National Health Service Act, 1946 : provisions relating to the mental health services.

MINISTRY OF HEALTH

NATIONAL HEALTH SERVICE ACT, 1946

PROVISIONS RELATING TO THE MENTAL HEALTH SERVICES

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FOREWORD

As indicated in the title, the purpose of this booklet is to summarise briefly the provisions of the National Health Service Act which may in any way concern those responsible for the care and treatment of persons suffering from mental illness or mental defect. The booklet is designed to explain the changes in the organisation of the Mental Health Services, and the effect of the amending provisions of the National Health Service Act upon the already complicated provisions of the Lunacy and Mental Treatment Acts and the Mental Deficiency Acts. It is intended primarily to serve as a book of reference for those administering the Mental Health Services.

Ministry of Health,
32 Rutland Gate, Knightsbridge, S.W.7
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CONTENTS

INTRODUCTORY

1. The mental health services will form part of the comprehensive health service for England and Wales to be established under the National Health Service Act, 1946. The responsibility for providing them is placed by that Act upon the same authorities as those who will be required to establish, and to maintain, comparable services in other fields of health. The Minister of Health, accordingly, will be charged, from the day appointed for this purpose (5th July, 1948), with the duty of providing hospital or institutional accommodation for mentally ill or mentally defective patients. The newly constituted Local Health Authorities, likewise, will become responsible from the same date, in addition to their other health duties, for the community care of mental defectives and for the initial care and conveyance to hospital of patients who are dealt with under the Lunacy and Mental Treatment Acts.

2. The Minister, except in the case of hospitals or institutions formally designated by him as " teaching hospitals," is to administer the hospital and specialist services provided by him through the agency of a regional authority, that is to say, the Regional Hospital Board, in each of the fourteen Regions into which England and Wales have been divided for this purpose. The Regional Hospital Board, again, will administer the individual hospitals or institutions within its area by means of a Hospital Management Committee for each hospital or group of hospitals. In the case of the teaching hospital or institution, the body responsible for management upon behalf of the Minister is to be a Board of Governors. The Local Health Authorities, for their part, will be required to perform their mental health duties, as in the case of other health services to be provided by them, in accordance with proposals submitted to the Minister and approved by him. As will appear later, Local Health Authorities will be able to arrange with voluntary organisations for the performance of certain of these duties.

3. The Central Authority for Mental Health will be the Minister, since he will either provide, or will in some degree control, every form of mental health service. He has already taken over, from 1st July, 1947, the supervisory functions formerly performed by the Board of Control, together with the powers of licensing or other formal approval by which the standards of accommodation for mentally ill or defective patients outside the National Health Service will still be safeguarded. The Board of Control for its part retains and still exercises independently of the Minister, all those quasi judicial powers and duties under the Lunacy and Mental Treatment and Mental Deficiency Acts which may broadly be described as relating to " the liberty of the subject." The Board thus continues to deal with all matters concerning the admission and discharge of patients under those Acts and the periodical review of each case, and the Commissioners and Inspectors of the Board continue to carry out, as formerly, the duties of visitation and inspection of all institutions for persons of unsound mind or mental defectives.

4. The character and the functions of the Central and other bodies responsible for mental health services are briefly described below. It will be appreciated that the term " the Minister " is used, both here and in the National Health Service Act, to mean the Minister of Health. The word " voluntary " is defined in Section 79 (1) of that Act as denoting that the hospital or organisation to which the adjective is

References:
* N.H.S.A.
† L.A. and M.T.A.
‡ M.D.A.

applied is not carried on for profit and not provided by a local or public authority. The marginal references to the National Health Service Act, 1946*, to the Lunacy and Mental Treatment Acts, 1890 to 1930†, or to the Mental Deficiency Acts, 1913 to 1938‡, indicate generally the authority for the statements made in the paragraph in question, but it is perhaps unnecessary to say that the Acts themselves must be consulted for full information. In a number of instances, also, the National Health Service Act has directed that the precise functions of such bodies as Regional Hospital Boards, Hospital Management Committees, and Boards of Governors, shall be defined in statutory regulations to be made for that purpose. These regulations, which are at present in the course of preparation, will set out in detail the duties of the bodies concerned.

I

THE CENTRAL AUTHORITY

5. It is now the duty of the Minister of Health to promote the establishment of a comprehensive health service. For that purpose he is to provide, or if he does not provide, to secure the effective provision of health services in accordance with the National Health Service Act, including those services which relate to mental health. All of these health services are, with unimportant exceptions, to be free of charge to the patient or his relatives. N.H.S.A. 1946 Sec. 1 (1)

Advisory Bodies for Mental Health.

6. To assist him to perform these tasks so far as mental health is concerned, the Minister is to be advised by a Central Health Services Council (" the Central Council ") which will normally deal with general questions relating to all types of health services, and by a Standing Mental Health Advisory Committee, which will advise both the Minister himself and the Central Council upon such matters relating to the mental health services as the Committee think fit, and also upon any questions referred to them. Sect. 2 (1) & 1st Sched. (3) & 1st Sched. (4)

7. Of the forty-one members of the Central Council, two of the thirty-five appointed by the Minister are to be medical practitioners selected for their knowledge of mental illness and mental defectiveness, and two are to be laymen with experience in mental health services. The terms of the Act allow the Central Council to appoint committees other than the Standing Committee for mental health purposes, if they wish to do so. The Standing Mental Health Advisory Committee itself may also appoint sub-committees. These committees or sub-committees may include non-members of the Central Council or of the Standing Advisory Committee respectively, so that expert help may be sought in the widest possible field. 1st Sched.

8. In addition to the powers conferred upon the Minister and the Committee of the Privy Council for Medical Research by the Ministry of Health Act 1919, the present Act empowers the Minister himself to conduct, or assist other bodies in conducting research into subjects of illness (including mental illness) and mental defectiveness. The intention is that consultation with the Medical Research Council shall precede any research into medical questions. Boards of Governors, Regional Hospital Boards and Hospital Management Committees are also authorised to carry out research into these matters (see paragraph 33). The Minister is enabled to provide a bacteriological laboratory service: this service will, in the first instance, be provided by the Medical Research Council upon his behalf. Sect. 16 (1) and (2)

Hospital and Specialist Services for Mental Health

9. From July 5th, 1948, the Minister will be responsible for providing, to such extent as he considers necessary to meet all reasonable requirements:— N.H.S.A 1946 Sect. 3 (1)

(a) Hospital accommodation for mentally ill and mentally defective persons.

(b) Medical, nursing and other services required at or for the purposes of hospitals for mentally ill or mentally defective persons.

(c) The services of specialists for mentally ill and mentally defective persons whether at a hospital, a health centre, or a

clinic, or, if necessary on medical grounds, at the home of the patient.

The word " hospital " as defined in the Act embraces, in addition to hospitals and institutions for general health purposes, mental
Sect. 79 (1) hospitals and institutions for defectives, together with the out-patient clinics based on those hospitals and institutions without which they are not completely equipped. The term further includes institutions for the convalescence or medical rehabilitation of mentally ill or mentally defective patients where treatment is given for these purposes. The Minister will in each case indicate the purpose for which a hospital is to be used (e.g. by designation in the case of a mental hospital, or by direction in the case of an institution for defectives). The medical and nursing and other services at the hospitals or institutions in question are to be established and maintained, as appears later, by the fourteen Regional Hospital Boards, the Hospital Management Committees, and the Boards of Governors acting on behalf of the Minister. The " other services " involve, of course, the appointment of such officers as clerks and stewards, psychiatric social workers, occupational therapists, dispensers, laboratory assistants and all the staff required for a modern hospital or institution.

10. The services of specialists, whether employed at the hospital or otherwise, will be those of whole or part time officers of the hospital itself. In the mental health services, it is contemplated that their work outside the hospital will normally be performed at the out-patient clinics, but they will be available to attend in their own homes the patients who are unable for any good reason to attend those clinics.

11. Travelling expenses (including those of a travelling companion
Sect. 3 (3) where necessary) will be repaid or advanced to patients who necessarily travel long distances for special diagnosis or treatment. Regulations will make clear the precise circumstances in which these expenses are payable.

12. It will be open to Hospital Management Committees of mental or other hospitals or institutions for defectives to allow patients who
Sect. 4 do not strictly require for medical reasons to occupy a single room, or a bed in a small ward, to do so upon payment of the additional cost thus involved in their maintenance. Such patients will, of course, continue to receive medical and nursing attention free of charge; (as to their status see paragraph 74). Single rooms or small wards may also be set aside for the patient whose relatives are willing to
Sect. 5 (1) pay the whole cost, both of his accommodation and of the necessary medical attention and nursing. But neither part-paying nor full paying patients may occupy rooms or beds in a hospital which are urgently needed upon medical grounds for non-paying patients. The charges are to be prescribed by regulation. It will be possible for any member of the medical staff to arrange for his own private patients to be treated in a private room or ward, either at his own or any other hospital. If he takes advantage of this arrangement, his charges to his patient for his own services must not exceed a maximum which is to be fixed by regulation, and the sum payable by the patient to the hospital for accommodation will not include, as it normally would, the cost of those services.

Transfer of Hospitals and Institutions to Minister of Health

13. The entire resources of the existing local authority and volun-

tary hospitals are to be transferred to the Minister when he assumes the duty of providing a national hospital and specialist service. All mental hospitals, therefore, and all institutions for defectives owned by local authorities or by joint boards or joint committees for the care of the mentally defective, together with registered hospitals for persons of unsound mind and certified institutions owned and managed by voluntary bodies will, with a few exceptions, be transferred to the Minister on 5th July, 1948. Sect. 6 (1) and (2)

14. With the hospitals and institutions will also be transferred the out-patient clinics attached to them. In addition, certain clinics not connected with hospitals, at which specialist advice is given for psychiatric or psychological purposes (but not school clinics) will pass to the Minister. There is special provision for the transfer of the mental and sick wards of public assistance institutions to the National Health Service; the administrative arrangements involved in this transfer are under consideration, and the legal position may be affected by proposals now before Parliament in the National Assistance Bill (see paragraph 67). Any institution owned by a local authority or voluntary body for the reception and treatment of patients convalescent from mental illness will also be liable to transfer, but this will not be the case if treatment is not normally given, as, for example, in a "holiday home" for mental patients. Questions may clearly arise as to the liability to transfer of particular hospitals or institutions, and the procedure for determining these questions is being laid down by regulations, which will provide for decision by an independent arbitrator where necessary. Sect. 9 (1) Sect. 79 (1) Sect. 9 (8)

15. Local authorities will, on 5th July, 1948, cease to have any duty to provide accommodation in hospitals or institutions for the mentally ill or mental defectives, and the Visiting Committees, Committees for the care of the Mentally Defective, and Joint Boards or Joint Committees established under the Lunacy or Mental Deficiency Acts will be dissolved. Regulations are to make provision for the winding up of the affairs of these bodies, and for the payment thereafter by local authorities of pensions which have become payable before that date. Sect. 78 (1) and (2)

16. Institutions carried on for private profit, that is to say houses licensed under the Lunacy Act, 1890, certified houses under the Mental Deficiency Act, 1913, and the majority of the approved homes for defectives under that Act, will not be liable to transfer, but the accommodation for private patients in mental hospitals, registered hospitals, or institutions for defectives will be transferred with the hospital itself. It is open to the Minister at any time to purchase by agreement, or compulsorily, for the purposes of the mental health services any private hospital or home, together with its equipment. He may similarly acquire land needed to house hospital staff. Sect. 9 (2) Sect. 58 Sect. 10

17. The uncompleted, destroyed, or damaged hospital or institution will be liable to transfer as if it were complete or intact. So also will premises intended for use for hospital purposes, provided that adaptation of the premises or construction of the building with that object has commenced before 5th July, 1948. Land acquired by local authorities for hospital purposes, but not built upon, is not liable to transfer, and will be purchased (by agreement or compulsorily) by the Minister, if it is required for the national hospital service. Land or buildings normally used by a local authority for other purposes, but temporarily used by them for their present hospital services are not liable to transfer. Provision is made for the transfer of any rights Sect. 9 (3) Sect. 9 (4) (5)

enforceable by a local authority or governing body under the War Damage Act, 1943.

18. It will not be possible for a local authority or for a governing body to avoid the transfer of hospital property (if such a step were ever contemplated) by appropriating the buildings to other uses or by selling them before 5th July, 1948, or by any other means. The Act provides,
(7) in effect, that no dealing with any property which at any time between 21st March, 1946, and 5th July, 1948, was liable to transfer as hospital property, shall be valid, unless the local authority or governing body concerned prove that they parted with the property in question in the ordinary course of business (e.g., the letting or sale of an unsuitable building previously used as an out-patient clinic), and that the transaction had no connection with the transfer provisions of the Act.

19. If the Minister considers that a hospital or institution, or any premises included in the definition of " hospital " in the Act, will not be required for the purposes of the national hospital service, he may before 5th July, 1948, give formal notice to that effect to the local
Sect. 6 (3) authority or governing body who are the owners. Should the local authority or governing body, however, desire the transfer to take place for any reason, they in their turn may within twenty-eight days so inform the Minister by notice, and the hospital or institution must be transferred with the rest.

20. The transfer of mental hospitals or institutions belonging to local authorities will involve, besides the transfer of the buildings, the
Sect. 6 (2) transfer of all the legal interests of the local authority, whether as owners or tenants, or otherwise, in land, hospital equipment, or other property which is held or maintained by the authority *solely* for the purposes of those hospitals or institutions. Where premises are, before transfer, used partly for hospital and partly for non-hospital purposes, regulations will provide for the necessary apportionment of legal interests in those premises. Property belonging to a medical school
Sect. 8 (1) or post-graduate institution associated with any hospital is to be retained by the school. There will also pass to the Minister the benefit of any outstanding arrangements or contracts (except those relating to the services of the staff which are dealt with in paragraph 50) which the authority have made before 5th July, 1948, in connection with the maintenance of the hospital, such as those for food or for clothing. This benefit also extends to any arrangements made by the authority for the treatment of patients for whom it is at present responsible at a
Sect. 6 (2) hospital which is not vested in the authority, and not transferred to the Minister. Conversely, the Minister will take over any liabilities of the local authority which are outstanding on 5th July, 1948, provided that they have been incurred solely for hospital purposes.
Sect. 6 (5) and Sect. 9 (8) Regulations are to provide for the settlement, if necessary by an independent arbitrator, of questions arising out of the transfer generally.

21. The transfer of the registered hospitals and certified institutions
Sect. 6 (1) owned by voluntary bodies will, again, involve not only the transfer of the legal interests in the buildings, the land on which they stand, and the equipment and furniture or other moveable articles used for their sole purposes, but also the transfer of the contractual or other rights and liabilities of the governing bodies (except, generally speaking, those relating to the services of the staff) which are outstanding on 5th July, 1948. All such interests, property, rights and liabilities will pass to the Minister upon the transfer of the hospital or

institution. In this case also, regulations will provide for the determination of questions arising from the transfer, including resort to an independent arbitrator in default of agreement between the Minister and the governing body. Sect. 6 (5) and Sect. 9 (8)

Endowments

22. Different considerations affect the "endowments" of registered hospitals and voluntary certified institutions. "Endowments," broadly speaking, here means the gifts of land, money or securities made to a particular hospital or institution, from which the governing body draw financial support for the maintenance of that hospital or institution, as distinct from the land upon which it stands, or the equipment which it uses. Gifts to hospitals owned by local authorities may be treated as " endowments." Sect. 7 (1) (10) (11)

23. Endowments will normally be transferred, together with the hospital or institution itself, to the Minister. The Minister is to establish a Hospital Endowments Fund to which he is to transfer these assets. But the hospital may be one designated by the Minister as a teaching hospital (the Maudsley will be so designated). In that case, the endowments are to be transferred to the Board of Governors responsible for managing that hospital. There is a further exception. If an endowment is given to any non-teaching hospital between the passing of the Act and 5th July, 1948, upon terms which require it to be preserved as a separate fund or to be used for some specific object distinct from the general purposes of the hospital and involving capital expenditure (e.g. the endowment of a memorial bed), the endowment will be transferred, not to the Minister, but to the Hospital Management Committee. Regulations are to provide for the determination of questions arising from the transfer of endowments, including resort to an independent arbitrator if necessary. Sect. 7 (4) Sect. 7 (1) Sect. 7 (4) proviso Sect. 7 (9) and Sect. 9 (8)

24. All endowments, whenever given, will pass to the Minister, the Board of Governors or the Hospital Management Committee, as the case may be, free, technically, of any restrictions or conditions imposed by the person who originally made the gift. Nevertheless, the Act requires that, so far as is reasonably practicable, the objects of each endowment shall not be prejudiced by the transfer; in particular the conditions attached to memorial gifts are to be respected. Sect. 7 (2) and (4) (7)

25. The Hospital Endowments Fund into which pass the endowments transferred to the Minister is to be under his control. It is to be used in the first place to meet the outstanding liabilities of the voluntary hospitals and institutions transferred to the Minister. The extent to which the Fund is to be used for this purpose is to be fixed by regulations. Subject to this, the capital value of the Fund is to be apportioned between the Regional Hospital Boards and the Hospital Management Committees, who will receive their appropriate share of the income, and who may, if the Minister approves, receive part of their share of the capital, and apply it for special purposes. The accounts of the Hospital Endowments Fund are to be examined and certified annually by the Comptroller and Auditor General, and laid before Parliament. Sect. 7 (5) Sect. 56 (1)

Regional Hospital Boards, Hospital Management Committees and Boards of Governors

26. The Regional Hospital Boards constituted by an order made by the Minister for each of the fourteen Regional Hospital Areas (them- Sect. 11 (1) S.R. & O., 1946 No. 2158

selves defined by orders), will be responsible on behalf of the Minister for co-ordinating and supervising the mental hospital, mental deficiency institution and mental health specialist services in each area, together with the other hospital and other specialist services provided by the Minister. Except for appointing senior medical and dental staff, the Regional Hospital Board will not itself take any direct part in the management of hospitals or institutions; that will be left to the Hospital Management Committees. The Regional
Sect. 12 (1) Hospital Board has, however, the duties, in addition to the appointment of officers, of maintaining all the hospital buildings and of obtaining all the hospital equipment and furniture required. Hospital Management Committees of the Regional Hospital Board, are to be
Sect. 11 (3) appointed and allotted in accordance with a scheme submitted to the Minister within a specified period (or, failing this, made by the Minister himself), and approved by him. Such a scheme must, of course, provide for the mental hospitals and mental deficiency institutions, either as separate hospitals or in groups.

27. If, however, a hospital is, before 5th July, 1948, designated by
(8) the Minister by order as a teaching hospital it will pass under the direct management, not of a Hospital Management Committee, but of a Board of Governors. That Board of Governors will be responsible, not to the Regional Hospitals Board, but only to the Minister himself, and will be bound only by his directions, by regulations, and by the financial limits of the annual estimate for the hospital.

3rd Sch. Pt. I 28. By the time that this booklet is issued, the Regional Hospital Boards, and possibly a number of Boards of Governors, will have been appointed by the Minister. In order to reap the benefit of local experience and knowledge the appointments have been made, as the Act requires, after consultation with the universities concerned, the medical associations (local and national), the Local Health Authorities, and organisations representing voluntary hospitals in each area. The Act requires that a minimum of two members of each Regional Hospital Board shall be persons with experience in mental health services.
3rd Sch. Pt. IV Membership will involve part-time duties only, and provision is to be made by regulation for payment of expenses.

29. A standing Mental Health Committee (not necessarily composed entirely of members of the Board) will be appointed, among other standing Committees, for each Regional Hospital Board. It is to this Committee that the Board will delegate the supervision of all the mental hospital, mental deficiency institution and mental specialist services in the Regional area. The Mental Health Committee is to be advised by the Regional Medical Officer of Mental Health (the " Regional Psychiatrist "). It will no doubt appoint sub-committees for different purposes.

Sect. 12 (2) 30. The Hospital Management Committees appointed for each hospital, or group of hospitals, will be immediately responsible for the day-to-day control and administration of the institutions under their charge. These Committees will enjoy a considerable degree of independence, although they will necessarily be subject to regulations, and to directions, both from the Minister, and from the Regional Hospitals Board on whose behalf they are performing most of their
3rd Sch. Pt. II functions. The Hospital Management Committees will be composed, as the Act requires, of members appointed after consultations with Local Health Authorities, Executive Councils (who are responsible for the general practitioner and other health services), and other interested

organisations. The Regional Hospital Board appoints the Chairman and the members, all of whom will be part time only. Where a voluntary hospital is transferred to the Minister which was previously administered by, or associated with a particular religous organisation or denomination, its character is to be preserved as far as possible by means of suitable appointments to the Hospital Management Committee concerned, as well as in the general administration. Sect. 61

31. In the case of a mental hospital, members of the Hospital Management Committee will perform the duties relating to visitation, absence on trial, discharge and removal of patients now carried out by members of the Visiting Committee (see paragraph 68). In the case of an institution for defectives, the Hospital Management Committee succeeds to all the present functions of the Managers, and will, therefore, be responsible for such matters as concurring in the grant of licence by the Superintendent to a patient.

32. In the case of a mental hospital or an institution for defectives which is designated by the Minister by order as a teaching hospital (only the Maudsley is likely to be so treated at first), the hospital is to be controlled and administered in every detail by a Board of Governors. The Board are to consist, up to one-fifth of their number, of members nominated by the university with which the hospital is associated, up to one-fifth of members nominated by the Regional Hospital Board for the area, up to one-fifth of members nominated by the medical and dental teaching staff of the hospital, and, as to the remainder, of members appointed after consultation with local health authorities and other bodies with an interest in the hospital and specialist services; the existing governing body of the hospital itself is also to be consulted in the case of the original appointments to the new Board of Governors. That Board, as already observed in paragraph 27, will enjoy a large degree of independence in administration. 3rd Sch Pt.III

33. In addition to the powers of the Minister in the matter of research, which are mentioned in paragraph 8, Boards of Governors, Regional Hospital Boards, and Hospital Management Committees are also authorised to conduct research independently, and may accept and hold on trust gifts made for this particular purpose. Sect. 16 (2) Sect. 59 (1)

34. A Regional Hospital Board may, with the approval of the Minister, arrange with any local education authority or voluntary organisation for the use of part of any institution for defectives controlled by the Board as a special school. Since this will provide educational facilities both for patients in the institution and for children who are not patients, the Board is empowered to provide for the maintenance of the latter. For this, and for the use of the premises, the Board may make a charge. Sect. 62

35. The ordinary expenses of Regional Hospital Boards (including those of their Hospital Management Committees), and of Boards of Governors are payable from national funds. All expenditure must receive the approval of the Minister in order to rank for payment; this will be obtained by submission of an annual estimate. The income of a Regional Hospital Board from the share of endowments with which it is credited in the Hospital Endowments Fund, and the income of a Board of Governors from its own endowments will thus be available—subject to any general conditions laid down by the Minister—purely for the purpose of improving the quality of their services. So far as ordinary expenses are concerned, each Hospital Management Committee will be required to submit an annual budget to the parent Sect. 54

Regional Hospital Board, which in its turn will submit an annual budget to the Minister, as also will each Board of Governors. Within the terms of such a budget once approved, each body will have considerable freedom of action in financial matters.

3rd Sch. Pt. IV

36. Regional Hospital Boards and Boards of Governors are all made bodies corporate by the Act, or legal persons with power to hold land in perpetuity. Since they are carrying out their duties on behalf of the Minister, and not as independent bodies, they would normally have the legal status of " agents " only; that is to say, they could not commence or defend legal proceedings in their own right, but the Minister as their principal would necessarily be involved. Similar considerations would apply to Hospital Management Committees who are also incorporated, and who perform functions upon behalf of Regional Hospital Boards. To avoid this excessive centralisation of legal responsibility, the Act provides that all three bodies, notwithstanding that their duties are in fact performed on behalf of the Minister, shall be entitled to enforce in their own name any rights and be subject to any liabilities (including liabilities for negligence and the like) as if they were principals (or independent bodies). It is specifically provided, that no privilege of the Crown which would enable any of the three bodies, as agents of the Crown, to refuse disclosure or production of documents which might be required in any legal proceedings, shall be available to them, although the Crown itself may, as in other cases, withhold or procure the withholding from production of any document on the grounds that its disclosure would be contrary to the public interest.

3rd Sch. Pt. IV para. 1

Sect. 13 (1)

(2)

Sect. 57 (1) (2)

37. In the unlikely event of a Regional Hospital Board, Hospital Management Committee, or Board of Governors failing, in the opinion of the Minister, to carry out their functions or to comply with any regulations or directions which relate to those functions, the Minister, after such inquiry as he may think fit, is empowered to make an order declaring the Board or Committee to be in default. The effect is to cause the members to vacate office immediately. Provison is made for temporary administration by individuals authorised by the Minister, until new members are appointed under the same procedure as applied to their precedessors.

3rd Sch. Pts. I, II and III

38. The members of Regional Hospital Boards and Boards of Governors and their staff and the members of Hospital Management Committees are protected in their personal capacity when dealing with matters under the Lunacy, Mental Treatment, or Mental Deficiency Acts to the extent laid down by Section 330 of the Lunacy Act, 1890 (as amended by Section 16 (1) of the Mental Treatment Act, and as applied by Section 63 of the Mental Deficiency Act, 1913). That is to say, broadly speaking, that no person so acting will be liable to be involved in criminal proceedings or to an action for damages for any cause, unless it be prima facie established against him either that (a) he acted in bad faith or that (b) he acted without reasonable care. Unless it is shown that there is substantial ground for this contention, the High Court, by refusing leave to proceed, will prevent any criminal or civil proceedings being pursued to their termination. Moreover, the individual who is apprehensive as to his legal position, may invoke the additional protection afforded to him by the Public Health Act, which is extended by this Act to all members and officers of Regional Hospital Boards, Hospital Management Committees, and Boards of Governors. The effect of this provision is to exempt individuals from personal

Sect. 72 and P.H.A. Act, 1875 Sect. 65

liability in respect of contracts concluded, or acts bona fide performed by them in connection with the health services under this Act, where they are acting upon the direction of the Board or Committee concerned.

THE LOCAL HEALTH AUTHORITY

39. The Local Health Authority, as the name implies, is the body responsible for providing the local government health services, as distinct from the general practitioner services, and the hospital and specialist services. By the passing of the Act each County Council and each County Borough Council in England and Wales was constituted a Local Health Authority, and thereby became liable to provide certain local health services (including mental health services) after the appointed day (now indicated as 5th July, 1948). In the interests of efficiency, the Minister may by order combine two or more Authorities in a joint board for the purpose of all or any of these services. Until 5th July, 1948, the County and County Borough Councils will continue to provide any existing health services in their present capacities as local authorities (e.g., under the Public Health Act, 1936).

Sect. 19 (1)

Sect. 51 (1)

Sect. 19 and (3)

40. The responsibilities of the Local Health Authority in relation to mental health will be :—

L.A. 1890 Sects. 11, 14, to 16 and 20

(a) The initial care and removal to hospital of persons who are dealt with under the Lunacy and Mental Treatment Acts.

M.D.A. 1913 Sect. 30

(b) The ascertainment and (where necessary) removal to institutions of mental defectives, and the supervision, guardianship, training and occupation of those in the community.

N.H.S.A. 1946 Sect. 28 (1)

(c) The preventive care and after care of all types of patient, so far as this is not otherwise provided for.

These duties are considered in detail in paragraph 66.

41. The Local Health Authority will have at the same time, responsibility for Maternity and Child Welfare, Domiciliary Midwifery, Health Visiting and the other services set out in sections 21 to 29 of the National Health Service Act. In particular, it will be their duty to provide an ambulance service for the transport of patients (including those of unsound mind or mentally defective) within their area, and to places outside it. They may perform this duty, if they wish, by arrangement with voluntary organisations or other bodies, or they may themselves provide the vehicles and staff.

Sect. 27

42. The object of the following procedure, which is to be applied to these services as well as to the local mental health services, is to secure uniformity of standards throughout England and Wales. Every Local Health Authority must, within a period specified by the Minister in a formal direction, submit to the Minister proposals for carrying out their duties (including mental health duties) under the Act. Should the Local Health Authority fail to do so, the Minister himself may formulate proposals. Different periods may be specified for the submission of proposals for different duties. The proposals or plans will, it is contemplated, show briefly the numbers and qualifications of the workers to be employed by the Local Health Authority, the methods which they will use in performing each particular duty, and the centres from which they will work.

Sect. 20 (1)

43. Not later than the day upon which the Local Health Authority submits these proposals to the Minister, it must serve copies of them upon the following parties, who are interested because they also provide services within the area of the Local Health Authority.

(a) Voluntary Associations which provide services of the kind dealt with in the proposals—for example, a Voluntary Association for Mental Welfare. Sect. 20 (2) (a)

(b) Executive Councils (which provide general practitioner and other services under Part IV of the Act), Regional Hospital Boards and Boards of Governors of teaching hospitals.

(c) Local Authorities (e.g. Borough Councils, Urban or Rural District Councils, or the City and Metropolitan Borough Councils in London). Sect. 79 (1)

If, by reason of the failure of a Local Health Authority to submit proposals, the Minister himself has been compelled to formulate them, he, likewise, must serve copies upon these bodies. Sect. 20 (5)

44. Any of the bodies upon whom copies of the proposals are served may, if they wish, within two months make suggestions or criticisms of the proposals in the form of formal recommendations to the Minister; copies of these recommendations must be served upon the Local Health Authority itself.

45. The Minister will then have before him the proposals, and the views of interested or affected bodies upon them. If the Minister does not, for any reason, approve of any proposals, he may require the Local Health Authority concerned to submit new ones within such period as he directs. Conversely, the Local Health Authority itself may, at any time, submit fresh proposals for any particular service. Sect. 20 (4)

46. Once the proposals submitted to the Minister are approved by him, the Local Health Authority become legally bound to carry them into effect, subject to any modification which may subsequently be made by the method of submission and approval. The Act obliges each Local Health Authority to establish a statutory Health Committee, a majority of whom are to be members of the Authority. To this Committee, the Authority may delegate its functions as a Local Health Authority (except those relating to the raising of money), and it will normally be to the Mental Health Sub Committee of this Committee that responsibility for the provision and control of the local mental health services will be assigned. Sect. 20 (3)

4th Sch. Pt. II Paras, 1, 3, 4 6 and 7

47. The expenditure of a County or County Borough Council in performing its duties as a Local Health Authority, or as a constituent member of a Joint Board for that purpose, will be estimated in a manner prescribed by regulation. An annual grant of not more than one-half of the amount thus estimated will be paid by the Exchequer to each Council according to its financial position. The Minister may reduce this grant, if he is satisfied that the Local Health Authority have failed to maintain or to achieve a reasonable standard of efficiency in their services, or that their expenditure has been excessive or unreasonable: he must report the reduction, and the reasons for it, to Parliament. It will be this grant, and no other, which in the future will reimburse the County or County Borough Council for the cost of carrying out the duties for which it will be responsible as a Local Health Authority under the Lunacy, Mental Treatment, and Mental Deficiency Acts, and under Section 28 of the National Health Service Act.

Sect. 53 as amended by L.G.A. 1948 Sect.7 (1) and (2)

48. If, in the opinion of the Minister, a Local Health Authority have failed to carry out any functions imposed upon them by the Act (e.g., where the Minister has directed the provision of after-care

Sect. 57 (3) services under Section 28), he may after such inquiry as he thinks fit, make an order declaring the Authority to be in default, and directing the omission to be remedied within a specified time. Should this fail, a further order may be made by the Minister transferring the functions of the Authority to himself. In this unhappy contingency, the expenses incurred by the Minister in providing the Local Health Service in question would be recoverable by him from the Authority. In the case of the local Mental Deficiency Services, the existing default procedure will continue to be applicable.

M.D.A. 1913 Sect. 32

49. It will be possible for a Local Health Authority to permit other bodies (including Mental Welfare Associations) to use the buildings and equipment which it has, in the first place, provided for the purpose of its own functions as a Local Health Authority. No doubt, in some instances, advantage will be taken of this power to allow Hospital Management Committees the use of certain premises belonging to the Authority for the purpose of out-patient clinics. Local Health Authorities may also provide residential accommodation for their own staff engaged upon mental health duties, or those of a voluntary association providing mental health services.

N.H.S.A. 1946 Sect. 63

Sect 65

GENERAL

Transfer of Hospital and Institution Staff

50. In order to furnish the staff for the National Hospital Service at the outset, all medical, nursing, and other officers and staff employed in a hospital or institution which is transferred to the Minister will, generally speaking, be transferred (or have the opportunity to transfer) with their work to the employment of the Regional Hospital Board under which their hospital or institution passes or, in the case of a teaching hospital, to that of the new statutory Board of Governors. Regulations are to be made which will prescribe (among other things) the method of transfer. Special arrangements may be made where the transfer of honorary members of the staff is concerned. These regulations (and those relating to superannuation of staff: see paragraph 55), unlike other regulations made under the Act, do not take effect until approved by a resolution of each House of Parliament.

Sect. 68 (1) (*a*) and (*e*)

Sect. 75 (1)

Conditions of service and appointment of Hospital and Institution Staff

51. Notwithstanding the fact that the Regional Hospital Boards and the Boards of Governors are to manage hospitals and institutions of which the Minister is the legal owner, every officer employed in a hospital or institution in the National Health Service will be directly employed, not by the Minister as a civil servant, but by one of those two kinds of public Boards. The Boards of Governors both appoint and employ every member of the staff of their teaching hospital, and, subject to regulations, will determine their remuneration and conditions of service. The Regional Hospital Boards will be the legal employers of members of the staff of all hospitals and institutions controlled by them within the Regional Area, but they will appoint only the Senior Medical and Dental Officers, leaving the various Hospital Management Committees to appoint the remainder upon scales of pay and conditions of service which the Regional Hospital Board will determine under regulations to be made for the purpose.

Sect. 14 (1) and Sect. 66

These regulations will prescribe the qualifications which members of the junior medical and dental staff and the technical members must possess. They will provide, in the case of the appointment of senior medical and dental staff, that the Regional Hospital or Board of Governors concerned shall :—

Sect. 14 (2)

(a) Advertise the vacancy.

(b) Constitute an Advisory Appointments Committee consisting of persons nominated by the Regional Hospital Board and the Hospital Management Committee involved, or, if the hospital is a teaching one, by the Board of Governors and the University.

(c) Make the appointment from a select list submitted by the Advisory Appointments Committee.

Transfer of local authority staff

52. The transfer of the local mental health services to Local Health Authorities will (unlike the transfer of hospital services) in many cases, involve no transfer of staff. Except where they have combined for the purpose into Joint Boards or Joint Committees the County and

L.A. 1890 Sects. 13 to 16 and 20 M.T.A. 1930 Sect. 17. proviso (i) M.D.A. 1913 Sect. 30 (*a*), (*b*), (*cc*) and (*d*)

County Borough Councils who now assume the duties of Local Health Authorities are also the bodies who until 5th July, 1948, are responsible, as poor law authorities, through their relieving officers, for the initial disposal and care of patients of unsound mind, and, as mental deficiency authorities, for the ascertainment and care of defectives living in the community. So far as the relieving officers are concerned, their powers and duties in respect of patients of unsound mind form only a part of their present functions. These powers and duties will be assigned in future to duly authorised officers of the new Local Health Authorities who will be employed, it is hoped, wholly in mental health work. On the other hand, officers employed by County and County Borough Councils for the ascertainment and care of defectives living in the community will normally continue to be employed upon the same duties by those Councils in their new character of Local Health Authorities.

N.H.S.A. 9th Sch. Pt. I

M.D.A. 1913 and 1927 Sects. 29 and 8

Sect. 78 (1)

53. Where, however, in the past County and County Borough Councils have been combined in a Joint Board or Joint (incorporated) Committee for the purposes of the Mental Deficiency Acts, that Board or Committee will be dissolved for all purposes as from 5th July, 1948, and the officers by whom the duties of ascertainment and care of defectives living in the community have been performed will be transferred (or have the opportunity of being transferred) to similar service under the Local Health Authorities who were formerly constituent members of the board or committee.

Compensation for staff losing employment or part of remuneration by reason of transfer

Sect. 68 (1) (*e*) (i)

54. Regulations are to provide for the payment of compensation to classes of full-time officers which include those of transferred voluntary or local authority hospitals and institutions, and those of local authorities who, as a direct result of the transfer of their hospital, or the functions of their authority, to a new body under the Act, either lose their employment, or are employed on less remunerative terms. While they must be full-time officers to qualify for compensation, it is only necessary that a part of their full-time duties should have been connected with the health or mental health functions, the transfer of which is the cause of their loss. War service in H.M. Forces, or other prescribed employment continuing over the date of transfer is not to prejudice any right to compensation which would otherwise have been payable. The authority liable for payment will be the Minister in the case of hospital officers, and the Local Health or other appropriate Authority prescribed in the regulations in other cases.

Sect. 68 (1) (*e*) (ii) and (*f*)

Superannuation of Staff

Sect. 67 and N.H.S. (Superannuation) Regs., 1947 (S.R. and O. 1947 No. 1755)

55. Regulations made by virtue of the Act provide for the superannuation of all persons engaged in mental health services. Questions relating to superannuation can only be answered by reference to these regulations, and to the explanatory literature issued by the Ministry of Health. The effect, broadly speaking, is that all officers employed by Regional Hospital Boards or Boards of Governors of teaching hospitals will be entitled under a Central Scheme to benefits which include pension, retirement allowance (Lump sum), injury allowance, short service gratuity, death gratuity and widows' pension. Medical and Nursing staff who devote the whole, or substantially the whole, of their time to the treatment or care of patients who are mentally ill or defective, together with certain other officers in mental hospitals or

mental deficiency institutions who are to be designated by the Minister, will, as "Mental Health Officers," enjoy more favourable terms as to retiring age and calculation of contributing service. Officers employed by Local Health Authorities will, in return for contributions upon the scale at present laid down by the Local Government Act, 1937, become entitled to similar benefits to those provided for ordinary hospital staff by the Central Scheme. Voluntary Associations providing services under the Mental Deficiency Acts or under Section 28 of the National Health Service Act may apply to a Local Health or Administering Authority to be admitted to participate in the superannuation scheme of that Authority. Officers at present entitled to superannuation under the Asylum Officers Superannuation Act, 1909 (as amended by the Asylums and Certified Institutions (Officers Pensions) Act, 1918) may, if they wish, continue to serve upon the same terms. A similar option is permitted to officers transferred to Local Health Authorities, who prefer to serve upon the conditions previously applicable to them under the Local Government Act, 1937, or any local Act Scheme.

IV

CHANGES IN THE LAW

56. So far as the responsibility of the Central Authority for providing free hospital accommodation and free specialist services, and the responsibility of the Local Health Authority for local mental health services, are concerned, provision for mental health is placed by the Act, as already observed, upon the same footing as other health services. But the existing legal requirements for the admission and discharge of patients, and the periodical review of the reasons for their detention, where detention is necessary, must remain unchanged until the legislature has authorised a new, and possibly simpler, procedure in a new Act or Acts relating to mental health. It will be found, in consequence, that the amendments and repeals made by the National Health Service Act in the Lunacy, Mental Treatment and Mental Deficiency Acts are confined, with one or two exceptions, to those which were required in order to fit the existing mental health services into their place as a part of the new comprehensive health services. These amendments and repeals are mainly to be found in sections 49 to 51 and in the 8th and 9th Schedules of the National Health Service Act. Those which relate to the transfer to the Minister of the administrative functions of the Board of Control came into force on 1st July, 1947. The remainder will come into operation upon the day appointed for that purpose (5th July, 1948). The result will be the following changes, of which the first has already taken place:—

"Appointed day," 1st July, 1947

(i) The administrative functions of the Board of Control, as distinct from their quasi-judicial duties, are transferred to the Minister.

"Appointed day," 5th July, 1948

(ii) The liability for providing hospital or institutional accommodation and treatment for patients suffering from mental illness or mental defectiveness will be transferred from local authorities to the Minister.

"Appointed day," 5th July, 1948

(iii) The initial care and conveyance to hospital of persons of unsound mind, together with ascertainment, removal to institutions and community care of mental defectives, and care and after care of all types of patient (in so far as it is not otherwise provided for), will become the responsibility of County and County Borough Councils, in their capacity of Local Health Authorities.

"Appointed day," 5th July, 1948

(iv) It will no longer be lawful (subject to certain transitional arrangements) to detain any person of unsound mind or any mental defective in a workhouse.

"Appointed day," 5th July, 1948

(v) Visiting Committees, Joint Visiting Committees, Joint Mental Hospital Boards, Committees for the care of the Mentally Defective, and Joint Boards and Joint Committees for that purpose, will be dissolved, in consequence of the transfer to the Minister, and to Local Health Authorities, of the responsibility for mental health services.

"Appointed day," 5th July, 1948

(vi) Reception under the Lunacy Act, 1890, may be authorised, at the election of the relatives, either by order obtained upon petition or by summary reception order, whether the patient is to be received on private terms or otherwise.

"Appointed day," 5th July, 1948

(vii) Discharge (subject to a "barring" certificate) on a direction in writing of the petitioner (if any) or person making the

last payment or a specified relative, at present confined to private patients, may be effected in all cases, whatever the form of reception order, and whether the patient is private or otherwise.

These changes, and the more important of the amendments and repeals by which they are brought about, have now to be considered in greater detail. It will be borne in mind that, except for those relating to the transfer of the administrative functions of the Board of Control, which are now in force, none of those amendments or repeals take effect before 5th July, 1948, and that *until that date the existing law is unchanged.*

(i) *Transfer to the Minister of Administrative Functions of the Board of Control*

57. In 1913 the newly constituted Board of Control succeeded the Lunacy Commissioners as the Authority whose immediate duty it had been, under the aegis of the Home Secretary, to supervise the performance by local authorities of their duties under the Lunacy Acts. At the same time the Board were charged, among other more specific tasks, with the general superintendence of matters relating to the mentally defective patient, who then for the first time was accorded a separate legal status, and with the supervision of the administration by local authorities of their powers and duties under the Mental Deficiency Act. These general supervisory functions will, in future, be appropriately exercised by the Central Authority for health services of all kinds (that is to say, by the Minister), and the more so since the local mental health services to be provided by Local Health authorities under the Lunacy, Mental Treatment, and Mental Deficiency Acts are to be linked with other local health services, and to be approved by the same procedure.

M.D.A. 1913 Sect. 65 (1)

M.D.A. 1913 Sect. 21 (amended)

M.D.A. 1913 Sect. 25 (1) (*b*) (amended)

N.H.S.A. 1946 Sects. 51 (1) and 20

58. With the assumption by the Minister of the responsibility for providing hospital and institutional accommodation, and the transfer to him of most, if not all, of the existing mental hospitals, registered hospitals, and certified institutions for defectives, the statutory powers of the Board of Control to ensure proper standards of accommodation for mental patients, by requiring the submission of plans and by granting, revoking, or withholding certificates, licences or registration in the case of particular institutions, will become largely unnecessary. The accommodation provided by the Minister will, of course, be subject to his direct control. So far as these statutory powers relate to institutions which will remain outside the National Health Service (e.g., licensed houses), they should, in future, clearly be exercised by the Minister as the Central authority for mental health, and the amendments so provide.

Sect. 49 (1)

59. For the same reasons, it will be the Minister who, in future, will be responsible for approving medical practitioners for the purpose of signing medical recommendations under the Mental Treatment Act and medical certificates under the Mental Deficiency Acts.

M.T.A. 1930 Sects. 1 (3) (*a*) and 5 (3) M.D.A. 1913 Sects. 3 (1) and 5 (2)

60. It seems right, also, that the provision of special institutions for patients who require treatment and control of a kind not normally available in ordinary institutions, should rest with the Minister as the Central Authority. For this reason, the existing State Institutions for defectives of dangerous or violent propensities established by the Board of Control at Rampton, Nottinghamshire, and Moss Side, Lancashire, are transferred to the Minister. Management of these and any future institutions designated for this purpose by the Minister will remain in the hands of the Board of Control, and the provisions

N.H.S.A. 1946 Sect. 49 (4)

of the National Health Service Act relating to Regional Hospital Boards and Hospital Management Committees will not apply.

61. The Board of Control, as an independent body exercising quasi-judicial functions, will continue to be responsible for the matters affecting the liberty of individuals which are bound to arise in forms of illness where control and restraint may at any time be necessary. This duty involves frequent visitation of the patients themselves, and first-hand knowledge of the conditions under which they live. The Commissioners and Inspectors of the Board will therefore continue to visit and inspect, as hitherto, all institutions for persons of unsound mind, institutions, certified houses and approved homes for mental defectives, whether or not those institutions are maintained as part of the National Health Service; they will also continue to visit voluntary or temporary patients in general hospitals, nursing homes or institutions approved by the Minister for the purposes of the Mental Treatment Act, 1930, patients temporarily detained in any general hospital in wards designated by the Minister for the purposes of section 20 (as amended) of the Lunacy Act, 1890, and patients or mental defectives living in the care of private individuals in the community under the authority of the Lunacy, Mental Treatment, or Mental Deficiency Acts. The Board have certain statutory duties in the event of a member of the House of Commons being received as a patient of unsound mind. These duties they still retain.

M.T.A. 1930 Sects. 1 (1) and 5 (1) (iii) (Amended)

Lunacy (Vacating of Seats) Act, 1886 Sects. 2 and 3

62. This allocation of functions as between the Minister and the Board of Control involves the transfer of the staff of the Board, with the exception of the Commissioners, the Secretary and the Inspectors, to the Mental Health Division of the Ministry of Health. The services of these individual members and officers of the Board in their personal capacity will be made available to the Minister upon all questions relating to mental health, and the reports of Commissioners and Inspectors upon all hospitals and institutions will be placed at his disposal. The staff which the Board will still need for the purposes of their independent duties will be provided by the Minister.

N.H.S.A. 1946 Sect. 49 (2) and (3)

63. It was considered desirable to bring into effect the arrangements described in the preceding paragraphs before the day appointed for the transfer of hospitals and institutions and for the commencement of the local health services. Consequently an Order-in-Council made by virtue of the Act appointed 1st July, 1947, as the date upon which the sections, amendments and repeals necessary for this purpose were to come into force. For the convenience of all who are concerned with the matters to be dealt with in future by the Mental Health Division of the Ministry of Health, the distribution of correspondence between the two Departments is indicated in an Appendix to this Memorandum.

Sect. 79 (1)

(ii) *Transfer of liability for provision of Hospital or Institutional accommodation and treatment*

64. The expenses incurred by the Minister in exercising his functions under the National Health Service Act, including that of providing hospitals and institutions, are in the words of the Act, " to be defrayed out of moneys provided by Parliament," Local Authorities will, therefore, be relieved of all the liabilities under the Lunacy, Mental Treatment, and Mental Deficiency Acts in this respect to which they are at present subject. Since the cost of treatment and maintenance in hospital of each patient is thus to fall in the first place

Sect. 52 (1)

upon the Exchequer, no question can arise in the future as to the chargeability of that patient for that purpose to any local authority.

This transfer of liability is responsible for the abolition throughout the amended Lunacy and Mental Treatment Acts of the term "rate-aided," (and for the disuse in future in any statutory form relating to mental defectives of the term "aided."). It accounts also for the repeal of virtually the whole of Part X (Sections 283-314) of the Lunacy Act, 1890, which contains the machinery for determining the settlement or chargeability of a rate-aided patient of unsound mind, and for the recovery from his estate, or from the relatives legally liable to maintain him, of the expense incurred in his treatment. It follows also that a justice making a summary reception order under section 16 of the Lunacy Act will no longer require to be satisfied that the subject of the order is either in receipt of relief, or in such circumstances as to require relief for his proper care, and section 18, which involved a finding to this effect, is repealed.

65. Upon the same principle, the provisions of sections 43 and 44 of the Mental Deficiency Act, 1913, by which the liability of a local authority to provide for a mental defective is at present determined, will become unnecessary, so far as the cost of institutional accommodation is concerned. The machinery for determination of liability, however, has been preserved and applied in the case of Local Health Authorities, since these also will be required to bear the cost of providing for the guardianship and the conveyance to institutions of defectives resident in their area. It is hoped, nevertheless, that the cost of these services will rarely be a matter of dispute between Local Health Authorities.

(iii) *Transfer of responsibility for initial care and conveyance to hospital of persons of unsound mind and community care of mental defectives*

66. The duties for which each Local Health Authority will become responsible, and in respect of which they are required to submit proposals to the Minister under section 20 (1) of the National Health Service Act, are these:—

(a) *Under the Lunacy Act,* 1890

The provision of the services of a duly authorised officer for the purposes of sections 14, 15, 16, 20, of the Act.

Relieving officers of the poor law authority will no longer have any powers or duties with respect to persons of unsound mind. Their functions will be performed by special officers of the Local Health Authority duly authorised for the purpose. It is intended that these officers shall work with those responsible for the mental deficiency services of the same authority, and shall form one unit or team whenever this is possible.

Section 13 (relating to persons deemed to be of unsound mind who are not under proper care and control or cruelly treated or neglected) is to be repealed, the substantial protection provided by this section being afforded by the new section 14. Section 14 (1) requires a duly authorised officer to give notice within three days to a justice, if two conditions obtain. The first is that he has reasonable ground for believing that a person in the area of his authority is of unsound mind and a proper person to be sent to a mental hospital. The second is that he is satisfied that the person in question is not under proper

care and control, or that (even if he is, for the moment, adequately cared for) there are no relatives or friends who intend, or are able, to take proceedings by petition (as they may elect to do in future) for the reception of the patient. Under Section 14 (2) the justice must order the officer to bring the patient before him (or may himself under section 17 visit and examine him), within three days of the receipt of the notice. The procedure under section 15 (relating to persons wandering at large), and that under section 16 (for the making of summary reception orders) is substantially unaltered. So also are the provisions of section 20 (which enable a duly authorised officer or constable to remove immediately persons with regard to whom they have a duty to act under sections 14 (1) or 15 (1)) with the exception that the patient may no longer be taken to a workhouse, but must go to a ward in a mental or general hospital specially designated by the Minister for the purposes of this section. It is not intended that the powers of a police constable, which have been preserved in sections 15 (1) and 20, should be used, except in emergency.

(b) *Under the Mental Treatment Act,* 1930

The provision of the services of a duly authorised officer for the purposes of sections 5 (2) and 17, proviso (i).

Under Section 5 (2) the duly authorised officer who, on the request of the husband, wife or relative, may make the application for reception of a temporary patient, if these persons are unable or unwilling to do so, will, in future, be an officer of the Local Health Authority, and not of the Local Authority. Under Section 17 proviso (i) urgency orders for the reception of all patients, other than those for whom private arrangements have been made, must be signed by the same officer.

(c) *Under the Mental Deficiency Act,* 1913

Section 30 (a): the duty of ascertaining what persons within their area are defectives subject to be dealt with under the Act.

Section 30 (b): the duty of providing suitable supervision for defectives ascertained in accordance with paragraph (a), and, if supervision affords insufficient protection, of taking steps to secure that they are dealt with by being sent to institutions or placed under guardianship.

Section 30 (cc): the duty of providing suitable training or occupation for defectives who are under supervision or guardianship.

Section 30 (d): the duty of making provision for the guardianship of defectives placed under guardianship by orders under the Act.

All of these duties remain unchanged in character. The officers who perform them will, of course, be officers of the Local Health Authority responsible in the first place to the Mental Health Sub-Committee or Health Committee of that Authority. If these duties are performed by a voluntary association under arrangements with the Local Health Authority, their work will come under the direct supervision of the Mental Health Sub-Committee or Health Committee.

(d) *Under the National Health Service Act,* 1946

Section 28 (1): the power, and to the extent that the Minister directs, the duty to make arrangements for the care and after-care of persons (in the community) suffering from mental illness or mental defectiveness.

This provision replaces the powers conferred on local authorities by section 6 (3) (a) and (b) of the Mental Treatment Act, 1930. The intention is to supplement the services provided by the mental hospital or institution for defectives from which the patient has been discharged. The section provides that no money allowance is to be paid to the ex-patient, unless it be by way of remuneration for the special or sheltered employment provided for him by way of after-care. If he or his relatives are able to bear the cost, a reasonable charge may be made for any services under this section. Local Health authorities may contribute under section 28 (3) to any voluntary association formed for the purposes of care or after-care of this nature.

(iv) *Abolition of detention of persons of unsound mind and mental defectives in workhouses*

67. Expressed briefly, the amendments and repeals will result in these changes.

Under the Lunacy Act, 1890

Section 20: removal in urgent cases may no longer be to a workhouse, but must be to a mental or general hospital (or a ward of such a hospital), which has been designated by the Minister for the purposes of this section.

Section 21: temporary removal under the order of a justice may no longer be to a workhouse, but only to a mental or general hospital designated as above.

Section 24: the whole of this section is repealed. A new section 21 (a) replaces the provisions of sub-sections (1) and (2); this provides that any person detained under sections 20 or 21 may be further detained for a period not exceeding fourteen days from the date of a certificate by the medical officer that he is of unsound mind and that it is expedient for his welfare that he should be so detained.

The "permanent detention order" at present made by a justice under section 24 (3) and (4) is to be abolished; it cannot, therefore, in future be made even in respect of a patient detained in a hospital designated for the purposes of section 20. Where such an order is in force immediately before 5th July, 1948, the effect of Section 50 (3) and (4) of the National Health Service Act will be as follows:—

(1) If the patient is detained in a ward or block which is transferred to the Minister *and* is included by him in premises designated as a mental hospital, or is separately designated as such, the permanent detention order takes effect on 5th July, 1948, as if it were a summary reception order made under section 16 of the Lunacy Act, 1890.

(2) If the patient is detained in a ward or block which is transferred to the Minister, but which is *not* included by him in premises designated as a mental hospital, the permanent detention order will lapse on 5th July, 1948.

(3) If the patient is detained in a ward or block which is *not* transferred to the Minister, Section 50 (4) of the National Health Service Act provides that the permanent detention order shall continue to authorise his detention therein for a period of six months from 5th July, 1948, during that period it will constitute an authority for the patient's transfer to a mental hospital, in which event it will authorise his detention thereafter as if it had been a summary reception order made on 5th July, 1948. If by the end of the six months period the patient has not been so transferred, the order will lapse.

But proposals at present before Parliament in the National Assistance Bill will, if they become law, replace this provision and enable such a patient, detained in a non-transferred ward or block in an institution retained by the local authority, to remain there for a transitional period to be determined by the Minister; the ward or block would be deemed for legal purposes to be a mental hospital, and the permanent detention order would take effect as if it were a summary reception order made on 5th July, 1948.

Sections 25 and 26: These sections are repealed, and patients discharged from mental hospitals who have not recovered or chronic patients transferred from those hospitals may no longer be detained in a workhouse under their provisions.

Under the Mental Treatment Act, 1930

Section 19: This section is repealed. It authorised the removal of persons of unsound mind to Public Health (Municipal) Hospitals approved for the purpose by the local authority providing them, and their detention there upon the like conditions and procedure as obtain in the case of admission to the workhouse under the Lunacy Act, 1890. As already observed, the amendments to section 20 of that Act now provide for removal to a hospital vested in the Minister and designated by him for the purposes of that section.

Under the Mental Deficiency Act, 1913

Section 15 and 71 (1): a workhouse may no longer be used as a " place of safety " in which a mental defective may be detained pending the presentation of a petition.

Section 37: this section is repealed. Local Authorities will be absolved under the National Health Service Act, of the duty to provide institutional accommodation for mental defectives, and there will be no occasion for them, after 5th July, 1948, to apply for approval of poor law premises for that purpose.

Mental defectives in workhouses approved by the Board under this section are detained under the same form of order as that which applies in the case of an ordinary institution for defectives. Where such an order is in force immediately before 5th July, 1948, the effect of Section 50 (3) and (4) of the National Health Service Act will be as follows:—

(1) If the patient is detained in a ward or block which is transferred to the Minister *and* is included by him in an institution for defectives, or separately used as such, the order continues in force after 5th July, 1948, as before.

(2) If the patient is detained in a ward or block which is transferred to the Minister but which is *not* included by him in an institution for defectives, the order will lapse (unless the patient has been previously transferred) on 5th July, 1948.

(3) If the patient is detained in a ward or block which is *not* transferred to the Minister, Section 50 (4) of the National Health Service Act provides that the order shall continue to authorise his detention therein for a period of six months from 5th July, 1948: during that period it will also constitute an authority for his transfer to an institution for defectives and thereafter for his detention in that institution. If by the end of the six months period the patient has not been so transferred, the order will lapse.

But proposals at present before Parliament in the National Assistance Bill will, if they become law, replace this provision and enable a defective detained in a non-transferred ward or block in an institution retained by the local authority to remain there for a transitional period to be determined by the Minister: the ward or block would be deemed for legal purposes to be an institution for defectives, and the defective could be detained there under the original order.

It will be clear from the foregoing that for some considerable period, the accommodation required for mental patients now detained in workhouses must necessarily be provided in the same buildings, although responsibility for their care and treatment will pass from the poor law authority to the Regional Hospital Board. The proposals in the National Assistance Bill above referred to would result in the transfer to the Minister of the whole of every workhouse which is mainly used for hospital purposes, and the retention by the local authority of the whole of every workhouse (including mental wards) which is mainly used for non-hospital purposes. As already indicated, the mental wards in a workhouse retained by a local authority would be treated in law as being part of a mental hospital or institution for defectives, as the case might be; the care of the patients would be the responsibility of the Regional Hospital Board for whom the local authority would be obliged to make available, to the satisfaction of the Minister, not only the accommodation, but also the necessary domestic services, at charges to be agreed or determined by the Minister. These arrangements would continue until determined by the Minister. The transfer

of a mental ward in a workhouse to the Minister, whether by virtue of sections 6 (2) and 9 (1) of the National Health Service Act or under legislation on the above lines, will, of course, enable that ward to be included in premises designated for mental hospital purposes or in premises used as an institution for defectives as in the case of any other transferred buildings.

(v) *Dissolution of Visiting Committees, Joint Mental Hospital Boards, Joint Visiting Committees, Committees for the care of the Mentally Defective, and Joint Boards and Joint Committees for that purpose*

M.T.A. 1930 Sect. 7 (repealed)

68. Visiting Committees as the statutory bodies through which local authorities have hitherto been required to perform their duties of providing hospital accommodation for the mentally ill will clearly have no place in a system in which this task is imposed upon the Central Authority. Similar considerations apply in the case of the Joint Mental Hospital Boards. The duties of management of these bodies will, on 5th July, 1948, mainly devolve, as already observed, upon the Hospital Management Committee appointed for the mental hospital or institution concerned, or, if that mental hospital or institution forms a unit in a group of hospitals, upon a sub-committee of the Hospital Management Committee responsible for the group. As already indicated in paragraph 31 the statutory functions relating to discharge, absence on trial, and boarding-out of patients will be carried out by members of that Committee or Sub-Committee as the case may be. It is hoped that many of the present members of Visiting Committees will contribute their experience in such matters, and in questions of management generally, as members of the new Committees.

N.H.S.A. 1946 Sect. 11 (3)

L.A. 1890 Sects. 38 (6) (*b*) 39 (7), 77 (1) and (2), 79 and 188 (amended) and M.T.A. 1930 Sects. 5 (9) and (10) (amended)

69. Committees for the care of the Mentally Defective are at present concerned both with the provision of institutional accommodation and with the care of defectives living in the community. It will be remembered that on 5th July, 1948, the former duty will become the responsibility of the Central Authority, and the latter will be assigned to the Councils of Counties and County Boroughs in their capacity as Local Health Authorities, unless these authorities are combined in any instance as a new joint board under the National Health Service Act for this purpose. The functions of the existing Joint Boards and Joint Committees constituted under the Mental Deficiency Acts will similarly pass to the Central and Local Health Authorities, as the case may be, to be exercised by the latter through the appropriate sub-committee of the Health Committee.

M.D.A. 1913 Sect. 28 (1) and (2) (repealed)

N.H.S.A. 1946 Sect. 19 (2)

M.D.A. 1913 and 1927 Sects. 29 and 8 (repealed)

70. The managers of existing certified institutions for defectives are at present, in the case of an institution provided by a local authority, the Committee for the care of the Mentally Defective or a sub-committee of that Committee; in the case of a joint board or joint committee, they are the board or joint committee itself or a sub-committee. Where the institution is provided by a voluntary organisation, the managers are, of course, normally a committee of that body. In both instances, if the institution is transferred to the Minister, the duties of the managers, including those relating to concurrence in the granting of licence to suitable patients, will be carried out by the new Hospital Management Committee appointed for the institution or for the group of hospitals or institutions of which the institution forms a unit. If, on the other hand, an institution provided by a voluntary organisation

is not for any reason transferred to the Minister on 5th July, 1948, the present managers will continue their independent administration—subject, of course, to the renewal upon expiry of the existing certificate which authorises the use of the premises as a certified institution. M.D.A. 1913 Sect. 36 (amended)

(vi) *Altered procedure for reception under Lunacy Act,* 1890

71. From 5th July, 1948, the relatives of a patient whose reception (otherwise than by way of an urgency order) it is desired to authorise under the Lunacy Act, 1890, will be able to elect whether to employ the procedure by petition (hitherto applicable only to private patients) or to inform the duly authorised officer of the Local Health Authority of the facts with a view to the obtaining of a summary reception order. This will be so, irrespective of the question whether the patient is to be received upon a private basis, or whether his maintenance and treatment is to be free of charge to him or his relatives under the provisions of the National Health Service Act. It will thus be possible for the relatives of a patient who is to be received free of charge to proceed by petition (themselves obtaining the two medical certificates) or for the relatives of a prospective private patient (if they prefer to do so), to inform the duly authorised officer of the Local Health Authority that they do not themselves intend to take proceedings by petition, and thus to allow him to give notice to a justice, with a view to the patient being received under a summary reception order.

L.A. 1890 Sect. 6

Sect. 14 (1) (amended) Sect. 16 (amended)

N.H.S.A. 1946 Sects. 4 and 5

L.A. 1890 Sect. 14 (1) (amended)

72. The procedure for securing the reception of a person of unsound mind by means of an urgency order is unchanged; unless, however, at the time of the making of the order, arrangements have been made for the admission of the patient upon a private basis, the order must be signed by a duly authorised officer of the Local Health Authority, and not by a relative.

L.A. 1890 Sect. 11 M.T.A. 1930 Sect. 17 proviso (1) (as amended)

73. The restrictions upon the choice of mental hospital to which a patient may be sent or transferred, which have been imposed in the past by questions of chargeability to local authorities, will become unnecessary under a national hospital service, and it will be possible to send or remove him to the institution which, being the nearest to his home or for other reasons, is most suitable in his case. Similarly, reception contracts for the accommodation of patients away from their home areas, except for those made by a Regional Hospital Board for the reception of patients in registered hospitals, will cease to be necessary; administrative arrangements for this purpose will be settled between the Regional Hospital Boards involved. Removal will normally be authorised by the order of two members of the Hospital Management Committee of the receiving mental hospital under section 64 of the Lunacy Act, 1890; in the case of a patient detained in a registered hospital under contract between a Regional Hospital Board and the Managing Committee of that hospital, the Regional Hospital Board will make the order for the removal. The Board of Control retain their powers in respect of removal of all patients detained under the Lunacy and Mental Treatment Acts. Provision is made for removal by order of a justice of a private patient in a registered hospital or licensed house whose means are insufficient or whose relatives can no longer afford to maintain him there; the Local Health Authority are to bear the costs of removal and of the order.

L.A. 1890 Sect. 269 (repealed)

Sect. 61 (substituted)

Sect. 59 and M.T.A. 1930 Sect. 15 (1) 3rd Sch. para. 2 L.A. 1891 Sect. 19 (substituted)

74. The term " private patient " for the purposes of the Lunacy Act is re-defined as meaning " a patient maintained wholly or partly

L.A. 1890 Sect. 341 (amended)

at the expense of some person other than the Minister." Patients whose relatives choose to take advantage of any accommodation available in a mental hospital on payment of part of the cost will thus rank as private patients under the Lunacy Act. But, as already observed, the distinction between private and other patients will become immaterial (with a minor exception in the case of an urgency order) so far as the procedure for reception is concerned, and similar considerations apply to the question of discharge.

N.H.S.A. 1946 Sect. 4

(vii) *Altered procedure for discharge under Section 72 Lunacy Act,* 1890

75. The procedure from 5th July, 1948, for the discharge of patients of unsound mind under section 72 of the Lunacy Act, 1890 (which will also be applied, so far as appropriate, to temporary patients) is set out below. The effect is to create in the case of all such patients, private or otherwise and irrespective of the form of reception order, the same right to direct discharge under this section as has hitherto applied in the case of private patients only. The " appropriate relative," by whom the right to direct discharge will probably be exercised in most cases, means in this section the nearest surviving relative of the patient who is capable of acting, determined in the following order: husband or wife, father or mother, or any one of the next of kin. The right to direct discharge (as at present in the case of private patients) may be barred if the medical officer of the institution (or in the case of a single patient, his medical attendant) certifies in writing that the patient is dangerous and unfit to be at large, and gives the grounds for that opinion; in that event, the patient cannot be discharged under this section unless two members of the Hospital Management Committee of the mental hospital, or two visitors in the case of a licensed house, or a Commissioner (in the case of a patient not in a mental hospital) after seeing the certificate, consent nevertheless to this course.

M.T.A. 1930. Sect. 15 (1) and 3rd Sch. para. 6

L.A. 1890 Sect. 74

76. The power (subject to section 74) to effect discharge by means of a signed direction will be exerciseable as follows:—

L.A. 1890 Sect. 72 (1) (substituted)

1. *In the case of a patient detained under a reception order made on petition* —

(a) by the petitioner
or, if the petitioner is dead or otherwise incapable of acting,

(b) by the person who made the last payment on account of the patient
or

(c) by the appropriate relative.

(2) (substituted)

2. *In the case of a private patient detained under an urgency order or a summary reception order* —

(a) by the person who made the last payment on account of the patient
or

(b) by the appropriate relative.

(3) (substituted)

3. *In the case of a patient other than private detained under an urgency order or a summary reception order* —

by the appropriate relative.

(4) (substituted)

4. *In the case of any of the above patients* —

If no person is found who is qualified or able or willing to to direct discharge under this section, the Board of Control may order discharge.

77. Whilst the only substantial changes in the procedure for discharge of patients under the Lunacy Act are those made in section 72, it has already been observed that the existing powers and duties of Visiting Committees in this respect will pass to the succeeding Hospital Management Committee. Accordingly amendments to section 77 (1) and (2) provide that any three members of the latter Committee, or any two with the advice in writing of the Medical Officer, may order the discharge of any person detained in a mental hospital. Similarly under the amended section 79 any two members of the Hospital Management Committee of a mental hospital may, upon the application of a relative or friend of any patient detained there, discharge the patient, if they are satisfied with the undertaking of the applicant to take proper care of him. Section 73 in a new form will enable a Regional Hospital Board to order, and to direct the mode of the discharge of a patient detained at the expense of the Minister in a registered hospital under contract between that Board and the managing committee of the hospital. Since it will no longer be lawful to detain any person of unsound mind in a workhouse, the provisions for removal or discharge of such patients made by sections 60 and 81 are repealed. Apart from these, all existing methods of discharge of patients detained under the Lunacy and Mental Treatment Acts will be preserved; they will apply both to private and to other patients alike, with one exception. The exception relates to the visitation and discharge of a private patient in a licensed house under the provisions of sub sections (4) and (9) of section 39. This section as amended deals in general with reports upon and visits to all patients (private or otherwise) received upon reception orders made on petition. It is not contemplated, however, that any patients will be detained in licensed houses under contractual arrangements between the licensees and the Regional Hospital Boards. Sub-section (4), therefore, refers only to private patients so detained.

APPENDIX

1. All communications upon matters relating to the Mental Health Services, with the exception of those set out below, should be addressed to

The Secretary,
Ministry of Health,
32, Rutland Gate,
Knightsbridge, S.W.7.

2. All communications upon the following subjects should be addressed to

The Secretary,
Board of Control,
32, Rutland Gate,
Knightsbridge, S.W.7.

(i) Reception, detention, absence, removal or transfer, discharge, departure, or death of patients.

(ii) Amendment of orders and certificates and expiry or continuation of orders.

(iii) Admission of patients under Sections 20 and 21 of the Lunacy Act, 1890, or to a place of safety under Section 15 of the Mental Deficiency Act, 1913.

(iv) Substitution of petitioner.

(v) Examination of persons of unsound mind under Section 49 of the Lunacy Act, 1890.

(vi) Duties of Justices and Judicial Authorities.

(vii) Appointment and duties of Visitors and their Clerks.

(viii) Mechanical restraint and seclusion.

(ix) Forwarding of correspondence of patients.

(x) Rights of visitation of patients by relatives and others.

(xi) Removal of mentally defective patients on religious grounds.

(xii) Dismissal or resignation to escape dismissal of any member of the staff on the ground of misconduct in connexion with a patient.

(xiii) Prosecutions for offences under the Lunacy and Mental Treatment and Mental Deficiency Acts.

(xiv) Visitation and inspection by the Board of Control.

(xv) Institutions for defectives of violent or dangerous propensities.

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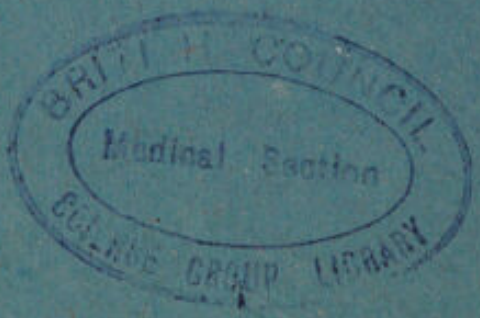

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