suffering from mental illness and is authorised to be detained as such.

(4) If the report is to the effect that the member is suffering from mental illness and authorised to be detained as aforesaid, the Speaker shall at the expiration of six months from the date of the report, if the House is then sitting, and otherwise as soon as may be after the House next sits, again cause the

member to be visited and examined by two such medical practitioners as aforesaid, and the medical practitioners shall report as aforesaid.

PART IX
—cont.

(5) If the second report is that the member is suffering from mental illness and authorised to be detained as aforesaid, the Speaker shall forthwith lay both reports before the House of Commons, and thereupon the seat of the member shall become vacant.

(6) This section shall apply in relation to the House of Commons of Northern Ireland as it applies in relation to the House of Commons and references therein to the Speaker shall be construed accordingly.

138.—(1) Where a periodic payment falls to be made to any person by way of pay or pension or otherwise in connection with the service or employment of that or any other person, and the payment falls to be made directly out of moneys provided by Parliament or the Consolidated Fund, or other moneys administered by or under the control or supervision of a Government department, the authority by whom the sum in question is payable, if satisfied after considering medical evidence that the person to whom it is payable (hereinafter referred to as "the patient") is incapable by reason of mental disorder of managing and administering his property and affairs, may, instead of paying the sum to the patient, apply it in accordance with the next following subsection.

Pay,
pensions, etc.,
of mentally
disordered
persons.

(2) The authority may pay the sum or such part thereof as they think fit to the institution or person having the care of the patient, to be applied for his benefit, and may pay the remainder (if any) or such part thereof as they think fit—

(a) to or for the benefit of persons who appear to the authority to be members of the patient's family or other persons for whom the patient might be expected to provide if he were not mentally disordered, or

(b) in reimbursement, with or without interest, of money applied by any person either in payment of the patient's debts (whether legally enforceable or not) or for the maintenance or other benefit of the patient or such persons as are mentioned in the foregoing paragraph.

(3) In this section "Government department" does not include a department of the Government of Northern Ireland.

Supplemental

139.—(1) Any person required or authorised by or by virtue of this Act to be conveyed to any place or to be kept in custody or detained in a place of safety or at any place to which he

Provisions as
to custody,
conveyance
and detention.

PART IX
—cont.

is taken under subsection (5) of section sixty-six of this Act shall, while being so conveyed, detained or kept, as the case may be, be deemed to be in legal custody.

(2) A constable or any other person required or authorised by or by virtue of this Act to take any person into custody, or to convey or detain any person shall, for the purposes of taking him into custody or conveying or detaining him, have all the powers, authorities, protection and privileges which a constable has within the area for which he acts as constable.

(3) In this section “convey” includes any other expression denoting removal from one place to another.

Retaking
of patients
escaping from
custody.

140.—(1) If any person being in legal custody by virtue of section one hundred and thirty-nine of this Act escapes, he may, subject to the provisions of this section, be retaken—

(a) in any case, by the person who had his custody immediately before the escape, or by any constable or mental welfare officer ;

(b) if at the time of the escape he was liable to be detained in a hospital within the meaning of Part IV of this Act, or subject to guardianship under this Act, by any other person who could take him into custody under section forty of this Act if he had absented himself without leave.

(2) A person who escapes as aforesaid when liable to be detained or subject to guardianship as mentioned in paragraph (b) of the foregoing subsection (not being a person subject to an order under Part V of this Act restricting his discharge or an order or direction having the like effect as such an order) shall not be retaken under this section after the expiration of the period within which he could be retaken under section forty of this Act if he had absented himself without leave on the day of the escape ; and subsection (3) of the said section forty shall apply with the necessary modifications accordingly.

(3) A person who escapes while being taken to or detained in a place of safety under section one hundred and thirty-five or section one hundred and thirty-six of this Act shall not be retaken under this section after the expiration of the period of seventy-two hours beginning with the time when he escapes or the period during which he is liable to be so detained, whichever expires first.

(4) This section, so far as it relates to the escape of a person liable to be detained in a hospital within the meaning of Part IV of this Act, shall apply in relation to a person who escapes—

(a) while being taken to or from such a hospital in pursuance of regulations under section forty-one of this

Act, or of any order, direction or authorisation under Parts V to VII of this Act; or

PART IX
—cont.

- (b) while being taken to or detained in a place of safety in pursuance of an order under Part V of this Act pending his admission to such a hospital,

as if he were liable to be detained in that hospital and, if he had not previously been received therein, as if he had been so received.

(5) In computing for the purposes of sections sixty-three and sixty-four of this Act the period of twenty-eight days therein mentioned, no account shall be taken of any time during which the patient is at large and liable to be retaken by virtue of this section.

(6) Section forty-five of this Act shall, with any necessary modifications, apply in relation to a patient who is at large and liable to be retaken by virtue of this section as it applies in relation to a patient who is absent without leave within the meaning of section forty of this Act, and references therein to the said section forty shall be construed accordingly.

141.—(1) No person shall be liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings to which he would have been liable apart from this section in respect of any act purporting to be done in pursuance of this Act or any regulations or rules thereunder, or in, or in pursuance of anything done in, the discharge of functions conferred by any other enactment on the authority having jurisdiction under Part VIII of this Act, unless the act was done in bad faith or without reasonable care.

Protection for
acts done in
pursuance of
this Act.

(2) No civil or criminal proceedings shall be brought against any person in any court in respect of any such act without the leave of the High Court, and the High Court shall not give leave under this section unless satisfied that there is substantial ground for the contention that the person to be proceeded against has acted in bad faith or without reasonable care.

(3) This section does not apply to proceedings for an offence under this Act, being proceedings which, under any provision of this Act, can be instituted only by or with the consent of the Director of Public Prosecutions.

(4) In this section, references to the High Court shall be construed, in relation to Northern Ireland, as references to a judge of the High Court of Northern Ireland.

142.—(1) Where the Minister is of opinion, on complaint or otherwise, that a local health authority have failed to carry out functions conferred or imposed on the authority by or under

Default
powers of
Minister.

PART IX
—cont.

this Act or have in carrying out those functions failed to comply with any regulations relating thereto, he may after such inquiry as he thinks fit make an order declaring the authority to be in default.

(2) Subsections (3) to (5) of section fifty-seven of the National Health Service Act, 1946 (which relates to orders declaring, among others, a local authority to be in default under that Act) shall apply in relation to an order under this section as they apply in relation to an order under that section.

Inquiries.

143. The Minister may cause an inquiry to be held in any case where he thinks it advisable to do so in connection with any matter arising under this Act, and subsections (2) to (5) of section two hundred and ninety of the Local Government Act, 1933, shall apply to any inquiry held under this Act, except that no local authority shall be ordered to pay costs under subsection (4) of that section in the case of any inquiry unless the authority is a party thereto.

Expenses.

144.—(1) There shall be defrayed out of moneys provided by Parliament—

- (a) any expenses incurred by the Minister or a Secretary of State under this Act ;
- (b) any sums required for the payment of fees and expenses to medical practitioners acting in relation to a member of the House of Commons under section one hundred and thirty-seven of this Act ;
- (c) any increase attributable to this Act in the sums payable out of moneys provided by Parliament under any other enactment.

(2) Any sums required for the payment of fees and expenses to medical practitioners acting in relation to a member of the House of Commons of Northern Ireland under section one hundred and thirty-seven of this Act shall be defrayed in such manner as may be provided by the Parliament of Northern Ireland.

General provisions as to regulations, orders and rules.

145.—(1) Any power of the Minister or the Lord Chancellor to make regulations, orders or rules under this Act shall be exercisable by statutory instrument.

(2) Any Order in Council under this Act and any statutory instrument containing regulations or rules made under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Warrants of Secretary of State.

146. Any warrant of a Secretary of State under this Act shall be given under the hand of the Secretary of State or of an Under Secretary of State.

147.—(1) In this Act, unless the context otherwise requires, the following expressions have meanings hereby respectively assigned to them, that is to say:—

PART IX
—cont.
Interpretation.

“absent without leave” has the meaning assigned to it by section forty of this Act;

“direction restricting discharge” has the meaning assigned to it by section seventy-four of this Act;

“hospital” means—

(a) any hospital vested in the Minister under the National Health Service Act, 1946;

(b) any accommodation provided by a local authority and used for hospital and specialist services under Part II of that Act; and

(c) any special hospital;

and “hospital within the meaning of Part IV of this Act” has the meaning assigned to it by subsection (2) of section fifty-nine of this Act;

“hospital order” and “guardianship order” have the meanings respectively assigned to them by section sixty of this Act;

“local health authority” has the same meaning as in the National Health Service Act, 1946, and includes a joint board constituted under section nineteen of that Act;

“the managers” has the meaning assigned to it by Part IV of this Act;

“medical practitioner” means a registered medical practitioner within the meaning of the Medical Act, 1956;

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

“mental nursing home” has the meaning assigned to it in Part III of this Act;

“mental welfare officer” means an officer of a local health authority appointed to act as mental welfare officer for the purposes of this Act;

“Minister” means the Minister of Health;

“nearest relative”, in relation to a patient, has the meaning assigned to it in Part IV of this Act;

“order restricting discharge” has the meaning assigned to it by section sixty-five of this Act;

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

“special hospital” has the meaning assigned to it in Part VII of this Act;

PART IX
—cont.

“transfer direction” has the meaning assigned to it by section seventy-two of this Act.

(2) Any reference in this Act to any other enactment is a reference thereto as amended, and includes a reference thereto as extended or applied, by or under any other enactment, including this Act.

(3) Without prejudice to the last foregoing subsection, any reference in this Act to an enactment of the Parliament of Northern Ireland, or to an enactment which that Parliament has power to amend, shall be construed, in relation to Northern Ireland, as a reference to that enactment as amended by any Act of that Parliament, whether passed before or after this Act.

(4) In relation to a person who is liable to be detained or subject to guardianship by virtue of an order or direction under Part V of this Act, any reference in this Act to any enactment contained in Part IV of this Act shall be construed as a reference to that enactment as it applies to that person by virtue of the said Part V.

(5) For the purposes of this Act a person shall be deemed not to have attained the age of sixteen, twenty-one or twenty-five years, as the case may be, until the commencement of the sixteenth, twenty-first or twenty-fifth anniversary of the date of his birth.

Transitional
provisions.

148.—(1) The transitional provisions set out in the Sixth Schedule to this Act shall have effect for the purposes of the transition to the provisions of this Act from the law in force before the commencement of this Act.

(2) For the purposes of Part III of the said Sixth Schedule, an order sending a person to an institution or placing a person under guardianship, made before the ninth day of March, nineteen hundred and fifty-six, on a petition presented under the Mental Deficiency Act, 1913, shall be deemed to be valid notwithstanding that that person may not have been found neglected within the meaning of section two of that Act when that order was made if—

- (a) that order has been continued, at any time after that date, by order made by the Board of Control under section eleven of that Act after consideration of the reports and certificate required by that section; or
- (b) the period for which that order was in force on the said date has not expired before the commencement of this Act, but the Board, after considering a report by a medical practitioner qualified to make a special report under the said section eleven, have determined that the patient is not a proper person to be discharged.

149.—(1) The enactments described in the first column of the Seventh Schedule to this Act shall have effect subject to the amendments specified in the second column of that Schedule, being minor amendments and amendments consequential on the foregoing provisions of this Act.

PART IX
—cont.

Minor and consequential amendments and repeals.

(2) The enactments described in the Eighth Schedule to this Act (which include certain obsolete enactments relating to persons of unsound mind) are hereby repealed to the extent specified in the third column of that Schedule.

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

(4) The repeal by this Act of the Mental Treatment Act, 1930, shall not affect any amendment effected by section twenty of that Act in any enactment not repealed by this Act.

(5) The repeal by this Act of the provisions of the Lunacy Act, 1890, and of the Mental Deficiency Act, 1913, relating to the superannuation of officers or employees shall not affect any arrangements for the payment of allowances or other benefits made in accordance with those provisions and in force at the commencement of this Act.

150. The following provisions of this Act shall extend to Scotland, that is to say—

Application to Scotland.

subsection (5) of section three ;

section ten ;

subsection (5) of section sixty-six ;

sections eighty-one to eighty-four ;

section ninety-one ;

section ninety-three and, so far as applied by that section, sections forty, forty-six and one hundred and forty ;

subsection (4) of section one hundred and ten ;

section one hundred and seventeen and so much of Part VIII as is applied in relation to Scotland by that section ;

section one hundred and twenty-nine except so far as it relates to patients subject to guardianship ;

section one hundred and thirty-three ;

sections one hundred and thirty-seven to one hundred and thirty-nine ;

PART IX
—cont.

subsection (1) of section one hundred and forty-one ;
 section one hundred and forty-five so far as applicable to
 any Order in Council extending to Scotland ;
 section one hundred and forty-six ;
 section one hundred and forty-nine except so far as it
 relates to the amendments and repeals contained in
 Part I of the Seventh and Eighth Schedules ;
 Part II of the Seventh Schedule ;
 Part II of the Eighth Schedule ;

but except as aforesaid, and except so far as it relates to the
 interpretation or commencement of the said provisions, this
 Act shall not extend to Scotland.

Power of
 Parliament
 of Northern
 Ireland
 to make
 consequential
 amendments
 of this Act.

151. Notwithstanding any limitation imposed on the powers of
 the Parliament of Northern Ireland by the Government of Ireland
 Act, 1920, that Parliament may by any Act re-enacting (with or
 without modifications) or amending the law in force in Northern
 Ireland with respect to persons suffering from mental disorder
 make such amendments of the provisions of this Act which extend
 to Northern Ireland (except section ninety and any provision of
 Part VIII) as may be necessary for the purpose of bringing the
 said provisions into conformity with the provisions of that Act.

Application
 to Northern
 Ireland.

152. The following provisions of this Act shall extend to
 Northern Ireland, that is to say—

subsection (5) of section three ;
 sections eighty-five to eighty-eight ;
 section ninety ;
 section ninety-two ;
 section ninety-three and, so far as applied by that section,
 sections forty, forty-six and one hundred and forty ;
 subsection (4) of section one hundred and ten ;
 section one hundred and seventeen and so much of Part VIII
 as is applied in relation to Northern Ireland by that
 section ;
 section one hundred and twenty ;
 section one hundred and twenty-nine, except so far as it
 relates to patients subject to guardianship ;
 sections one hundred and thirty-seven to one hundred and
 thirty-nine ;
 section one hundred and forty-one ;
 subsection (2) of section one hundred and forty-four ;
 section one hundred and forty-five so far as applicable to
 any Order in Council extending to Northern Ireland ;

section one hundred and forty-six ;

section one hundred and forty-nine except so far as it relates to the amendments and repeals contained in Part I of the Seventh and Eighth Schedules ;

section one hundred and fifty-one ;

the Fourth Schedule ;

Part II of the Seventh Schedule ;

Part II of the Eighth Schedule ;

but except as aforesaid, and except so far as it relates to the interpretation or commencement of the said provisions, this Act shall not extend to Northern Ireland.

PART IX
—cont.

153.—(1) This Act (except this section) shall come into operation on such date as the Minister may by order appoint. Commence-
ment.

(2) Different dates may be appointed by order under this section for different purposes of this Act ; and any reference in any provision of this Act to the commencement of this Act shall, unless otherwise provided by any such order, be construed as a reference to the date on which that provision comes into operation.

(3) Without prejudice to section thirty-seven of the Interpretation Act, 1889 (which authorises the exercise of statutory powers between the passing and the commencement of an Act conferring them), the following powers, that is to say—

(a) the power of the Minister to give directions under subsection (1) of section twenty-eight of the National Health Service Act, 1946, for defining the duties of local health authorities under that section as amended by this Act ; and

(b) the powers of the Minister and of local health authorities with respect to the submission, approval or making of proposals under section twenty of that Act for modifying in the light of such directions the proposals in force at the passing of this Act for the carrying out of the duties of those authorities under the said section twenty-eight,

may be exercised at any time after the passing of this Act.

154.—(1) This Act may be cited as the Mental Health Act, 1959. Short title
and
application to
Scilly Isles.

(2) Subsection (3) of section eighty of the National Health Service Act, 1946 (which provides for the extension of that Act to the Isles of Scilly) shall have effect as if the references to that Act included references to this Act.

Section 3.

SCHEDULES

FIRST SCHEDULE

MENTAL HEALTH REVIEW TRIBUNALS

1. Each of the Mental Health Review Tribunals shall consist of—
 - (a) a number of persons (hereinafter referred to as “the legal members”) appointed by the Lord Chancellor and having such legal experience as the Lord Chancellor considers suitable;
 - (b) a number of persons (hereinafter referred to as “the medical members”) being medical practitioners appointed by the Lord Chancellor after consultation with the Minister; and
 - (c) a number of persons appointed by the Lord Chancellor after consultation with the Minister and having such experience in administration, such knowledge of social services or such other qualifications or experience as the Lord Chancellor considers suitable.
2. The members of Mental Health Review Tribunals shall hold and vacate office under the terms of the instrument under which they are appointed, but may resign office by notice in writing to the Lord Chancellor; and any such member who ceases to hold office shall be eligible for re-appointment.
3. One of the legal members of each Mental Health Review Tribunal shall be appointed by the Lord Chancellor as chairman of the Tribunal.
4. Subject to rules made by the Lord Chancellor under paragraph (c) of subsection (2) of section one hundred and twenty-four of this Act, the members who are to constitute a Mental Health Review Tribunal for the purposes of any proceedings or class or group of proceedings under this Act shall be appointed by the chairman of that Tribunal or, if for any reason he is unable to act, by another member of that Tribunal appointed for the purpose by the chairman; and of the members so appointed—
 - (a) one or more shall be appointed from the legal members;
 - (b) one or more shall be appointed from the medical members; and
 - (c) one or more shall be appointed from the members who are neither legal nor medical members.
5. A member of a Mental Health Review Tribunal for any area may be appointed under paragraph 4 of this Schedule as one of the persons to constitute a Mental Health Review Tribunal for any other area for the purposes of any proceedings or class or group of proceedings; and for the purposes of this Act, a person so appointed shall, in relation to the proceedings for which he was appointed, be deemed to be a member of that other Tribunal.
6. Where the chairman of the Tribunal is included among the persons appointed under paragraph 4 of this Schedule, he shall be president of the Tribunal; and in any other case the president of the Tribunal shall be such one of the members so appointed (being one of the legal members) as the chairman may nominate.

SECOND SCHEDULE

SECTIONS SUBSTITUTED FOR EDUCATION ACT, 1944, s. 57

Section 11.

57.—(1) It shall be the duty of every local education authority to ascertain what children in their area are suffering from a disability of mind of such a nature or to such an extent as to make them unsuitable for education at school; and for the purpose of fulfilling that duty any officer of a local education authority authorised in that behalf by the authority may by notice in writing served upon the parent of any child who has attained the age of two years require him to submit the child for examination by a medical officer of the authority.

Medical examination and classification of children unsuitable for education.

(2) If a parent upon whom such a notice is served fails without reasonable excuse to comply with the requirements of the notice, he shall be liable on summary conviction to a fine not exceeding five pounds.

(3) Before any child is medically examined as aforesaid, the local education authority shall cause notice to be given to the parent of the time and place at which the examination will be held, and the parent shall be entitled to be present at the examination if he so desires.

(4) If, after considering the advice given with respect to any child by a medical officer in consequence of a medical examination under this section, and any reports or information which the local education authority are able to obtain from teachers or other persons with respect to the ability and aptitude of the child, the authority decide that the child is suffering from such a disability of mind as aforesaid, they shall (subject to subsection (5) of this section) cause the decision to be recorded and furnish to the local health authority a report of the decision, together with a copy of any written advice, report or information which was taken into account for the purposes of the decision.

(5) Before recording a decision under this section with respect to any child, the local education authority shall give to the parent of the child not less than twenty-one days' notice in writing of their intention to do so, and if within that period the parent refers to the Minister of Education the question whether such a decision should be recorded, the decision shall not be recorded except by direction of that Minister.

(6) Any notice under subsection (5) of this section shall contain a statement of the functions of the local health authority with respect to the making of arrangements for the treatment, care or training of the child in the event of the decision being recorded, and, if known to the local education authority, a statement of the arrangements proposed to be made by the local health authority in the discharge of those functions.

57A.—(1) Where a decision has been recorded under section fifty-seven of this Act in the case of a child—

Review of classification

(a) the parent of the child may, at any time (but not earlier than twelve months after the recording of the decision nor more often than once in any subsequent period of twelve months) by notice in writing request the local education authority to review the decision; and

2ND SCH.
—cont.

(b) if at any time it appears to the local health authority, or to any authority or body responsible for the management of an institution in which the child is under care, that the decision ought to be reviewed, they shall give notice to that effect to the local education authority.

(2) Where any such notice is given to the local education authority, the local education authority shall cause to be served on the parent of the child the notice authorised by subsection (1) of section fifty-seven of this Act, and subsections (2) and (3) of that section shall apply accordingly; and if they decide, after considering the advice given by the medical officer and any reports or information available to them with respect to the child (including, in the case of a notice under paragraph (b) of subsection (1) of this section, any reports or information from the authority or body by whom the notice is given) that the child is no longer unsuitable to receive education at school, they shall cancel the original decision.

(3) Where a decision recorded under section fifty-seven of this Act is reviewed under this section, the local education authority shall serve on the parent of the child a notice stating whether they have decided that the child is still unsuitable to receive education at school; and where the notice states that the authority have so decided—

(a) the parent may, before the expiration of the period of twenty-one days beginning with the day next following that on which the notice is served upon him, appeal to the Minister of Education against the decision of the authority; and

(b) if that Minister is of opinion that the authority ought to have decided that the child is no longer unsuitable to receive education at school, he may direct the authority to cancel the original decision recorded with respect to the child.

(4) Any notice under subsection (1) of this section shall be given to the local education authority who would be responsible for the education of the child if the decision were cancelled; and where a decision recorded in respect of a child by one local education authority is cancelled under this section by a different local education authority, the authority by whom the decision is cancelled shall give notice to that effect to the authority by whom the decision was recorded.

Supplementary
provisions as
to classification.

57B.—(1) For the purposes of section fifty-seven of this Act a child for whom education is provided by one local education authority in the area of another local education authority shall be treated as if he were in the area of the first-mentioned authority; but any functions of the local education authority under that section may, in accordance with arrangements made between them, be performed on behalf of the first-mentioned authority by the other authority, and the reference in subsection (1) of that section to a medical or other officer of the authority shall be construed accordingly.

(2) If, after considering the advice given with respect to a child by a medical officer in consequence of a medical examination carried out under section thirty-four of this Act, the local education authority decide, not that the child requires special educational treatment, but that he is suffering from such a disability as is referred to in subsection (1) of section fifty-seven of this Act, the provisions of the said section fifty-seven shall apply as if the examination had been carried out and the decision made under that section.

2ND SCH.
—cont.

(3) If, after considering the advice given with respect to a child by a medical officer in consequence of a medical examination carried out under section fifty-seven of this Act, or under the said section fifty-seven as applied by section fifty-seven A of this Act, and any such reports or information as are referred to in subsection (4) of the said section fifty-seven or subsection (2) of the said section fifty-seven A, the local education authority decide that the child is not suffering from such a disability as aforesaid, but that he requires special educational treatment, subsections (4) to (6) of the said section thirty-four shall apply as if the examination had been carried out and the decision made under that section.

Sections 63, 65,
66, 68, 71, 72,
74, 79.

THIRD SCHEDULE

APPLICATION OF PART IV TO PATIENTS ADMITTED TO HOSPITAL OR PLACED UNDER GUARDIANSHIP UNDER PART V

106

Exceptions and modifications	
Section of Part IV and subject matter	Hospital order without restriction (s. 63) Transfer direction without restriction (ss. 72 & 73) Guardianship order or direction (ss. 63 & 79)
S. 35 (Regulations as to guardianship).	None
S. 36 (Correspondence of patients)	None
S. 37 (Visiting and examination of patients).	In subsection (1), the words "or of advising as to the exercise by the nearest relative of any such patient of any power to order his discharge" and the words "or by the nearest relative of the patient, as the case may be" shall be omitted.
S. 38 (Re-classification of patients)	In subsection (1), for references to an application for admission or a guardianship application there shall be substituted references to the order or direction under Part V of this Act by virtue of which the patient is liable to be detained or subject to guardianship.
	Hospital order with restriction or committal to hospital (ss. 65 & 68) Direction as to Queen's pleasure prisoner (s. 71) Transfer direction with restriction (s. 74)
	Not applicable.
	In subsection (2), at the end of paragraph (a), there shall be inserted the words "or the Secretary of State", and subsection (5) shall be omitted.
	Subsection (1) shall not apply.
	The section shall not apply.

S. 39 (Leave of absence from hospital).

None

In subsection (1), after the word "may" there shall be inserted the words "with the consent of the Secretary of State".

In subsection (4), after the words "the responsible medical officer" and after the words "that officer" there shall in each case be inserted the words "or the Secretary of State".

In subsection (5), after the word "recalled", where that word first occurs, there shall be inserted the words "by the responsible medical officer", and for the words from "he has ceased" to the end of the subsection there shall be substituted the words "the expiration of the period of six months beginning with the first day of his absence on leave".

S. 40 (Return and re-admission of patients absent without leave).

None

Subsections (2) and (3), and in subsection (1), the words "within the period allowed by this section", shall be omitted.

S. 41 (Regulations as to transfer of patients).

In subsection (2), for the words from "as follows" to the end of the subsection there shall be substituted the words "as if the order or direction under Part V of this Act by virtue of which he was liable to be detained or subject to guardianship before being transferred were an order or direction for his admission or removal to the hospital to which he is transferred, or placing him under the guardianship of the authority or person into whose guardianship he is transferred, as the case may be".

In subsection (1), after the word "may" in paragraph (a), there shall be inserted the words "with the consent of the Secretary of State", and the words from "or into" to the end of the subsection shall be omitted.

In subsection (2), for the words from "as follows" to the end of the subsection there shall be substituted the words "as if the order or direction under Part V of this Act by virtue of which he was liable to be detained before being transferred were an order or direction for his admission or removal to the hospital to which he is transferred".

Subsection (5) shall be omitted.

3RD SCH.
—cont.

3RD SCH.
—cont.

	Exceptions and modifications	
Section of Part IV and subject matter	Hospital order without restriction (s. 63) Transfer direction without restriction (ss. 72 & 73) Guardianship order or direction (ss. 63 & 79)	Hospital order with restriction or committal to hospital (ss. 65 & 68) Direction as to Queen's pleasure prisoner (s. 71) Transfer direction with restriction (s. 74)
S. 42 (Transfer of guardianship in case of death, incapacity, etc. of guardian).	None	Not applicable.
S. 43 (Duration of Authority) ...	In subsection (1), for the words from "day on which he was" to "as the case may be" there shall be substituted the words "date of the relevant order or direction under Part V of this Act".	The section shall not apply.
S. 45 (Special provisions as to patients absent without leave).	In subsection (2), the words "or subsection (2) of section forty-four" shall be omitted.	The section shall not apply.
S. 46 (Special provisions as to patients sentenced to imprisonment, etc.).	For references to an application for admission or a guardianship application there shall be substituted references to the order or direction under Part V of this Act by virtue of which the patient is liable to be detained or subject to guardianship.	Subsection (1) and paragraph (a) of subsection (2) shall not apply.

S. 47 (Discharge of patients) ...	In subsection (2), paragraph (a) and the words "or by the nearest relative of the patient", in both places where those words occur, shall be omitted.	In subsection (1), references to guardianship shall be omitted, and after the word "made" there shall be inserted the words "with the consent of the Secretary of State and". In subsection (2), paragraphs (a) and (c), and in paragraph (b) the words "or by the nearest relative of the patient", shall be omitted.
S. 49 (Definition of relative and nearest relative).	None	The sections shall not apply.
S. 50 (Children and young persons in care of local authority).		
S. 51 (Nearest relative of infant under guardianship, etc.).		
S. 55 (Procedure on applications to county court).	None	The section shall not apply.
S. 56 (Regulations for purposes of Part IV).	None	None

3RD SCH.
—cont.

	Exceptions and modifications	
Section of Part IV and subject matter	Hospital order without restriction (s. 63) Transfer direction without restriction (ss. 72 & 73) Guardianship order or direction (ss. 63 & 79)	Hospital order with restriction or committal to hospital (ss. 65 & 68) Direction as to Queen's pleasure prisoner (s. 71) Transfer direction with restriction (s. 74)
S. 57 (Power of Minister to refer to Tribunal).	None	The section shall not apply.
S. 59 (Interpretation of Part IV)	None	In subsection (1) the definition of "the nominated medical attendant", and subsections (3) and (4), shall be omitted.

FOURTH SCHEDULE

Section 120.

MODIFICATIONS OF PROVISIONS OF LUNACY REGULATION (IRELAND)
Act, 1871

1. In the definitions in section two of the Lunacy Regulation (Ireland) Act, 1871 (in this Schedule referred to as "the Act"), the expression "stock" shall be defined to include shares and also any fund, annuity or security transferable in the books kept by any body corporate or unincorporated company or society, or by an instrument of transfer, either alone or accompanied by other formalities, and the expression "dividend" shall be construed accordingly.

2. Section eighteen of the Act (which contains provisions requiring an inquiry under the Act to be before a jury where the alleged lunatic is not within the jurisdiction and provisions respecting notice to be given to such a lunatic) shall cease to have effect.

3. In section sixty-eight of the Act (which provides that where the property of a lunatic does not exceed two thousand pounds in value or the income thereof one hundred pounds per annum the application thereof for his benefit may be ordered without any inquiry under a commission of lunacy) for the words "two thousand pounds" there shall be substituted the words "ten thousand pounds": for the words "one hundred pounds" there shall be substituted the words "five hundred pounds": for the words "for the purpose of rendering the property of such person or the income thereof," there shall be substituted the words "for the purpose of protecting the property of such person or the income thereof or of rendering such property or income"; and after the words "trade or business" there shall be inserted the words "or for otherwise administering the affairs of such person."

4. For section ninety-one of the Act (which authorises the making of orders with respect to stock standing in Northern Ireland in the name of a lunatic residing outside Northern Ireland) there shall be substituted the following section:—

"91. Where the Lord Chief Justice of Northern Ireland is satisfied—

- (a) that under the law prevailing in a place outside Northern Ireland a person has been appointed to exercise powers with respect to the property or affairs of any other person on the ground (however formulated) that that other person is incapable, by reason of a disorder or disability of mind, of managing and administering his property or affairs; and
- (b) that having regard to the nature of the appointment and to the circumstances of the case it is expedient that he should exercise his powers under this section:

he may direct any stock standing in the name of the said other person or the right to receive the dividends thereof to be transferred into the name of the person so appointed or otherwise dealt with as requested by that person, and may give such directions as the judge thinks fit for dealing with accrued dividends thereof."

5. In section ninety-six of the Act (which prescribes the extent of the powers and authorities given by the Act) for the words

4TH SCH.
—cont.

“(except England, Wales and Scotland)”, there shall be substituted the following words:—

“but shall not be exercisable in relation to any person—

(a) in relation to whom powers have been exercised in England or Wales under any enactment there in force with respect to the management of property or affairs of mentally disordered persons: or

(b) for whom a curator bonis, tutor, or judicial factor has been appointed in Scotland”.

Section 121.

FIFTH SCHEDULE

GENERAL ENACTMENTS CEASING TO HAVE EFFECT IN RELATION TO PERSONS WITHIN JURISDICTION UNDER PART VIII

Session and Chapter	Short Title	Enactments
13 Geo. 3. c. 81.	The Inclosure Act, 1773.	Sections twenty-two and twenty-four.
17 Geo. 3. c. 53.	The Clergy Residences Repair Act, 1776.	Section fourteen.
42 Geo. 3. c. 116.	The Land Tax Redemption Act, 1802.	Section fourteen.
55 Geo. 3. c. 128.	The Admiralty (Signal Stations) Act, 1815.	Section three.
55 Geo. 3. c. 147.	The Glebe Exchange Act, 1815.	Sections twelve, thirteen and seventeen.
57 Geo. 3. c. xxix.	The Metropolitan Paving Act, 1817.	Section eighty-one.
7 Geo. 4. c. 16.	The Chelsea and Kilmainham Hospitals Act, 1826.	Sections forty-four to forty-eight.
7 Geo. 4. c. 66.	The Clergy Residence Act, 1826.	Sections one and three.
10 Geo. 4. c. 50.	The Crown Lands Act, 1829.	Sections forty and forty-one.
2 & 3 Will. 4. c. 80.	The Ecclesiastical Corporations Act, 1832.	Section three.
1 & 2 Vict. c. 23.	The Parsonages Act, 1838.	Section twelve.
1 & 2 Vict. c. 106.	The Pluralities Act, 1838.	Section one hundred and twenty-seven.
2 & 3 Vict. c. 49.	The Church Building Act, 1839.	Section twenty.
4 & 5 Vict. c. 38.	The School Sites Act, 1841.	Section five.
5 & 6 Vict. c. 26.	The Ecclesiastical Houses of Residence Act, 1842.	Section twelve.
5 & 6 Vict. c. 27.	The Ecclesiastical Leases Act, 1842.	Section seven.
5 & 6 Vict. c. 94.	The Defence Act, 1842.	Sections ten and eighteen.
5 & 6 Vict. c. 108.	The Ecclesiastical Leasing Act, 1842.	Section twenty-four.

Session and Chapter	Short Title	Enactments
8 & 9 Vict. c. 16.	The Companies Clauses Consolidation Act, 1845.	Section seventy-nine.
8 & 9 Vict. c. 18.	The Lands Clauses Consolidation Act, 1845.	Sections seven, eight, nine, and sixty-nine to seventy-two.
8 & 9 Vict. c. 56.	The Land Drainage Act, 1845.	Section three.
8 & 9 Vict. c. 118.	The Inclosure Act, 1845.	Sections twenty, one hundred and thirty-three, one hundred and thirty-four and one hundred and thirty-seven.
9 & 10 Vict. c. 73.	The Tithe Act, 1846.	Sections five, nine and ten.
17 & 18 Vict. c. 112.	The Literary and Scientific Institutions Act, 1854.	Section five.
23 & 24 Vict. c. 112.	The Defence Act, 1860.	Section eleven.
25 & 26 Vict. c. 53.	The Land Registry Act, 1862.	Section one hundred and sixteen.
27 & 28 Vict. c. 114.	The Improvement of Land Act, 1864.	Section twenty-four.
29 & 30 Vict. c. 122.	The Metropolitan Commons Act, 1866.	Section twenty-eight.
31 & 32 Vict. c. 109.	The Compulsory Church Rate Abolition Act, 1868.	Section seven.
36 & 37 Vict. c. 50.	The Places of Worship Sites Act, 1873.	Sections one and three.
40 & 41 Vict. c. 59.	The Colonial Stock Act, 1877.	Section six.
56 & 57 Vict. c. 39.	The Industrial and Provident Societies Act, 1893.	Sections twenty-nine and thirty.
57 & 58 Vict. c. 46.	The Copyholds Act, 1894.	Section forty-five.
57 & 58 Vict. c. 60.	The Merchant Shipping Act, 1894.	In section fifty-five, subsection (1).
3 & 4 Geo. 5. c. 32.	The Ancient Monuments Consolidation and Amendment Act, 1913.	In section five, subsection (2).
13 & 14 Geo. 5. c. 16.	The Salmon and Fresh Water Fisheries Act, 1923.	In section fifty, subsection (2).

5TH SCH.
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SIXTH SCHEDULE

Section 148.

TRANSITIONAL PROVISIONS

PART I

PROVISIONS RELATING TO PART II

1. Without prejudice to the power of the Minister to give directions under subsection (1) of section twenty-eight of the National Health Service Act, 1946, for defining the extent of the duties of local health authorities under that section, and subject to any directions which may be given by the Minister thereunder, it shall be the duty of every such authority to continue to provide under

6TH SCH.
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that section services corresponding (subject to any necessary modifications) with the services which, under any enactment repealed by this Act, were required to be provided by that authority for or for the benefit of persons of unsound mind or mental defectives; and any proposals in force immediately before the commencement of this Act under section twenty of the said Act of 1946, being proposals with respect to the provision of such services as aforesaid, shall continue in force accordingly until modified by further proposals under the said section twenty.

2. Anything done before the commencement of this Act under any enactment referred to in section eleven of this Act shall have effect as if done under the corresponding provision of the Education Act, 1944, as amended by that section; and without prejudice to the generality of the foregoing provision, any decision reported by a local education authority under section fifty-seven of the said Act of 1944, and not cancelled before the commencement of this Act, shall be treated as a decision recorded under section fifty-seven of that Act as so amended, and references in section twelve of this Act to a child who is the subject of a decision recorded under that section shall be construed accordingly.

PART II

PROVISIONS RELATING TO PART III

3.—(1) Until the expiration of the period of six months beginning with the commencement of this Act or until registration is effected under sub-paragraph (2) of this paragraph, whichever first occurs—

- (a) any person who, immediately before the date of the commencement of this Act, was the holder of a licence granted and in force under Part VIII of the Lunacy Act, 1890, in respect of a licensed house;
- (b) the management committee of a hospital which, immediately before that date, was a registered hospital as defined by section seventeen of this Act; and
- (c) any person who, immediately before that date, was carrying on a nursing home for the time being approved for the purposes of section one or section five of the Mental Treatment Act, 1930,

shall be treated for the purposes of the provisions of Part III of this Act relating to mental nursing homes as if he or they were registered in respect of the house, hospital or home as a mental nursing home and (except in the case of a nursing home approved for the purposes of section one but not section five of the Mental Treatment Act, 1930) as if the particulars of registration were entered in the separate part of the register referred to in subsection (1) of section fifteen of this Act.

(2) Before the expiration of the said period of six months the registration authority for the purposes of the provisions of Part III of this Act relating to mental nursing homes shall, without an application being made in that behalf,—

- (a) register any person or committee mentioned in the foregoing sub-paragraph in respect of the relevant house, hospital or home as a mental nursing home and (except as mentioned in that sub-paragraph) enter the particulars of registration in the said separate part of the register; and

- (b) issue to him or them a certificate of registration specifying as the number of persons permitted to be kept at any one time in the home the number permitted to be kept there immediately before the commencement of this Act.

4. During the period of six months beginning with the commencement of this Act—

- (a) the managers of any institution in respect of which a certificate under section thirty-six of the Mental Deficiency Act, 1913, was in force immediately before the date of the commencement of this Act ;
- (b) any person who, immediately before that date, had the custody at any place of a patient under section fifty-seven of the Lunacy Act, 1890 ; and
- (c) any person who, immediately before that date, had the charge of a certified or temporary patient as a single patient under the Lunacy and Mental Treatment Acts, 1890 to 1930, in any place not being a licensed house or nursing home to which paragraph 3 of this Schedule applies,

shall be treated for the purposes of the provisions of Part III of this Act relating to mental nursing homes as if they or he were registered in respect of that institution or place as a mental nursing home and as if the particulars of registration were entered in the separate part of the register referred to in subsection (1) of section fifteen of this Act.

5. During the period of six months beginning with the commencement of this Act—

- (a) the managers of any premises, or the person approved under the Mental Deficiency Act, 1913, in respect of any house which, immediately before the date of the commencement of this Act, were or was an approved home within the meaning of section fifty of that Act ;
- (b) any person who, immediately before that date, had the care and control in any place of any defectives with the consent of the Board of Control under subsection (1) of section fifty-one of that Act ;
- (c) any person who, immediately before that date, had the care and control in any place (not being a place to which paragraph 4 (c) of this Schedule applies) of any voluntary patient received as a single patient under section one of the Mental Treatment Act, 1930 ; and
- (d) any person who, immediately before that date, was registered or exempted from registration under Part VI of the Public Health Act, 1936, or under Part XI of the Public Health (London) Act, 1936, in respect of a nursing home which, if this Act had been in force, would have been a mental nursing home within the meaning of Part III of this Act (not being a place to which paragraph 4 (c) of this Schedule applies),

shall be treated for the purposes of the provisions of the said Part III as if they or he were registered in respect of that home or place and, in the case of a home or place being a mental nursing home within the meaning of the said Part III, as if the particulars of registration were so entered otherwise than in the separate part of the register referred to in subsection (1) of section fifteen of this Act.

6TH SCH.
—cont.

6. Where, by virtue of this Schedule any person is treated for the purposes of the provisions of Part III of this Act as if he were registered in respect of any premises, institution, home or place, the said Part III shall apply as if the number of patients specified in the certificate of registration in pursuance of subsection (2) of section fifteen or subsection (1) of section twenty of this Act were the number permitted to be kept there immediately before the commencement of this Act, including any single patients who were then kept in the premises, institution, home or place.

PART III

PROVISIONS RELATING TO PARTS IV AND V

Patients other than transferred patients and short-period patients

7.—(1) This paragraph applies to patients who immediately before the commencement of this Act were patients of any of the following classes, that is to say—

- (a) patients liable to be detained in a hospital or other place, or as single patients, in pursuance of a reception order under section six or section twelve of the Lunacy Act, 1890, or a summary reception order under section sixteen of that Act or an order having the like effect as a summary reception order (including patients who were treated by virtue of any enactment as liable to be so detained or in whose case a summary reception order was so treated as having been made);
- (b) temporary patients liable to be so detained under section five of the Mental Treatment Act, 1930;
- (c) patients liable to be so detained or subject to guardianship by virtue of section three, section six, subsection (1) of section eight, section sixteen or subsection (3) of section sixty-seven of the Mental Deficiency Act, 1913, or, being patients whose sentence or other period of detention ordered by the court had expired before the commencement of this Act, by virtue of section nine of that Act.

(2) A patient to whom this paragraph applies shall, notwithstanding the repeal or exclusion by this Act of any enactment by virtue of which he was, or was treated as, liable to be so detained or subject to guardianship, continue to be liable to be detained in any hospital or other place in which he might have been detained immediately before the commencement of this Act or, as the case may be, subject to guardianship until the expiration of the period of six months beginning with the commencement of this Act (in this Part of this Schedule referred to as the initial period).

(3) During the initial period the responsible medical officer shall record with respect to each such patient as aforesaid for whose treatment he is responsible his opinion whether the patient is suffering from mental illness, severe subnormality, psychopathic disorder or subnormality and whether his mental disorder is of a nature or degree which warrants the detention of the patient in a hospital for medical treatment, or his retention under guardianship.

8.—(1) In relation to any patient who by virtue of the last foregoing paragraph is liable to be detained in a hospital or subject to

guardianship during the initial period, Part IV of this Act shall, subject to the exceptions and modifications specified in the following provisions of this paragraph, apply during that period as if he had been admitted to the hospital in pursuance of an application for admission for treatment under the said Part IV or had been received into guardianship in pursuance of a guardianship application thereunder, and the other provisions of this Act shall apply in relation to him accordingly.

6TH SCH.
—cont.

(2) Section thirty-eight of this Act shall not apply in relation to the patient until the form or forms of mental disorder from which, in the opinion of the responsible medical officer, the patient is suffering have been recorded under the last foregoing paragraph and, on that being done, Part IV of this Act shall have effect as if the application had specified as the form or forms of mental disorder from which he is suffering the form or forms so recorded.

(3) If the patient is also a patient to whom paragraph 21 of this Schedule applies, sections thirty-nine and forty of this Act shall apply in relation to him subject to the modifications mentioned in that paragraph, and if he is not, but no form or forms of mental disorder have been recorded in his case under the last foregoing paragraph, the said section forty shall apply in relation to him as if for paragraphs (a) and (b) of subsection (3) of that section there were substituted the following sub-paragraphs:—

- “(a) in the case of a patient mentioned in sub-paragraph (1) (c) of paragraph 7 of the Sixth Schedule to this Act, six months ;
(b) in the case of any other patient to whom that paragraph applies, twenty-eight days.”

(4) Sections forty-three to forty-five of this Act shall not apply in relation to the patient except in so far as provisions of the said section forty-three are applied by the following provisions of this Part of this Schedule.

(5) If the patient was immediately before the commencement of this Act liable to be detained by virtue of section six, subsection (1) of section eight or section nine of the Mental Deficiency Act, 1913, the power of discharging him under section forty-seven of this Act shall not be exercisable by the nearest relative.

(6) In its application to a patient who was immediately before the commencement of this Act in the custody of a relative or friend under section fifty-seven of the Lunacy Act, 1890, Part IV of this Act shall have effect as if—

- (a) for references (except in section forty-seven of this Act) to the managers of the hospital in which the patient is detained there were substituted references to the person having the custody of the patient ; and
(b) for references to those managers in the said section forty-seven there were substituted references to the managers of the hospital from which he was transferred to the custody of the relative or friend.

(7) In its application to any such patient who was immediately before the commencement of this Act liable to be detained as a single

6TH SCH.
—cont.

patient under the Lunacy and Mental Treatment Acts, 1890 to 1930, Part IV of this Act shall have effect as if—

- (a) for references (except in section forty-seven of this Act) to the managers of the hospital in which the patient was detained there were substituted references to the person having charge of the patient; and
- (b) the references in the said section forty-seven to those managers were omitted.

9.—(1) A patient to whom paragraph 7 of this Schedule applies shall unless previously discharged continue to be liable to be detained in a hospital or, as the case may be, subject to guardianship after the expiration of the initial period if—

- (a) he satisfies the conditions specified in sub-paragraph (2) or sub-paragraph (3) of this paragraph; and
- (b) the authority for his detention or guardianship is renewed under the following provisions of this Part of this Schedule before the expiration of the initial period or his current period of treatment would expire after the expiration of the initial period.

(2) Any such patient shall be so liable or subject if it is recorded under the said paragraph 7 that in the opinion of the responsible medical officer he is suffering from mental illness or severe subnormality and his mental disorder is of a nature or degree which warrants the detention of the patient in a hospital for medical treatment or, as the case may be, his retention under guardianship.

(3) Any such patient shall be so liable or subject if it is so recorded that in the opinion of the responsible medical officer he is suffering from subnormality or psychopathic disorder, but not from mental illness or severe subnormality, and his mental disorder is of such a nature or degree as aforesaid and either—

- (a) he was immediately before the commencement of this Act liable to be detained or subject to guardianship in pursuance of an order under subsection (1) of section eight or section nine of the Mental Deficiency Act, 1913, or by virtue of an order made, or having effect as if made, under section thirty of the Magistrates' Courts Act, 1952; or
- (b) he had not attained the age of twenty-one years when he was first detained or placed under guardianship and will not attain the age of twenty-five years before the expiration of the initial period; or
- (c) in the case of any other patient liable to be detained in a hospital, the responsible medical officer before the expiration of the initial period records his opinion under the following provisions of this Part of this Schedule that the patient is unfit for discharge.

10.—(1) The period for which a patient may by virtue of the last foregoing paragraph be detained or kept under guardianship after the expiration of the initial period, without renewal of the authority for his detention or guardianship, shall be the remainder of his current period of treatment.

(2) Where the current period of treatment of a patient who may be detained or kept as aforesaid would continue after the expiration of the period of two years beginning with the commencement of this Act, the patient may between the expiration of the said period of two years and the expiration of the current period of treatment apply to a Mental Health Review Tribunal.

6TH SCH.
—cont.

11.—(1) Authority for the detention or guardianship of a patient to whom paragraph 7 of this Schedule applies may on the expiration of the relevant period, unless the patient has previously been discharged, be renewed for whichever of the following periods is applicable, that is to say—

- (a) where the period for which he has, at the expiration of the relevant period, already been detained or subject to guardianship on account of any description of mental disorder (whether before or after the appointed day) is not more than one year, a further period of one year;
- (b) where the period for which he has already been so detained or subject is more than one year, a further period of two years.

(2) Subsections (3) to (6) of section forty-three of this Act shall apply in relation to the renewal of authority for the detention or guardianship of a patient under this paragraph as they apply in relation to the renewal of authority for the detention or guardianship of the patient under subsection (2) of that section.

(3) In this paragraph “the relevant period” means, in relation to a patient, the patient’s current period of treatment or, if that period expires during the initial period, the initial period or any period subsequent to the said period for which authority for the detention or guardianship of the patient has previously been renewed under this paragraph.

12.—(1) In relation to any patient who by virtue of paragraph 9 of this Schedule is liable to be detained in a hospital or subject to guardianship after the expiration of the initial period, Part IV of this Act shall, subject to the exceptions and modifications specified in the following provisions of this paragraph, apply as if he had been admitted to the hospital in pursuance of an application for admission for treatment under the said Part IV or had been received into guardianship in pursuance of a guardianship application thereunder and had been so admitted or received as a patient suffering from the form or forms of mental disorder recorded under paragraph 7 of this Schedule or, if a different form or forms have been specified in a report under section thirty-eight of this Act as applied by that paragraph, the form or forms so specified, and the other provisions of this Act shall apply to him accordingly.

(2) Section forty-three of this Act shall not apply in relation to the patient, but the provisions of paragraph 11 of this Schedule shall apply instead.

(3) Section forty-four of this Act shall not apply in relation to any such patient as is mentioned in sub-paragraph (3) of paragraph 9 of this Schedule, but any such patient as is mentioned in paragraph (b)

6TH SCH.
—cont.

of that sub-paragraph shall cease to be liable to be detained on attaining the age of twenty-five years unless, during the period of two months ending on the date when he attains that age, the responsible medical officer records his opinion under the following provisions of this Part of this Schedule that the patient is unfit for discharge.

(4) If the patient was immediately before the commencement of this Act liable to be detained by virtue of section six, subsection (1) of section eight or section nine of the Mental Deficiency Act, 1913, the power of discharging him under section forty-seven of this Act shall not be exercisable by his nearest relative, but his nearest relative may make an application in respect of him to a Mental Health Review Tribunal, during the period of twelve months beginning with the expiration of the initial period and in any subsequent period of twelve months.

13.—(1) The responsible medical officer may record for the purposes of paragraph (c) of sub-paragraph (3) of paragraph 9 of this Part of this Schedule or sub-paragraph (3) of paragraph 12 thereof his opinion that a patient detained in a hospital is unfit for discharge if it appears to the responsible medical officer,—

(a) that if that patient were released from the hospital he would be likely to act in a manner dangerous to other persons or to himself, or would be likely to resort to criminal activities; or

(b) that that patient is incapable of caring for himself and that there is no suitable hospital or other establishment into which he can be admitted and where he would be likely to remain voluntarily;

and where the responsible medical officer records his opinion as aforesaid he shall also record the grounds for his opinion.

(2) Where the responsible medical officer records his opinion under this paragraph in respect of a patient, the managers of the hospital or other persons in charge of the establishment where he is for the time being detained or liable to be detained shall cause the patient to be informed, and the patient may, at any time before the expiration of the period of twenty-eight days beginning with the date on which he is so informed, apply to a Mental Health Review Tribunal.

(3) On any application under the last foregoing sub-paragraph the Tribunal shall, if satisfied that none of the conditions set out in paragraphs (a) and (b) of sub-paragraph (1) of this paragraph are fulfilled, direct that the patient be discharged, and subsection (1) of section one hundred and twenty-three of this Act shall have effect in relation to the application as if paragraph (b) of that subsection were omitted.

14. Any person who immediately before the commencement of this Act was the guardian of any such patient as is mentioned in sub-paragraph (1) (c) of paragraph 7 of this Schedule shall be deemed for the purposes of this Act to have been named as the guardian of the patient in an application for his reception into guardianship under Part IV of this Act accepted on that person's behalf by the relevant local authority.

*Transferred patients*6TH SCH.
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15.—(1) This paragraph applies to patients who immediately before the commencement of this Act were liable to be detained in a hospital or other place as Broadmoor patients or, not being Broadmoor patients, as patients of any of the following classes, that is to say—

- (a) patients liable to be detained by virtue of section nine of the Mental Deficiency Act, 1913, not being patients whose sentence or other period of detention ordered by the court had expired before the commencement of this Act ;
- (b) patients liable to be detained by virtue of subsection (4) of section eight of the said Act of 1913 ;
- (c) patients liable to be detained by virtue of subsection (3) of section sixty-three or subsection (3) of section sixty-four of the Criminal Justice Act, 1948, or subsection (2) of section sixty-four of the Criminal Justice (Scotland) Act, 1949 ; or
- (d) patients liable to be detained by virtue of section ten of the Colonial Prisoners Removal Act, 1884 ;

and any patient to whom this paragraph applies is in this Part of this Schedule referred to as a transferred patient.

(2) A transferred patient who immediately before the commencement of this Act was liable to be detained in a hospital as being or having been required to be kept in custody during Her Majesty's pleasure or until the directions of Her Majesty are known (including a patient of that or a similar description liable to be detained by virtue of section ten of the Colonial Prisoners Removal Act, 1884, but not including a patient transferred to England and Wales from Scotland, the Channel Islands or the Isle of Man) shall be treated for the purposes of this Act as if he were liable to be detained in a hospital in pursuance of a direction under section seventy-one of this Act.

(3) A transferred patient who immediately before the commencement of this Act was subject to a sentence of imprisonment within the meaning of section seventy-two of this Act (including a patient liable to be detained by virtue of section ten of the Colonial Prisoners Removal Act, 1884, who does not fall within the last foregoing subparagraph) shall be treated for the purposes of this Act as if he were liable to be detained in a hospital by virtue of a transfer direction under the said section seventy-two and as if a direction restricting his discharge had been given under section seventy-four of this Act.

(4) Section eighty-four of this Act shall apply to a transferred patient who having been a state mental patient in Scotland was immediately before the commencement of this Act liable to be detained in a hospital in England and Wales by virtue of subsection (3) of section sixty-three of the Criminal Justice Act, 1948, or subsection (2) of section sixty-four of the Criminal Justice (Scotland) Act, 1949, as if he had been removed to such a hospital from Scotland in pursuance of an order under the said subsection (2) ; and where he is treated by virtue of the said section eighty-four as if he had been removed to a hospital in pursuance of a transfer direction, he shall also be treated as if a direction restricting his discharge had been given as aforesaid.

6TH SCH.
—cont.

(5) Section eighty-nine of this Act shall apply to a transferred patient who having been ordered by a court in any of the Channel Islands or in the Isle of Man to be detained during Her Majesty's pleasure was removed to, and was immediately before the commencement of this Act liable to be detained in, a hospital in England and Wales as if he had been removed to such a hospital under that section.

(6) Any person to whom this paragraph applies and who does not fall within any of the four last foregoing sub-paragraphs shall be treated for the purposes of this Act as if he were liable to be detained in a hospital in pursuance of a transfer direction given under section seventy-three of this Act and as if a direction restricting his discharge had been given under section seventy-four of this Act, and he shall be so treated notwithstanding that he is not suffering from a form of mental disorder mentioned in the said section seventy-three.

16.—(1) References in the last foregoing paragraph to a patient who immediately before the appointed day was liable to be detained as a Broadmoor patient include references to a Broadmoor patient conditionally discharged by the Secretary of State before the commencement of this Act under section five of the Criminal Lunatics Act, 1884, and—

(a) any such patient shall be treated as if he had been conditionally discharged by the Secretary of State under section sixty-six of this Act; and

(b) any direction given before the commencement of this Act under the said section five to take any such patient into custody and convey him to a hospital shall be deemed to have been given under the said section sixty-six.

(2) Sections thirty-nine and forty of this Act, in their application to a transferred patient, who is also a patient to whom paragraph 21 of this Schedule applies shall have effect subject to the modifications mentioned in that paragraph.

17. Upon a direction restricting the discharge of a transferred patient ceasing to have effect, the responsible medical officer shall record his opinion whether the patient is suffering from mental illness, severe subnormality, psychopathic disorder or subnormality, and references in this Act to the form or forms of mental disorder specified in the relevant application, order or direction shall be construed as including references to the form or forms of mental disorder so recorded.

Short-period patients

18. A person who immediately before the commencement of this Act was detained under section eleven of the Lunacy Act, 1890, may continue to be detained until the expiration of the period of seven days mentioned in that section or, if at the commencement of this Act that period had expired and a petition for a reception order was pending, until the expiration of the period of twenty-eight days beginning with the commencement of this Act or until he becomes liable to be detained or subject to guardianship under this Act, whichever occurs first, and may be so detained in any place in which he might have been detained but for the repeal of that section.

19. A person who immediately before the commencement of this Act was detained by virtue of section twenty, section twenty-one or section twenty-one A of the Lunacy Act, 1890, may continue to be

detained until the expiration of his current period of treatment or until he becomes liable to be detained or subject to guardianship under this Act, whichever occurs first, and may be so detained in any place in which he might have been detained but for the repeal of that section.

20. A person who immediately before the commencement of this Act—

- (a) was detained by virtue of subsection (3) of section eight of the Mental Deficiency Act, 1913, in an institution or place of safety within the meaning of that Act ; or
- (b) was detained under section fifteen of that Act in such a place of safety ;

may continue to be detained as aforesaid until the expiration of the period of twenty-eight days beginning with the commencement of this Act or until he becomes liable to be detained or subject to guardianship under this Act, whichever occurs first.

Patients on leave or absent without leave

21.—(1) Sections thirty-nine and forty of this Act shall apply to a patient to whom paragraph 7 of this Schedule applies or a transferred patient who immediately before the commencement of this Act was absent on trial or leave or in pursuance of a licence under any enactment repealed by this Act or any rules or regulations thereunder, as if he had been granted leave of absence under the said section thirty-nine at the commencement of this Act for an indefinite period, and accordingly a patient to whom paragraph 7 of this Schedule applies may be recalled under the said section thirty-nine at any time within the initial period and a transferred patient may be so recalled at any time within or after the initial period.

(2) Section forty of this Act shall, subject to the next following sub-paragraph, apply to a patient to whom paragraph 7 of this Schedule applies, a transferred patient or a short-period patient who immediately before the commencement of this Act was absent otherwise than as mentioned in the foregoing sub-paragraph from the hospital or other place where he was required to be by virtue of any such enactment, rules or regulations as if he had absented himself without leave or without permission from the hospital or other place as mentioned in subsection (1) of that section or, as the case may be, he were absent without his guardian's permission as mentioned in subsection (2) of that section.

(3) The period within which any patient to whom paragraph 7 of this Schedule applies or a short-period patient may be retaken and returned under the said section forty shall be whichever of the following periods is applicable instead of that specified in subsection (3) of that section, that is to say—

- (a) in the case of a patient liable to be detained by virtue of any of the provisions of the Mental Deficiency Act, 1913 (not being a transferred patient), the initial period ;
- (b) in the case of any other patient to whom paragraph 7 of this Schedule applies or any other short-period patient, the period of twenty-eight days beginning with the commencement of this Act ;

and a transferred patient may be retaken and returned under the said section forty at any time.

6TH SCH.
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6TH SCH.
—cont.*Supplemental*

22. Any opinion recorded by the responsible medical officer under this Part of this Schedule shall be recorded in such form as may be prescribed by regulations made by the Minister.

23.—(1) In this Part of this Schedule the following expressions have the meanings hereby respectively assigned to them, that is to say—

“current period of treatment” means, in relation to any patient, the period for which he would have been liable to be detained or subject to guardianship by virtue of any enactment repealed or excluded by this Act, or any enactment repealed or replaced by any such enactment as aforesaid, being a period which began but has not expired before the commencement of this Act;

“initial period” has the meaning assigned to it by paragraph 7 of this Schedule;

“the responsible medical officer” means—

(a) in relation to a patient subject to guardianship, the medical officer of health of the responsible local health authority or any other medical officer authorised by that authority to act (either generally or in any particular case or for any particular purpose) as the responsible medical officer;

(b) in relation to any other class of patient, the medical practitioner in charge of the treatment of the patient;

“transferred patient” has the meaning assigned to it by paragraph 15 of this Schedule;

“short-period patient” means a patient to whom paragraph 18, 19, or 20 of this Schedule applies.

(2) Subsection (2) of section fifty-nine of this Act shall apply for the purposes of this Part of this Schedule as it applies for the purposes of Part IV of this Act.

(3) The sentence or other period of detention of a person who was liable to be detained or subject to guardianship immediately before the commencement of this Act by virtue of an order under section nine of the Mental Deficiency Act, 1913, shall be treated for the purposes of this Part of this Schedule as expiring at the end of the period for which that person would have been liable to be detained in a prison or other institution if the order had not been made.

PART IV

PROVISIONS RELATING TO PART VIII

24.—(1) The persons who immediately before the commencement of this Act were respectively Master in Lunacy and Assistant Master in Lunacy shall by virtue of this sub-paragraph continue in office as Master and Deputy Master of the Court of Protection; and it shall not be necessary for the Master to take the oaths required by subsection (1) of section one hundred and fifteen of this Act.

(2) Notwithstanding anything in subsection (2) of section one hundred and fifteen of this Act, a person who, immediately before

the commencement of this Act, was authorised by an order under section eight of the Administration of Justice (Miscellaneous Provisions) Act, 1933, to exercise the jurisdiction of the Master in Lunacy shall be qualified for appointment as Deputy Master of the Court of Protection if he is at the time of the appointment an officer nominated under subsection (3) of section one hundred of this Act.

6TH SCH.
—cont.

(3) The persons who immediately before the commencement of this Act were clerks and other officers of the Master in Lunacy shall by virtue of this sub-paragraph continue in office as officers of the Court of Protection.

25. Any order or appointment made, direction or authority given, or thing done, which—

(a) had effect immediately before the commencement of this Act with respect to the property or affairs of a person falling within subsection (1) of section one hundred and sixteen of the Lunacy Act, 1890, or section sixty-four of the Mental Deficiency Act, 1913, and

(b) was such as could have been made, given or done under any provision of Part VIII of this Act if that provision had been in force at the material time,

shall continue to have effect as if made, given or done under that provision; and where at the commencement of this Act any person's estate was subject to the jurisdiction of the Master in Lunacy under Part IV of the Lunacy Act, 1890, Part VIII of this Act shall apply in that person's case as if immediately after the commencement of this Act it had been determined that he was then a patient within the meaning of the said Part VIII.

26. A person who, immediately before the commencement of this Act, was the committee of the estate of a person of unsound mind so found by inquisition shall thereafter be deemed to be a receiver for that person appointed under section one hundred and five of this Act with such functions in relation to that person's property and affairs as were exercisable by him in relation thereto as committee of the estate, and references in any document to such a committee shall be construed accordingly.

27. Subsection (1) of section one hundred and seven of this Act shall apply in relation to any disposal of property (within the meaning of that subsection) of a person living at the commencement of this Act, being a disposal effected under the Lunacy Act, 1890, as it applies in relation to the disposal of the property of a person effected under Part VIII of this Act.

28. Rules under Part VIII of this Act may contain transitional provisions with respect to proceedings pending at the commencement of this Act and, notwithstanding anything in section one hundred and one of this Act, such rules may provide for treating as sufficient for conferring jurisdiction under the said Part VIII any evidence given in such proceedings, or in proceedings brought within one month after the commencement of this Act, being evidence which would have been sufficient to confer jurisdiction under Part IV of the Lunacy Act, 1890.

Sections 149,
150, 152.

SEVENTH SCHEDULE

MINOR AND CONSEQUENTIAL AMENDMENTS

PART I

AMENDMENTS EXTENDING TO ENGLAND AND WALES ONLY

*Enactment**Amendment*

The Fines and Recoveries Act,
1833, 3 & 4 Will. 4. c. 74.

In section thirty-three, for the words from "lunatic" where it first occurs to "unsound mind as aforesaid" there shall be substituted the words "incapable, by reason of mental disorder within the meaning of the Mental Health Act, 1959, of managing and administering his property and affairs, the judge having jurisdiction under Part VIII of that Act shall be the protector of the settlement in his stead so long as he is incapable as aforesaid".

In sections forty-eight and forty-nine, for the references to the Lord High Chancellor, Lord Keeper or Lords Commissioners for the custody of the Great Seal or other the person or persons intrusted as mentioned in those sections there shall be substituted references to the judge having jurisdiction under Part VIII of this Act.

In section ninety-one, for the words from "being a lunatic" to "inquisition or not" there shall be substituted the words "suffering from mental disorder" and for the reference to the Lord High Chancellor, Lord Keeper or Lords Commissioners for the custody of the Great Seal or other the person or persons intrusted as mentioned in that section there shall be substituted a reference to the judge having jurisdiction under Part VIII of this Act.

The Court of Chancery of
Lancaster Act, 1850, 13 & 14
Vict. c. 43.

In section nine, for the words from "person" to "inquisition" there shall be substituted the words "person suffering from mental disorder within the meaning of the Mental Health Act, 1959".

In section ten, for the words "lunatic, or person of unsound mind" there shall be substituted the words "or person suffering from mental disorder within the meaning of the

Enactment

The Court of Chancery of Lancaster Act, 1850, 13 & 14 Vict. c. 43—*cont.*

The Improvement of Land Act, 1864, 27 & 28 Vict. c. 114.

The Habitual Drunkards Act, 1879, 42 & 43 Vict. c. 19.

The Colonial Prisoners Removal Act, 1884, 47 & 48 Vict. c. 31.

Amendment

Mental Health Act, 1959", and for the words from "committee" to "mind" there shall be substituted the words "receiver or guardian ad litem of a person suffering from mental disorder as aforesaid, and of the guardian ad litem of any infant,".

In section sixty-eight, for the words "committee, or trustee" there shall be substituted the words "or receiver" and for the words "lunatic, idiot" there shall be substituted the words "or patient within the meaning of Part VIII of the Mental Health Act, 1959".

In section three, in the definition of "habitual drunkard", for the words "amenable to any jurisdiction in lunacy" there shall be substituted the words "a mentally disordered person within the meaning of the Mental Health Act, 1959".

In section seven, for the words from "who is licensed" to the end of the section there shall be substituted the words "in respect of premises which are a mental nursing home within the meaning of the Mental Health Act, 1959".

In section ten, after subsection (2), there shall be added the following subsection—

"(3) Without prejudice to the foregoing provisions of this section, where a criminal lunatic is removed to England and Wales, then—

(a) except where he is a criminal lunatic by virtue of having been convicted of an offence and afterwards certified or otherwise lawfully proved to be insane, the Secretary of State may give the like direction in respect of him under section seventy-one of the Mental Health Act, 1959, as may be given in the case of a person to whom that section applies;

7TH SCH.
—*cont.*

7TH SCH.
—cont.

<i>Enactment</i>	<i>Amendment</i>
The Colonial Prisoners Removal Act, 1884, 47 & 48 Vict. c. 31— <i>cont.</i>	(b) in the said excepted case, the Secretary of State may give the like direction in respect of him under section seventy-two of that Act (with or without a direction under section seventy-four thereof) as may be given in the case of a person serving a sentence of imprisonment with respect to whom the Secretary of State is satisfied as mentioned in subsection (1) of that section."
The Forgery Act, 1913, 3 & 4 Geo. 5. c. 27.	In section three, in paragraph (d) of subsection (3), for the words "any master or registrar in lunacy" there shall be substituted the words "the authority having jurisdiction under Part VIII of the Mental Health Act, 1959". In section five, in paragraph (b) of subsection (3), for the words "the office of any master or registrar in lunacy" there shall be substituted the words "the Court of Protection".
The Settled Land Act, 1925, 15 & 16 Geo. 5. c. 18.	In section sixty-eight, in subsection (3), for the words "a lunatic, or a defective" there shall be substituted the words "suffering from mental disorder".
The Trustee Act, 1925, 15 & 16 Geo. 5. c. 19.	In section thirty-six, the following subsection shall be substituted for subsection (9)— “(9) Where a trustee is incapable, by reason of mental disorder within the meaning of the Mental Health Act, 1959, of exercising his functions as trustee and is also entitled in possession to some beneficial interest in the trust property, no appointment of a new trustee in his place shall be made by virtue of paragraph (b) of subsection (1) of this section unless leave to make the appointment has been given by the authority

Enactment

The Trustee Act, 1925, 15 & 16
Geo. 5. c. 19—*cont.*

Amendment

having jurisdiction under Part
VIII of the Mental Health Act,
1959."

7TH SCH.
—*cont.*

In section forty-one, in subsection
(1), for the words "a lunatic or a
defective" there shall be substi-
tuted the words "incapable, by
reason of mental disorder within
the meaning of the Mental Health
Act, 1959, of exercising his func-
tions as trustee".

The following section shall be sub-
stituted for section fifty-four—

"Jurisdic-
tion in
regard to
mental
patients.

54.—(1) Subject to the provi-
sions of this section, the autho-
rity having jurisdiction under
Part VIII of the Mental Health
Act, 1959, shall not have power
to make any order, or give any
direction or authority, in relation
to a patient who is a trustee if
the High Court has power under
this Act to make an order to
the like effect.

(2) Where a patient is a trustee
and a receiver appointed by
the said authority is acting for
him or an application for the
appointment of a receiver has
been made but not determined,
then, except as respects a trust
which is subject to an order for
administration made by the
High Court, the said authority
shall have concurrent jurisdic-
tion with the High Court in
relation to—

- (a) mortgaged property of
which the patient has be-
come a trustee merely by
reason of the mortgage
having been paid off;
- (b) matters consequent on the
making of provision by the
said authority for the exer-
cise of a power of appoint-
ing trustees or retiring
from a trust;
- (c) matters consequent on the
making of provision by the
said authority for the carry-
ing out of any contract
entered into by the patient;

7TH SCH.
—cont.

Enactment

The Trustee Act, 1925, 15 & 16
Geo. 5. c. 19—cont.

Amendment

- (d) property to some interest in which the patient is beneficially entitled but which, or some interest in which, is held by the patient under an express, implied or constructive trust.

The Lord Chancellor may make rules with respect to the exercise of the jurisdiction referred to in this subsection.

(3) In this section "patient" means a patient as defined by section one hundred and one of the Mental Health Act, 1959, or a person as to whom powers are exercisable and have been exercised under section one hundred and four of that Act."

In section fifty-five (except so far as it applies to vesting orders made before the commencement of this Act), for the words "the Lunacy Act, 1890" there shall be substituted the words "Part VIII of the Mental Health Act, 1959".

The Law of Property Act, 1925,
15 & 16 Geo. 5. c. 20.

The following section shall be substituted for section twenty-two—

22.—(1) Where a legal estate in land (whether settled or not) is vested in a person suffering from mental disorder, either solely or jointly with any other person or persons, his receiver or (if no receiver is acting for him) any person authorised in that behalf shall, under an order of the authority having jurisdiction under Part VIII of the Mental Health Act, 1959, or of the court, or under any statutory power, make or concur in making all requisite dispositions for conveying or creating a legal estate in his name and on his behalf.

(2) If land held on trust for sale is vested, either solely or jointly with any other person or persons, in a person who is incapable, by reason of mental disorder, of exercising his functions as trustee, a new trustee shall be appointed in the place

Enactment

The Law of Property Act, 1925,
15 & 16 Geo. 5. c. 20—*cont.*

Amendment

of that person, or he shall be otherwise discharged from the trust, before the legal estate is dealt with under the trust for sale or under the powers vested in the trustees for sale."

7TH SCH.
—*cont.*

In section twenty-six, in subsection (2), the words "committee or" shall be omitted, and for the words "lunatic or defective" there shall be substituted the words "person suffering from mental disorder".

In section twenty-eight, in proviso (i) of subsection (3), for the words "lunatic or defective" there shall be substituted the words "person suffering from mental disorder", and the words "committee or" shall be omitted.

In section two hundred and five, in subsection (1), the following paragraph shall be substituted for paragraph (xiii)—

"(xiii) 'Mental disorder' has the meaning assigned to it by section four of the Mental Health Act, 1959, and 'receiver', in relation to a person suffering from mental disorder, means a receiver appointed for that person under Part VIII of that Act; "

The Land Registration Act,
1925, 15 & 16 Geo. 5. c. 21.

In section one hundred and eleven, in subsection (5), for the words from "a lunatic" to the words "lunacy or" there shall be substituted the words "incapable, by reason of mental disorder within the meaning of the Mental Health Act, 1959, of managing and administering his property and affairs, his receiver or (if no receiver is acting for him) any person authorised in that behalf shall, under an order of the authority having jurisdiction under Part VIII of the Mental Health Act, 1959, or" and for the words "lunatic or defective" in each place where they occur there shall be substituted the words "the proprietor", and in subsection (6), for the words "the Lunacy Act, 1890" there shall be substituted the words "Part VIII of the Mental Health Act, 1959".

7TH SCH.
—cont.

Enactment

The Administration of Estates Act, 1925, 15 & 16 Geo. 5. c. 23.

The Supreme Court of Judicature (Consolidation) Act, 1925, 15 & 16 Geo. 5. c. 49.

Amendment

In section forty-one, in subsection (1), in paragraph (ii) of the proviso, for the words "a lunatic or defective" there shall be substituted the words "is incapable, by reason of mental disorder within the meaning of the Mental Health Act, 1959, of managing and administering his property and affairs" and the word "committee" shall be omitted, and in paragraph (iv) of the proviso, for the words from "committee" to "appointed" there shall be substituted the words "receiver is acting for a person suffering from mental disorder", and for the words "lunatic or defective" in the second place where they occur there shall be substituted the words "said person".

In section sixty-eight, in subsection (5), in paragraph (a) of the proviso, for the words "person of unsound mind, whether so found by inquisition or not" there shall be substituted the words "person who is incapable, by reason of mental disorder within the meaning of the Mental Health Act, 1959, of managing and administering his property and affairs", for the word "committee" there shall be substituted the word "receiver", and for the words from "any committee" to the end of the paragraph there shall be substituted the words "any receiver of a person suffering from mental disorder and that person, unless with the previous sanction of the authority having jurisdiction under Part VIII of the Mental Health Act, 1959".

In section one hundred and twenty-nine, in subsection (1), for the words "in matters and proceedings in lunacy a judge or master in lunacy" there shall be substituted the words "in proceedings before the authority having jurisdiction under Part VIII of the Mental Health Act, 1959, that authority".

Enactment

The Supreme Court of Judicature (Consolidation) Act, 1925, 15 & 16 Geo. 5. c. 49
—cont.

Amendment

7TH SCH.
—cont.

In section one hundred and forty-nine, for the words "the Lord Chancellor and any person exercising the powers of the judge in lunacy" there shall be substituted the words "the authority having jurisdiction under Part VIII of the Mental Health Act, 1959".

In section two hundred and twenty-five, in the definition of "Officer of the Supreme Court", for the words from "salaries" to "lunacy" there shall be substituted the words "salaries, pensions and allowances of officers includes an officer of the Court of Protection or of the Lord Chancellor's Visitors".

In the Third Schedule, for the words "Master in Lunacy" there shall be substituted the words "Master of the Court of Protection", for the words "Legal Visitor in Lunacy" there shall be substituted the words "Lord Chancellor's Legal Visitor" and for the words "Medical Visitor in Lunacy" there shall be substituted the words "Lord Chancellor's Medical Visitor".

In the Fourth Schedule, for the words "Master in Lunacy" wherever they occur there shall be substituted the words "Master of the Court of Protection", and in paragraph 4, there shall be inserted at the end the words "or

(iv) the Deputy Master of the Court of Protection.",

and in paragraph 8, for the words "Legal Visitor in Lunacy" there shall be substituted the words "Lord Chancellor's Legal Visitor".

The Children and Young Persons Act, 1933, 23 & 24 Geo. 5. c. 12.

In section ninety-two, for the words from "but does not include" to the end of the section there shall be substituted the words "but does not include any mental nursing home or residential home for mentally disordered persons within the meaning of Part III of the Mental Health Act, 1959".

7TH SCH.
—cont.

Enactment

Amendment

The Children and Young Persons Act, 1933, 23 & 24 Geo. 5. c. 12—cont.

In the Fourth Schedule, in paragraph 4, the words from “and shall” to the end of the paragraph shall be omitted.

The Public Health Act, 1936, 26 Geo. 5 & 1 Edw. 8. c. 49.

In section one hundred and ninety-nine, in subsection (1), in the definition of “nursing home”, for paragraphs (ii) and (iii) there shall be substituted the following paragraph:—

“(ii) except so far as this Part of this Act is applied thereto by Part III of the Mental Health Act, 1959, any mental nursing home within the meaning of that Act.”

The Public Health (London) Act, 1936, 26 Geo. 5 & 1 Edw. 8. c. 50.

In section three hundred and four, in subsection (1), in the definition of “nursing home”, for paragraphs (ii) and (iii) there shall be substituted the following paragraph:—

“(ii) except so far as Part XI of this Act is applied thereto by Part III of the Mental Health Act, 1959, any mental nursing home within the meaning of that Act.”

The Limitation Act, 1939, 2 & 3 Geo. 6. c. 21.

In section thirty-one, in subsection (3) (except so far as it relates to any period before the commencement of this Act), for paragraphs (a) and (b) there shall be substituted the following paragraphs:—

“(a) while he is liable to be detained or subject to guardianship under the Mental Health Act, 1959; and

(b) while he is receiving treatment as an in-patient in any hospital or mental nursing home within the meaning of that Act without being liable to be detained thereunder, being treatment which follows without any interval a period during which he was liable to be detained or subject to guardianship under that Act or by virtue of any enactment repealed or excluded by that Act”.

Enactment

The London Government
Act, 1939, 2 & 3 Geo. 6. c. 40.

Amendment

In section ninety-four, subsection (1) shall cease to have effect; the following subsection shall be substituted for subsection (2)—

7TH SCH.
—cont.

“(2) Subject to the provisions of this section, where any sum to which this section applies is payable to a person by a local authority and the authority is satisfied after considering medical evidence that the said person (hereinafter referred to as ‘the patient’) is incapable, by reason of mental disorder within the meaning of the Mental Health Act, 1959, of managing and administering his property and affairs, the authority may pay the said sum or such part thereof as the authority thinks fit to the institution or person having the care of the patient, to be applied for his benefit, and may pay the remainder (if any) or such part thereof as the authority thinks fit—

(a) to or for the benefit of persons who appear to the authority to be members of the patient’s family or other persons for whom the patient might be expected to provide if he were not mentally disordered, or

(b) in reimbursement, with or without interest, of money applied by any person either in payment of the patient’s debts (whether legally enforceable or not) or for the maintenance or other benefit of the patient or such persons as are mentioned in the foregoing paragraph”;

and in subsections (4) and (5), for the references to the Master in Lunacy there shall be substituted references to the authority having jurisdiction under Part VIII of this Act.

7TH SCH.
—cont.

Enactment

The Education Act, 1944,
7 & 8 Geo. 6. c. 31.

The Teachers' Superannuation
Act, 1945, 8 & 9 Geo. 6. c. 14.

The National Health Service
Act, 1946, 9 & 10 Geo. 6.
c. 81.

Amendment

In section one hundred and sixteen, for the words from "person who is the subject of an order or inquisition" to "education at school" there shall be substituted the words "child who is for the time being the subject of a decision recorded under section fifty-seven of this Act".

In section one, in subsection (1), after paragraph (d) there shall be inserted the following paragraph—

"(dd) as a teacher of such kind as may be prescribed of mentally disordered patients who is employed—

(i) in a hospital vested in the Minister of Health under the National Health Service Act, 1946;

(ii) by a local health authority in the exercise of their functions under section twenty-eight of the said Act of 1946;

(iii) by a voluntary organisation to which a local health authority is making contributions under that section";

and after paragraph (e) there shall be inserted the following paragraph—

"(ee) as a teacher employed in a mental nursing home or residential home for mentally disordered persons within the meaning of Part III of the Mental Health Act, 1959, being a teacher who at any time before the coming into operation of the said Part III was employed in recognised or contributory service in any such certified institution as aforesaid".

In section sixty-three, for the words "the Mental Deficiency Acts, 1913 to 1938" there shall be substituted the words "section twenty-eight of this Act as extended by Part II of the Mental Health Act, 1959".

*Enactment**Amendment*7TH SCH.
—cont.

The National Health Service Act, 1946, 9 & 10 Geo. 6. c. 81—*cont.*

In section seventy-nine, in subsection (1), in the definition of “illness”, for the words “mental illness” there shall be substituted the words “mental disorder within the meaning of the Mental Health Act, 1959”.

The National Assistance Act, 1948, 11 & 12 Geo. 6. c. 29.

In section forty-nine, for the words from “section one” to “that section” there shall be substituted the words “Part VIII of the Mental Health Act, 1959, as receiver for a patient or as a person otherwise having functions in relation to the property and affairs of a patient”, and for the words “the said powers” there shall be substituted the words “such functions”.

The Children Act, 1948, 11 & 12 Geo. 6. c. 43.

In section two, in the proviso to subsection (3), for the words “unsoundness of mind or mental deficiency” there shall be substituted the words “mental disorder within the meaning of the Mental Health Act, 1959”.

The Criminal Justice Act, 1948, 11 & 12 Geo. 6. c. 58.

In section four, in subsection (1), for the words from “appearing” to “1913” there shall be substituted the words “approved for the purposes of section twenty-eight of the Mental Health Act, 1959, that the mental condition of an offender is such as requires and may be susceptible to treatment but is not such as to warrant his detention in pursuance of a hospital order under Part V of that Act”.

In subsection (2) of that section, the following paragraph shall be substituted for paragraphs (a) and (b):—

“(a) treatment as a resident patient in a hospital or mental nursing home within the meaning of the Mental Health Act, 1959, not being a special hospital within the meaning of that Act.”

7TH SCH.
—cont.

Enactment

Amendment

The Criminal Justice Act, 1948,
11 & 12 Geo. 6. c. 58—*cont.*

In subsection (3) of that section, the words “or can be” and the words “as a voluntary patient or” shall be omitted.

In subsection (4) of that section, the words “as a voluntary patient or” shall be omitted.

For subsections (7) and (8) of that section there shall be substituted the following subsection:—

“(7) Subsections (2) and (3) of section sixty-two of the Mental Health Act, 1959, shall apply for the purposes of this section as if for the reference in the said subsection (2) to paragraph (a) of subsection (1) of section sixty of that Act there were substituted a reference to subsection (1) of this section.”

The National Service Act, 1948,
11 & 12 Geo. 6. c. 64.

In the First Schedule, for paragraph 3 there shall be substituted the following paragraph:—

“3. A person who—

(a) is receiving treatment for mental disorder as an in-patient in a hospital within the meaning of the Mental Health Act, 1959, or is receiving such treatment as an in-patient in any other place at the expense of a Regional Hospital Board; or

(b) is suffering from severe subnormality within the meaning of that Act and is either resident in accommodation provided by, or by arrangement with, a local health authority under section twenty-eight of the National Health Service Act, 1946, or is otherwise receiving care from a local health authority under that section.”

Enactment

The Recall of Army and Air Force Pensioners Act, 1948, 12, 13 & 14 Geo. 6. c. 8.

Amendment

In the Schedule, for paragraph 2 there shall be substituted the following paragraph:—

“ 2. A person who is receiving treatment for mental disorder as an in-patient in a hospital within the meaning of the Mental Health Act, 1959, or is receiving such treatment as an in-patient in any other place at the expense of a Regional Hospital Board ”.

7TH SCH.
—cont.

The National Health Service (Amendment) Act, 1949, 12, 13 & 14 Geo. 6. c. 93.

For section twenty-five there shall be substituted the following section:—

“ 25.—(1) Where a medical practitioner carries out a medical examination of any person with a view to an application for his admission to hospital for observation or treatment being made under Part IV of the Mental Health Act, 1959, the local health authority for the area where the person examined resides shall, subject to the following provisions of this section, pay to that medical practitioner reasonable remuneration in respect of the said examination and in respect of any recommendation or report made by him with regard to the person examined and the amount of any expenses reasonably incurred by him in connection with the examination or the making of any such recommendation or report.

(2) No payment shall be made under this section to a medical practitioner in respect of an examination carried out as part of his duty to provide general medical services for the person examined or in respect of an examination carried out or any recommendation or report made as part of his duty as an officer of a Regional Hospital Board or a Board of Governors of a teaching hospital.

7TH SCH.
—cont.

Enactment

The National Health Service
(Amendment) Act, 1949, 12,
13 & 14 Geo. 6. c. 93.—cont.

Amendment

(3) This section shall only apply in a case where it is intended, when the medical examination of the person in question is carried out, that if he is admitted to hospital in pursuance of any such application as is mentioned in subsection (1) of this section, the whole cost of his maintenance and treatment will be defrayed out of moneys provided by Parliament under the National Health Service Act, 1946, or the Mental Health Act, 1959."

The Matrimonial Causes Act,
1950, 14 Geo. 6. c. 25.

In section one, in subsection (2) (except so far as it relates to any time before the commencement of this Act) for paragraph (a) there shall be substituted the following paragraph:—

"(a) while he is liable to be detained in a hospital, mental nursing home or place of safety under the Mental Health Act, 1959",

and in paragraph (d), the words "the Mental Treatment Act, 1930, or under" shall be omitted.

In section eight, in subsection (1) (except so far as it relates to a marriage celebrated before the commencement of this Act) in paragraph (b), for the words from "a mental defective" to "1938" there shall be substituted the words "was then suffering from mental disorder within the meaning of the Mental Health Act, 1959, of such a kind or to such an extent as to be unfitted for marriage and the procreation of children", and for the word "fits" there shall be substituted the word "attacks".

In section twenty-seven, in subsection (2), in paragraph (b), after the word "deficiency" there shall be inserted the words "or disorder".

*Enactment**Amendment*7TH SCH.
—cont.

The Costs in Criminal Cases Act, 1952, 15 & 16 Geo. 6. and 1 Eliz. 2. c. 48.

In section fourteen, in subsection (1), after the words "that Act" there shall be inserted the words "or with a view to the making of a hospital order with an order restricting his discharge under Part V of the Mental Health Act, 1959".

The Magistrates' Courts Act, 1952, 15 & 16 Geo. 6 and 1 Eliz. 2. c. 55.

In section twenty-six, in subsection (1), for the words "the offence has been committed by the accused" there shall be substituted the words "the accused did the act or made the omission charged"; in subsection (3), for the words from "shall undergo" to the words "may be so specified" there shall be substituted the words "shall—

(a) undergo medical examination by a duly qualified medical practitioner or, where the inquiry is into his mental condition and the recognizance so specifies, two such practitioners; and

(b) for the purpose attend at an institution or place, or on any such practitioner, specified in the recognizance and, where the inquiry is into his mental condition, comply with any directions which may be given to him for the said purpose by any person so specified or by a person of any class so specified",

and for the words "for such period as may be specified in the recognizance" there shall be substituted the words "until the expiration of such period as may be specified in the recognizance or he is discharged therefrom, whichever occurs first"; in subsection (4), for the words from "it may" to the end of the subsection there shall be substituted the words "the conditions of the recognizance taken for the purpose of his committal may, in addition to the condition for his appearance, include the like conditions as could be included in the

7TH SCH.
—cont.

Enactment

Amendment

The Magistrates' Courts Act, 1952, 15 & 16 Geo. 6 and 1 Eliz. 2. c. 55—*cont.*

conditions of a recognizance with respect to the like inquiry by virtue of the last preceding subsection"; and subsection (6) shall cease to have effect.

The Local Government Superannuation Act, 1953, 1 & 2 Eliz. 2. c. 25.

In section fifteen, in subsection (1), in paragraph (a) for the words "the Mental Deficiency Acts, 1913 to 1938" there shall be substituted the words "the Mental Health Act, 1959".

The Sexual Offences Act, 1956, 4 & 5 Eliz. 2. c. 69.

In the Second Schedule, in paragraph 1, in the fourth column, for the words "an idiot or imbecile" there shall be substituted the words "a defective"; in paragraph 11, in the first column, for the words "idiot or imbecile" there shall be substituted the word "defective"; and in paragraph 14, in the fourth column, for the words "an idiot or imbecile" there shall be substituted the words "a defective".

The Nurses Act, 1957, 5 & 6 Eliz. 2. c. 15.

In section two, in subsection (1), for the word "diseases" there shall be substituted the word "disorder".

In section eight, in subsection (2), for the word "diseases" there shall be substituted the word "disorder".

In section eighteen, in subsection (3), for the word "diseases" there shall be substituted the word "disorder".

In section thirty-one, for the word "diseases" there shall be substituted the word "disorder".

In section thirty-three, in subsection (1), for the definition of "mental hospital" there shall be substituted the following definition, that is to say, "'mental hospital' means any hospital or mental nursing home within the meaning of the Mental Health Act, 1959, wholly or mainly used for the treatment of persons suffering from mental disorder", and in the definition of "registered mental nurse" for the word "diseases" there shall be substituted the word "disorder".

*Enactment**Amendment*7TH SCH.
—cont.

The Nurses Act, 1957, 5 & 6 Eliz. 2. c. 15—*cont.*

In the First Schedule, in sub-paragraph (1) of paragraph 2, for the word "diseases" there shall be substituted the word "disorder".
In the Third Schedule, in paragraph 1, in sub-paragraph (3), for the word "diseases" there shall be substituted the word "disorder".

The Solicitors Act, 1957, 5 & 6 Eliz. 2. c. 27.

In section twelve, in subsection (1), the following shall be substituted for paragraph (e)—

"(e) whilst he is a patient as defined by section one hundred and one of the Mental Health Act, 1959, or a person as to whom powers are exercisable and have been exercised under section one hundred and four of that Act; "

The Variation of Trusts Act, 1958, 6 & 7 Eliz. 2. c. 53.

In section one, in subsection (3), for the words from "the Judge" to the end of the subsection there shall be substituted the words "the authority having jurisdiction under Part VIII of the Mental Health Act, 1959, if that person is a patient within the meaning of the said Part VIII", and in subsection (6), for the words from "section one hundred and seventy-one" to the end of the subsection there shall be substituted the words "the powers of the authority having jurisdiction under Part VIII of the Mental Health Act, 1959".

The Local Government Act, 1958, 6 & 7 Eliz. 2. c. 55.

In section forty-six, in subsection (1), references to Part III of the National Health Service Act, 1946, and to section twenty-eight of that Act, and references to sections twenty-nine and thirty of the National Assistance Act, 1948, shall include references to those enactments as amended by this Act; and for paragraphs (d) and (e) there shall be substituted the following paragraph—

"(d) the Mental Health Act, 1959, except so far as it amends Part III of the National Health Service Act, 1946";

7TH SCH.
—cont.

Enactment

Amendment

The Local Government Act,
1958, 6 & 7 Eliz. 2. c. 55—
cont.

In Part III of the First Schedule, in paragraph 4, in sub-paragraph (1), for the words "occupation centres provided for the purposes of paragraph (cc) of section thirteen of the Mental Deficiency Act, 1913" there shall be substituted the words "centres provided under section twenty-eight of the National Health Service Act, 1946, for the occupation or training of persons who are or have been suffering from mental disorder" and, in sub-paragraph (2), after "occupation" there shall be inserted "or training".

PART II

OTHER AMENDMENTS

Enactment

Amendment

The Naval Enlistment Act,
1884, 47 & 48 Vict. c. 46.

In section three, after the word "1955" there shall be inserted the words "as amended by the Mental Health Act, 1959"

The Pharmacy and Poisons Act,
1933, 23 & 24 Geo. 5. c. 25.

In section ten, in subsection (6), for the words from "trustee" to "powers of a committee" there shall be substituted the words "or trustee, or a receiver appointed under Part VIII of the Mental Health Act, 1959".

In section thirty, in paragraph (f), for the words from "references" to "of a committee" there shall be substituted the words "reference to a receiver".

The Polish Resettlement Act,
1947, 10 & 11 Geo. 6. c. 19.

In section four, in subsection (1), for the words "the Lunacy and Mental Treatment Acts, 1890 to 1930, or the Mental Deficiency Acts, 1913 to 1938" there shall be substituted the words "the Mental Health Act, 1959".

In section eleven, in subsection (3), in paragraph (b), for the words "the Lunacy and Mental Treatment Acts, 1890 to 1930, and the Mental Deficiency Acts, 1913 to 1938" there shall be substituted the words "the Mental Health Act, 1959".

<i>Enactment</i>	<i>Amendment</i>	7TH SCH. —cont.
The National Assistance Act, 1948, 11 & 12 Geo. 6. c. 29.	In section thirty-seven, in subsection (9), at the end of paragraph (d) of the proviso there shall be added the words "including any mental nursing home within the meaning of Part III of the Mental Health Act, 1959", and after paragraph (g) there shall be inserted the words "or (h) except as provided by Part III of the Mental Health Act, 1959, any residential home for mentally disordered persons within the meaning of the said Part III".	
The Children Act, 1948, 11 & 12 Geo. 6. c. 43.	In section thirty-nine, in subsection (1), after paragraph (e) there shall be inserted the following paragraph:— “(f) section nine of the Mental Health Act, 1959, and the provisions of section ten of that Act relating to children and young persons in respect of whom the rights and powers of a parent are vested in a local authority as mentioned in paragraph (a) of subsection (1) of that section.”	
The U.S.A. Veterans' Pensions (Administration) Act, 1949, 12, 13 & 14 Geo. 6. c. 45.	Subsection (4) of section one shall apply as respects a person for whom a receiver has been appointed under section one hundred and five of this Act as it applies as respects such a person as is mentioned in that subsection.	
The Representation of the People Act, 1949, 12, 13 & 14 Geo. 6. c. 68.	Section four shall have effect, in its application to England and Wales, as if for the words "or mental defectiveness" there were substituted the words "or other form of mental disorder" and, in its application to Northern Ireland, as if for the words "or mental defectiveness" there were substituted the words "or arrested or incomplete development of mind".	

7TH SCH.
—cont.

Enactment

Amendment

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|---|---|
| <p>The Administration of Justice (Pensions) Act, 1950, 14 & 15 Geo. 6. c. 11.</p> | <p>In the First Schedule, for the words "Master in Lunacy" and "Legal Visitor in Lunacy" there shall be substituted respectively the words "Master of the Court of Protection" and "Lord Chancellor's Legal Visitor".</p> |
| <p>The Army Act, 1955, 3 & 4 Eliz. 2. c. 18.</p> | <p>No order shall be made under section sixteen directing that a soldier be received into a hospital in England and Wales; and accordingly, in subsection (2), for the words "Great Britain" there shall be substituted the word "Scotland".</p> |
| <p>The Air Force Act, 1955, 3 & 4 Eliz. 2. c. 19.</p> | <p>No order shall be made under section sixteen directing that an airman be received into a hospital in England and Wales; and accordingly, in subsection (2), for the words "Great Britain" there shall be substituted the word "Scotland".</p> |
| <p>The Revision of the Army and Air Force Acts (Transitional Provisions) Act, 1955, 3 & 4 Eliz. 2. c. 20.</p> | <p>In the Second Schedule, in paragraph 2, after the word "1955" there shall be inserted the words "as amended by the Mental Health Act, 1959".</p> |
| <p>The Children Act, 1958, 6 & 7 Eliz. 2. c. 65.</p> | <p>In section two, at the end of subsection (4), there shall be added the words "or while he is liable to be detained or subject to guardianship under the Mental Health Act, 1959, or is resident in a residential home for mentally disordered persons within the meaning of Part III of that Act".</p> |
| <p>The Adoption Act, 1958, 7 & 8 Eliz. 2. c. 5.</p> | <p>In section thirty-seven, in subsection (3), at the end there shall be added the words "nor while he is liable to be detained, subject to guardianship or resident as mentioned in subsection (4) of that section".</p> |

EIGHTH SCHEDULE

Sections 149,
150, 152.

ENACTMENTS REPEALED

PART I

REPEALS EXTENDING TO ENGLAND AND WALES ONLY

Session and Chapter	Short Title	Extent of Repeal
—	The Statute Prerogativa Regis.	Chapters xi and xii.
51 Geo. 3. c. 37	The Marriage of Lunatics Act, 1811.	The whole Act.
1 & 2 Vict. c. 106.	The Pluralities Act, 1838.	Section seventy-nine.
1 & 2 Vict. c. 110.	The Judgments Act, 1838.	In section eighteen, the words "and all orders of the Lord Chancellor in matters of lunacy" and the words "and by the Lord Chancellor in matters of lunacy".
12 & 13 Vict. c. 45.	The Quarter Sessions Act, 1849.	In section two, the words "or against an order under any statute relating to pauper lunatics".
15 & 16 Vict. c. 87.	The Court of Chancery Act, 1852.	The whole Act.
23 & 24 Vict. c. 75.	The Criminal Lunatic Asylums Act, 1860.	The whole Act.
33 & 34 Vict. c. 77.	The Juries Act, 1870.	In the Schedule, the words "Keepers in public lunatic asylums".
34 & 35 Vict. c. 44.	The Incumbents Resignation Act, 1871.	Section eighteen.
36 & 37 Vict. c. 57.	The Consolidated Fund (Permanent Charges Redemption) Act, 1873.	In section seven, in the definition of "limited owner", the words "a committee of a lunatic or idiot".
46 & 47 Vict. c. 38.	The Trial of Lunatics Act, 1883.	In section two, in subsection (2), the words "as a criminal lunatic".
47 & 48 Vict. c. 64.	The Criminal Lunatics Act, 1884.	The whole Act.
53 & 54 Vict. c. 5.	The Lunacy Act, 1890.	The whole Act.
53 & 54 Vict. c. 39.	The Partnership Act, 1890.	In section thirty-five, paragraph (a).
54 & 55 Vict. c. 65.	The Lunacy Act, 1891.	The whole Act.
61 & 62 Vict. c. 57.	The Elementary School Teachers (Superannuation) Act, 1898.	In section six, paragraph (b) of subsection (1) so far as it applies in relation to persons of unsound mind.
7 Edw. 7. c. 23	The Criminal Appeal Act, 1907.	In section five, in subsection (4), the words "as a criminal lunatic".

8TH SCH.
—cont.

Session and Chapter	Short Title	Extent of Repeal
8 Edw. 7. c. 47	The Lunacy Act, 1908 ...	The whole Act.
3 & 4 Geo. 5. c. 28.	The Mental Deficiency Act, 1913.	The whole Act.
6 & 7 Geo. 5. c. 31.	The Police, Factories, &c. (Miscellaneous Provisions) Act, 1916.	Section eleven.
8 & 9 Geo. 5. c. 55.	The School Teachers (Superannuation) Act, 1918.	Section nine.
12 & 13 Geo. 5. c. 16.	The Law of Property Act, 1922.	In section one hundred and eighty-eight, paragraph (19).
12 & 13 Geo. 5. c. 60.	The Lunacy Act, 1922 ...	The whole Act.
15 & 16 Geo. 5. c. 18.	The Settled Land Act, 1925.	Section twenty-eight. In section one hundred and seventeen, in subsection (1), paragraph (xiii).
15 & 16 Geo. 5. c. 19.	The Trustee Act, 1925 ...	In section sixty-eight, in paragraph (15), the words " 'lunatic', 'defective' ".
15 & 16 Geo. 5. c. 20.	The Law of Property Act, 1925.	In section seventy-six, in paragraph (F) of subsection (1), the words "or as committee of a lunatic or as receiver of a defective," and in subsection (4), the words "or as committee of a lunatic, or as receiver of a defective". In section seventy-seven, in subsection (4), the words "or as committee of a lunatic, or as receiver of a defective,". Section one hundred and seventy-one. In the Second Schedule, in the cross-heading to Part VI, the words "or as committee of a lunatic or as a receiver of a defective".
15 & 16 Geo. 5. c. 21.	The Land Registration Act, 1925.	In section three, in paragraph (xxvi), the words " 'committee' ", " 'lunatic' " and " 'defective' ".
15 & 16 Geo. 5. c. 23.	The Administration of Estates Act, 1925.	In section fifty-one, in subsection (2), the words "committee or". In section fifty-five, in paragraph (viii) of subsection (1), the definition of "committee".
15 & 16 Geo. 5. c. 49.	The Supreme Court of Judicature (Consolidation) Act, 1925.	In section twenty-six, in subsection (2), in paragraph (c), the words from "or from any order" to the end of the paragraph. Section one hundred and twenty-four.

8TH SCH.
—cont.

Session and Chapter	Short Title	Extent of Repeal
15 & 16 Geo. 5. c. 53.	The Mental Deficiency (Amendment) Act, 1925.	The whole Act.
15 & 16 Geo. 5. c. 59.	The Teachers (Superannuation) Act, 1925.	In the First Schedule, paragraph 9.
15 & 16 Geo. 5. c. 86.	The Criminal Justice Act, 1925.	In section thirty-four, the words "or the Board of Control" and the words "or a Commissioner or the Secretary of the Board of Control".
17 & 18 Geo. 5. c. 33.	The Mental Deficiency Act, 1927.	The whole Act.
20 & 21 Geo. 5. c. 23.	The Mental Treatment Act, 1930.	The whole Act.
23 & 24 Geo. 5. c. 12.	The Children and Young Persons Act, 1933.	In the Fourth Schedule, in paragraph 4, the words from "and shall" to the end of the paragraph.
23 & 24 Geo. 5. c. 36.	The Administration of Justice (Miscellaneous Provisions) Act, 1933.	Section eight.
1 Edw. 8 & 1 Geo. 6. c. 47.	The Teachers (Superannuation) Act, 1937.	In section one, in subsection (6), the references to section nine of the School Teachers (Superannuation) Act, 1918, and paragraph 9 of the First Schedule to the Teachers (Superannuation) Act, 1925.
1 & 2 Geo. 6. c. 43.	The Mental Deficiency Act, 1938.	The whole Act.
2 & 3 Geo. 6. c. 31.	The Civil Defence Act, 1939.	In section sixty-six, in subsection (2), the word "committee" in each place where it occurs.
2 & 3 Geo. 6. c. 40.	The London Government Act, 1939.	In section ninety-four, subsection (1).
7 & 8 Geo. 6. c. 31.	The Education Act, 1944.	Section fifty-seven. In the Eighth Schedule, the amendment of section two of the Mental Deficiency Act, 1913.
9 & 10 Geo. 6. c. 81.	The National Health Service Act, 1946.	In section sixteen, in subsection (1), the words "or mental defectiveness". In section twenty-seven, in subsection (1) the words "or mental defectiveness". In section twenty-eight, in subsection (1) the words "or mental defectiveness". In section twenty-nine, in subsection (1) the words "mentally defective". Sections forty-nine to fifty-one.

8TH SCH.
—cont.

Session and Chapter	Short Title	Extent of Repeal
9 & 10 Geo. 6 c. 81—cont.	The National Health Service Act, 1946—cont.	<p>In section fifty-two, in subsection (1), the words “the Lunacy and Mental Treatment Acts, 1890 to 1930, or the Mental Deficiency Acts, 1913 to 1938”.</p> <p>In section seventy-nine, in subsection (1), in the definition of “hospital”, the words “or mental defectiveness” and in the definition of “local authority”, paragraph (b).</p> <p>The Eighth and Ninth Schedules.</p> <p>In the Tenth Schedule, the amendments of the Children and Young Persons Act, 1933, and the Education Act, 1944.</p>
11 & 12 Geo. 6. c. 29.	The National Assistance Act, 1948.	In the Sixth Schedule, in paragraph 7, sub-paragraphs (2) and (3).
11 & 12 Geo. 6. c. 40.	The Education (Miscellaneous Provisions) Act, 1948.	<p>Section eight.</p> <p>In the First Schedule, in Part I, the amendment of subsection (6) of section fifty-seven of the Education Act, 1944, and, in the amendments of section one hundred and sixteen of that Act, the paragraph beginning with “For the words”; and in Part II, the amendments of the Mental Deficiency Act, 1913.</p>
11 & 12 Geo. 6. c. 58.	The Criminal Justice Act, 1948.	<p>In section four, in subsection (3), the words “or can be” and the words “as a voluntary patient or,” and in subsection (4), the words “as a voluntary patient or”.</p> <p>In section forty-seven, in subsection (1), the words “or voluntary”.</p> <p>Sections sixty-two to sixty-four.</p> <p>In section seventy-seven, in subsection (2), the words from the beginning to “Treasury, and”.</p> <p>In section eighty, in subsection (1), the definition of “mental hospital”.</p> <p>In the Fifth Schedule, in paragraph 3, in paragraph (d) of sub-paragraph (1), the words “voluntary or”.</p>

8TH SCH.
—cont.

Session and Chapter	Short Title	Extent of Repeal
11 & 12 Geo. 6. c. 58— <i>cont.</i>	The Criminal Justice Act, 1948— <i>cont.</i>	In the Ninth Schedule, the amendments of the Criminal Lunatic Asylums Act, 1860, the Criminal Lunatics Act, 1884, the Mental Deficiency Act, 1913, and the Mental Deficiency Act, 1927.
11 & 12 Geo. 6. c. 63.	The Agricultural Holdings Act, 1948.	Section eighty-four.
12, 13 & 14 Geo. 6. c. 93.	The National Health Service (Amendment) Act, 1949.	Section twenty-six.
12, 13 & 14 Geo. 6. c. 100.	The Law Reform (Miscellaneous Provisions) Act, 1949.	Section eight.
14 Geo. 6. c. 25.	The Matrimonial Causes Act, 1950.	In section one, in subsection (2), in paragraph (d) the words "the Mental Treatment Act, 1930, or under".
15 & 16 Geo. 6 and 1 Eliz. 2. c. 52.	The Prison Act, 1952 ...	In the Third Schedule, the amendments of the Mental Deficiency Act, 1913.
15 & 16 Geo. 6. and 1 Eliz. 2. c. 55.	The Magistrates' Courts Act, 1952.	In section twenty-six, subsection (6).
4 & 5 Eliz. 2. c. 34.	The Criminal Justice Administration Act, 1956.	Section thirty.
4 & 5 Eliz. 2. c. 46.	The Administration of Justice Act, 1956.	In section two, subsection (8).
4 & 5 Eliz. 2. c. 69.	The Sexual Offences Act, 1956.	In section ten, in subsection (1), paragraph (b).
6 & 7 Eliz. 2. c. 3.	The Yarmouth Naval Hospital Transfer Act, 1957.	Section eight.
6 & 7 Eliz. 2. c. 40.	The Matrimonial Proceedings (Children) Act, 1958.	In the Second Schedule, in paragraph 1, sub-paragraph (vii), and paragraph 12.
6 & 7 Eliz. 2. c. 55.	The Local Government Act, 1958.	The whole Act.
		In section five, subsection (6).
		In section fifty, in subsection (1), the words "or of that section as applied by section fifty-one of that Act" and the words "(or that subsection as applied by the said section fifty-one)".
		In the Eighth Schedule, paragraph 19.

PART II

OTHER REPEALS

8TH SCH.
—cont.

Session and Chapter	Short Title	Extent of Repeal
2 & 3 Vict. c. 51.	The Pensions Act, 1839.	Section six.
47 & 48 Vict. c. 64.	The Criminal Lunatics Act, 1884.	In section eight, subsections (3) to (5).
49 & 50 Vict. c. 16.	The Lunacy (Vacating of Seats) Act, 1886.	The whole Act.
50 & 51 Vict. c. 67.	The Superannuation Act, 1887.	Section seven, except so far as applied by the Superannuation Act (Northern Ireland), 1921.
53 & 54 Vict. c. 5.	The Lunacy Act, 1890	Section eighty-six. In section eighty-seven, in subsection (1), the words "England or" and in subsection (2), the words "England and", the words "England or" in each place where they occur, and the words "as the case may be". In section eighty-eight, in subsection (1), the words "England or", and in subsection (2), the words "England and", the words "for any justice in England, and", the words "England or" and the words "as the case may be". Section one hundred and seven. In section one hundred and thirty-one, subsections (1) and (4), and in subsections (2) and (3), the words "England or" in each place where they occur.
9 & 10 Geo. 6. c. 72.	The Education (Scotland) Act, 1946.	Section one hundred and four.
9 & 10 Geo. 6. c. 81.	The National Health Service Act, 1946.	In section eighty, in subsection (2), the words from "and the amendment" to "1884". In the Ninth Schedule, in Part I, the amendment of subsection (3) of section eight of the Criminal Lunatics Act, 1884.
11 & 12 Geo. 6. c. 29.	The National Assistance Act, 1948.	In section thirty-seven, in the proviso to subsection (9), the words "any institution for persons of unsound mind within the meaning of the Lunacy and Mental Treatment Acts, 1890 to 1930 or", the words "the Mental Deficiency Acts, 1913 to 1927 or" and the word "or" at the end of paragraph (f).

8TH SCH.
—cont.

Session and Chapter	Short Title	Extent of Repeal
11 & 12 Geo. 6. c. 43.	The Children Act, 1948.	Section eight.
11 & 12 Geo. 6. c. 58.	The Criminal Justice Act, 1948.	Section sixty-three.
12, 13 & 14 Geo. 6. c. 44.	The Superannuation Act, 1949.	In section forty-eight, in subsection (5), the words from "and section three hundred and thirty-five" to "unsound mind)".
12, 13 & 14 Geo. 6. c. 94.	The Criminal Justice (Scotland) Act, 1949.	In section sixty-four, in subsection (2), the words from "and any patient" to the end of the subsection, and subsection (3).
3 & 4 Eliz. 2. c. 18.	The Army Act, 1955 ...	In section sixteen, in subsection (4), the words "an order under section sixteen of the Lunacy Act, 1890, or in Scotland".
3 & 4 Eliz. 2. c. 19.	The Air Force Act, 1955.	In section sixteen, in subsection (4), the words "an order made under section sixteen of the Lunacy Act, 1890, or in Scotland".
6 & 7 Eliz. 2. c. 65.	The Children Act, 1958...	In section two, in subsection (5), the words "the Mental Deficiency Acts, 1913 to 1938, or", the words "the Board of Control or of", and the words "the Board of Control in accordance with subsection (2) of section fifty-one of the Mental Deficiency Act, 1913, or to".

Table of Statutes referred to in this Act.

Short Title	Session and Chapter
Criminal Lunatics Act, 1800	39 & 40 Geo. 3. c. 94.
Lunacy (Ireland) Act, 1821	1 & 2 Geo. 4. c. 33.
Vagrancy Act, 1824	5 Geo. 4. c. 83.
Fines and Recoveries Act, 1833	3 & 4 Will. 4. c. 74.
Court of Chancery of Lancaster Act, 1850	13 & 14 Vict. c. 43.
Lunacy (Scotland) Act, 1857	20 & 21 Vict. c. 71.
Lunacy (Scotland) Act, 1862	25 & 26 Vict. c. 54.
Improvement of Land Act, 1864	27 & 28 Vict. c. 114.
Lunacy (Scotland) Act, 1866	29 & 30 Vict. c. 51.
Promissory Oaths Act, 1868	31 & 32 Vict. c. 72.
Lunacy Regulation (Ireland) Act, 1871	34 & 35 Vict. c. 22.
Criminal and Dangerous Lunatics (Scotland) Amendment Act, 1871	34 & 35 Vict. c. 55.
Trial of Lunatics Act, 1883	46 & 47 Vict. c. 38.
Colonial Prisoners Removal Act, 1884	47 & 48 Vict. c. 31.
Naval Enlistment Act, 1884	47 & 48 Vict. c. 46.
Criminal Lunatics Act, 1884	47 & 48 Vict. c. 64.
Lunacy (Vacating of Seats) Act, 1886	49 & 50 Vict. c. 16.
Interpretation Act, 1889	52 & 53 Vict. c. 63.
Lunacy Act, 1890	53 & 54 Vict. c. 5.
Lunacy (Ireland) Act, 1901	1 Edw. 7. c. 17.
Criminal Appeal Act, 1907	7 Edw. 7. c. 23.
Forgery Act, 1913	3 & 4 Geo. 5. c. 27.
Mental Deficiency Act, 1913	3 & 4 Geo. 5. c. 28.
Mental Deficiency and Lunacy (Scotland) Act, 1913	3 & 4 Geo. 5. c. 38.
Government of Ireland Act, 1920	10 & 11 Geo. 5. c. 67.
Settled Land Act, 1925	15 & 16 Geo. 5. c. 18.
Trustee Act, 1925	15 & 16 Geo. 5. c. 19.
Law of Property Act, 1925	15 & 16 Geo. 5. c. 20.
Land Registration Act, 1925	15 & 16 Geo. 5. c. 21.
Administration of Estates Act, 1925	15 & 16 Geo. 5. c. 23.
Supreme Court of Judicature (Consolidation) Act, 1925	15 & 16 Geo. 5. c. 49.
Mental Treatment Act, 1930	20 & 21 Geo. 5. c. 23.
Poor Prisoners Defence Act, 1930	20 & 21 Geo. 5. c. 32.
Children and Young Persons Act, 1933	23 & 24 Geo. 5. c. 12.
Pharmacy and Poisons Act, 1933	23 & 24 Geo. 5. c. 25.
Administration of Justice (Miscellaneous Provisions) Act, 1933	23 & 24 Geo. 5. c. 36.
Summary Jurisdiction (Appeals) Act, 1933	23 & 24 Geo. 5. c. 38.
Local Government Act, 1933	23 & 24 Geo. 5. c. 51.
Criminal Lunatics (Scotland) Act, 1935	25 & 26 Geo. 5. c. 32.
Public Health Act, 1936... ..	26 Geo. 5 & 1 Edw. 8. c. 49.
Public Health (London) Act, 1936	26 Geo. 5 & 1 Edw. 8. c. 50.
Children and Young Persons (Scotland) Act, 1937	1 Edw. 8 & 1 Geo. 6. c. 37.
Limitation Act, 1939	2 & 3 Geo. 6. c. 21.
Education Act, 1944	7 & 8 Geo. 6. c. 31.
Teachers Superannuation Act, 1945	8 & 9 Geo. 6. c. 14.
National Health Service Act, 1946	9 & 10 Geo. 6. c. 81.
Polish Re-settlement Act, 1947... ..	10 & 11 Geo. 6. c. 19.
National Health Service (Scotland) Act, 1947	10 & 11 Geo. 6. c. 27.
National Assistance Act, 1948	11 & 12 Geo. 6. c. 29.
Education (Miscellaneous Provisions) Act, 1948	11 & 12 Geo. 6. c. 40.
Children Act, 1948	11 & 12 Geo. 6. c. 43.

Short Title	Session and Chapter
Criminal Justice Act, 1948	11 & 12 Geo. 6. c. 58.
National Service Act, 1948	11 & 12 Geo. 6. c. 64.
Recall of Army and Air Force Pensioners Act, 1948	12, 13 & 14 Geo. 6. c. 8.
Legal Aid and Advice Act, 1949	12, 13 & 14 Geo. 6. c. 51.
Representation of the People Act, 1949	12, 13 & 14 Geo. 6. c. 68.
National Health Service (Amendment) Act, 1949	12, 13 & 14 Geo. 6. c. 93.
Criminal Justice (Scotland) Act, 1949	12, 13 & 14 Geo. 6. c. 94.
Matrimonial Causes Act, 1950	14 Geo. 6. c. 25.
Arbitration Act, 1950	14 Geo. 6. c. 27.
Administration of Justice (Pensions) Act, 1950	14 & 15 Geo. 6. c. 11.
Courts-Martial (Appeals) Act, 1951	14 & 15 Geo. 6. c. 46.
Costs in Criminal Cases Act, 1952	15 & 16 Geo. 6 & 1 Eliz. 2. c. 48.
Prison Act, 1952	15 & 16 Geo. 6 & 1 Eliz. 2. c. 52.
Magistrates Courts Act, 1952	15 & 16 Geo. 6 & 1 Eliz. 2. c. 55.
Births and Deaths Registration Act, 1953	1 & 2 Eliz. 2. c. 20.
Local Government Superannuation Act, 1953	1 & 2 Eliz. 2. c. 25.
Post Office Act, 1953	1 & 2 Eliz. 2. c. 36.
Army Act, 1955	3 & 4 Eliz. 2. c. 18.
Air Force Act, 1955	3 & 4 Eliz. 2. c. 19.
Revision of the Army and Air Force Acts (Transitional Provisions) Act, 1955	3 & 4 Eliz. 2. c. 20.
Sexual Offences Act, 1956	4 & 5 Eliz. 2. c. 69.
Medical Act, 1956	4 & 5 Eliz. 2. c. 76.
Nurses Act, 1957... ..	5 & 6 Eliz. 2. c. 15.
House of Commons Disqualification Act, 1957	5 & 6 Eliz. 2. c. 20.
Solicitors Act, 1957	5 & 6 Eliz. 2. c. 27.
Naval Discipline Act, 1957	5 & 6 Eliz. 2. c. 53.
Matrimonial Proceedings (Children) Act, 1958	6 & 7 Eliz. 2. c. 40.
Variation of Trusts Act, 1958	6 & 7 Eliz. 2. c. 53.
Local Government Act, 1958	6 & 7 Eliz. 2. c. 55.
Children Act, 1958	6 & 7 Eliz. 2. c. 65.
Adoption Act, 1958	7 Eliz. 2. c. 5.



Section and Chapter	Short Title
11 & 12 Geo. 6 c. 58	Criminal Justice Act, 1958
11 & 12 Geo. 6 c. 59	Prison Act, 1958
11 & 12 Geo. 6 c. 60	Recall of Army and Air Force Prisoners Act, 1958
11 & 12 Geo. 6 c. 61	Legal Aid and Advice Act, 1958
11 & 12 Geo. 6 c. 62	Representation of the People Act, 1958
11 & 12 Geo. 6 c. 63	National Health Service (Amendment) Act, 1958
11 & 12 Geo. 6 c. 64	Criminal Justice (Scotland) Act, 1958
11 & 12 Geo. 6 c. 65	Mental Health Act, 1959
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11 & 12 Geo. 6 c. 67	Administration of Justice Act, 1959
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11 & 12 Geo. 6 c. 74	Prison Act, 1959
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11 & 12 Geo. 6 c. 83	Visiting of Prisons Act, 1959
11 & 12 Geo. 6 c. 84	Local Government Act, 1959
11 & 12 Geo. 6 c. 85	Children Act, 1959
11 & 12 Geo. 6 c. 86	Adoption Act, 1959

PRINTED BY SIR JOHN ROUGHTON SIMPSON, C.B.

Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament

1960 No. 1241

MENTAL HEALTH

**The Mental Health (Hospital and Guardianship)
Regulations, 1960**

<i>Made - - - -</i>	<i>20th July, 1960</i>
<i>Laid before Parliament</i>	<i>25th July, 1960</i>
<i>Coming into Operation</i>	<i>1st November, 1960</i>

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The Minister of Health, in exercise of the powers conferred on him by sections 34, 35, 36, 41, 56, 94, 96, 99 of, and paragraph 22 of the Sixth Schedule to, the Mental Health Act, 1959(a), and of all other powers enabling him in that behalf, hereby makes the following regulations:—

PART I

PRELIMINARY

Citation and commencement

1. These regulations may be cited as the Mental Health (Hospital and Guardianship) Regulations, 1960, and shall come into operation on the first day of November, 1960.

Interpretation

2.—(1) In these regulations, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them:—

“the Act” means the Mental Health Act, 1959;

“document” means any application, recommendation, report, order, notice, or other document;

“guardian” in relation to a patient, means the local health authority or other person named as the guardian in a guardianship application made and accepted under Part IV of the Act in respect of that patient or such an authority or person having the like powers as if such an application had been made and accepted and “guardianship” shall be construed accordingly;

(a) 7 & 8 Eliz. 2. c. 72.

“hospital” has the meaning assigned to it by subsection (1) of section 147 of the Act and includes a mental nursing home ;

“mental nursing home” means a home in respect of which the particulars of registration are, for the time being, entered or treated as entered in the separate part of the register kept for the purposes of subsection (1) of section 15 of the Act ;

“Minister” means the Minister of Health ;

“officer of the managers” when used in relation to a hospital under the management of a hospital management committee includes any officer employed at, or for the purposes of, a hospital under the management of the committee, notwithstanding that the officer is an officer of the regional hospital board in accordance with the provisions of section 14 of the National Health Service Act, 1946(a) ;

“responsible local health authority” means in relation to a patient who is subject to guardianship:—

(a) where the patient is subject to the guardianship of a local health authority, that authority ;

(b) where the patient is subject to the guardianship of a person other than a local health authority, the local health authority for the area in which that person resides ;

“served” with reference to a document includes delivered, given, forwarded, furnished or sent.

(2) Other expressions which are given a meaning in Part IV of the Act shall, unless the context otherwise requires, have the same meaning in these regulations.

(3) Except where otherwise provided references to the “managers of a hospital” in relation to a patient who was immediately before the commencement of the Act in the custody of a relative or friend under section 57 of the Lunacy Act, 1890(b), or was liable to be detained as a single patient under the Lunacy and Mental Treatment Acts, 1890 to 1930, and who is still liable to be detained under paragraph 7 of the Sixth Schedule to the Act shall have effect as if there were substituted references to the person having the custody or charge of the patient.

(4) References in these regulations to any form shall include a form to the like effect.

(5) The Interpretation Act, 1889(c), applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

Revocation of regulations

3. The Mental Health (Approval of Medical Practitioners) Regulations, 1960(d), are hereby revoked and any application made or any approval given or any other thing done under those regulations shall be treated as valid and as if made, given or done under the corresponding provisions in regulation 5 of these regulations.

PART II

GENERAL PROVISIONS FOR HOSPITAL ADMISSION AND GUARDIANSHIP

Forms for admission etc.

4. Subject to the provisions of the Act and of these regulations, the forms numbered 1 to 15 inclusive in the schedule to these regulations shall be used

(a) 9 & 10 Geo. 6. c. 81.

(b) 53 & 54 Vict. c. 5.

(c) 52 & 53 Vict. c. 63.

(d) S.I. 1960/771.

whenever applicable in connection with the use of compulsory powers under Part IV of the Act or under the Sixth Schedule thereto.

Approval of medical practitioners for the purposes of section 28 of the Act

5.—(1) Before approving a medical practitioner for the purposes of section 28 of the Act as having special experience in the diagnosis or treatment of mental disorder, a local health authority shall consult not less than two members of the local advisory panel for their area as to the experience of the practitioner and shall not approve a medical practitioner for such purposes unless any two members of the panel so consulted are satisfied that he possesses such special experience.

(2) The local advisory panel for the area of a local health authority constituted for the purpose of the last foregoing paragraph shall consist of medical practitioners appointed by the regional hospital board or boards whose area includes the area of the authority:

Provided that—

(a) where the area of a board includes only a small part of the area of the authority, that board shall, if the Minister so directs, take no part in the appointment of members of the panel, and

(b) before appointing a member of the panel the board or boards shall consult such boards of governors of teaching hospitals as the Minister shall direct.

(3) An approval of a medical practitioner under this regulation shall be given for a period not exceeding five years and shall not be renewed except after compliance with the provisions of this regulation.

PART III

GUARDIANSHIP

General powers and duties of guardians

6.—(1) The guardian shall, so far as is practicable, make arrangements for the occupation, training or employment of the patient and for his recreation and general welfare and shall ensure that everything practicable is done for the promotion of his physical and mental health.

(2) Subject to the provisions of paragraph (3) of this regulation and to any direction given under regulation 10 of these regulations, the guardian may restrict to such extent as he thinks necessary the making of visits to the patient and may prohibit visits by any person who the guardian has reason to believe may have an adverse effect on the patient.

(3) Nothing in this regulation shall operate to restrict the visits of any person authorised in that behalf by the responsible local health authority or the Minister.

Visits to patients on behalf of the responsible local health authority

7. The responsible local health authority shall arrange for every patient who is subject to guardianship to be visited at such intervals as the authority may decide, but in any case at intervals of not more than three months and at least one such visit in any year shall be made by a medical practitioner approved for the purposes of section 28 of the Act.

Duties of guardians other than local health authorities

8. The provisions of the four succeeding regulations shall apply in relation to a patient who is subject to the guardianship of a person other than a local health authority.

Appointment of nominated medical attendant

9.—(1) The guardian shall appoint a medical practitioner to act as the nominated medical attendant of the patient for the purposes of the Act and shall notify the responsible local health authority of the name and address of the medical practitioner for the time being so appointed.

(2) The nominated medical attendant appointed under the last foregoing paragraph may be a medical practitioner employed by a local health authority.

Directions of, and reports to, responsible local health authority

10. The guardian shall, in exercising the powers and duties conferred or imposed on him by the Act or these regulations, comply with such directions as the responsible local health authority think it appropriate at any time to give, and the guardian shall furnish to that authority all such reports or other information with regard to the patient (in addition to the information mentioned in the two succeeding regulations) as the authority may from time to time require.

Notification of residence

11.—(1) On the reception of a patient into guardianship the guardian shall notify to the responsible local health authority the place of his residence and that of the patient and on any permanent change in either place of residence he shall notify to that authority the new place of residence either before, or not later than 7 days after, the change takes place.

(2) If the new place of residence of the guardian is in the area of a different local health authority, the notification required by the last foregoing paragraph shall be sent to that authority and shall include the name and address of the medical practitioner for the time being appointed as the patient's nominated medical attendant under regulation 9 of these regulations and a copy of the notification shall also be sent to the local health authority of the former place of residence.

Notification of death or discharge

12. In the event of the death of the patient or the termination of the guardianship by discharge, transfer or otherwise the guardian shall as soon as may be notify the responsible local health authority.

PART IV

TRANSFER AND REMOVAL

Transfer from hospital to hospital or guardianship

13.—(1) A patient may be transferred under paragraph (a) of subsection (1) of section 41 of the Act from one hospital to another or from hospital to guardianship, as the case may be, in the circumstances and subject to the conditions provided for by this regulation.

(2) An authority for such a transfer shall be given in the form numbered 16 or 17, in the schedule to these regulations by the managers of the hospital where the patient is liable to be detained or by an officer of the managers authorised by them in that behalf and, in the case of a patient liable to be detained in a mental nursing home such authority may also be given by the registration authority of the home, within the meaning of Part III of the Act and, in the case of such a patient maintained under contract with a regional hospital board, by the board or by an officer of the board authorised by them in that behalf :

Provided that in its application to a patient who was immediately before the commencement of the Act in the custody of a relative or friend under section 57 of the Lunacy Act, 1890, and who is still subject to the provisions of paragraph 7 of the Sixth Schedule to the Act this paragraph shall have effect as if for references to the managers of the hospital where the patient is liable to be detained there were substituted references to the managers of the hospital from which the patient was transferred to the custody of the relative or friend.

(3) In the case of a patient's transfer to hospital the authority shall not be given unless the person giving the authority is satisfied that arrangements have been made for the admission of the patient to the hospital to which he is being transferred within a period of 28 days beginning with the date of the authority.

(4) The provisions of the last two foregoing paragraphs shall not apply where the patient is transferred from one mental nursing home to another and both nursing homes are under the management of the same managers.

(5) In the case of a patient's transfer to guardianship the authority shall be of no effect until it has been confirmed by the local health authority which will be the responsible local health authority if the proposed transfer takes effect and where the guardian is to be a person other than a local health authority the authority for the transfer shall not be confirmed without the agreement of that person.

(6) When confirming an authority for transfer under the last foregoing paragraph the local health authority shall specify the date on which the transfer is to take effect.

(7) Nothing in this regulation shall apply where the patient is removed in pursuance of subsection (3) of section 41 of the Act or in pursuance of a direction of the Minister given under subsection (1) or subsection (2) of section 99 of the Act.

Transfer from guardianship to guardianship or hospital

14. A patient may be transferred under paragraph (b) of sub-section (1) of section 41 of the Act from the guardianship of one guardian to that of another or from guardianship to hospital in the circumstances and subject to the conditions provided for under regulation 15 or regulation 16 of these regulations.

Authority for transfer from guardianship to guardianship

15. An authority for the transfer of a patient from the guardianship of one guardian to that of another shall be given by the guardian in the form numbered 18 in the schedule to these regulations but the authority so given shall be of no effect until it has been confirmed in the manner provided for in paragraph (5) of regulation 13 of these regulations; and the local health authority when confirming the authority for transfer shall specify the date on which the transfer is to take effect.

Authority for transfer from guardianship to hospital

16.—(1) Subject to the following provisions of this regulation, an authority for the transfer of a patient from guardianship to hospital shall be given by the responsible local health authority in the form numbered 19 in the schedule to these regulations.

(2) No authority shall be given under this regulation unless—

(a) two medical recommendations in the form numbered 20A or 20B in the schedule to these regulations have been given in accordance with the provisions of the next following paragraph; and

(b) the responsible local health authority is satisfied that arrangements have been made for the admission of the patient to the hospital to which he is being transferred.

(3) The provisions of subsection (4) of section 27 and of section 28 of the Act shall apply to the authority for transfer and medical recommendations required under this regulation as they apply to an application and the medical recommendations required for the purposes of the admission of a patient to hospital under Part IV of the Act, and the provisions of subsection (4) of section 28 shall apply where the authority for transfer is given by a medical officer on behalf of the local health authority in accordance with paragraph (1) of regulation 24 of these regulations as if that medical officer were the applicant.

Conveyance to hospital

17. An authority for transfer duly completed in accordance with these regulations or a direction given by the Minister under subsection (2) of section 99 of the Act shall be sufficient authority for the following persons to take the patient and convey him to the hospital to which he is being transferred within the periods specified:—

- (a) in the case of a transfer from hospital to hospital, an officer of the managers of either hospital or any person authorised by the managers of the hospital from which the patient is being transferred, within the period of 28 days beginning with the date of the authority for transfer; or
- (b) in the case of transfer from guardianship to hospital an officer of, or any person authorised by, the responsible local health authority, within the period of 21 days beginning with the date on which the patient was last examined by a medical practitioner before giving a medical recommendation for the purpose of the authority for transfer.

Conveyance between hospitals under the same managers

18.—(1) An officer of, or any person authorised by the managers of, a hospital may take and convey a patient who is being removed to another hospital under subsection (3) of section 41 or subsection (1) of section 99 of the Act.

(2) An officer or any other person authorised by the managers of a mental nursing home may take and convey a patient who is being transferred under subsection (1) of section 41 of the Act from one mental nursing home to another under the same managers.

PART V

REMOVAL TO ENGLAND AND WALES

Removal to England and Wales

19.—(1) The following provisions of this regulation shall apply in respect of a patient who is removed to England and Wales in pursuance of arrangements made under Part VI of the Act or in pursuance of subsection (2) of section 64 of the Criminal Justice (Scotland) Act, 1949(a).

(2) For the purposes of subsection (3) of section 96 of the Act the responsible medical officer or, in the case of a patient subject to the guardianship of a person other than a local health authority, the nominated medical

(a) 12, 13 & 14 Geo. 6. c. 94.

attendant shall record in the form numbered 15 in the schedule to these regulations his opinion as to the form or forms of mental disorder from which the patient is suffering.

(3) The opinion referred to in the last foregoing paragraph shall be recorded—

(a) where the patient is or becomes at the time of his removal subject to an order or direction restricting his discharge, or is treated as being so subject, as soon as may be after he ceases to be so subject ; and

(b) in any other case as soon as may be after the patient's removal.

(4) The managers of the hospital or, in the case of a patient subject to guardianship, the guardian, shall cause to be recorded in the form numbered 21 in the schedule to these regulations the date on which the patient is admitted to the hospital to which he is removed or arrives at the place where he is to reside on his reception into guardianship in England and Wales.

(5) Where the patient is received into the guardianship of a person other than a local health authority, the guardian shall notify to the responsible local health authority the date recorded under the last foregoing paragraph and also the particulars required to be notified by regulations 9 and 11 of these regulations.

PART VI

MISCELLANEOUS

Service of documents

20.—(1) An order made by the nearest relative of the patient under paragraph (b) of subsection (2) of section 47 of the Act for the discharge of a patient who is liable to be detained in a hospital or a notice given for the purpose of obtaining the discharge of such a patient under section 48 of the Act shall be served either by delivery of the order or notice at the hospital where the patient is liable to be detained to an officer of the managers of that hospital authorised by them to receive it or by sending it by pre-paid post addressed to those managers at that hospital.

(2) An application for the admission of a patient to hospital under the provisions of Part IV of the Act may be served by delivering the application to an officer of the managers of the hospital, to which it is proposed the patient shall be admitted, authorised by them to receive it or by sending it by pre-paid post addressed to the managers of the hospital, either at their principal office or at the hospital to which it is proposed that the patient shall be admitted.

(3) Any other document required or authorised to be served upon any authority, body or person by or under Part IV of, or Part III of the Sixth Schedule to, the Act, may be served either:—

(a) by delivering it to the authority, body or person upon whom it is to be served, or upon any person authorised by the authority, body or person to receive it ; or

(b) by sending it by pre-paid post addressed to the authority or body at their registered or principal office or to the person upon whom it is to be served at his usual or last known residence.

(4) Any document to be addressed, in accordance with this regulation, to the managers of a hospital shall be deemed to be properly addressed to

such managers if addressed to their secretary or to the superintendent or secretary of an individual hospital under their control and management if the patient to whom the document relates is detained in such hospital or it is proposed that he shall be there detained.

Signing of documents

21.—(1) An authority for transfer or any other document given by the managers of a hospital, a local health authority, registration authority or regional hospital board under Part IV of, or Part III of the Sixth Schedule to, the Act or these regulations may be signed on their behalf by their clerk or secretary or other officer authorised by them in that behalf.

(2) In the case of a mental nursing home having two or more managers the managers may also authorise one of their number to sign on their behalf an authority for transfer or any other document.

Proof of documents

22. Any document required or authorised by or under Part IV of, or Part III of the Sixth Schedule to, the Act or these regulations and purporting to be signed by a person required or authorised by or under the said part to do so, shall be received in evidence and be deemed to be such a document without further proof, unless the contrary is shown.

Withholding of correspondence

23.—(1) Subject to the provisions of the next following paragraph, section 36 of the Act (which, inter alia, authorises the withholding from the Post Office of certain patients' correspondence) shall apply as if there was added to the persons mentioned in the proviso to subsection (2) of the section a solicitor acting or invited to act for the patient.

(2) This regulation shall only apply—

- (a) when the patient has notified the managers of the hospital or the responsible medical officer that the solicitor is so acting or has been so invited, and
- (b) where the solicitor has not given a notification within the meaning of paragraph (a) of subsection (2) of that section in respect of the patient's correspondence.

Delegation of functions

24.—(1) Notwithstanding their power to delegate any function to their health committee or a sub-committee of that committee under Part II of the Fourth Schedule to the National Health Service Act, 1946, a local health authority may authorise any of its medical officers to exercise on its behalf any function (other than the function of discharge under section 47 of the Act) in relation to the guardianship of a patient conferred on them by or under the Act.

(2) A local health authority or the managers of the hospital, as the case may be, may authorise in writing an officer or class of officers on their behalf:—

- (a) to consent to the amendment of an application or medical recommendation under the provisions of subsection (1) of section 32 or subsection (4) of section 34 of the Act; or

(b) to consider the sufficiency of a medical recommendation under the provisions of subsection (2) of section 32 of the Act and if the recommendation is considered insufficient to give written notice as required by that subsection ; or

(c) to authorise in writing any person to retake a patient under the provisions of subsection (1) or subsection (2) of section 40 of the Act.

(3) Without prejudice to their powers conferred by the last foregoing paragraph, the managers of a mental nursing home if two or more in number may authorise one of their number or any other person to exercise their functions in respect of matters mentioned in that paragraph.

Performance of the functions of the nearest relative

25.—(1) Subject to the provisions of this regulation, the nearest relative of a patient may authorise in writing any other person (not being the patient or a person mentioned in subsection (4) of section 49 of the Act) to perform in respect of the patient the functions conferred upon him by or under Part IV of the Act and may revoke any such authority.

(2) The nearest relative of a patient on making or revoking such an authority shall forthwith give the authority or give notice of the revocation as the case may be, to the person authorised, and shall also forthwith give notice in writing to the same effect to :—

(a) the managers of the hospital in the case of a patient liable to be detained there, and

(b) the guardian and the responsible local health authority in the case of a patient subject to guardianship.

(3) The authority so given shall take effect upon receipt of the authority by the person authorised and the revocation of authority shall take effect upon the receipt of a notice of revocation by any of the authorities or persons mentioned in the last preceding paragraph.

(4) A person for the time being authorised to exercise the functions of the nearest relative of a patient in accordance with this regulation shall exercise those functions to the exclusion of the nearest relative.

(5) The expression “nearest relative” in this regulation means the nearest relative as defined in section 49 of the Act and includes a person who is deemed to be the nearest relative of the patient by virtue of section 51 of the Act.

Determination of age of patients

26.—(1) In any case where the date of birth of a patient is material for the purposes of the Act or of any regulations made thereunder and the exact age is not known or cannot be ascertained by reference to the registers kept under the Births and Deaths Registration Act, 1953(a), the age shall be determined in accordance with the following provisions of this regulation.

(2) The authority for determining the age of a patient (in this regulation called “the determining authority”) shall be :—

(a) in the case of a patient subject to guardianship, the responsible local health authority ; or

(a) 1 & 2 Eliz. 2. c. 20.

(b) in any other case the local health authority in whose area the patient is or, if the patient is in hospital at the time when his age is to be determined and resided in the area of a different local health authority before admission to hospital, the local health authority in whose area he so resided.

(3) The determining authority or, on appeal by the patient or by the nearest relative, the Minister shall determine an age which accords with such information in that respect as they are able to obtain :—

(a) by reference to any birth certificate or passport or other document of identity issued in respect of the patient by an authority having power under the laws in force in any country ; or

(b) by reference to an age determined under or by virtue of any other Act of Parliament ;

or failing such information or upon such information being insufficient by any other means.

(4) The determining authority or, on appeal by the patient or by the nearest relative, the Minister :—

(a) shall revoke a determination as to the age of the patient where the age of the patient is subsequently ascertained by reference to the registers kept under the Births and Deaths Registration Act, 1953 ; and

(b) may vary or revoke such a determination on the production of further evidence as to the age of the patient in any other case.

(5) Where an age has been determined in accordance with this regulation the determining authority or the Minister shall issue a certificate in the form numbered 22 in the schedule to these regulations, specifying the age of the patient so determined (in this regulation referred to as “ a certificate of age ”) :—

(a) to the patient if the age specified exceeds sixteen years ;

(b) to the nearest relative of the patient ;

(c) to the managers of the hospital in the case of a patient liable to be detained therein ; and

(d) to the guardian in the case of a patient subject to guardianship.

(6) The date of birth for the time being entered in a certificate of age shall be the date of birth of the patient for the purposes of the Act and any regulations made thereunder.

(7) On the variation or revocation of the determination of age the determining authority or the Minister shall notify the persons mentioned in paragraph (5) of this regulation.

SCHEDULE

FORM 1

APPLICATION FOR ADMISSION FOR OBSERVATION (SECTION 25)

To the Managers of [name and address of hospital or mental nursing home]

1. I [name and address of applicant] hereby apply for the admission of [name and address of patient] to the above-named hospital for observation in accordance with Part IV of the Mental Health Act, 1959.

2.

(a) I am the patient's nearest relative within the meaning of the Act, being the patient's [state relationship].

OR

Delete the two statements which do not apply.

(b) I have been authorised by a county court the patient's nearest relative to exercise the functions of the patient's nearest relative under the Act and a copy* of the authority is attached to this application.

OR

(c) I am an officer of [name of local health authority] appointed to act as a mental welfare officer for the purposes of the Act.

3. I last saw the patient on [date].

4. This application is founded on the medical recommendations forwarded herewith.

5. †

Signed.....

Date

* Copy of the court order or of the authority signed by the nearest relative under Regulation 25 of the Mental Health (Hospital and Guardianship) Regulations, 1960.

† If neither of the medical practitioners who have made the medical recommendations had previous acquaintance with the patient, the applicant should state here why it is not practicable to obtain a recommendation from a practitioner having such acquaintance.

RECORD OF ADMISSION

(This is not part of the application but is to be completed later at the hospital or mental nursing home.)

(a) [Name of patient] was admitted to [name of hospital or mental nursing home] in pursuance of this application on [date].

Delete (a) or (b). OR

(b) [Name of patient] was already an in-patient in [name of hospital or mental nursing home] on the date of this application and the application was received by me on behalf of the managers on [date].

Signed.....
on behalf of the managers.

Date

[Sections 49, 50 and 51 of the Act to be set out.]

EMERGENCY APPLICATION FOR ADMISSION FOR OBSERVATION (SECTION 29)

To the Managers of [name and address of hospital or mental nursing home]

1. I [name and address of applicant] hereby apply for the admission of [name and address of patient] to the above-named hospital for observation in accordance with Part IV of the Mental Health Act, 1959.

2.

(a) I am a relative of the patient within the meaning of the Act, being the patient's [state relationship].

OR

(b) I am an officer of [name of local health authority] appointed to act as a mental welfare officer for the purposes of the Act.

Delete (a)
or (b).

3. I last saw the patient on [date].

4. In my opinion it is of urgent necessity for the patient to be admitted and detained under Section 25 of the Act, and compliance with the requirements of the Act relating to applications for admission other than emergency applications would involve undesirable delay.

5. This application is founded on the medical recommendation forwarded herewith.

6. †

Signed

Date

† If the medical practitioner who has made the recommendation had no previous acquaintance with the patient, the applicant should state here why it is not practicable to obtain a recommendation from a practitioner having such acquaintance.

RECORD OF ADMISSION

(This is not part of the application but is to be completed later at the hospital or mental nursing home.)

(a) [Name of patient] was admitted to [name of hospital or mental nursing home] in pursuance of this application at [time] on [date].

OR

(b) [Name of patient] was already an in-patient in [name of hospital or mental nursing home] on the date of this application and the application was received by me on behalf of the managers at [time] on [date].

Delete (a)
or (b).

Signed
on behalf of the managers.

Date

[Subsections (1), (2), (5) and (6) of Section 49 of the Act to be set out.]

FORM 3A

MEDICAL RECOMMENDATION FOR ADMISSION FOR OBSERVATION
(SECTION 25 OR SECTION 29)

1. I [name and address of medical practitioner], being a registered medical practitioner, recommend that [name and address of patient] be admitted to a hospital for observation in accordance with Part IV of the Mental Health Act, 1959.

2. I last examined this patient on [date].

3.

*(a) I was acquainted with the patient previously to conducting that examination.

* Delete if not applicable.

*(b) I have been approved by [name of local health authority] under Section 28 of the Act as having special experience in the diagnosis or treatment of mental disorder.

4. I am of the opinion

(a) that this patient is suffering from mental disorder of a nature or degree which warrants ^{his}_{her} detention in a hospital under observation for at least a limited period,

AND

(b) that this patient ought to be so detained
(i) in the interests of the patient's own health or safety,
(ii) with a view to the protection of other persons,

Delete (i) or (ii) unless both apply.

AND

(c) that informal admission is not appropriate in the circumstances of this case.

5. *(This section is to be deleted unless the medical recommendation is the first recommendation in support of an emergency application under Section 29.)*

In my opinion it is of urgent necessity for the patient to be admitted and detained under Section 25 of the Act and compliance with the requirements of the Act relating to applications for admission for observation other than emergency applications would involve undesirable delay.

Signed

Date

RECORD OF RECEIPT

(This is not part of the recommendation, and is to be completed only if the medical recommendation is the second recommendation in support of an emergency application under Section 29.)

This recommendation was received on behalf of the managers at [time] on [date], the patient having been admitted at [time] on [date].

Signed
on behalf of the managers.

Date

JOINT MEDICAL RECOMMENDATION FOR ADMISSION FOR
OBSERVATION (SECTION 25)

1. We [names and addresses of both medical practitioners] being registered medical practitioners recommend that [name and address of patient] be admitted to a hospital for observation in accordance with Part IV of the Mental Health Act, 1959.

2. I [name of first practitioner] last examined this patient on [date].

*I was acquainted with the patient previously to conducting that examination.

*I have been approved by [name of local health authority] under Section 28 of the Act as having special experience in the diagnosis or treatment of mental disorder.

3. I [name of second practitioner] last examined this patient on [date].

* Delete if not applicable.

*I was acquainted with the patient previously to conducting that examination.

*I have been approved by [name of local health authority] under Section 28 of the Act as having special experience in the diagnosis or treatment of mental disorder.

4. We [names of both practitioners] are of the opinion

(a) that this patient is suffering from mental disorder of a nature or degree which warrants $\frac{\text{his}}{\text{her}}$ detention in a hospital under observation for at least a limited period

AND

(b) that this patient ought to be so detained

- (i) in the interests of the patient's own health or safety
- (ii) with a view to the protection of other persons

Delete (i) or (ii) unless both apply.

AND

(c) that informal admission is not appropriate in the circumstances of this case.

Signed.....

Date

Signed.....

Date

FORM 4A

APPLICATION BY NEAREST RELATIVE FOR ADMISSION FOR
TREATMENT (SECTION 26)

To the Managers of [name and address of hospital or mental nursing home].

‡ Insert mental illness, severe subnormality, subnormality and/or psychopathic disorder.

1. I [name and address of applicant] hereby apply for the admission of [name and address of patient] to the above named hospital for treatment in accordance with Part IV of the Mental Health Act, 1959, as a patient suffering from ‡.

2.

(a) I am the patient's nearest relative within the meaning of the Act, being the patient's [state relationship]

Delete the statement that does not apply.

OR

(b) I have been authorised by a county court the patient's nearest relative to exercise the functions of the patient's nearest relative under the Act and a copy* of the authority is attached to this application.

3. I last saw the patient on [date]†

4. *(This section is to be deleted if the patient is recorded above as suffering from mental illness or severe subnormality).*

(a) The patient's date of birth is []

Delete the statement that does not apply.

OR

(if the exact age is not known)

(b) I believe the patient to be under twenty-one years.

5. This application is founded on the medical recommendations forwarded herewith.

6. †

Signed.....

Date.....

*Copy of the court order or of the form of authority signed by the nearest relative under Regulation 25 of the Mental Health (Hospital and Guardianship) Regulations, 1960.

† If neither of the medical practitioners who have made the recommendations had previous acquaintance with the patient, the applicant should state here why it is not practicable to obtain a recommendation from a practitioner having such acquaintance.

RECORD OF ADMISSION

(This is not part of the application, but is to be completed later at the hospital or mental nursing home.)

(a) [Name of patient] was admitted to [name of hospital or mental nursing home] in pursuance of this application on [date of admission].

Delete (a) or (b) as appropriate.

OR

(b) [Name of patient] was already in [name of hospital or mental nursing home] on the date of this application, and the application was received by me on behalf of the managers on [date].

Signed.....
on behalf of the managers.

Date.....

[Sections 49, 50 and 51 of the Act to be set out.]

APPLICATION BY MENTAL WELFARE OFFICER FOR ADMISSION
FOR TREATMENT (SECTION 26)

To the Managers of [name and address of hospital or mental nursing home]

1. I [name and address of applicant] hereby apply for the admission of [name and address of patient] to the above-named hospital for treatment in accordance with Part IV of the Mental Health Act, 1959, as a patient suffering from *.

* Insert mental illness, severe subnormality, subnormality and/or psychopathic disorder.

2. I am an officer or [name of local health authority] appointed to act as a mental welfare officer for the purposes of the Act.

3. *(This section should be deleted if no consultation has taken place)*

(a) I have consulted [name and address] who to the best of my knowledge and belief is the patient's nearest relative within the meaning of the Act.

OR

(b) I have consulted [name and address] who has been authorised by the County Court for [] to exercise the functions of the patient's nearest relative under the Act.

Delete the two statements which do not apply.

OR

(c) I have consulted [name and address] who has been authorised by [name of patient's nearest relative], who to the best of my knowledge and belief is the patient's nearest relative within the meaning of the Act, to exercise the functions of the patient's nearest relative under the Act,

AND

he
she has not notified me or the local health authority by whom I am appointed that he
she objects to this application being made.

4. *(This section should be deleted if consultation has taken place)*

(a) I have been unable to ascertain who is this patient's nearest relative within the meaning of the Act.

OR

(b) To the best of my knowledge and belief this patient has no nearest relative within the meaning of the Act.

OR

(c) In my opinion it is not reasonably practicable
would involve unreasonable delay before making this application to consult [name and address] who to the best of my knowledge and belief is this patient's nearest relative within the meaning of the Act.
authorised to exercise the functions of this patient's nearest relative under the Act.

Delete the two statements which do not apply.

5. I last saw the patient on [date].

6. *(This section is to be deleted if the patient is recorded above as suffering from mental illness or severe subnormality).*

(a) The patient's date of birth is [].

OR (if the exact age is not known)

(b) I believe the patient to be under the age of twenty-one years.

Delete the statement that does not apply.

7. This application is founded on the medical recommendations forwarded herewith.

8. †

Signed.....

Date

† If neither of the medical practitioners who have made the recommendations had previous acquaintance with the patient the applicant should state here why it is not practicable to obtain a recommendation from a medical practitioner having such acquaintance.

RECORD OF ADMISSION

(This is not part of the application but is to be completed later at the hospital or mental nursing home.)

Delete (a)
or (b).

(a) [Name of patient] was admitted to [name of hospital or mental nursing home] in pursuance of this application on [date of admission].

OR

(b) [Name of patient] was already in [name of hospital or mental nursing home] on the date of this application, and the application was received by me on behalf of the managers on [date].

Signed
on behalf of the managers

Date

[Sections 49, 50 and 51 of the Act to be set out.]

FORM 5A

MEDICAL RECOMMENDATION FOR ADMISSION FOR TREATMENT (SECTION 26)

1. I [name and address of practitioner], being a registered medical practitioner, recommend that [name and address of patient] be admitted to a hospital for treatment in accordance with Part IV of the Mental Health Act, 1959.

2. I last examined this patient on [date].

3.

*(a) I was acquainted with the patient previously to conducting that examination.

* Delete if not applicable.

*(b) I have been approved by [name of local health authority] under Section 28 of the Act as having special experience in the diagnosis or treatment of mental disorder.

† Insert mental illness, severe subnormality, subnormality and/or psychopathic disorder.

4. In my opinion this patient is suffering from † of a nature or degree which warrants ^{his} _{her} detention in a hospital for medical treatment within the meaning of the Act. This opinion is founded on the following grounds:—

(Clinical description of the patient's mental condition)

5. I am of the opinion that it is necessary

Delete (i)
or (ii) unless
both apply.

(i) in the interests of this patient's health or safety

(ii) for the protection of other persons

that this patient should be detained in a hospital, and my reasons for this opinion are:—

(Reasons should indicate whether other methods of care or treatment (e.g. out-patient treatment or local authority services) are available and if so why they are not appropriate, and why informal admission is not suitable.)

Signed

Date.....

[Section 4 of the Act to be set out.]

JOINT MEDICAL RECOMMENDATION FOR ADMISSION FOR TREATMENT
(SECTION 26)

1. We [names and addresses of both medical practitioners], being registered medical practitioners, recommend that [name and address of patient] be admitted to a hospital for treatment in accordance with Part IV of the Mental Health Act, 1959.

2. I [name of first practitioner] last examined this patient on [date].

*I was acquainted with the patient previously to conducting that examination.

*I have been approved by [name of local health authority] under Section 28 of the Act as having special experience in the diagnosis or treatment of mental disorder.

* Delete if not applicable.

3. I [name of second practitioner] last examined this patient on [date].

*I was acquainted with the patient previously to conducting that examination.

*I have been approved by [name of local health authority] under Section 28 of the Act as having special experience in the diagnosis or treatment of mental disorder.

4. We [names of both practitioners] are of the opinion that this patient is suffering from † of a nature or degree which warrants ^{his}_{her} detention in a hospital for medical treatment within the meaning of the Act. This opinion is founded on the following grounds:—

† Insert mental illness, severe subnormality, subnormality and/or psychopathic disorder.

(Clinical description of the patient's mental condition)

5. We are of the opinion that it is necessary

(i) in the interests of this patient's health or safety

(ii) for the protection of other persons

Delete (i) or (ii) unless both apply.

that ^{he}_{she} should be detained in hospital, and our reasons for this opinion are:—

(Reasons should indicate whether other methods of care or treatment (e.g. out-patient treatment or local authority services) are available and if so why they are not appropriate, and why informal admission is not suitable.)

Signed

Date.....

Signed

Date.....

[Section 4 of the Act to be set out.]

REPORT ON HOSPITAL IN-PATIENT (SECTION 30 (2))

To the Managers of [name of hospital or mental nursing home in which the patient is]

I [name] am the medical practitioner in charge of the treatment of [name of patient], who is an in-patient in this hospital and not at present liable to be detained under the Mental Health Act, 1959. I hereby report, for the purposes of Section 30 (2) of the Act, that it appears to me that an application ought to be made for this patient's admission to hospital under Part IV of the Act for observation or for treatment.

Signed

Date.....

To be completed on behalf of the managers

This report was received by me on behalf of the managers on [date].

Signed
on behalf of the managers.

FORM 7A

GUARDIANSHIP APPLICATION BY NEAREST RELATIVE (SECTION 33)

To the [name of local health authority]

† Insert mental illness, severe subnormality, subnormality and/or psychopathic disorder.

1. I [name and address of applicant] hereby apply for the reception of [name and address of patient] into the guardianship of [name and address of proposed guardian] in accordance with Part IV of the Mental Health Act, 1959, as a patient suffering from †.

2.

(a) I am the patient's nearest relative within the meaning of the Act, being the patient's [state relationship].

Delete (a) or (b).

OR

(b) I have been authorised by a county court the patient's nearest relative to exercise the functions of the patient's nearest relative under the Act and a copy* of the authority is attached to this application.

3. I last saw the patient on [date].

4. *(This section is to be deleted if the patient is recorded above as suffering from mental illness or severe subnormality.)*

(a) The patient's date of birth is [].

OR (if the patient's exact age is not known)

(b) I believe the patient to be under the age of twenty-one years.

5. This application is founded on the medical recommendations forwarded herewith.

6. †

Signed

Date.....

* Copy of the county court order or of the form of authority signed by the nearest relative under Regulation 25 of the Mental Health (Hospital and Guardianship) Regulations, 1960.

† If neither of the medical practitioners who have made the recommendations have had previous acquaintance with the patient, the applicant should state here why it is not practicable to obtain a recommendation from a practitioner having such acquaintance.

RECORD OF ACCEPTANCE

(To be completed on behalf of the local health authority)

This application was accepted by on behalf of [name of local health authority] on [date].

Signed

Date.....

[Sections 49, 50 and 51 of the Act to be set out.]

GUARDIANSHIP APPLICATION BY MENTAL WELFARE OFFICER (SECTION 33)

To the [name of local health authority]

1. I [name and address of applicant] hereby apply for the reception of [name and address of patient] into the guardianship of [name and address of proposed guardian] in accordance with Part IV of the Mental Health Act, 1959, as a patient suffering from*.

* Insert mental illness, severe subnormality, subnormality and/or psychopathic disorder.

2. I am an officer of [name of local health authority] appointed to act as a mental welfare officer for the purposes of the Act.

3. *(This section should be deleted if no consultation has taken place.)*

(a) I have consulted [name and address] who to the best of my knowledge and belief is the patient's nearest relative within the meaning of the Act;

OR

(b) I have consulted [name and address] who has been authorised by the County Court for [] to exercise the functions of the patient's nearest relative;

Delete the two statements which do not apply.

OR

(c) I have consulted [name and address] who has been authorised by [name of patient's nearest relative], who to the best of my knowledge and belief is the patient's nearest relative within the meaning of the Act, to exercise the function of the patient's nearest relative under the Act.

AND

that person has not notified me or the local health authority by whom I am appointed that ^{he}_{she} objects to this application being made.

4. *(This section should be deleted if consultation has taken place.)*

(a) I have been unable to ascertain who is this patient's nearest relative within the meaning of the Act.

OR

(b) To the best of my knowledge and belief this patient has no nearest relative within the meaning of the Act.

Delete the two statements which do not apply.

OR

(c) In my opinion it is not reasonably practicable would involve unreasonable delay before making this application to consult [name and address], who to the best of my knowledge and belief is this patient's nearest relative within the meaning of this Act. authorised to exercise the functions of this patient's nearest relative under the Act.

5. I last saw the patient on [date].

6. *(This section should be deleted if the patient is recorded above as suffering from mental illness or severe subnormality.)*

(a) The patient's date of birth is [].

OR (if the exact age is not known)

(b) I believe the patient to be under the age of twenty-one years.

7. This application is founded on the medical recommendations forwarded herewith.

8. †

Signed.....

Date

† If neither of the medical practitioners who have made the recommendations had previous acquaintance with the patient the applicant should state here why it is not practicable to obtain a recommendation from a medical practitioner having such acquaintance.

RECORD OF ACCEPTANCE

(To be completed on behalf of the local health authority)

This application was accepted ^{by} _____ [name of local health authority]
on behalf of _____
on [date of acceptance].

Signed.....

Date

[Sections 49, 50 and 51 of the Act to be set out.]

FORM 8A

MEDICAL RECOMMENDATION FOR RECEPTION INTO GUARDIANSHIP

(SECTION 33)

1. I [name and address of practitioner], being a registered medical practitioner, recommend that [name and address of patient] be received into guardianship in accordance with Part IV of the Mental Health Act, 1959.

2. I last examined this patient on [date].

3.

* Delete if not applicable.

*(a) I was acquainted with the patient previously to conducting that examination.

*(b) I have been approved by [name of local health authority] under Section 28 of the Act as having special experience in the diagnosis or treatment of mental disorder.

† Insert mental illness, severe subnormality, subnormality and/or psychopathic disorder.

4. In my opinion this patient is suffering from† of a nature or degree which warrants ^{his} _{her} reception into guardianship under the Act. This opinion is founded on the following grounds:—

(Clinical description of the patient's mental condition)

Delete (i) or (ii) unless both apply.

5. I am of the opinion that it is necessary

(i) in the patient's interests,

(ii) for the protection of other persons,

that ^{he} _{she} should be so received, and my reasons for this opinion are:—

(Reasons why patient cannot appropriately be cared for without powers of guardianship.)

Signed.....

Date

[Section 4 of the Act to be set out.]

FORM 8B

JOINT MEDICAL RECOMMENDATION FOR RECEPTION INTO GUARDIANSHIP

(SECTION 33)

1. We [names and addresses of both medical practitioners], being registered medical practitioners, recommend that [name and address of patient] be received into guardianship in accordance with Part IV of the Mental Health Act, 1959.

2. I [name of first practitioner] last examined this patient on [date].

* Delete if not applicable.

* I was acquainted with the patient previously to conducting that examination.

* I have been approved by [name of local health authority] under Section 28 of the Act as having special experience in the diagnosis or treatment of mental disorder.

3. I [name of second practitioner] last examined this patient on [date].

† I was acquainted with the patient previously to conducting that examination.

† I have been approved by [name of local health authority] under Section 28 of the Act as having special experience in the diagnosis or treatment of mental disorder.

† Delete if not applicable.

4. We [names of both practitioners] are of the opinion that this patient is suffering from ‡ of a nature or degree which warrants ^{his}_{her} reception into guardianship under the Act. This opinion is founded on the following grounds:—

‡ Insert mental illness, severe subnormality, subnormality and/or psychopathic disorder.

(Clinical description of the patient's mental condition)

5. We are of the opinion that it is necessary

(i) in the patient's interests,

(ii) for the protection of other persons,

Delete (i) or (ii) unless both apply.

that ^{he}_{she} should be so received, and our reasons for this opinion are:—

(Reasons why patient cannot appropriately be cared for without powers of guardianship.)

Signed

Date

Signed

Date

[Section 4 of the Act to be set out.]

FORM 9A

RECLASSIFICATION OF PATIENT DETAINED IN A HOSPITAL OR

MENTAL NURSING HOME (SECTION 38)

To the Managers of [name of hospital or mental nursing home in which the patient is detained]

1. I hereby report, for the purposes of Section 38 of the Mental Health Act, 1959, that in my opinion [name of patient], who is recorded on the authority for ^{his}_{her} detention as suffering from

[original classification as amended by any previous reclassification] is now suffering from *

* Insert mental illness, severe subnormality, subnormality and/or psychopathic disorder.

Signed

Responsible Medical Officer.

Date.....

To be completed on behalf of the managers.

This report was received by me on behalf of the managers on [date].

(The following statement is to be deleted if the patient is under 16 years of age.)

The patient († and ^{his}_{her} nearest relative) ^{was}_{were} informed of this report on [date].

† Delete if no known nearest relative.

Signed

on behalf of the managers.

Date.....

[Section 4 of the Act to be set out.]

FORM 9B

RECLASSIFICATION OF PATIENT UNDER GUARDIANSHIP (SECTION 38)

To [name of guardian]

1. I hereby report, for the purposes of Section 38 of the Mental Health Act, 1959, that in my opinion [name of patient] who is recorded on the authority for his ~~the~~ guardianship as suffering from [original classification as amended by any previous reclassification] is now suffering from *

* Mental illness, severe subnormality, subnormality and/or psychopathic disorder.

† Delete whichever does not apply.

Signed

† Responsible Medical Officer or Nominated Medical Attendant.

Date.....

To be completed by the guardian

This report was received by me on [date].

(The following statement to be deleted if the patient is under 16 years of age)

† Delete if no known nearest relative, or if the nearest relative is also the guardian.

The patient († and his ~~her~~ nearest relative) was ~~were~~ informed of this report on [date].

Signed

Guardian (or where guardian is a local health authority, officer acting on behalf of the authority).

[Section 4 of the Act to be set out.]

FORM 10A

RENEWAL OF AUTHORITY FOR DETENTION IN A HOSPITAL OR MENTAL NURSING HOME (SECTION 43 OR PARAGRAPH 11 OF THE SIXTH SCHEDULE)

To the Managers of [name of hospital or mental nursing home in which patient is liable to be detained].

* Insert mental illness, severe subnormality, subnormality and/or psychopathic disorder.

Delete (i) or (ii) unless both apply.

1. I examined [name of patient] on [date of examination] and hereby report that I am of the opinion that this patient is suffering from * and that it is necessary

(i) in the interests of the patient's health or safety,

(ii) for the protection of other persons,

that the patient should continue to be liable to be detained under the Mental Health Act, 1959 beyond [date on which authority for detention is due to expire if not renewed].

2. The reasons why this patient cannot suitably remain in hospital informally or be discharged from hospital are:—

Signed

Responsible Medical Officer.

Date.....

(The following is not part of the renewal of the authority, but is to be completed on behalf of the managers of the hospital or mental nursing home)

This report has been considered by the managers,
persons authorised to act on behalf of the managers,

who have decided to order
not to order that the patient be discharged.

† Delete if the patient is under 16 years of age or if the managers order the patient's discharge.

† The patient has been informed of the receipt of this report.

Signed

on behalf of the managers.

Date.....

RENEWAL OF AUTHORITY FOR GUARDIANSHIP (SECTION 43 AND
PARAGRAPH 11 OF 6TH SCHEDULE)

To [name of guardian]

[name of responsible local health authority if it is not the guardian]

1. I examined [name of patient] on [date of examination] and hereby report that I am of the opinion that this patient is suffering from * and that it is necessary

(i) in the patient's interests,

(ii) for the protection of other persons

that the patient should remain under guardianship under the Mental Health Act, 1959, beyond [the date on which authority for guardianship is due to expire if not renewed]

2. The reasons why this patient cannot be properly cared for without powers of guardianship are:—

Signed

† Responsible Medical Officer or
Nominated Medical Attendant.

* Insert mental illness, severe subnormality, subnormality and/or psychopathic disorder.

Delete (i) or (ii) unless both apply.

† Delete whichever does not apply.

(The following is not part of the renewal of authority but is to be completed on behalf of the responsible local health authority)

This report has been considered by on behalf of the local health authority, who have decided to order not to order that the patient be discharged from guardianship.

The guardian († and the patient) has have been informed of the receipt of this report.

† Delete if patient is under age 16, or if the local health authority order the patient's discharge.

Signed

(on behalf of the local health authority).

Date.....

FORM 11

SPECIAL REPORT ON SUBNORMAL OR PSYCHOPATHIC PATIENT
AT AGE 25 (SECTION 44 (2))

To the Managers of [name of hospital or mental nursing home in which patient is liable to be detained]

Name of patient

Classification*

Date of birth.....

* Subnormal and/or psychopathic.

I examined [name of patient] on [date] and hereby report, for the purposes of Section 44 (2) of the Mental Health Act, 1959, that I am of the opinion that, if released on attaining the age of 25 years, this patient would be likely to act in a manner dangerous to other persons or to himself herself

Signed

Responsible Medical Officer.

Date.....

To be completed on behalf of the managers

This report was received by me on behalf of the managers on [date].

Signed

Date.....

This patient († and his her nearest relative) was were so informed on [date].

† Delete if no known nearest relative.

Signed

on behalf of the managers.

Date.....

FORM 12

REPORT BARRING DISCHARGE BY NEAREST RELATIVE (SECTION 48 (2))

To the Managers of [name of hospital or mental nursing home in which patient is liable to be detained]

I hereby report, for the purposes of Section 48 (2) of the Mental Health Act, 1959, that I am of the opinion that [name of patient], if discharged, would be likely to act in a manner dangerous to other persons or to himself.
herself

Signed
Responsible Medical Officer.

Date.....

To be completed on behalf of the managers

This report was received by me on behalf of the managers at [time] on [date].

Signed

Date.....

The patient's nearest relative, whose notice of intention to order the patient's discharge was received at [time] on [date], was informed of this report on [date].

Signed
on behalf of the managers.

Date.....

FORM 13A

CLASSIFICATION OF PATIENTS DURING INITIAL PERIOD
(PARAGRAPH 7 (3) OF 6TH SCHEDULE)

* Insert mental illness, severe subnormality, subnormality and/or psychopathic disorder.

For the purposes of paragraph 7 (3) of the 6th Schedule to the Mental Health Act, 1959, I hereby record that I am of the opinion that [name of patient] is suffering from *

and that his mental disorder is of a nature or degree which warrants
her

(i) his detention in a hospital for medical treatment within the meaning of
her the Act.

Delete (i) or
(ii).

(ii) his retention under guardianship under the Act.
her

Signed
Responsible Medical Officer.

Date.....

[Section 4 of the Act to be set out.]

CLASSIFICATION AND DETENTION OF CERTAIN SUBNORMAL AND
PSYCHOPATHIC PATIENTS BEYOND END OF INITIAL PERIOD
(PARAGRAPHS 7 (3), 9 (3) (c) AND 13 (1) OF 6TH SCHEDULE)

1. For the purposes of paragraph 7 (3) of the 6th Schedule to the Mental Health Act, 1959, I hereby record that I am of the opinion that [name of patient] is suffering from * and that $\frac{\text{his}}{\text{her}}$ mental disorder is of a nature or degree which warrants $\frac{\text{his}}{\text{her}}$ detention in hospital for medical treatment within the meaning of the Act.

* Subnormality and/or psychopathic disorder.

2. And, for the purposes of paragraph 9 (3) (c) of the said Schedule, I hereby record that I am of the opinion that this patient is unfit for discharge, as it appears to me that:—

- (a) if the patient were released from the hospital $\frac{\text{he}}{\text{she}}$ would in my opinion be likely to act in a manner dangerous to other persons or to $\frac{\text{himself}}{\text{herself}}$;
- (b) if the patient were released from the hospital $\frac{\text{he}}{\text{she}}$ would in my opinion be likely to resort to criminal activities;
- (c) in my opinion the patient is incapable of caring for $\frac{\text{himself}}{\text{herself}}$ and there is no suitable hospital or other establishment into which the patient can be admitted and where $\frac{\text{he}}{\text{she}}$ would be likely to remain voluntarily;

Delete whichever of (a), (b) or (c) do not apply.

and the grounds for this opinion are:—

Signed
Responsible Medical Officer.

Date.....

To be completed on behalf of the managers of the hospital or mental nursing home
The patient was informed on [date] that the above opinion has been recorded.

Signed
on behalf of the managers
or other persons in charge.

Date.....

[Section 4 of the Act to be set out.]

OPINION UNDER 6TH SCHEDULE AS TO DETENTION OF SUBNORMAL
OR PSYCHOPATHIC PATIENT WHO REACHES THE AGE OF 25 AFTER THE
INITIAL PERIOD (PARAGRAPHS 12 (3) AND 13 (1) OF THE 6TH SCHEDULE)

Name of patient

Date of attaining age of 25 years.....

1. For the purposes of paragraph 12 (3) of the 6th Schedule to the Mental Health Act, 1959, I hereby record that I am of the opinion that this patient is unfit for discharge, as it appears to me that

*(a) if the patient were released from the hospital $\frac{\text{he}}{\text{she}}$ would in my opinion be

likely to act in a manner dangerous to other persons or to $\frac{\text{himself.}}{\text{herself.}}$

* Delete
whichever of
(a), (b) and (c)
do not apply.

*(b) if the patient were released from the hospital $\frac{\text{he}}{\text{she}}$ would in my opinion be likely to resort to criminal activities.

*(c) in my opinion the patient is incapable of caring for $\frac{\text{himself}}{\text{herself}}$ and there is no suitable hospital or other establishment into which the patient can be admitted and where $\frac{\text{he}}{\text{she}}$ would be likely to remain voluntarily.

2. The grounds for this opinion are:—

Signed
Responsible Medical Officer.

Date.....

To be completed on behalf of the managers or other persons in charge

The patient was informed on [date] that the above opinion has been recorded.

Signed
on behalf of the managers
or other persons in charge.

Date.....

CLASSIFICATION OF PATIENTS WHEN RESTRICTION ON DISCHARGE CEASES
TO HAVE EFFECT (PARAGRAPH 17 OF THE 6TH SCHEDULE) OR AFTER
REMOVAL TO ENGLAND OR WALES (SECTION 96 (3) AND REGULATION 19 (2))

For the purposes of

Delete (a)
or (b).

(a) paragraph 17 of the 6th Schedule to the Mental Health Act, 1959,

OR

(b) Section 96 (3) of the Mental Health Act, 1959,

I hereby record that I am of the opinion that [name of patient] is suffering from*

* Insert mental
illness, severe
subnormality,
subnormality
and/or
psychopathic
disorder.

Signed
Responsible Medical Officer.

Date.....

[Section 4 of the Act to be set out.]

**AUTHORITY FOR TRANSFER FROM ONE HOSPITAL TO ANOTHER UNDER
DIFFERENT MANAGERS**

Authority is hereby given for the transfer of [name of patient] from [name and address of hospital in which the patient is liable to be detained] to [name and address of hospital to which the patient is to be transferred], in accordance with the Mental Health (Hospital and Guardianship) Regulations, 1960, within 28 days of the date of this authority.

Signed.....

Capacity

Date

RECORD OF ADMISSION

(This is not part of the authority for transfer but is to be completed at the hospital to which the patient is transferred.)

This patient was transferred to [name of hospital] in pursuance of this authority on [date of admission to receiving hospital].

Signed.....

on behalf of the managers.

Date

AUTHORITY FOR TRANSFER FROM HOSPITAL TO GUARDIANSHIP

Authority is hereby given for the transfer of [name of patient] who is at present liable to be detained in [name and address of hospital] to the guardianship of [name and address of proposed guardian] in accordance with the Mental Health (Hospital and Guardianship) Regulations, 1960.

Signed.....

Capacity

Date

Confirmation of authority for transfer

This authority for transfer was confirmed by the [name of local health authority] on [date of confirmation] on behalf of to take effect on [date].

Signed.....

Date

**AUTHORITY FOR TRANSFER OF A PATIENT FROM THE GUARDIANSHIP OF
ONE GUARDIAN TO ANOTHER**

Authority is hereby given for the transfer of [name and address of patient] from the guardianship of [name and address of present guardian] to the guardianship of [name and address of new guardian] in accordance with the Mental Health (Hospital and Guardianship) Regulations, 1960.

Signed.....

Date

Confirmation of authority for transfer

This authority for transfer was confirmed by the [name of local health authority] on [date of confirmation] on behalf of to take effect on [date].

Signed.....

Date

AUTHORITY FOR TRANSFER FROM GUARDIANSHIP TO HOSPITAL

Authority is hereby given for the transfer of [name and address of patient] who is at present under the guardianship of [name and address of guardian] to [name and address of hospital], in accordance with the Mental Health (Hospital and Guardianship) Regulations, 1960.

This authority is founded on the medical recommendations attached hereto.

Signed.....
on behalf of [name of
responsible local health
authority].

Date

RECORD OF ADMISSION

(This is not part of the authority for transfer but is to be completed at the hospital to which the patient is transferred.)

This patient was transferred to [name of hospital] in pursuance of this authority on [date of admission to the receiving hospital].

Signed.....
on behalf of the managers.

Date

FORM 20A

MEDICAL RECOMMENDATION FOR TRANSFER FROM GUARDIANSHIP TO HOSPITAL

1. I [name and address of medical practitioner], being a registered medical practitioner, recommend that [name and address of patient] be transferred from guardianship to hospital under Section 41 of the Mental Health Act, 1959.

2. I last examined this patient on [date of examination].

3.

*(a) I was acquainted with the patient previously to that examination.

*(b) I have been approved by [name of local health authority] under Section 28 of the Act as having special experience in the diagnosis or treatment of mental disorder.

4. In my opinion it is necessary

*(a) In the interests of this patient's health or safety,

*(b) for the protection of other persons,

that $\frac{\text{he}}{\text{she}}$ should be detained in hospital. My reasons for this opinion are:—

(Reasons why transfer to hospital is recommended, including reasons why community care is no longer appropriate and why out-patient treatment or informal admission is not suitable.)

Signed.....

Date

* Delete (a) or (b) unless both apply.

JOINT MEDICAL RECOMMENDATION FOR TRANSFER FROM
GUARDIANSHIP TO HOSPITAL

1. We [names and addresses of both medical practitioners], being registered medical practitioners, recommend that [name and address of patient] be transferred from guardianship to hospital under Section 41 of the Mental Health Act, 1959.

2. I [name of first practitioner] last examined this patient on [date].

* (a) I was acquainted with the patient previously to conducting that examination.

* (b) I have been approved by [name of local health authority] under Section 28 of the Act as having special experience in the diagnosis or treatment of mental disorder.

3. I [name of second practitioner] last examined this patient on [date].

* (a) I was acquainted with the patient previously to conducting that examination.

* (b) I have been approved by [name of local health authority] under Section 28 of the Act as having special experience in the diagnosis or treatment of mental disorder.

4. We are of the opinion that it is necessary

* (a) in the interests of this patient's health or safety,

* (b) for the protection of other persons

that ^{he}_{she} should be detained in hospital. Our reasons for this opinion are:—

(Reasons why transfer to hospital is recommended including reasons why community care is no longer appropriate and why out-patient treatment or informal admission is not suitable.)

Signed

Signed

Date.....

* Delete (a) or (b) unless both apply.

FORM 21

DATE OF RECEPTION OF A PATIENT REMOVED TO ENGLAND AND WALES

For the purposes of Part VI of the Mental Health Act, 1959, I hereby record that [name of patient] was *admitted to [name and address of hospital] *received into the guardianship of [name and address of guardian] on the [date].

* Delete as appropriate.

Signed

on behalf of the ^{*managers.}_{*guardian.}

Date.....

FORM 22

FORM OF CERTIFICATE OF AGE

We [name of determining authority] being the determining authority in respect of [name of the patient] whose exact age is unknown to us hereby determine for the purposes of the Mental Health Act, 1959, and of any regulations made thereunder the date of birth of the said to be the day of 19 .

Signed
on behalf of [name of determining authority].

Given under the official seal of the Minister of Health this twentieth day of July, nineteen hundred and sixty.

(L.S.)

Derek Walker-Smith,
Minister of Health.

EXPLANATORY NOTE

(This Note is not part of the Regulations, but is intended to indicate their general purport.)

These are the principal regulations dealing with the exercise of compulsory powers in respect of persons liable to be detained in hospital or subject to guardianship under the Mental Health Act, 1959.

Regulation 2 defines the terms used in the regulations. Regulation 3 revokes the Mental Health (Approval of Medical Practitioners) Regulations, 1960, the provisions of which are re-enacted in Regulation 5.

Regulation 4 and the Schedule prescribe the forms to be used for the admission of patients to hospital or their reception into guardianship under Part IV of the Act, and for certain other reports required under the Act in connection with detention or guardianship.

Part III sets out the powers and duties of guardians and responsible local health authorities in respect of persons subject to guardianship. The responsible local health authority must arrange visits at intervals of not more than three months (Regulation 7). All guardians are required to make appropriate provision for the patient's health and welfare (Regulation 6). A guardian other than a local health authority is required to exercise his functions subject to any directions of the responsible local health authority and to give the authority certain information in respect of the patient (Regulation 10).

Part IV prescribes the procedures by which patients may be transferred under section 41 of the Act from one hospital to another, from hospital to guardianship, from one guardian to another and from guardianship to hospital. It also provides for the conveyance of such patients (Regulations 17 and 18).

Regulation 19 makes provision for the classification of patients removed to England and Wales from Scotland, Northern Ireland, the Channel Islands or the Isle of Man and requires the date of their admission to hospital or reception into guardianship to be recorded.

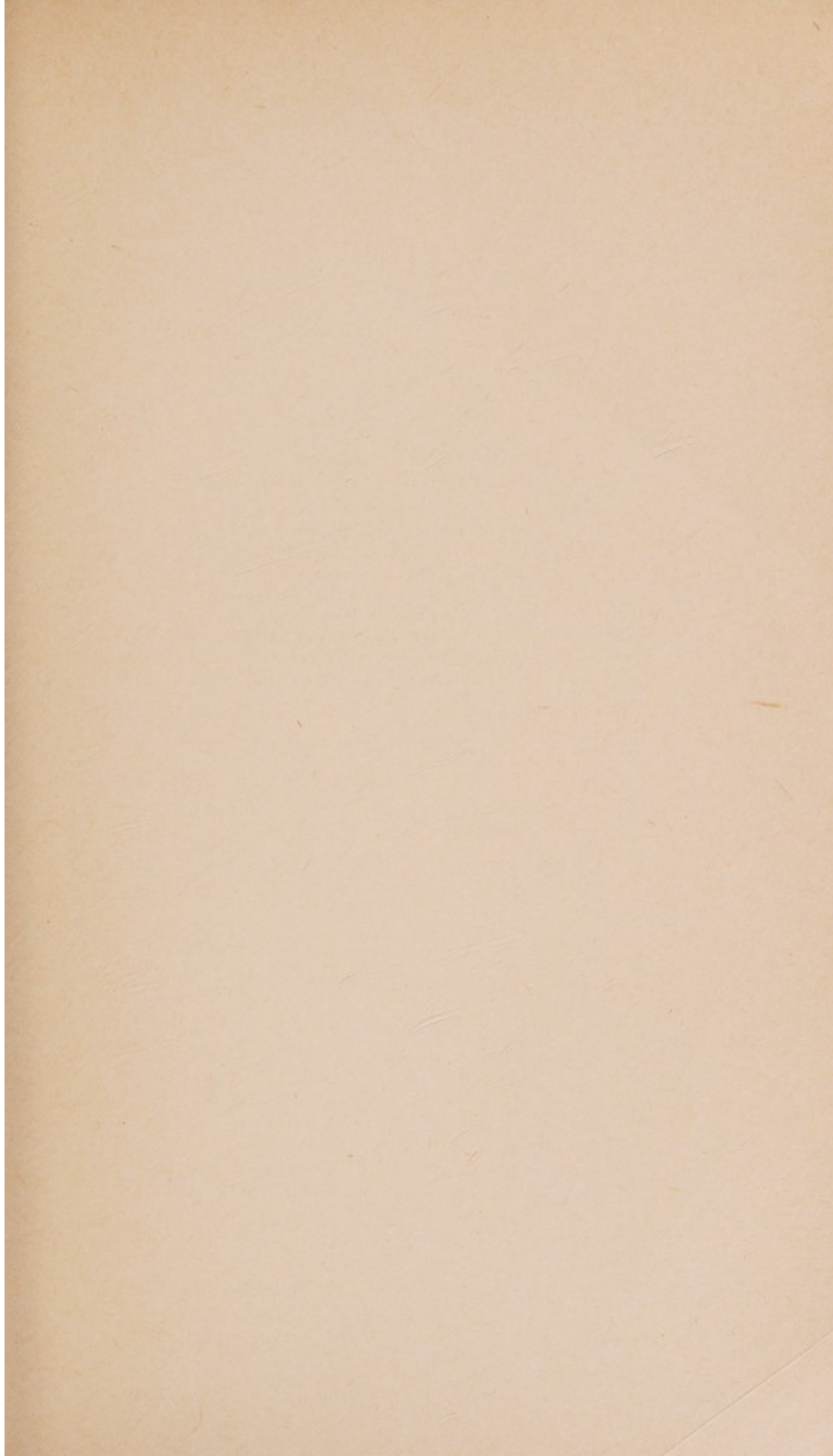
Part VI deals with miscellaneous matters including the service of documents (Regulation 20) and their proof (Regulation 22).

Regulation 24 enables certain functions of local health authorities and hospital authorities to be performed by officers and Regulation 25 enables a nearest relative of a patient to delegate his functions under the Act to another person. Regulation 23 enables any patient to write to his solicitor without his letters being opened and Regulation 26 enables the age of a patient if unknown to be determined if it is material for the purposes of the Act.

Printed in England and published by
HER MAJESTY'S STATIONERY OFFICE: 1960

PRICE 1s. 3d. NET

(34207) (R. 66) K360 7/60 D.L.



Printed and published by
HER MAJESTY'S STATIONERY OFFICE

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