



BERMUDA

MENTAL HEALTH ACT 1968

1968 : 295

TABLE OF CONTENTS

PART I
PRELIMINARY

1	Interpretation
2	Facilities for persons suffering from mental disorder
3	Administration
4	Appointment of Staff
5	Establishment of Review Tribunal

PART II
METHODS OF ADMISSION TO A HOSPITAL

6	Classification of methods of admission
7	Voluntary and informal admissions
8	Definition of nearest relative
9	Admission for assessment
10	Admission for treatment
11	General provisions as to applications
12	General provisions as to medical recommendations
13	Admission for assessment in cases of emergency
14	Applications in respect of patients already in hospital
15	Effect of application for admission
16	Rectification of application for admission
16A	Treatment at hospital outside Bermuda
17	Correspondence of patients
18	Visiting, etc., of patients
19	Re-classification of patients
20	Leave of absence
21	Patients absent without leave

MENTAL HEALTH ACT 1968

- 22 Duration of authority
- 23 Psychopathic patients *[repealed]*
- 24 Special provisions as to patients absent without leave
- 25 Special provisions as to patients sentenced to imprisonment
- 26 Discharge of patients
- 27 Restriction on discharge by nearest relative
- 28 Children in care
- 29 Appointment by court of acting nearest relative
- 30 Discharge of order under s.29
- 31 Rules
- 32 Duty of mental welfare officer

PART III

ADMISSION OF PATIENTS CONCERNED IN CRIMINAL PROCEEDINGS, ETC., AND TRANSFER OF PATIENTS UNDER SENTENCE

- 33 Powers of court to order hospital admission
- 34 Additional powers in respect of children and young persons
- 35 Requirements as to medical evidence
- 36 Effects of hospital orders
- 37 Supplementary provisions as to hospital orders
- 38 Power of Supreme Court to restrict discharge from hospital
- 38A Applications to tribunal by patient subject to restriction order
- 39 Powers of Minister in respect of patient subject to restriction orders
- 40 Power of Magistrates' Court to commit for restriction order
- 41 Committal to hospital under s.40
- 42 Appeals from Magistrates' Courts, etc
- 43 Persons ordered to be kept in custody until the pleasure of the Minister is known
- 44 Removal to hospital of person detained in prison, etc
- 45 Restriction on discharge of prisoners removed to hospital
- 46 Further provisions as to prisoners under sentence
- 47 Further provisions as to persons committed for trial
- 48 Further provisions as to persons remanded by Magistrates' Court

PART IIIA

COMMUNITY TREATMENT ORDERS

- 48A Community treatment order
- 48B Relevant criteria
- 48C Conditions
- 48D Duration of community treatment order
- 48E Effect of community treatment order
- 48F Extension of community treatment period
- 48G Applications to Review Tribunal concerning community patients
- 48H Power to recall to hospital
- 48I Powers in respect of recalled patients
- 48J Community patients absent without leave
- 48K Special provisions as to community patients absent without leave for less than twenty-eight days

MENTAL HEALTH ACT 1968

- 48L Special provisions as to community patients absent without leave for more than twenty-eight days
- 48M Revocation of a community treatment order
- 48N Effect of expiry of community treatment order

PART IIIB CONSENT TO TREATMENT

- 48O Application of Part IIIB
- 48P Treatment requiring consent and a second opinion
- 48Q Treatment requiring consent or a second opinion
- 48R Electro-convulsive therapy, etc. (requiring consent or a second opinion)
- 48S Plans of treatment
- 48T Withdrawal of consent
- 48U Review of treatment
- 48V Urgent treatment
- 48W Treatment on recall of community patient or revocation of order
- 48X Treatment not requiring consent
- 48Y SOADs and other approved persons
- 48Z Supplementary provisions for Part IIIB

PART IIIC TREATMENT OF COMMUNITY PATIENTS NOT RECALLED TO HOSPITAL

- 48.1A Application of Part IIIC
- 48.1B Treatment under a community treatment order
- 48.1C Withdrawal of consent
- 48.1D Community patients lacking capacity
- 48.1E Emergency treatment for community patients lacking capacity
- 48.1F Part IIIC certificate; supplementary provisions
- 48.1G Factors to be considered in determining whether patient objects to treatment
- 48.1H Supplementary provisions for Part IIIC

PART IV MANAGEMENT OF PROPERTY AND AFFAIRS OF PATIENTS

- 49 Judicial authority for the purpose of this part
- 50 Persons within the jurisdiction of the judge
- 51 General functions of the judge
- 52 Powers of the judge as to patient's property and affairs
- 53 Judge's powers in cases of emergency
- 54 Power to appoint receiver
- 55 Vesting of stock in curator appointed outside Bermuda
- 56 Preservation of interests in patient's property
- 57 Court Commissioners
- 58 Functions of Commissioners
- 59 General powers of the judge with respect to proceedings
- 60 Rules of procedure

PART V MISCELLANEOUS AND GENERAL

MENTAL HEALTH ACT 1968

- 61 Applications to the Review Tribunal
- 61A References to Review Tribunal by Minister concerning Part II patients
- 61B Duty of Board to refer cases to Review Tribunal
- 61C Applications to Review Tribunal concerning patients subject to hospital order
- 61D Applications to Review Tribunal concerning restricted patients
- 61E References by Minister concerning restricted patients
- 61F Duty of Board to give information to detained patients
- 61G Duty of Board to inform nearest relative of discharge of patient
- 62 Powers of the Review Tribunal
- 63 Rules as to procedure
- 64 Forgery, false statements, etc
- 65 Ill-treatment of patients
- 66 Sexual intercourse with patients
- 67 Assisting patients to absent themselves without leave, etc
- 68 Obstruction
- 69 Prosecutions by the Board
- 70 Correspondence of patients not subject to detention
- 71 Warrant to search for and remove patients
- 72 Mentally disordered persons found in public places
- 73 Provision as to custody, conveyances and detention
- 74 Re-taking of patients escaping from custody
- 75 Protection for acts done on pursuance of this Act
- 76 Nursing homes
- 77 Regulations relating to fees, etc
- 78 Rules for the Mental Hospital
- 78A Code of Practice
- 79 Transitional provisions *[omitted]*
- 80 Repeal and amendments *[omitted]*
- 81 Commencement *[omitted]*

FIRST SCHEDULE

SECOND SCHEDULE

THIRD SCHEDULE

FOURTH SCHEDULE

[preamble and words of enactment omitted]

PART I

PRELIMINARY

Interpretation

- 1 (1) In this Act, unless the context otherwise requires—
“absent without leave” has the meaning given in section 21(3);

MENTAL HEALTH ACT 1968

- “application for admission for assessment or for assessment followed by treatment” means an application for admission of a patient to a hospital made under section 9(1);
- “application for admission for treatment” means an application for admission of a patient to a hospital made under section 10(1);
- “the Board” means the Bermuda Hospitals Board established under the Bermuda Hospitals Board Act 1970 [*title 11 item 26*];
- “Chief of Psychiatry” means the Chief of Psychiatry appointed under the Bermuda Hospitals Board Act 1970 ;
- “Code” means the Code of Practice issued under section 78A;
- “Commissioners” means the Court Commissioners appointed under section 57(1);
- “community patient” means a patient in respect of whom a community treatment order is in force;
- “community treatment order” means an order made by a responsible medical officer under section 48A;
- “community treatment period” has the meaning given in section 48D(2);
- “consultant psychiatrist” means a medical practitioner who is registered as a specialist in psychiatry by the Bermuda Medical Council under the Medical Practitioners’ Act 1950 [*title 30 item 8*];
- “direction restricting discharge” means a direction of the Minister given under section 45(1);
- “emergency application” means an application for admission for observation of a patient to a hospital made under section 13(1);
- “hospital” means—
- (a) a hospital under the control of the Board and includes the buildings or the premises and the precincts thereof; and
 - (b) any building or premises or part thereof declared to be a hospital under section 2(2);
- “hospital order” means an order made by a court under section 33(1) or (2) or section 34 authorising the admission to and detention in a hospital of any person;
- “Hospital Rules” means Rules made by the Board under the authority of section 78;
- “Legal Commissioner” means the barrister and attorney appointed as such to the Court Commissioners under section 57(1);
- “Medical Commissioner” means the registered medical practitioner appointed as such to the Court Commissioners under section 57(1);

MENTAL HEALTH ACT 1968

- “medical recommendation” means a recommendation of a medical practitioner required for the purpose of an application for admission of a patient to a hospital under Part II pursuant to section 12;
- “mental disorder” means mental illness, arrested or incomplete development of mind, severe personality disorder, and any other disorder or disability of mind; and “mentally disordered” shall be construed accordingly;
- “mental impairment” means a state of arrested or incomplete development of mind (not amounting to severe mental impairment) which includes significant impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned and “mentally impaired” shall be construed accordingly;
- “mental welfare officer” means an officer appointed to be a mental welfare officer, for the purposes of this Act;
- “the Minister” means the Minister responsible for Health;
- “nearest relative” has the meaning given in section 8;
- “order for discharge” has the meaning given in section 26(1B);
- “order restricting discharge” means an order made by the Supreme Court under section 38(1) or section 40;
- “Part IIIC certificate” has the meaning given in section 48.1F(1);
- “patient” means any person who is suffering or appears to be suffering from mental disorder;
- “psychiatric care” includes treatment for mental disorder;
- “registered medical practitioner” has the meaning given in section 1 of the Medical Practitioners Act 1950;
- “responsible medical officer” in relation to a patient means the consultant psychiatrist in charge of the psychiatric care of that patient and includes the Chief of Psychiatry and any consultant psychiatrist designated by the Chief of Psychiatry to be in charge of the psychiatric care of that patient during the absence of the responsible medical officer;
- “restriction order” means an order made under section 38;
- “the Review Tribunal” means the Mental Health Review Tribunal established and appointed under section 5;
- “SOAD” or “second opinion approved doctor” has the meaning given in section 48Y(1);
- “severe mental impairment” means a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible

MENTAL HEALTH ACT 1968

conduct on the part of the person concerned and “severely mentally impaired” shall be construed accordingly;

“severe personality disorder” means a persistent disorder or disability of mind (whether or not including significant impairment of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the person concerned;

“transfer direction” means a direction of the Minister given under section 44(1).

(2) Nothing in this Act 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, other immoral conduct, sexual deviance or dependence on alcohol or drugs.

(3) The Chief of Psychiatry may, from time to time, designate a consultant psychiatrist to be in charge of a patient during the absence of the responsible medical officer.

[Section 1 amended by 1991:85 effective 15 July 1991; and by 1998 : 32 effective 13 July 1998; “Minister” amended by BR67/2007 effective 13 July 2007; subsection (1) definitions “absent without leave”, “Code”, “community patient”, “community treatment order”, “community treatment period”, “order for discharge”, “Part III C certificate”, “registered medical practitioner”, “restriction order” and “SOAD or second opinion approved doctor” inserted by 2019 : 1 s. 2 effective 31 October 2020; subsection (1) definition “patient” repealed and substituted by 2019 : 1 s. 2 effective 31 October 2020]

Facilities for persons suffering from mental disorder

2 (1) For the purposes of this Act, a person suffering from mental disorder may be lawfully detained and may be given therapeutic or psychiatric treatment in any hospital.

(2) The Minister may from time to time, by notice published in the Gazette declare any building or premises or any part thereof to be a hospital for the purposes of subsection (1).

[Section 2 repealed and replaced by 1998:32 effective 13 July 1998]

Administration

3 The Board shall have the general charge for administration of a hospital referred to in section 2 and, for the purposes of this Act, shall administer such hospital in accordance with the provisions of this Act and, in so far as they are not in conflict therewith, in accordance with the provisions of the Bermuda Hospital Boards Act 1970 *[title 11 item 26]*.

[Section 3 repealed and replaced by 1998:32 effective 13 July 1998]

Appointment of Staff

4 (1) In the exercise of his powers under sections 5(3), 38(3), 39, 43 (2) , 44, 45, 46, 47 and the First Schedule the Minister shall act in his discretion.

(2) In the exercise of his powers under section 57 the Minister shall act after consultation with the Chief Justice.

[Section 4 amended by 1998:32 effective 13 July 1998]

MENTAL HEALTH ACT 1968

Establishment of Review Tribunal

5 (1) There shall be established a Tribunal, to be called the Mental Health Review Tribunal, for the purpose of exercising the rights and discharging the duties and functions conferred or imposed upon them under this Act.

(2) The First Schedule shall have effect with respect to the appointment and constitution of the Review Tribunal.

(3) Subject to any special directions given by the Minister, the jurisdiction of the Review Tribunal may be exercised by any three or more of its members.

(4) Subject to any general directions given by the Chairman of the Review Tribunal in that behalf, the members of any particular Review Tribunal shall have power to regulate their own procedure.

[Section 5 amended by 1998:32 effective 13 July 1998]

PART II

METHODS OF ADMISSION TO A HOSPITAL

Classification of methods of admission

6 A person may, subject to the succeeding provisions of this Part, be admitted to, committed to or detained in a hospital under any of the following processes—

- (a) by voluntary admission at the request of the patient; or
- (b) by informal admission at the request of a relative of the patient in any case where the patient raises no objection to such admission; or
- (c) by compulsory admission for observation; or
- (d) by compulsory admission for treatment; or
- (e) by order of a court.

[Section 6 amended by 1998:32 effective 13 July 1998]

Voluntary and informal admissions

7 (1) Subject to this section, nothing in this Act shall be construed so as to prevent a patient who requires psychiatric care from being admitted to a hospital 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 the hospital in pursuance of such arrangements after he has ceased to be so liable to be detained.

(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 subsection (1) may be made, carried out and determined notwithstanding any right of custody or control vested by law in his parent or guardian.

(3) Subject to subsections (3A) and (3B) in any case where a patient is the subject of a voluntary or informal admission to a hospital, he or the nearest relative, as the case

MENTAL HEALTH ACT 1968

may be, may at any time request his discharge from hospital and, subject as aforesaid, the patient shall be so discharged.

(3A) Notwithstanding subsection (3), if, in the case of such a patient as is mentioned in that subsection, it appears to a responsible medical officer or a medical practitioner nominated by the Chief of Psychiatry that an application ought to be made under this Part for the admission of the patient to hospital, he may furnish a report in writing to the Board to that effect; and in any such case the patient may be detained in the hospital for a period of seventy-two hours from the time when the report is so furnished and the report shall be sufficient authority for the Board to detain the patient in hospital for a period of seventy-two hours from the time when the report is so furnished.

(3B) Notwithstanding subsection (3), if, in the case of such a patient as is mentioned in that subsection, it appears to a nurse of the prescribed class—

- (a) that the patient is suffering from mental disorder to such a degree that it is necessary for his health or safety or for the protection of others for him to be immediately restrained from leaving the hospital; and
- (b) that it is not practicable to secure the immediate attendance of a responsible medical officer or the medical practitioner referred to in subsection (3A) for the purpose of furnishing a report under that subsection,

the nurse may record that fact in writing; and in that event the patient may be detained in the hospital for a period of three hours from the time when that fact is so recorded or until the earlier arrival at the place where the patient is detained of a responsible medical officer having power to furnish a report under subsection (3A).

(3C) A record made under subsection (3B) shall be delivered by a nurse (or by a person authorised by the nurse in that behalf) to a responsible medical officer as soon as possible after it is made; and where a record is made under that subsection the period mentioned in subsection (3A) shall begin at the time when it is made.

(3D) In subsection (3B) “prescribed” means prescribed by an order made by the Board.

(4) In any case where a report under subsection (3) is furnished in respect of a patient, a responsible medical officer shall cause the patient or, as the case may be, the nearest relative of the patient to be informed.

[Section 7 amended by 1991:85 effective 15 July 1991; and amended by 1998:32 effective 13 July 1998]

Definition of nearest relative

8 (1) In this Part, “relative” means any of the following persons, that is to say, husband or wife, son or daughter, father, mother, brother or sister, grandparent, grandchild, uncle or aunt, 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.

(3) Subject to this section, the “nearest relative” means the person first described in subsection (1) 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 of the same degree being preferred to the other or others of those relatives, regardless of sex.

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

- (a) *[Deleted by 1998 : 32]*
- (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 eighteen years of age; or
- (d) is a person who has been deprived by the order of a court of the custody or control over the patient; or
- (e) is a patient in a hospital,

the nearest relative of the patient shall be determined as if that person were unrelated.

(5) For the purposes of 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 subsection (4)(b).

(6) Subject to the provisions of this section, where a patient ordinarily resides with or is cared for by one or more of his relatives (or, if he is for the time being an in-patient in a hospital, he last ordinarily resided with or was cared for by one or more of his relatives) his nearest relative shall be determined—

- (a) by giving preference to that relative or those relatives over the other or others; and
- (b) as between two or more such relatives, in accordance with subsection (3).

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

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

MENTAL HEALTH ACT 1968

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

(8) 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 subsection (4)(b).

[Section 8 amended by 1998:32 effective 13 July 1998; subsection (4)(c) amended by 2001:20 s.7(1) & Sch 2 effective 1 November 2001; subsection (2) amended by 2002:36 s.8 & Sch effective 19 January 2004]

Admission for assessment

9 (1) A patient may be admitted to a hospital and detained there for the period allowed by subsection (4) in pursuance of an application (in this Act referred to as “an application for admission for assessment”) made in accordance with subsections (2) and (3).

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

- (a) he is suffering from mental disorder of a nature or degree which warrants the detention of the patient in a hospital for assessment (or for assessment followed by medical treatment) for at least a limited period; and
- (b) 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 assessment shall be founded on the written recommendations of two medical practitioners one of whom shall be a consultant psychiatrist, including in each case a statement that in the opinion of the practitioner the conditions set out in subsection (2)(a) and (b) are complied with.

(4) A patient admitted to hospital in pursuance of an application for admission for assessment 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 after the expiration of that period unless before it has expired he has become liable to be detained by virtue of a subsequent application, order or direction under the following provisions of this Act.

[Section 9 repealed and replaced by 1998:32 effective 13 July 1998]

Admission for treatment

10 (1) A patient may be admitted to a hospital, and there detained for the period allowed for by the following provisions of this Act, in pursuance of an application 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—

MENTAL HEALTH ACT 1968

- (a) that he is suffering from mental disorder, being—
 - (i) in the case of a patient of any age, mental illness or severe mental impairment;
 - (ii) in the case of a patient under the age of eighteen years, severe personality disorder or mental impairment,and that the said disorder is of a nature or degree which warrants the detention of the patient in the hospital for 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 detained.

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

- (a) all necessary particulars 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 application, may describe the patient as suffering from more than one of the forms of mental disorder referred to in subsection (2) ; 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 on the ground that the patient is suffering from severe personality disorder or mental impairment, and no other form of mental disorder referred to in subsection (2), 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 eighteen years.

[Section 10 amended by 1998:32 effective 13 July 1998; subsections (2)(a) and (5) amended by 2001:20 s.7(1) & Sch 2 effective 1 November 2001]

General provisions as to applications

11 (1) Subject to this section, an application for the admission of a patient for assessment or for treatment may be made either by the nearest relative or by a mental welfare officer; and every such application shall be addressed to the Board and shall specify the qualification of the applicant to make the application.

(1A) Before making an application for the admission of a patient to hospital a mental welfare officer shall interview the patient in a suitable manner and if he is satisfied that

MENTAL HEALTH ACT 1968

detention in a hospital is in all the circumstances of the case the most appropriate way of providing the care and medical treatment of which the patient stands in need shall submit, with the application, a report to that effect.

(2) An application for admission for treatment shall not be made by a welfare officer if the nearest relative of the patient has notified that officer or the Board 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.

[Section 11 amended by 1991:85 effective 15 July 1991; and by 1998:32 effective 13 July 1998]

General provisions as to medical recommendations

12 (1) The recommendations required for the purposes of an application for the admission of a patient under this Part 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 the Board 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) A medical recommendation for the purposes of an application for the admission of a patient under this Part shall not be given by any of the following persons—

- (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;
- (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 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, 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 assessment in cases of emergency

13 (1) In any case of urgent necessity, an application for admission for assessment 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 the nearest relative of the patient or by a police officer; and every such application shall include a statement that it is of urgent necessity for the patient to be admitted and detained under section 9, and that compliance with the provisions of this Part of this Act relating to applications under that section 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 9, given, if practicable, by a practitioner who has previous acquaintance with the patient and otherwise complying with the requirements of section 12 so far as practicable to a single recommendation, and verifying the statement referred to in subsection (2) of this section.

(4) An emergency application 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 by section 9 is given and received by the Board or a person designated by the Board within that period; and
- (b) that recommendation and the recommendation referred to in subsection (3) together comply with all the requirements of section 12 (other than the requirement as to the time of signature of the second recommendation).

(5) In relation to an emergency application, section 11 shall have effect as if in subsection (3) of that section for the words “the period of fourteen days ending with the date of the application” there were substituted the words “the previous twenty-four hours”.

[Section 13 amended by 1991:85 effective 15 July 1991; and repealed and replaced by 1998:32 effective 13 July 1998]

Applications in respect of patients already in hospital

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

- (a) in any case, notwithstanding that the patient is already an in-patient in the hospital, not being liable to be detained in pursuance of an application under this Part;
- (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 assessment;

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

(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, it appears to the responsible medical officer that an application ought to be made under this Part for the admission of the patient to the hospital, he may furnish to the the Board or a person designated by the Board 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.

(3) The responsible medical officer may nominate one (but not more than one) other medical practitioner on the staff of that hospital to act for him under subsection (2) in his absence.

[Section 14 amended by 1991:85 effective 15 July 1991; and amended by 1998:32 effective 13 July 1998]

Effect of application for admission

15 (1) An application for the admission of a patient to a hospital under this Part, duly completed in accordance with the foregoing provisions of this Part, shall be sufficient authority—

- (a) for the applicant, or any person authorised by the applicant, or a police officer, to take the patient and convey him to the hospital at any time within the following period—
 - (i) 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;
 - (ii) 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 section 13(3), or with the date of the application, whichever is the earlier; and
- (b) for the responsible medical officer to order that the patient receive, subject to this Act, such treatment as may be necessary for the medical and psychiatric care and welfare of the patient, and for such treatment to be administered by the staff of the hospital or any other person so authorised in accordance with this Act,

and it shall be lawful for any person to use such force as may be necessary in the circumstances to effect any of those purposes.

(2) Where a patient is admitted within the said period to the hospital, or, being then an in-patient, is treated by virtue of section 14 as if he had been so admitted, the application shall be sufficient authority for a responsible medical officer to detain the patient in a hospital in accordance with this Act.

(3) Any application for the admission of a patient under this Part 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) A patient who is admitted to the Mental Hospital in pursuance of an application for admission for treatment may apply to the 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 by virtue of which he was liable to be detained in the hospital shall cease to have effect.

[Section 15 amended by 1991 : 85 effective 15 July 1991; amended by 1998 : 32 effective 13 July 1998; subsection (1)(b) repealed and substituted by 2019 : 1 s. 3 effective 31 October 2020]

Rectification of application for admission

16 (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 assessment 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 Board or a person designated by the Board 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 subsection (1), if within the period therein mentioned it appears to the Board or a person designated by the Board that one of the two medical recommendations on which the application for the admission of a patient is founded is insufficient to warrant the detention of the patient in pursuance of the application, he 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 (other than the provisions relating to the time of signature and the interval between examinations) is furnished to the Board or a person designated by the Board 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) may be given in respect of either of those recommendations; but this subsection shall not apply in any case where the application is of no effect by virtue of section 10(4).

MENTAL HEALTH ACT 1968

(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 13, or the detention of a patient admitted in pursuance of such an application, after the period of seventy-two hours referred to in section 13(3), unless the conditions set out in section 13(3) (a) and (b) are complied with or would be complied with apart from any error or defect to which this section applies.

[Section 16 amended by 1991:85 effective 15 July 1991; and by 1998:32 effective 13 July 1998]

Treatment at hospital outside Bermuda

16A (1) This section applies in the case of a patient—

- (a) who is over the age of eighteen years; and
- (b) who is liable to be detained in a hospital for treatment under this Act,

where no effective treatment for his disorder can be given at a hospital in Bermuda and it is necessary, for the health or safety of the patient or for the protection of other persons, that he should continue to be liable to be detained in a hospital outside Bermuda for treatment.

(2) Where the circumstances referred to in subsection (1) exist and the Minister is satisfied that—

- (a) the management and administration of the patient's property and affairs in Bermuda have been dealt with, either under Part IV or otherwise; and
- (b) arrangements have been made for the admission, detention and treatment of the patient at a hospital outside Bermuda,

then the Minister may by warrant discharge the patient from the hospital, and give such directions as he thinks fit for the conveyance of the patient to the hospital outside Bermuda, and for the patient's detention pending his conveyance.

[Section 16A inserted by 2018 : 25 s. 2 effective 13 June 2018]

Correspondence of patients

17 (1) Notwithstanding anything contained in the Post Office Act 1900 [*title 24 item 1*], any postal packet addressed to a patient detained in a hospital under this Part, or recalled to hospital under Part IIIA, 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.

(2) Subject to this section, any postal packet addressed by a patient so detained or recalled and delivered by him for dispatch may be withheld from the post office—

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

- (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 shall not apply to any postal packet addressed as follows—

- (i) to the Minister;
- (ii) to any member of either House of the Legislature;
- (iii) to the Chief of Psychiatry;
- (iv) to the legal adviser of the patient;
- (v) to any other authority or person having power to discharge the patient under this Part;
- (vi) at any time when the patient is entitled to make application to the Review Tribunal, to that tribunal.

(3) Nothing in subsection (2)(b) 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 or recalled 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) In this section, "postal packet" has the meaning given in the Post Office Act 1900 [*title 24 item 1*].

[Section 17 amended by 1991:85 effective 15 July 1991; and by 1998:32 effective 13 July 1998; Section 17 amended by 2019: 1 s. 4 effective 31 October 2020]

Visiting, etc., of patients

18 (1) For the purposes of—

- (a) advising whether an application to the Review Tribunal should be made by or in respect of a patient—
 - (i) who is liable to be detained under this Part; or
 - (ii) who has been recalled under Part IIIA; or
- (b) furnishing information as to the condition of a patient for the purposes of such an application; or
- (c) advising as to the exercise by the nearest relative of any such patient of any power to order his discharge,

MENTAL HEALTH ACT 1968

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.

(2) Any person authorised under this section to visit a patient may require the production of and inspect any document constituting or alleged to constitute the authority for the detention of the patient under this Part, and, if he is a medical practitioner, he may require the production of and inspect any other medical records relating to the treatment of the patient.

[Section 18 subsection (1) repealed and substituted by 2019 : 1 s. 5 effective 31 October 2020]

Re-classification of patients

19 (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, 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 Chief of Psychiatry 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.

(2) Where a report is furnished under this section, in respect of a patient who has attained the age of sixteen years, the Chief of Psychiatry 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 the Review Tribunal:

Provided that in the case of a patient who is under the age of sixteen years, the patient need not be so informed.

[Section 19 amended by 1991:85 effective 15 July 1991; and by 1998:32 effective 13 July 1998]

Leave of absence

20 (1) The responsible medical officer may, subject to subsections (2A) and (2B), grant to any patient who is for the time being liable to be detained in a hospital under this Part 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.

(2A) Longer-term leave shall not be granted to a patient unless the responsible medical officer first considers whether the patient should be dealt with under section 48A instead.

(2B) For the purposes of subsection (2A), “longer-term leave” means—

(a) leave of absence granted indefinitely;

- (b) leave of absence granted for a specified period of more than seven consecutive days; or
- (c) leave of absence granted for a specified period that is extended further, such that the total period of leave of absence exceeds seven consecutive days.

(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 a responsible medical officer.

(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), 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) after he has ceased to be liable to be detained under this Part; and without prejudice to any other provision of this Part, any such patient shall cease to be so liable at the expiration of the period of twelve months beginning with the first day of his absence on leave unless either—

- (a) he has returned to the hospital before the expiration of that period; or
- (b) he is absent without leave at the expiration of that period.

(6) A patient to whom leave of absence is granted under this section may apply to the Review Tribunal within the period of three months beginning with the day on which leave was granted, and thereafter at intervals of three months.

(7) Nothing in subsection (5) shall have effect in respect of a patient to whom leave of absence had been granted prior to the coming into operation of this Act and the provisions of the said subsection (5) shall have effect as if this Act had not been enacted.

[Section 20 amended by 1991 : 85 effective 15 July 1991; amended by 1998 : 32 effective 13 July 1998; amended by 2019 : 1 s. 6 effective 31 October 2020]

Patients absent without leave

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

- (a) absents himself from the hospital without leave granted under section 20; or
- (b) fails to return to the hospital on any occasion on which, or, at the expiration of the period for which, leave of absence was granted to him under section 20, 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 under section 20,

he may, subject to 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 police officer, or by any person authorised in writing by the responsible medical officer.

(2) 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)—

- (a) in the case of a patient over the age of eighteen years on that day who is liable to be detained by virtue of an application for admission for treatment and is so liable as a patient suffering from severe personality disorder or mental impairment, 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 at the expiration of that period.

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

[Section 21 amended by 1991:85 effective 15 July 1991; by 1998:32 effective 13 July 1998; subsection (2) amended by 2001:20 s.7(1) & Sch 2 effective 1 November 2001]

Duration of authority

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

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

- (a) from the expiration of the period referred to in subsection (1), for a further period of six months; and
- (b) from the expiration of any period of renewal under paragraph (a), for a further period of one year,

and so on for periods of one year at a time.

(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 detention, it shall be the duty of the responsible medical officer—

- (a) to examine the patient; and

MENTAL HEALTH ACT 1968

- (b) if it appears to him that the conditions set out in subsection (4) are satisfied, to furnish to the Board or a person designated by the Board a report to that effect in the prescribed form,

and where such a report is furnished in respect of a patient the Board or the person designated by the Board shall, unless it discharges the patient, cause him to be informed.

- (4) The conditions referred to in subsection (3) are that—
 - (a) the patient is suffering from mental illness, severe mental impairment, severe personality disorder or mental impairment, and his mental disorder is of a nature or degree which makes it appropriate for him to receive medical treatment in a hospital; and
 - (b) such treatment is likely to alleviate or prevent a deterioration of his condition; and
 - (c) it is necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment and that it cannot be provided unless he continues to be detained,

but, in the case of mental illness or severe mental impairment, it shall be an alternative to the condition specified in paragraph (b) that the patient, if discharged, is unlikely to be able to care for himself, to obtain the care which he needs or to guard himself against serious exploitation.

(5) Before furnishing a report under subsection (3) the responsible medical officer shall consult one or more other persons who have been professionally concerned with the patient's medical treatment.

(6) Where a report is duly furnished under subsection (3), the authority for the detention of the patient shall be thereby renewed for the period prescribed in subsection (2).

(7) Where the form of mental disorder specified in a report furnished under subsection (3) is a form of disorder other than that specified in the application for admission for treatment, that application shall have effect as if that other form of mental disorder were specified in it.

[Section 22 amended by 1991:85 effective 15 July 1991; and repealed and replaced by 1998:32 effective 13 July 1998]

Psychopathic patients

23 *[Repealed]*

[Section 23 amended by 1991:85 effective 15 July 1991; and repealed by 1998:32 effective 13 July 1998]

Special provisions as to patients absent without leave

24 (1) If on the day on which, apart from this section, a patient would cease to be liable to be detained under this Part, 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—

MENTAL HEALTH ACT 1968

- (a) in any case, until after the expiration of the period during which he can be taken into custody under section 21, 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 to the hospital or place where he ought to be within the period during which he can be taken into custody under section 21, until the expiration of the period of one week beginning with the day on which he is returned or returns to the hospital or place where he ought to be.

(2) Where the period for which a patient is liable to be detained is extended by virtue of this section, any examination and report to be made and furnished under section 22(3) may be made and furnished within that period as so extended.

(3) Where the authority for the detention 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 22, the renewal shall take effect as from that day.

[Section 24 amended by 1998:32 effective 13 July 1998]

Special provisions as to patients sentenced to imprisonment

25 (1) Where a patient—

- (a) who is liable to be detained by virtue of the application for admission for treatment; or
- (b) in respect of whom a community treatment order is made,

is detained in custody in pursuance of any sentence or order passed or made by a court in Bermuda (including any 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 or community treatment order (as the case may be) 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), then—

- (a) if apart from this subsection the patient would have ceased to be liable to be detained 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 until the end of that day; and
- (b) in any case, sections 21 and 24 shall apply in relation to the patient as if he had absented himself without leave on that day.

[Section 25 subsection (1) repealed and substituted by 2019 : 1 s. 7 effective 31 October 2020]

Discharge of patients

26 (1) Subject to this section and section 27, a patient who is for the time being liable to be detained under this Part shall cease to be so liable if an order in writing discharging him from detention is made in accordance with subsection (2).

MENTAL HEALTH ACT 1968

(1A) Subject to section 27, if an order in writing discharging a community patient is made in accordance with subsection (2)(c)—

- (a) the community patient shall cease to be liable to recall under Part IIIA; and
- (b) the application for admission for treatment in respect of such patient shall cease to have effect.

(1B) An order under subsection (1) or (1A) shall be referred to as an “order for discharge”.

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

- (a) where the patient is liable to be detained in pursuance of an application for admission for assessment, by the responsible medical officer or by the Chief of Psychiatry;
- (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 Chief of Psychiatry or by the nearest relative of the patient; or
- (c) where the patient is a community patient, by the responsible medical officer, by the Chief of Psychiatry or by the nearest relative of the patient.

[Section 26 amended by 1991 : 85 effective 15 July 1991; amended by 1998 : 32 effective 13 July 1998; amended by 2019 : 1 s. 8 effective 31 October 2020]

Restriction on discharge by nearest relative

27 (1) Where a report under section 22(3) or section 48F(2)(b) 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.

(2) An order for the discharge of a patient who is liable to be detained in a hospital, or in respect of whom a community treatment order is made, shall not be made by his nearest relative except after giving not less than seventy-two hours' notice in writing to the Board or a person designated by the Board; if, within seventy-two hours after such notice has been given, the responsible medical officer furnishes to the Board or a person designated by the Board 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) an 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) is furnished in respect of a patient, the Board or a person designated by the Board shall cause the nearest relative of the patient to be informed, and that relative may, within the period of twenty-eight days

MENTAL HEALTH ACT 1968

beginning with the day on which he is so informed, apply to the Review Tribunal in respect of the patient.

[Section 27 amended by 1991 : 85 effective 15 July 1991; amend by 1998 : 32 effective 13 July 1998; amended by 2019 : 1 s. 9 effective 31 October 2020]

Children in care

28 In any case where the rights and powers of a parent of a patient, being a child or young person, are vested in the Director of Child and Family Services or fit person, the Director or that 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).

[Section 28 amended by 1998:38 effective 1 January 2000]

Appointment by court of acting nearest relative

29 (1) A court of summary jurisdiction may, upon application made in accordance with this section in respect of a patient, by order direct that the functions under this Part 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.

(2) An order made 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) shall have effect as if the words "by the applicant or" had been deleted.

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

- (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 unreasonably objects to the making of an application for admission for treatment 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 under this Part, 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 assessment, an application

under this section, being an application made on the ground specified in subsection (3)(c) or (d), 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
- (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, this Part (other than this section and section 30) shall apply in relation to a 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 section 30) shall so apply notwithstanding that the person who was the nearest relative of the patient 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 under this Part, the nearest relative of the patient may make an application to the 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.

(7) Where an order is made under this section in respect of a patient who is or subsequently becomes a community patient pursuant to Part IIIA, the nearest relative of the patient may make an application to the Review Tribunal in respect of the patient within the period of six months beginning with the date of the order, and in any subsequent period of twelve months during which the order continues in force.

[Section 29 amended by 1998 : 32 effective 13 July 1998; Section 29 subsection (7) inserted by 2019 : 1 s. 10 effective 31 October 2020]

Discharge of order under s.29

30 (1) An order made under section 29 in respect of a patient may be discharged by a court of summary jurisdiction 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 section 29(3)(a) or (b), 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 section 29 in respect of a patient may be varied by a court of summary jurisdiction, 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 any other person who in the opinion of the court is a proper person to exercise those functions, being a person who is willing to do so.

(3) If a person having the functions of the nearest relative of the patient by virtue of an order under section 29 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 shall not be exercisable by any person.

(4) An order under section 29 shall, unless previously discharged under subsection (1), 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 under this Part, or becomes so liable within the period of three months beginning with that date, when he ceases to be so liable; or
- (b) if the patient was not on the date of the order and has not within the said period become so liable, at the expiration of that period; or
- (c) if the patient was on the date of the order a community patient, or subsequently becomes a community patient, when he ceases to be a community patient.

(5) The discharge or variation under this section of an order made under section 29 shall not affect the validity of anything previously done in pursuance of the order.

[Section 30 subsection (4)(c) inserted by 2019 : 1 s. 11 effective 31 October 2020]

Rules

31 (1) The Chief Justice may make rules for regulating the procedure to be followed in respect of the hearing of applications authorised by this Part to be made to a court of summary jurisdiction, and such rules may provide—

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

(2) Section 6 of the Statutory Instruments Act 1977 [*title 1 item 3*] shall not apply to rules made under this section.

Duty of mental welfare officer

32 (1) It shall be the duty of a mental welfare officer to make an application for admission to the Mental Hospital in respect of any patient in any case where he is satisfied that such an application ought to be made and is of the 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 section 11(2), or as restricting the power of a mental welfare officer to make any application under this Act.

PART III

ADMISSION OF PATIENTS CONCERNED IN CRIMINAL PROCEEDINGS, ETC., AND TRANSFER OF PATIENTS UNDER SENTENCE

Powers of court to order hospital admission

33 (1) Where a person is convicted before the Supreme Court of an offence other than an offence the sentence for which is fixed by law, or is convicted by a court of summary jurisdiction of an offence punishable on summary conviction with imprisonment and the following conditions are satisfied—

- (a) the court is satisfied, on the written or oral evidence of two medical practitioners (complying with section 35)—
 - (i) that the offender is suffering from mental illness, severe personality disorder, mental impairment or severe mental impairment;
 - (ii) that the mental disorder is of a nature or degree which warrants the detention of the patient in a hospital for medical treatment; and
- (b) the court is of the 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 a hospital.

(2) Where a person is charged before a court of summary jurisdiction 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) in his case as being a person suffering from mental illness or severe mental impairment, 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) A hospital order for the admission of an offender to a hospital shall not be made under this section unless the court is satisfied that arrangements have been made for the admission of the offender to the Hospital in the event of such an order being made by the court, and for his admission thereto within a period of twenty-eight days beginning with the date of making such an order.

(4) A hospital order shall specify the form or forms of mental disorder referred to in subsection (1)(a) 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

MENTAL HEALTH ACT 1968

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.

(5) 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 a sentence of corrective training.

[Section 33 amended by 1998:32 effective 13 July 1998]

Additional powers in respect of children and young persons

34 (1) If, in the case of a child brought before a Family Court under the Children Act 1998 [*title 27 item 26*]

- (a) the court is satisfied that the child is in need of care or protection; and
- (b) the conditions which, under section 33, are required to be satisfied for the making of a hospital order in respect of a person convicted as therein mentioned are so far as applicable satisfied in the case of the child,

the court shall have the like power to make a hospital order as if the child had been convicted by the court of an offence punishable on summary conviction with imprisonment; and section 33 shall with the necessary modifications apply accordingly.

(2) Where a hospital order is made by virtue of this section in respect of a child, the court may also make an order committing him to the care of a fit person or the Director of Child and Family Services under the Children Act 1998 [*title 27 item 26*]; but except as aforesaid no order shall be made under section 8 of that Act in conjunction with a hospital order.

[Section 34 amended by 1998:38 effective 1 January 2000]

Requirements as to medical evidence

35 (1) Of the medical practitioners whose evidence is taken into account under section 33(1)(a), at least one shall be a practitioner approved for the purposes of section 12 by the Board as having special experience in the diagnosis or treatment of mental disorders.

(2) For the purposes of section 33(1)(a), a report in writing purporting to be signed by a medical practitioner may, subject to this section, be received in evidence without proof of the signature or qualification 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, a copy of the report shall be given to his counsel;

MENTAL HEALTH ACT 1968

- (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, 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 brought before a Family Court under the Children Act 1998 [*title 27 item 26*], subsection (3) shall have effect as if for references to the accused there were substituted references to the child.

[Section 35 amended by 1998:38 effective 1 January 2000]

Effects of hospital orders

- 36 (1) A hospital order shall be sufficient authority—
- (a) for a police officer, a mental welfare officer or any other person directed to do so by the court to convey the patient to a hospital within a period of twenty-eight days; and
 - (b) for a responsible medical officer to admit him at any time within that period and thereafter detain him in accordance with this Act;
 - (c) for the responsible medical officer to order that the patient receive, subject to this Act, such treatment as may be necessary for the medical and psychiatric care and welfare of the patient, and for such treatment to be administered by the staff of the hospital or any other person so authorised in accordance with this Act,

and for the purposes of paragraphs (a) and (c) it shall be lawful for any person to use such force as may be necessary in the circumstances.

(2) A patient who is admitted to the hospital in pursuance of a hospital order shall be treated for the purposes of Part II (other than sections 15 and 16, as the case may be) as if he had been so admitted on the date of the order in pursuance of an application for admission for treatment duly made under the said Part II, except that—

- (a) the power to order the discharge of the patient under section 26 shall not be exercisable by his nearest relative; and
- (b) the special provisions relating to the expiration and renewal of authority for detention in the case of psychopathic and subnormal patients shall not apply;

and accordingly the provisions of Part II specified in the first column of the Second Schedule 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 Part II shall not apply.

(3) Without prejudice to any provision of Part II as applied by this section, an application to the Review Tribunal may be made in respect of a patient admitted to a hospital in pursuance of a hospital order as follows—

- (a) by the patient, within a 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 latest;
- (b) by the nearest relative of the patient, within the period of six months beginning with the date of the order, and in any subsequent period of twelve months.

(4) Where a patient is admitted to a hospital in pursuance of a hospital order, any previous application or hospital order by virtue of which he was liable to be detained in the hospital 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 25 shall have effect as if during any period for which the patient was liable to be detained, he had been detained in custody as mentioned in section 25.

[Section 36 amended by 1991 : 85 effective 15 July 1991; amended by 1998 : 32 effective 13 July 1998; subsection (1)(c) repealed and substituted by 2019 : 1 s. 12 effective 31 October 2020]

Supplementary provisions as to hospital orders

37 The court by which a hospital order is made may give such directions as it thinks fit for the conveyance of the patient to the care of the Director of Child and Family Services pending his admission to the hospital within the period of twenty-eight days referred to in section 36(1).

[Section 37 amended by 1998:38 effective 1 January 2000]

Power of Supreme Court to restrict discharge from hospital

38 (1) Where a hospital order is made in respect of an offender by the Supreme Court 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 from serious harm 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.

(2) 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 section 33(1)(a) has given evidence orally before the court.

(3) The special restrictions applicable to a patient in respect of whom an order restricting discharge is in force are as follows—

- (a) none of the provisions of Part II 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 Part II or absolutely discharged under section 39;

- (b) no application shall be made to the Review Tribunal in respect of the patient under section 36 or under any provision of Part II;
- (ba) none of the provisions of Part IIIA shall apply;
- (c) the following powers shall be exercisable only with the consent of the Minister—
 - (i) power to grant leave of absence to the patient under section 20;
 - (ii) power to order the discharge of the patient under section 26;and if leave of absence is granted under section 20 the power to recall the patient under that section shall be vested in the Minister as well as the responsible medical officer; and
- (d) the power of the Minister to recall the patient under section 20, and the power to take the patient into custody and return him under section 21, may be exercised at any time;

and in relation to any such patient the provisions of Part II described in the first column of the Second Schedule shall have effect subject to the exceptions and modifications set out in the second column of that Schedule.

(4) A hospital order shall not cease to have effect under section 36(4) 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, section 36 and the Second Schedule shall apply to the patient as if he had been admitted to a 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.

[Section 38 amended by 1998 : 32 effective 13 July 1998; Section 38 subsection (3)(ba) inserted by 2019 : 1 s. 13 effective 31 October 2020]

Applications to tribunal by patient subject to restriction order

38A A patient who is subject to a restriction order and is detained in a hospital may apply to the Review Tribunal—

- (a) in the period between the expiration of six months and the expiration of twelve months beginning with the date of the hospital order or transfer direction; and
- (b) in any subsequent period of twelve months.

[Section 38A inserted by 1998:32 effective 13 July 1998]

Powers of Minister in respect of patient subject to restriction orders

39 (1) If the Minister 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 38; and where the Minister so directs, the order restricting the discharge of the patient shall cease to have effect, and section 38(5) shall apply accordingly.

(2) At any time while an order restricting the discharge of a patient is in force, the Minister 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 Minister may at any time during the continuance in force of an order restricting the discharge of a patient who has been conditionally discharged under subsection (2) by warrant recall the patient to such hospital as may be specified in the warrant.

(3A) Where a patient is recalled as mentioned in subsection (3)—

- (a) if the hospital specified in the warrant 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 21 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 section 21.

(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 subsection (3), 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 Minister may, if satisfied that the attendance at any place in Bermuda 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 enquiry, 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 Minister otherwise directs, be kept in custody while being so taken, while at that place and while being taken back to a hospital.

(6) The Minister may at any time refer to the Review Tribunal for their advice the case of a patient who is for the time being subject to an order restricting his discharge.

(7) A patient who is subject to a restriction order and is detained in a hospital may apply to the Review Tribunal—

- (a) in the period between the expiration of six months and the expiration of twelve months beginning with the date of the hospital order; and

(b) in any subsequent period of twelve months.

(8) Where a patient subject to an order restricting his discharge has been conditionally discharged under subsection (2) and subsequently recalled to hospital, subsection (7) 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.

[Section 39 amended by 1998:32 effective 13 July 1998]

Power of Magistrates' Court to commit for restriction order

40 (1) If in the case of a person who is convicted by a court of summary jurisdiction of an offence punishable on summary conviction with imprisonment—

- (a) the conditions which, under section 33(1), 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 the Supreme Court to be dealt with in respect of the offence.

(2) Where an offender is committed to the Supreme Court under this section, the Supreme Court 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 upon the conviction of the offender before that court of such an offence as is described in section 33(1), make a hospital order in his case, with or without an order restricting his discharge; or
- (b) if the court does not make such an order, deal with the offender in any other manner in which the court of summary jurisdiction might have dealt with him.

Committal to hospital under s.40

41 (1) Where an offender is committed under section 40(1) and the court of summary jurisdiction 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 be admitted to that hospital and to be detained therein until the case is disposed of by the Supreme Court, and may give such directions as it thinks fit for his production from the hospital to attend the Supreme Court.

(2) Section 36(1) and section 37 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 section 36(1) were omitted; and subject as aforesaid, an order under this section shall, until the offender's case is disposed of by the Supreme Court,

MENTAL HEALTH ACT 1968

have the like effect as a hospital order together with an order restricting his discharge, made without limitation of time.

[Section 41 amended by 1998:32 effective 13 July 1998]

Appeals from Magistrates' Courts, etc

42 (1) Where, on the trial of an information charging a person with an offence, a court of summary jurisdiction makes a hospital 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, the Supreme Court shall have the like powers as if the appeal had been against both conviction and sentence.

(2) Where a Family Court, on being satisfied that a child brought before the court is in need of care or protection, makes such an order as aforesaid, the child may appeal to the Supreme Court against the order.

(3) An appeal by a child 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.

[Section 42 amended by 1998:38 effective 1 January 2000]

Persons ordered to be kept in custody until the pleasure of the Minister is known

43 (1) Where any person is detained in a hospital in pursuance of an order made by the Minister under sections 545 or 546 of the Criminal Code [*title 8 item 31*], that person shall be deemed to be detained under a hospital order together with an order restricting his discharge, made without limitation of time; and where the order of the Minister is made in respect of a person while he is in a hospital, he shall be deemed to have been admitted in pursuance of, and on the date of, such order.

(2) Where the Minister is notified by a responsible medical officer that a person detained in the Hospital, being a person ordered under section 545 of the Criminal Code [*title 8 item 31*] to be kept in custody, no longer requires treatment for mental disorder, the Minister may remit that person to prison for trial at the next Criminal Session of the Supreme Court, and on his arrival at the prison the order made under section 545 of the Criminal Code [*title 8 item 31*] shall cease to have effect.

[Section 43 amended by 1998:32 effective 13 July 1998]

Removal to hospital of person detained in prison, etc

44 (1) If, in case of a person detained in prison, the Minister is satisfied, by reports from at least two medical practitioners (complying with this section)—

- (a) that the said person is suffering from mental illness, severe personality disorder, mental impairment or severe mental impairment.
- (b) that the mental disorder is of a nature which warrants the detention of the patient in a hospital for medical treatment,

the Minister 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 a hospital.

(2) A transfer direction shall cease to have effect at the expiration 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 a hospital.

(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), at least one shall be a practitioner approved for the purposes of section 12 by the Board 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 subsection (1)(a) from which, upon the reports taken into account under subsection (1), the patient is found by the Minister 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.

(6) References in this Part to a person detained in prison include references—

- (a) to a person detained in pursuance of any sentence or order for detention made by a court in criminal proceedings, including a sentence of corrective training;
- (b) to a person committed by a court to prison in default of payment of any fine adjudged to be paid on his conviction;
- (c) to a person committed in custody for trial in the Supreme Court;
- (d) to a person remanded in custody by a court of summary jurisdiction.

(7) This section shall not derogate from the provisions of the Prisons Act 1979 [*title 10 item 32*], or any Rules made thereunder or of the Young Offenders Act 1950 [*title 10 item 33*], or any Rules made thereunder.

[Section 44 amended by 1998:32 effective 13 July 1998]

Restriction on discharge of prisoners removed to hospital

45 (1) Where a transfer direction is given in respect of any person, the Minister, if he thinks fit, may by warrant further direct that that person shall be subject to the special restrictions set out in section 38; and where the Minister gives a transfer direction in respect of any such person as is described in section 44(6)(c) or (d), he shall also give a direction under this section applying the said restrictions to him.

(2) A direction restricting discharge shall have the like effect as an order restricting the discharge of the patient made under section 38.

[Section 45 amended by 1998:32 effective 13 July 1998]

MENTAL HEALTH ACT 1968

Further provisions as to prisoners under sentence

46 (1) Where a transfer direction and a restriction direction have been given in respect of a person serving a sentence of imprisonment and before the expiration of that person's sentence the Minister is notified by a responsible medical officer or the Review Tribunal that that person no longer requires treatment in hospital for mental disorder, the Minister may—

- (a) by warrant direct that he be remitted to prison, there to be dealt with as if he had not been so removed; or
- (b) exercise or authorise the Commissioner of Prisons to exercise any power of releasing him on licence or discharging him under supervision or otherwise, which would have been exercisable if he had been remitted to prison or to a training school,

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

(2) A direction restricting the discharge of a person serving a sentence of imprisonment or undergoing corrective training shall cease to have effect on the expiration of the sentence.

(3) Subject to subsection (4), references in this section to the expiration of a person's sentence are references to the expiration of a 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 and that period shall be treated as expiring on the date on which he could have been discharged if he had not forfeited remission of any part of the sentence after his removal pursuant to the direction.

(4) For the purposes of section 19 of the Prisons Act 1979 [*title 10 item 32*], a patient who, having been transferred in pursuance of a transfer into custody under any provision of this Act, shall be treated as unlawfully at large and absent from prison or, as the case may be, from the training school.

[Section 46 amended by 1991:85 effective 15 July 1991; and by 1998:32 effective 13 July 1998]

Further provisions as to persons committed for trial

47 (1) Any transfer directions given in respect of any such person as is described in section 44(6)(c) 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.

(2) If the Minister is notified by a responsible medical officer, or the Review Tribunal at any time before the detainee's case is disposed of by the court—

- (a) that the detainee no longer requires treatment in hospital for mental disorder; or
- (b) that no effective treatment for his disorder can be given at the hospital to which he has been removed,

MENTAL HEALTH ACT 1968

the Minister may by warrant direct that he be remitted to prison, there to be dealt with as if he had not been so removed, and on his arrival at the prison the transfer direction shall cease to have effect.

(3) If (no direction having been given under subsection (2)) the court having jurisdiction to try or otherwise deal with the detainee is satisfied on the written or oral evidence of a responsible medical officer—

- (a) that the detainee no longer requires treatment in hospital for mental disorder; or
- (b) that no effective treatment for his disorder can be given at the hospital to which he has been removed,

the court may order him to be remitted to prison or released on bail and on his arrival at prison or, as the case may be, his release on bail the transfer direction shall cease to have effect.

(4) If (no direction or order having been given or made under subsection (2) or (3)) it appears to the court having jurisdiction to try or otherwise deal with the detainee—

- (a) that it is impracticable or inappropriate to bring the detainee before the court; and
- (b) that the conditions set out in subsection (5) are satisfied,

the court may make a hospital order (with or without a restriction order) in his case in his absence and, in the case of a person awaiting trial, without convicting him.

(5) A hospital order may be made in respect of a person under subsection (4) if the court—

- (a) is satisfied, on the written or oral evidence of at least two registered medical practitioners, that the detainee is suffering from mental illness or severe mental impairment of a nature or degree which makes it appropriate for the patient to be detained in a hospital for medical treatment; and
- (b) is of the opinion, after considering any depositions or other documents required to be sent to the court, that it is proper to make such an order.

[Section 47 amended by 1991:85 effective 15 July 1991; and repealed and replaced by 1998:32 effective 13 July 1998]

Further provisions as to persons remanded by Magistrates' Court

48 (1) A transfer direction given in respect of a person remanded in custody by a court of summary jurisdiction shall cease to have effect on the expiration of the period of remand unless, upon his being brought before the Magistrate he is committed in custody for trial at the Supreme Court.

(2) Where, on the expiration of the period of remand of any such person, he is committed in custody for trial as aforesaid, section 47 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 7 of the Criminal Jurisdiction and Procedure Act 2015, 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) The court shall not under subsection (3) further remand the accused in his absence unless he has appeared before the court within the previous six months.

(5) If the court is satisfied, on the written or oral evidence of a responsible medical officer—

- (a) that the accused no longer requires treatment in hospital for mental disorder; or
- (b) that no effective treatment for his disorder can be given in the hospital to which he has been removed,

the court may direct that the transfer direction shall cease to have effect notwithstanding that the period of remand has not expired or that the accused is committed to the Supreme Court as mentioned in subsection (2).

[Section 48 amended by 1998:32 effective 13 July 1998; subsection (3) amended by 2015 : 38 s. 91 effective 6 November 2015]

PART IIIA

COMMUNITY TREATMENT ORDERS

Community treatment order

48A (1) Without prejudice to section 26, the responsible medical officer may make an order in writing discharging a detained patient from hospital, subject to the patient being liable to recall to hospital in accordance with section 48H.

(2) In this section, a “detained patient” means a patient who is liable to be detained in a hospital in pursuance of an application for admission for treatment.

(3) For the purposes of this Part, an order discharging a patient under subsection (1) shall be referred to as a “community treatment order”.

[Section 48A inserted by 2019 : 1 s. 14 effective 31 October 2020]

Relevant criteria

48B (1) A community treatment order may be made in respect of a patient if—

- (a) in the opinion of the responsible medical officer, the relevant criteria under subsection (2) are met; and
- (b) a mental welfare officer states in writing—
 - (i) that he agrees with that opinion; and

(ii) that it is appropriate to make the order.

(2) The relevant criteria are—

- (a) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment;
- (b) it is necessary for the health or safety of the patient or for the protection of other persons that the patient receive such medical treatment;
- (c) subject to the patient being liable to be recalled to a hospital, medical treatment can be provided without the patient continuing to be detained in a hospital; and
- (d) it is necessary that the responsible medical officer be able to exercise the power under section 48H to recall the patient to a hospital.

(3) In determining whether the criterion in subsection (2)(d) is met, the responsible medical officer shall have regard to—

- (a) the patient's history of mental disorder;
- (b) the risk of deterioration of the patient's condition if he were not detained in a hospital; and
- (c) any other relevant factors.

(4) A community treatment order shall not be made in respect of a patient who has not attained the age of eighteen years.

[Section 48B inserted by 2019 : 1 s. 14 effective 31 October 2020]

Conditions

48C (1) A community treatment order shall, subject to this section, specify the following conditions with which a community patient is to comply while the order remains in force—

- (a) a condition that the patient make himself available for examination—
 - (i) for the purposes of section 48F(2); and
 - (ii) if it is proposed in his case to give treatment for which a Part IIIC certificate is required, for the purposes of enabling a SOAD to certify, in accordance with section 48.1B(3)(a), that it is appropriate for the treatment to be given; and
- (b) any other condition as agreed between the responsible medical officer and the mental welfare officer.

(2) A community treatment order may only specify a condition under subsection (1)(b) if the responsible medical officer, with the agreement of a mental welfare officer, thinks it necessary or appropriate for one or more of the following purposes—

- (a) ensuring that the patient receives medical treatment;

MENTAL HEALTH ACT 1968

- (b) preventing risk of harm to the patient's health or safety;
- (c) protecting other persons.

(3) The responsible medical officer may from time to time, by notice in writing, vary or suspend any conditions specified in the community treatment order.

(4) Where a community patient fails to comply with a condition of his community treatment order, that fact may be taken into account for the purposes of exercising the power to recall under section 48H.

[Section 48C inserted by 2019 : 1 s. 14 effective 31 October 2020]

Duration of community treatment order

48D (1) A community treatment order shall remain in force until whichever of the following occurs first—

- (a) the expiration of the period of six months (or any period of extension under this Act) beginning with the date on which the order was made;
- (b) the patient is discharged in pursuance of an order under section 26(2)(c) or a direction under section 62;
- (c) the application for admission for treatment in respect of the patient otherwise ceases to have effect; or
- (d) the order is revoked under section 48M.

(2) The six-month period mentioned in subsection (1)(a) shall be referred to as “the community treatment period”.

[Section 48D inserted by 2019 : 1 s. 14 effective 31 October 2020]

Effect of community treatment order

48E (1) An application for admission for treatment shall not cease to have effect, in respect of a patient, by virtue of his becoming a community patient.

(2) During the period in which a patient is subject to a community treatment order—

- (a) the power to detain that patient pursuant to section 10(1) is suspended;
- (b) reference (however expressed) in this Act, or any other Act or in any statutory instrument to patients liable to be detained or detained under this Act, shall not include him; and
- (c) section 22 shall not apply while he remains a community patient.

(3) Notwithstanding subsection (2), a patient who is subject to a community treatment order shall be liable to be recalled to hospital under section 48H until an order for discharge is made in accordance with section 26(2)(c).

[Section 48E inserted by 2019 : 1 s. 14 effective 31 October 2020]

Extension of community treatment period

- 48F (1) The community treatment period may be extended—
- (a) from its expiration, for a period of six months; and
 - (b) from the expiration of any period of extension under paragraph (a), for a further period of one year and so on for periods of one year at a time.
- (2) Within the period of two months, ending on the day on which the community treatment order would cease to be in force in default of an extension under this section, it shall be the duty of the responsible medical officer—
- (a) to examine the patient; and
 - (b) if it appears to him that the conditions set out in subsection (4) are satisfied, and a statement is made under subsection (6), to furnish to the Board or a person designated by the Board, a report to that effect.
- (3) Where a report is furnished under subsection (2)(b), in respect of a community patient, the Board or a person designated by the Board shall, unless it discharges the patient, cause the patient to be informed.
- (4) The conditions referred to in subsection (2)(b) are that—
- (a) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment;
 - (b) it is necessary for the health or safety of the patient or for the protection of other persons that he receive such treatment;
 - (c) subject to the patient being liable to be recalled to a hospital, such treatment can be provided without his being detained in a hospital; and
 - (d) it is necessary that the responsible medical officer should continue to be able to exercise the power under section 48H to recall the patient to a hospital.
- (5) In determining whether the criterion in subsection (4)(d) is met, the responsible medical officer shall have regard to—
- (a) the patient's history of mental disorder;
 - (b) the risk of deterioration of the patient's condition if he were not detained in a hospital; and
 - (c) any other relevant factors.
- (6) The statement referred to in subsection (2)(b) is a statement in writing by a mental welfare officer—
- (a) that it appears to him that the conditions set out in subsection (4) are satisfied; and
 - (b) that it is appropriate to extend the community treatment period.

MENTAL HEALTH ACT 1968

(7) Before furnishing a report under subsection (2)(b), the responsible medical officer shall consult one or more other persons who have been professionally concerned with the patient's medical treatment.

[Section 48F inserted by 2019 : 1 s. 14 effective 31 October 2020]

Applications to Review Tribunal concerning community patients

48G A patient, in respect of whom a community treatment order is made, extended or revoked, may apply to the Review Tribunal in accordance with section 61.

[Section 48G inserted by 2019 : 1 s. 14 effective 31 October 2020]

Power to recall to hospital

48H (1) The responsible medical officer may recall a community patient to hospital if in his opinion—

- (a) the patient requires medical treatment in hospital for his mental disorder; and
- (b) there would be a risk of harm to the health or safety of the patient or to other persons if the patient were not recalled to the hospital for that purpose.

(2) The responsible medical officer may also recall a community patient to hospital if the patient fails to comply with a condition specified under section 48C(1).

(3) The power to recall under this section shall be exercisable by notice in writing to the patient.

(4) Where a patient is already in the hospital at the time when the power of recall is exercised, a notice under this section shall be sufficient authority to detain the patient there in accordance with this Act.

[Section 48H inserted by 2019 : 1 s. 14 effective 31 October 2020]

Powers in respect of recalled patients

48I (1) Where a community patient is detained in hospital by virtue of a notice recalling him there under section 48H(3), the responsible medical officer may—

- (a) in accordance with section 48M, revoke the community treatment order; or
- (b) release the patient (but not after the community treatment order is revoked).

(2) If after the period of seventy-two hours the patient has not been released, nor has the community treatment order been revoked, the patient shall be released.

(3) A community patient who is detained in hospital by virtue of a notice recalling him there under section 48H(3) may be transferred to another hospital and, where so transferred, shall be treated for the purposes of this section—

- (a) as if the notice were a notice recalling him to that other hospital; and

MENTAL HEALTH ACT 1968

- (b) as if he had been detained there from the time when his detention in hospital by virtue of the notice first began.
- (4) A patient who is released under this section shall remain subject to the community treatment order.
- (5) For the purposes of this section—
 - (a) “the period of seventy-two hours” means the period of seventy-two hours beginning with the time when the patient’s detention in a hospital by virtue of the notice under section 48H(3) begins; and
 - (b) references to being released shall be construed as being released from that detention and accordingly from being recalled to hospital.

[Section 48I inserted by 2019 : 1 s. 14 effective 31 October 2020]

Community patients absent without leave

48J (1) This section applies to a community patient who is absent without leave from a hospital to which he is recalled.

- (2) Subject to subsection (3), a patient to whom this section applies may be taken into custody and returned to the hospital by any—
 - (a) mental welfare officer;
 - (b) officer on the staff of the hospital;
 - (c) police officer; or
 - (d) person authorised in writing by the responsible medical officer.
- (3) A person shall not be taken into custody under this section after the earlier of—
 - (a) the period of six months beginning with the first day of his absence without leave; or
 - (b) the expiration of the period that the community treatment order is in force.
- (4) For the purposes of determining whether a community treatment order is in force, a report under section 48F(2)(b) (to extend the community treatment period) furnished before the first day of the patient’s absence without leave, shall not take effect unless the extension began before the first day of the patient’s absence without leave.
- (5) Where a community patient is absent without leave on the day on which the seventy-two-hour period mentioned in section 48I(2) would expire, that period shall not expire until the end of the period of seventy-two hours beginning with the time when—
 - (a) the patient is taken into custody under subsection (2) and returned to the hospital; or
 - (b) the patient returns himself to the hospital within the period during which he can be taken into custody under this section.

MENTAL HEALTH ACT 1968

(6) Where a community patient is absent without leave—

- (a) on the day on which the community treatment order would cease to be in force; or
- (b) within the period of one week ending with the day on which the community treatment order would cease to be in force,

the order shall not cease to be in force until the relevant time.

(7) For the purposes of subsection (6), the relevant time—

- (a) where the patient is taken into custody under subsection (2), is the end of the period of one week beginning with the day on which he is returned to the hospital;
- (b) where the patient returns himself to the hospital within the period during which he can be taken into custody under this section, is the end of the period of one week beginning with the day on which he so returns himself; and
- (c) otherwise, is the end of the period during which the patient can be taken into custody under this section.

[Section 48J inserted by 2019 : 1 s. 14 effective 31 October 2020]

Special provisions as to community patients absent without leave for less than twenty-eight days

48K (1) This section applies where a community patient who is absent without leave from a hospital to which he is recalled is taken into custody and returned to hospital under section 48J, or returns himself to the hospital, within twenty-eight days beginning with the first day of his absence without leave.

(2) Where a community patient is absent without leave under this section, the community treatment order may be extended under section 48F and any examination and report to be made and furnished in respect of the patient under that section may be made and furnished within the period so extended.

(3) Where the community treatment period is extended by virtue of subsection (2), after the day on which the order would have ceased to be in force, the extension shall take effect as from the day the order would have ceased to be in force.

[Section 48K inserted by 2019 : 1 s. 14 effective 31 October 2020]

Special provisions as to community patients absent without leave for more than twenty-eight days

48L (1) This section applies where a community patient who is absent without leave from a hospital to which he is recalled is taken into custody and returned to hospital under section 48J, or returns himself to the hospital, after a period of more than twenty-eight days beginning with the first day of his absence without leave.

(2) Where a community patient is absent without leave under this section, it shall be the duty of the responsible medical officer, within the period of one week beginning with the day on which the patient is returned or returns to the hospital (hereinafter referred to as his "return day")—

- (a) to examine the patient; and
- (b) if it appears to him that the relevant conditions are satisfied, to furnish to the Board or a person designated by the Board a report in writing to that effect, in respect the patient.

(3) Where a report is furnished under subsection (2)(b), the Board or the person designated by the Board shall cause the patient to be informed.

(4) Before furnishing a report under subsection (2)(b), the responsible medical officer shall consult—

- (a) one or more other persons who have been professionally concerned with the patient's medical treatment; and
- (b) a mental welfare officer.

(5) Where the community treatment order in respect of a patient under this section would (apart from any extension of the community treatment period on or after the patient's return day) be in force after the end of the patient's period of absence without leave, the community treatment period shall be deemed to expire at the end of that period of absence unless a report is duly furnished in respect of that patient under subsection (2)(b).

(6) If the community treatment order in respect of a patient under this section is revoked during the period of one week beginning with his return day—

- (a) subsections (2) to (5) shall not apply; and
- (b) any report already furnished in respect of the patient under subsection (2) shall be of no effect.

(7) Where the community treatment order in respect of a patient under this section would (apart from section 48J) have ceased to be in force on or before the day on which a report under subsection (2)(b) is furnished, the report shall extend the community treatment period in accordance with section 48F(1).

(8) Where a community treatment period is extended by virtue of subsection (7)—

- (a) the extension shall take effect as from the day on which (apart from that subsection and section 48J) the order would have ceased to be in force; and
- (b) if (apart from this paragraph) the period as so extended would expire on or before the day on which the report under subsection (2)(b) is furnished, the report shall further extend that period, as from the day on which the period would expire, in accordance with section 48F(1).

(9) Where the community treatment order in respect of a patient under this section would (taking into account any extension under subsection (7)) cease to be in force within

MENTAL HEALTH ACT 1968

the period of two months beginning on the day on which a report is furnished under subsection (2)(b), the report shall, if it so provides, have effect also as a report furnished under section 48F(2) and the Board or the person designated by the Board shall, unless it discharges the patient, cause the patient to be informed.

(10) In this section, “the relevant conditions” means the conditions set out in section 48F(4).

[Section 48L inserted by 2019 : 1 s. 14 effective 31 October 2020]

Revocation of a community treatment order

48M (1) The responsible medical officer may by notice in writing given to the patient or to the person for the time being in charge of the patient revoke the community treatment order—

- (a) if in his opinion the grounds mentioned in section 10(2) are satisfied in respect of the patient; and
- (b) if a mental welfare officer states in writing—
 - (i) that he agrees with that opinion; and
 - (ii) that it is appropriate to revoke the order.

(2) Where a community treatment order is revoked—

- (a) section 15 shall have effect as if the patient had never been discharged from hospital by virtue of a community treatment order;
- (b) section 22 shall have effect as if the patient had been admitted in pursuance of the application for admission for treatment on the day on which the order is revoked; and
- (c) any provisions of this Act or any other Act relating to patients liable to be detained or detained in pursuance of an application for admission for treatment shall apply to the patient as they did before the community treatment order was made.

[Section 48M inserted by 2019 : 1 s. 14 effective 31 October 2020]

Effect of expiry of community treatment order

48N (1) Without prejudice to section 26(2)(c), on expiry of the community treatment order the community patient shall be deemed to be discharged absolutely from liability to be recalled to hospital under this Act and the application for admission for treatment shall cease to have effect.

(2) For the purposes of subsection (1), a community treatment order expires on the expiry of the community treatment period as extended under section 48F, but this is subject to section 48J.

[Section 48N inserted by 2019 : 1 s. 14 effective 31 October 2020]

PART IIIB
CONSENT TO TREATMENT

Application of Part IIIB

- 48O (1) This Part applies—
- (a) subject to subsection (2), to any patient who is liable to be detained in hospital under this Act; and
 - (b) to a community patient if he is recalled to hospital under section 48H.
- (2) This Part does not apply to a patient who is liable to be detained under this Act by virtue of—
- (a) section 7(3A) or 7(3B);
 - (b) an emergency application and the second medical recommendation referred to in section 13(4)(a) has not been given and received; or
 - (c) section 14(2), 71(3) or 72(2).

[Section 48O inserted by 2019 : 1 s. 14 effective 31 October 2020]

Treatment requiring consent and a second opinion

- 48P (1) This section applies to the following forms of medical treatment for mental disorder—
- (a) any surgical operation for destroying brain tissue or for destroying the functioning of brain tissue; and
 - (b) such other forms of treatment as the Minister may by regulations prescribe for the purposes of this section.
- (2) Subject to section 48V, a patient shall not be given any form of medical treatment to which this section applies unless he has consented to the treatment and—
- (a) a SOAD (not being the responsible medical officer or the person in charge of the treatment in question) and two other persons (not being registered medical practitioners) approved, for the purposes of this paragraph, in accordance with section 48Y(2), have certified in writing that the patient is capable of understanding the nature, purpose and likely effects of the treatment in question and has consented to it; and
 - (b) the SOAD referred to in paragraph (a) has certified in writing that it is appropriate for the treatment to be given.
- (3) Before giving a certificate under subsection (2)(b), the SOAD concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment and, of those persons consulted—
- (a) one shall be a nurse and the other shall be neither a nurse nor a registered medical practitioner; and

MENTAL HEALTH ACT 1968

- (b) neither shall be the responsible medical officer or the person in charge of the treatment in question.

(4) The negative resolution procedure shall apply to regulations made under this section.

[Section 48P inserted by 2019 : 1 s. 14 effective 31 October 2020]

Treatment requiring consent or a second opinion

48Q (1) This section applies to the following forms of medical treatment for mental disorder—

- (a) the administration of medicine to the patient by any means (not being a form of treatment under paragraph (b), section 48P or section 48R) and at any time during the period for which he is liable to be detained as a patient to whom this Part applies, where the period of three months or more has elapsed since the first occasion in that period when medicine was administered to him by any means for his mental disorder; and
- (b) such other forms of treatment as the Minister may, by regulations, prescribe for the purposes of this section.

(2) Subject to section 48V, a patient shall not be given any form of treatment to which this section applies unless—

- (a) the patient has consented to the treatment and either the responsible medical officer in charge of the treatment or a SOAD has certified in writing that the patient is capable of understanding the nature, purpose and likely effects of the treatment in question and has consented to it; or
- (b) a SOAD (not being the responsible medical officer or the person in charge of the treatment in question) has certified in writing that the patient is not capable of understanding the nature, purpose and likely effects of the treatment in question or, being so capable, has not consented to it but it is appropriate for the treatment to be given.

(3) Before giving a certificate under subsection (2)(b), the SOAD concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment and, of those persons consulted—

- (a) one shall be a nurse and the other shall be neither a nurse nor a registered medical practitioner; and
- (b) neither shall be the responsible medical officer or the person in charge of the treatment in question.

(4) The negative resolution procedure shall apply to regulations made under this section.

[Section 48Q inserted by 2019 : 1 s. 14 effective 31 October 2020]

MENTAL HEALTH ACT 1968

Electro-convulsive therapy, etc. (requiring consent or a second opinion)

48R (1) This section applies to the following forms of medical treatment for mental disorder—

- (a) electro-convulsive therapy; and
- (b) such other forms of treatment as the Minister may, by regulations, prescribe for the purposes of this section.

(2) Subject to section 48V, a patient shall not be given any form of treatment to which this section applies unless—

- (a) the patient has consented to the treatment and either the responsible medical officer in charge of the treatment or a SOAD has certified in writing that the patient is capable of understanding the nature, purpose and likely effects of the treatment in question and has consented to it; or
- (b) a SOAD (not being the responsible medical officer or the person in charge of the treatment in question) has certified in writing—
 - (i) that the patient is not capable of understanding the nature, purpose and likely effects of the treatment; but
 - (ii) that it is appropriate for the treatment to be given; and
 - (iii) that giving him the treatment would not conflict with—
 - (A) any previous wishes made by the patient, which the SOAD concerned is satisfied are valid and applicable to the treatment in question; or
 - (B) a decision made by a judge appointed under Part IV or a donee of a power of attorney.

(3) Before giving a certificate under subsection (2)(b), the SOAD concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment and of those persons consulted—

- (a) one shall be a nurse and the other shall be neither a nurse nor a registered medical practitioner; and
- (b) neither shall be the responsible medical officer or the person in charge of the treatment in question.

(4) When giving a certificate in respect of the matters set out in subsection (2)(b)(iii)(A), the SOAD concerned shall act in accordance with the Code.

(5) The negative resolution procedure shall apply to regulations made under this section.

[Section 48R inserted by 2019 : 1 s. 14 effective 31 October 2020]

MENTAL HEALTH ACT 1968

Plans of treatment

48S Any consent or certificate given under section 48P, 48Q or 48R may relate to a plan of treatment under which the patient is to be given (whether within a specified period or otherwise) one or more of the forms of treatment to which that section applies.

[Section 48S inserted by 2019 : 1 s. 14 effective 31 October 2020]

Withdrawal of consent

48T (1) Where a patient has consented to any form of treatment under section 48P, 48Q or 48R, the patient may, subject to section 48V, at any time before the completion of the treatment withdraw his consent.

(2) Where a patient has consented to treatment for the purposes of section 48P, 48Q or 48R, but before the completion of the treatment—

- (a) withdraws his consent; or
- (b) ceases to be capable of understanding the nature, purpose and likely effects of the treatment,

those sections shall then apply as if the remainder of the treatment were a separate form of treatment.

(3) Where a patient, before the completion of any treatment for which a certificate under section 48Q or 48R is given certifying that the patient is not capable of understanding the nature, purpose and likely effects of the treatment to which the certificate applies, becomes capable of understanding the nature, purpose and likely effects of the treatment—

- (a) that certificate shall, subject to section 48V, cease to apply to the treatment; and
- (b) those sections shall then apply as if the remainder of the treatment were a separate form of treatment.

(4) Without prejudice to the application of subsections (1) to (3) to any treatment given under the plan of treatment to which a patient has consented, a patient who has consented to such a plan may, subject to section 48V, at any time withdraw his consent to further treatment, or to further treatment of any description, under the plan.

[Section 48T inserted by 2019 : 1 s. 14 effective 31 October 2020]

Review of treatment

48U (1) This section applies in respect of a patient who is given treatment—

- (a) in accordance with section 48P, 48Q(2)(b) or 48R(2)(b); or
- (b) by virtue of section 48W in accordance with a Part IIIC certificate.

(2) A report on the treatment and condition of a patient, to whom this section applies, shall be given by the responsible medical officer in charge of the treatment to the Board—

MENTAL HEALTH ACT 1968

- (a) on the next occasion on which the responsible medical officer furnishes a report under section 22(3), 48F(2), or 48L(2); and
 - (b) at any other time if so required by the Board.
- (3) Where a patient to whom this section applies is subject to a restriction order or to a direction under section 45(2), subsection (2) shall have effect as if paragraph (a) of that subsection required the report to be made—
- (a) in the case of treatment in the period of six months beginning with the date the order was made, at the end of that period; and
 - (b) in the case of treatment at any subsequent time, on the next occasion on which the responsible medical officer makes a report in respect of the patient.
- (4) The Board may at any time give notice directing that, subject to section 48V, a certificate given in respect of a patient under section 48P(2), 48Q(2)(b) or 48R(2)(b) shall not apply to treatment given to him after a date specified in the notice and sections 48P, 48Q and 48R shall apply to any such treatment as if that certificate had not been given.

[Section 48U inserted by 2019 : 1 s. 14 effective 31 October 2020]

Urgent treatment

- 48V (1) Sections 48P and 48Q shall not apply to any treatment—
- (a) which is immediately necessary to save the patient's life;
 - (b) which is immediately necessary to prevent a serious deterioration of the patient's condition, provided such treatment is not irreversible; or
 - (c) which—
 - (i) is immediately necessary to alleviate serious suffering by the patient; or
 - (ii) is immediately necessary and represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or to others,provided such treatment is not irreversible or hazardous.
- (2) Section 48R shall not apply to any treatment—
- (a) which is immediately necessary to save the patient's life; or
 - (b) which is immediately necessary to prevent a serious deterioration of the patient's condition, provided such treatment is not irreversible.
- (3) For the purposes of this section, treatment is—
- (a) irreversible if it has unfavourable irreversible physical or psychological consequences; and
 - (b) hazardous if it entails significant physical hazard.

MENTAL HEALTH ACT 1968

(4) Section 48T shall not preclude the continuation of any treatment (or of treatment under any plan) pending compliance with section 48P, 48Q or 48R, if the responsible medical officer in charge of the treatment considers that the discontinuance of the treatment (or of the treatment under the plan) would cause serious suffering to the patient.

[Section 48V inserted by 2019 : 1 s. 14 effective 31 October 2020]

Treatment on recall of community patient or revocation of order

48W (1) This section applies where—

- (a) a community patient is recalled to hospital under section 48H; or
- (b) a patient is liable to be detained under this Act following the revocation of a community treatment order under section 48M.

(2) For the purposes of section 48Q(1)(a), a patient to whom this section applies is to be treated as if he had remained liable to be detained since the making of the community treatment order.

(3) But section 48Q shall not apply to treatment given to the patient if—

- (a) for the purpose of section 48.1B(1), the certificate requirement is met; or
- (b) as a result of section 48.1B(4)(c), the certificate requirement does not apply.

(4) Section 48R does not apply to treatment given to the patient if for the purpose of section 48.1B(1)—

- (a) there is authority to give the treatment; and
- (b) the certificate requirement is met.

(5) Where this section applies and a certificate (for the purpose of section 48.1B(1)) falls within section 48.1B(3), the certificate requirement is met only in so far as—

- (a) the certificate expressly provides that it is appropriate for one or more specified forms of treatment to be given to the patient in that case (subject to such conditions as may be specified in the certificate); or
- (b) where a notice is given under section 48.1F(5), treatment is authorised by virtue of section 48.1F(8).

(6) Subsection (5)(a) shall not preclude the continuation of any treatment (or of treatment under any plan) pending compliance with section 48Q, 48R or 48.1B, if the responsible medical officer in charge of the treatment considers that the discontinuance of the treatment (or of the treatment under the plan) would cause serious suffering to the patient.

(7) Where this section applies and the certificate requirement is no longer met for the purposes of section 48.1B(3)(c), the continuation of any treatment (or of treatment under any plan) pending compliance with section 48Q, 48R or 48.1B, shall not be precluded if the responsible medical officer in charge of the treatment considers that the discontinuance of

MENTAL HEALTH ACT 1968

the treatment (or of the treatment under the plan) would cause serious suffering to the patient.

(8) In a case where subsection (1)(b) applies, subsection (3) only applies pending compliance with section 48Q.

[Section 48W inserted by 2019 : 1 s. 14 effective 31 October 2020]

Treatment not requiring consent

48X (1) The consent of a patient shall not be required for any medical treatment, not being a form of treatment to which section 48P, 48Q or 48R applies, given to him for the mental disorder from which he is suffering if the treatment is given by or under the direction of the responsible medical officer in charge of the treatment.

(2) Notwithstanding subsection (1), where any medical treatment, not being a form of treatment to which section 48P, 48Q or 48R applies, is given to a patient for the mental disorder from which he is suffering, the consent of the patient shall wherever practicable be sought and the patient's consent, refusal to consent or a lack of capacity to give consent must be recorded.

(3) Subsection (2) shall not apply to medical treatment given to a patient in the circumstances set out in section 48V if the treatment is given by or under the direction of the responsible medical officer in charge of the treatment.

[Section 48X inserted by 2019 : 1 s. 14 effective 31 October 2020]

SOADs and other approved persons

48Y (1) For the purposes of this Act, a SOAD shall be a registered medical practitioner who—

- (a) is a specialist in psychiatry; or
- (b) is qualified to practise as a psychiatrist by virtue of a qualification recognised by the Bermuda Medical Council; and
- (c) is appointed as a SOAD by the Minister in accordance with the Code.

(2) Persons approved for the purposes of section 48P(2)(a), shall be persons approved in accordance with the Code.

(3) A SOAD or other person approved under this section may, for the purpose of exercising his functions under Part IIIB or Part IIIC, at any reasonable time—

- (a) visit and interview and, in the case of a SOAD, examine in private any patient detained in hospital or any community patient in a hospital or establishment of any description or (if access is granted) other place; and
- (b) require the production of and inspect any records relating to the treatment of the patient there.

[Section 48Y inserted by 2019 : 1 s. 14 effective 31 October 2020]

Supplementary provisions for Part IIIB

48Z For the purposes of this Part—

- (a) “consent” in relation to a patient, means the voluntary permission of a patient to be given a proposed treatment where sufficient information has been given to the patient of the purpose, nature, likely effects and risks of that treatment, including the likelihood of its success and any alternatives to it;
- (b) it is appropriate for treatment to be given to a patient if the treatment is appropriate in his case, taking into account the nature and degree of the mental disorder from which he is suffering and all other circumstances of his case;
- (c) any certificate shall be in such form as the Board may determine.

[Section 48Z inserted by 2019 : 1 s. 14 effective 31 October 2020]

PART IIIC

TREATMENT OF COMMUNITY PATIENTS NOT RECALLED TO HOSPITAL

Application of Part IIIC

48.1A (1) This Part applies to the giving of relevant treatment to a community patient who is not recalled to hospital under section 48H.

(2) In this Part, “relevant treatment” in relation to a patient means medical treatment which—

- (a) is for the mental disorder from which the patient is suffering; and
- (b) is a form of treatment to which section 48P does not apply; or
- (c) is a type of treatment to which section 48Q or 48R applies if, at the time when it is given to the patient, section 48Q or 48R, respectively, would have applied to it had the patient remained liable to be detained in hospital in pursuance of an application for admission for treatment rather than being a community patient by virtue of section 48A.

[Section 48.1A inserted by 2019 : 1 s. 14 effective 31 October 2020]

Treatment under a community treatment order

48.1B (1) Relevant treatment shall not be given unless—

- (a) there is authority to give it; and
- (b) where such treatment is of a form to which section 48Q or 48R applies, the certificate requirement under subsection (3) is met.

(2) For the purposes of subsection (1)(a), there is authority to give relevant treatment to a patient if—

- (a) the patient has capacity to consent to it and does consent to it; or
 - (b) the giving of such treatment is authorised in accordance with section 48.1D or 48.1E.
- (3) For the purposes of subsection (1)(b), the certificate requirement is met if—
- (a) a SOAD (not being the responsible medical officer or the person in charge of the treatment) has certified in writing that it is appropriate for the treatment to be given or for the treatment to be given subject to such conditions as may be specified in the certificate; and
 - (b) where conditions are so specified, the conditions are satisfied; or
 - (c) where there is authority to give the treatment under subsection (1)(a), the responsible medical officer in charge of the treatment has certified in writing that the patient has the capacity to consent to the treatment and has consented to it.
- (4) The certificate requirement does not apply—
- (a) if giving the treatment to the patient is authorised in accordance with section 48.1E;
 - (b) if the treatment is immediately necessary and the patient has capacity to consent to it and does consent to it; or
 - (c) to the administration of medicine that is a form of treatment to which section 48Q applies, if such medicine is administered to the patient at any time during the period of one month beginning with the day on which the community treatment order is made.
- (5) For the purposes of subsection (4)(b), treatment is immediately necessary if—
- (a) in the case of treatment of a form to which section 48Q applies—
 - (i) it is immediately necessary to save the patient's life; or
 - (ii) it is immediately necessary to prevent a serious deterioration of the patient's condition and is not irreversible; or
 - (iii) it is immediately necessary to alleviate serious suffering by the patient and is not irreversible or hazardous; or
 - (iv) it is immediately necessary, represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or others and is not irreversible or hazardous; or
 - (b) in the case of treatment of a form to which section 48R applies, it falls within paragraph (a)(i) or (a)(ii).
- (6) In subsection (5), treatment is—
- (a) irreversible if it has unfavourable irreversible physical or psychological consequences; and

MENTAL HEALTH ACT 1968

- (b) hazardous if it entails significant physical hazard.

[Section 48.1B inserted by 2019 : 1 s. 14 effective 31 October 2020]

Withdrawal of consent

48.1C (1) Where the consent of a patient to treatment has been given as mentioned in section 48.1B(2)(a), the patient may at any time before the completion of the treatment withdraw his consent and that section shall then apply as if the remainder of the treatment were a separate form of treatment.

(2) Where a patient has consented to treatment for the purposes of section 48.1B(2)(a) but, before the completion of the treatment, loses capacity to consent to the treatment—

- (a) the patient shall be treated as having withdrawn his consent; and
- (b) that section shall then apply as if the remainder of the treatment were a separate form of treatment.

(3) Without prejudice to the application of subsections (1) and (2) to any treatment given under the plan of treatment to which a patient has consented, a patient who has consented to such a plan may at any time withdraw his consent to further treatment, or to further treatment of any description, under the plan.

(4) This section shall not preclude the continuation of any treatment (or of treatment under any plan) pending compliance with section 48Q, 48R or 48.1B if the responsible medical officer in charge of the treatment considers that the discontinuance of the treatment (or of treatment under the plan) would cause serious suffering to the patient.

[Section 48.1C inserted by 2019 : 1 s. 14 effective 31 October 2020]

Community patients lacking capacity

48.1D (1) A person is authorised to give relevant treatment to a patient under section 48.1B(2)(b) if the conditions in subsections (2) to (6) are satisfied.

(2) The first condition is that, before giving the treatment, the person takes reasonable steps to establish whether the patient lacks capacity to consent to the treatment.

(3) The second condition is that, when giving the treatment, the person reasonably believes that the patient lacks capacity to consent to it.

(4) The third condition is that—

- (a) the person has no reason to believe that the patient objects to being given the treatment; or
- (b) the person does have reason to believe that the patient so objects, but it is not necessary to use force against the patient in order to give the treatment.

(5) The fourth condition is that—

- (a) the person is in charge of the treatment and is the responsible medical officer; or

(b) the treatment is given under the direction of the responsible medical officer.

(6) The fifth condition is that giving the patient the treatment would not conflict with—

(a) any previous wishes made by the patient, which the person authorised to give the treatment is satisfied are valid and applicable to the treatment in question; or

(b) a decision made by a judge appointed under Part IV or a donee of a power of attorney.

(7) When determining the matters set out in subsection (6)(a), the person authorised to give the treatment shall act in accordance with the Code.

[Section 48.1D inserted by 2019 : 1 s. 14 effective 31 October 2020]

Emergency treatment for community patients lacking capacity

48.1E (1) A person is also authorised to give relevant treatment to a patient under section 48.1B(2)(b) if the conditions in subsections (2) to (5) are satisfied.

(2) The first condition is that, when giving the treatment, the person reasonably believes that the patient lacks capacity to consent to it.

(3) The second condition is that the treatment is immediately necessary.

(4) The third condition is that if it is necessary to use force against the patient in order to give the treatment—

(a) the treatment needs to be given in order to prevent harm to the patient; and

(b) the use of such force is a proportionate response to the likelihood of the patient's suffering harm, and to the seriousness of that harm.

(5) For the purposes of subsection (3), treatment is immediately necessary if, subject to subsections (6) and (7)—

(a) it is immediately necessary to save the patient's life; or

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

(c) it is immediately necessary to alleviate serious suffering by the patient and is not irreversible or hazardous; or

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

(6) Where treatment is of a form to which section 48R(1)(a) applies, treatment is immediately necessary if it falls within subsection (5)(a) or (b).

MENTAL HEALTH ACT 1968

(7) Where treatment is of a form to which section 48R(1)(b) applies, treatment is immediately necessary if it falls within subsection (5)(a) to (d) as may be specified in regulations made under section 48R.

(8) Section 48V(3) applies for the purposes of this section as it applies for the purposes of that section.

[Section 48.1E inserted by 2019 : 1 s. 14 effective 31 October 2020]

Part IIIC certificate; supplementary provisions

48.1F (1) A certificate meeting the requirements of section 48.1B(3) (referred to as a “Part IIIC certificate”) may relate to a plan of treatment under which the patient is to be given (whether within a specified period or otherwise) one or more forms of treatment to which section 48Q or 48R applies.

(2) A Part IIIC certificate shall be in such form as the Board may determine.

(3) Before giving a Part IIIC certificate that falls within section 48.1B(3)(a), the SOAD concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment but, of those persons—

- (a) at least one shall be a person who is not a registered medical practitioner; and
- (b) neither shall be the patient's responsible medical officer or the person in charge of the treatment in question.

(4) Where a patient is given treatment in accordance with a Part IIIC certificate that falls within section 48.1B(3)(a), a report on the treatment and the patient's condition shall be given by the person in charge of the treatment to the Board if so required by the Board.

(5) The Board may, at any time, give notice directing that a Part IIIC certificate shall not apply to treatment given to a patient after a date specified in the notice and, where such notice is given, the relevant section shall then apply to any such treatment as if that certificate had not been given.

(6) The relevant section is—

- (a) if the patient is not recalled to hospital, section 48.1B; or
- (b) if the patient is recalled to hospital or is liable to be detained in hospital under this Act following revocation of the community treatment order under section 48M—
 - (i) section 48Q, in the case of treatment to which section 48Q applies (subject to section 48W(2)); or
 - (ii) section 48R, in the case of treatment to which section 48R applies.

(7) The notice under subsection (5) shall be given to the person in charge of the treatment in question.

(8) Subsection (5) shall not preclude the continuation of any treatment (or of treatment under any plan) pending compliance with the relevant section, if the person in charge of the treatment considers that the discontinuance of the treatment or of treatment under the plan would cause serious suffering to the patient.

[Section 48.1F inserted by 2019 : 1 s. 14 effective 31 October 2020]

Factors to be considered in determining whether patient objects to treatment

48.1G (1) In assessing for the purposes of this Part whether he has reason to believe that a patient objects to treatment, a person shall consider all the circumstances so far as they are reasonably ascertainable, including the patient's behaviour, wishes, feelings, views, beliefs and values.

(2) But circumstances from the past shall be considered only so far as it is still appropriate to consider them.

[Section 48.1G inserted by 2019 : 1 s. 14 effective 31 October 2020]

Supplementary provisions for Part IIIC

48.1H Section 48Z applies for the purposes of this Part as it applies for the purposes of Part IIIB.

[Section 48.1H inserted by 2019 : 1 s. 14 effective 31 October 2020]

PART IV

MANAGEMENT OF PROPERTY AND AFFAIRS OF PATIENTS

Judicial authority for the purpose of this part

49 (1) The Chief Justice and, in his absence, a Puisne Judge, are hereby appointed to act for the purposes of this Part, and each such judge is hereinafter in this Part referred to as the judge.

(2) The judge shall be the judicial authority for the protection and management, as provided by this Part, of the property of persons under disability.

Persons within the jurisdiction of the judge

50 The functions of the judge under this Part shall be exercisable where, after considering medical evidence, he is satisfied that a person is incapable, by reason of mental disorder, of managing and administering his property and affairs; and a person as to whom the judge is so satisfied is in this Part referred to as a patient.

General functions of the judge

51 (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 administers 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; 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

52 (1) Without prejudice to the generality of section 51, 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 section 51(1)(b) and (c);
- (e) the carrying on by a suitable person of any professions, 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;
- (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 of consent) vested in the patient, whether beneficially, or as guardian or trustee, or otherwise.

(2) If under subsection (1) 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.

(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 judge is satisfied, at any time before the death of a 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.

Judge's powers in cases of emergency

53 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 immediate provision for any of the matters referred to in section 51, 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 so far as is requisite for enabling that provision to be made.

Power to appoint receiver

54 (1) The judge may by order appoint as receiver for a patient a person specified in the order; 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 51 and 52, 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 Bermuda

55 (1) Where the judge is satisfied—

- (a) that under the law prevailing in any place outside Bermuda 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.

Preservation of interests in patient’s property

56 (1) Where any property of a person has been disposed of under this Part, 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 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 subsections (1) and (2), 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), 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 this subsection:

MENTAL HEALTH ACT 1968

Provided that a charge created under this subsection shall not confer any right of sale or foreclosure during the lifetime of the patient.

Court Commissioners

57 (1) The Minister shall appoint a body of persons consisting of not less than three and not more than five persons to be known as the Court Commissioners of whom one shall be a registered medical practitioner appointed as Medical Commissioner and one shall be a barrister and attorney appointed as Legal Commissioner.

(2) Each Commissioner shall be appointed to hold office for such period as the Minister thinks fit, but within such period shall hold office at the Minister pleasure.

(3) There shall be a Chairman of the Commissioners who shall be appointed by the Minister to hold office (as such) for such period as the Minister thinks fit but who within such period shall hold office during the Minister pleasure.

[Section 57 amended by 1998:32 effective 13 July 1998]

Functions of Commissioners

58 (1) It shall be the duty of the Commissioners 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 administering his property and affairs, or otherwise relating to the exercise, in relation to him, of the functions of the judge; and the Commissioners shall make such reports on their visits as the judge may direct.

(2) A Commissioner making a visit under this section may interview the patient in private.

(3) A Medical Commissioner 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) A report made by a Commissioner under this section, and information contained in such report, shall not be disclosed except to the judge and any person authorised by the judge to receive the disclosure.

(5) If any person discloses any report or information in contravention of subsection (4), he commits an offence:

Punishment on summary conviction: imprisonment for 3 months or a fine of \$720 or both such imprisonment and fine.

General powers of the judge with respect to proceedings

59 (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 Supreme Court in respect of securing the attendance of witnesses and the production of documents.

(2) Subject to this section, any act or omission in the course of such proceedings as aforesaid which, if occurring in the course of proceedings in the Supreme Court would

have been a contempt of court, shall be punishable by the judge in any manner in which it could have been punished by the Supreme Court.

Rules of procedure

- 60 (1) The Chief Justice shall have power to make rules for the purposes of this Part.
- (2) 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 rules made under this Part.
- (3) Rules under this Part 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 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.
- (4) Without prejudice to section 59(1), rules under this Part 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.
- (5) Rules under this Part may make provision as to the termination of proceedings, whether on the death or recovery of the person to whom proceedings relate or otherwise, and for the exercise, pending the termination of the proceedings, of powers exercisable under this Part in relation to the property or affairs of a patient.
- (6) Rules under this Part 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.
- (7) A charge upon the estate of a person created by virtue of subsection (6) shall not cause any interest of that person in any property to fail or determine or to be prevented from recommencing.
- (8) Rules under this Part may authorise the making of orders for the payment of costs to or by persons attending, as well as persons taking part in proceedings.
- (9) Rules under this Part may make provision as to the giving of security by a receiver or any other person, and as to the enforcement and discharge of the security, and such rules may provide for the rendering of accounts by receivers or by other persons, not being receivers, ordered, directed or authorised under this Part to carry out any transaction.
- (10) Rules under this Part may contain such other incidental and supplemental provisions as appear requisite for the purposes of the rules.

(11) Section 6 of the Statutory Instruments Act 1977 [*title 1 item 3*] shall apply only to subsection (6) to which subsection the affirmative resolution procedure shall apply.

PART V

MISCELLANEOUS AND GENERAL

Applications to the Review Tribunal

61 (1) Where—

- (a) a patient is admitted to a hospital in pursuance of an application for admission for assessment under section 9; or
- (b) a patient is admitted to a hospital in pursuance of an application for admission for treatment under section 10; or
- (c) a report is furnished under section 19 in respect of a patient; or
- (d) a report is furnished under section 22 in respect of a patient and the patient is not discharged; or
- (e) a report is furnished under section 27 in respect of a patient who is detained in pursuance of an application for admission for treatment, or in respect of patient for whom a community treatment order is made; or
- (f) an order is made under section 29 in respect of a patient who is or subsequently becomes liable to be detained under Part II, or who is or subsequently becomes a community patient pursuant to Part IIIA; or
- (g) a community treatment order, in respect of a patient, is made under section 48A; or
- (h) a report is furnished under section 48F(2)(b) in respect of a community patient and the patient is not discharged; or
- (i) a community treatment order, in respect of a patient, is revoked under section 48M,

an application may be made to the Review Tribunal within the relevant period—

- (i) by the patient (except in the cases mentioned in paragraph (e) and (f) or, in the case mentioned in paragraph (c), by his nearest relative, and
- (ii) in the cases mentioned in paragraph (e) and (f) above, by his nearest relative.

(2) In subsection (1) “the relevant period” means—

- (a) in the case mentioned in paragraph (a) of that subsection, fourteen days beginning with the day on which the patient is admitted as so mentioned;

- (b) in the cases mentioned in paragraphs (b), (g) and (i) of that subsection, six months beginning with the day on which the patient is admitted, or the community treatment order is made or revoked, as so mentioned;
- (ba) in the case mentioned in paragraph (h) of that subsection, the period or periods for which the community treatment period is extended by virtue of the report;
- (c) in the cases mentioned in paragraphs (c) and (e) of that subsection, twenty-eight days beginning with the day on which the applicant is informed that the report has been furnished;
- (d) in the case mentioned in paragraph (d) of that subsection, the period for which authority for the patient's detention is renewed by virtue of that report;
- (e) in the case mentioned in paragraph (f) of that subsection—
 - (i) in respect of a patient who is or subsequently becomes liable to be detained under Part II, twelve months beginning with the date of the order, and in any subsequent period of twelve months during which the order continues in force; and
 - (ii) in respect of a community patient, six months beginning with the date of the order, and in any subsequent period of twelve months during which the order continues in force.

[Section 61 repealed and replaced by 1998 : 32 effective 13 July 1998; Section 61 amended by 2019 : 1 s. 15 effective 31 October 2020]

References to Review Tribunal by Minister concerning Part II patients

61A (1) The Minister may, if he thinks fit, at any time refer to the Review Tribunal the case of any patient who is liable to be detained under Part II of this Act.

(2) For the purpose of furnishing information for the purposes of a reference under subsection (1) a registered medical practitioner authorised by or on behalf of the patient may, at any reasonable time, visit the patient and examine him in private and require the production of, and inspect, any records relating to the detention or treatment of the patient in a hospital.

[Section 61A inserted by 1998:32 effective 13 July 1998]

Duty of Board to refer cases to Review Tribunal

61B (1) Where a patient who is admitted to a hospital in pursuance of an application for admission for treatment does not exercise his right to apply to the Review Tribunal under section 61(1) by virtue of his case falling within paragraph (b) of that section, the Board shall at the expiration of the period for making such an application refer the patient's case to the Review Tribunal unless an application or reference in respect of the patient has then been made under section 61(1) above by virtue of his case falling within paragraph (c), (e) or (f) of that section or under section 61A(1).

MENTAL HEALTH ACT 1968

(2) If the authority for the detention of a patient in a hospital is renewed under section 22 and a period of two years (or, if the patient has not attained the age of sixteen years, one year) has elapsed since his case was last considered by the Review Tribunal, whether on his own application or otherwise, the Board shall refer his case to the Review Tribunal.

(3) For the purpose of furnishing information for the purposes of any reference under this section, a registered medical practitioner authorised by or on behalf of the patient may at any reasonable time visit and examine the patient in private and require the production of, and inspect, any records relating to the detention or treatment of the patient in any hospital.

(4) The Minister may by order vary the length of the periods mentioned in subsection (2).

(5) For the purposes of subsection (1) a person who applies to a tribunal but subsequently withdraws his application shall be treated as not having exercised his right to apply, and where a person withdraws his application on a date after the expiration of the period mentioned in that subsection, the Board shall refer the patient's case as soon as possible after that date.

[Section 61B inserted by 1998:32 effective 13 July 1998]

Applications to Review Tribunal concerning patients subject to hospital order

61C (1) Without prejudice to any provision of section 61(1) as applied by section 36(2), an application to the Review Tribunal may also be made in respect of a patient admitted to a hospital in pursuance of a hospital order, by the nearest relative of the patient in the period between the expiration of six months and the expiration of twelve months beginning with the date of the order and in any subsequent period of twelve months.

(2) Where a person detained in a hospital—

- (a) is treated as subject to a hospital order by virtue of section 38(5); or
- (b) is subject to an order having the same effect as a hospital order by virtue of section 43(1),

then, without prejudice to any provision of Part II of this Act as applied by section 36, that person may make an application to the Review Tribunal in the period of six months beginning with the date of the order mentioned in paragraph (a) or (b).

[Section 61C inserted by 1998:32 effective 13 July 1998]

Applications to Review Tribunal concerning restricted patients

61D A patient in respect of whom an order restricting his discharge from hospital has been made under section 38 may apply to the Review Tribunal—

- (a) in the period between the expiration of six months and the expiration of twelve months beginning with the date of the order; and

MENTAL HEALTH ACT 1968

- (b) in any subsequent period of twelve months.

[Section 61D inserted by 1998:32 effective 13 July 1998]

References by Minister concerning restricted patients

61E (1) The Minister may at any time refer the case of a patient in respect of whom an order restricting his discharge from hospital has been made under section 38 to the Review Tribunal.

(2) The Minister shall refer to the Review Tribunal the case of any such patient whose case has not been considered by such a tribunal, whether on his own application or otherwise, within the last two years.

(3) The Minister may by order vary the length of the period mentioned in subsection (2).

[Section 61E inserted by 1998:32 effective 13 July 1998]

Duty of Board to give information to detained patients

61F (1) The Board shall take such steps as are practicable to ensure that a patient who is detained under this Act understands—

- (a) under which of the provisions of this Act he is for the time being detained and the effect of that provision; and
- (b) what rights of applying to the Review Tribunal are available to him in respect of his detention under that provision,

and those steps shall be taken as soon as practicable after the commencement of the patient's detention under the provision in question.

(2) The Board shall in respect of a patient who is detained as aforesaid also take such steps as are practicable to ensure that the patient understands the effect, so far as relevant in his case, of sections 26, 27, 61(1)(e) and 17; and those steps shall be taken as soon as practicable after the commencement of the patient's detention in the hospital or nursing home.

(3) The steps to be taken under subsections (1) and (2) above shall include giving the requisite information both orally and in writing.

(4) The Board shall in respect of a patient who is detained as aforesaid, except where the patient otherwise requests, take such steps as are practicable to furnish the person (if any) appearing to the Board to be his nearest relative with a copy of any information given to him in writing under subsections (1) and (2); and those steps shall be taken when the information is given to the patient or within a reasonable time thereafter.

[Section 61F inserted by 1998:32 effective 13 July 1998]

Duty of Board to inform nearest relative of discharge of patient

61G (1) Where—

- (a) a patient liable to be detained under this Act in a hospital; or

- (b) a community patient,

is to be discharged otherwise than by virtue of an order for discharge made by his nearest relative, the Board shall, subject to subsection (2), take such steps as are practicable to inform the person (if any) appearing to the Board to be the nearest relative of the patient; and that information shall, if practicable, be given at least seven days before the date of discharge.

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

[Section 61G inserted by 1998:32 effective 13 July 1998; Section 61G subsection (1) repealed and substituted by 2019 : 1 s. 16 effective 31 October 2020]

Powers of the Review Tribunal

62 (1) Where application is made to the 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 section 23(3) or section 27(3), that the patient, if released, would not be likely to act in a manner dangerous to other persons or to himself.

(1A) Where application is made to the Review Tribunal by or in respect of a community patient, the tribunal shall direct the discharge of a community patient if it is not satisfied—

- (a) that the patient is suffering from mental disorder or mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment; or
- (b) that it is necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment; or
- (c) that it is necessary that the responsible medical officer should be able to exercise the power under section 48H to recall the patient to hospital; or
- (d) in the case of application by virtue of section 61(1)(e), that the patient, if discharged, would be likely to act in a manner dangerous to other persons or himself.

(2) Where application is made to the 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

MENTAL HEALTH ACT 1968

disorder specified therein such other form of mental disorder as appears to the Tribunal to be appropriate.

(3) This section does not apply in relation to any reference by the Minister under section 39(6).

[Section 62 amended by 1998:32 effective 13 July 1998; Section 62 subsection (1A) inserted by 2019 : 1 s. 17 effective 31 October 2020]

Rules as to procedure

63 (1) The Chief Justice may make rules with respect to the making of applications to the Review Tribunal, and with respect to the proceedings of the Tribunal and matters incidental to and consequential on such proceedings.

(2) Rules made under this section may in particular make provision—

- (a) for enabling the Tribunal or the Chairman of the 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 the Tribunal;
- (b) for restricting the persons qualified to serve as members of the Tribunal for the consideration of any application, or of an application of any specified class;
- (c) for enabling the 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;
- (d) for enabling the 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;
- (e) for regulating the circumstances in which, and the persons by whom, applicants and patients in respect of whom applications are made to the Tribunal may, if not desiring to conduct their own case, be represented for the purposes of those applications;
- (f) 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 the 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;
- (g) for making available to any applicant, and to any patient in respect of whom an application is made to the 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;

- (h) for requiring the Tribunal, if so requested in accordance with the rules to furnish such statements of the reasons for any decisions 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 where the Tribunal considers that furnishing it would be undesirable in the interests of the patient or for other special reasons;
- (i) for conferring on the Tribunal such ancillary powers as the Chief Justice 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 the Review Tribunal as they apply in relation to applications to the Tribunal 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) The Review Tribunal may, and if so required by the Supreme Court shall, state in the form of a special case for the determination by the court any question of law which may arise before them.

(6) Section 6 of the Statutory Instruments Act 1977 [*title 1 item 3*] shall not apply to rules made under this section.

Forgery, false statements, etc

64 (1) Without prejudice to any provision of the Criminal Code [*title 8 item 31*], any person who, with intent to deceive, forges any of the following documents—

- (a) an application under Part II;
- (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 any other 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, commits 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, commits an offence,

(3) Where any person commits an offence under this section:

Punishment on conviction on indictment: imprisonment for 3 years;

MENTAL HEALTH ACT 1968

Punishment on summary conviction: imprisonment for 6 months or a fine of \$720 or both such imprisonment and fine.

(4) In this section “forge” has the meaning which it has in the Criminal Code [*title 8 item 31*].

Ill-treatment of patients

65 (1) Where a person (“D”) has, pursuant to this Act, care or custody (whether by virtue of any legal or moral obligation or otherwise) of—

(a) a mentally disordered person; or

(b) a person who lacks, or who D reasonably believes lacks, mental capacity,

it shall be an offence for D to ill-treat or wilfully neglect that person.

(2) Where any person commits an offence under this section:

Punishment on conviction on indictment: imprisonment for 2 years;

Punishment on summary conviction: imprisonment for 6 months or a fine of \$720 or both such imprisonment and fine.

(3) No proceedings shall be instituted for an offence under this section except by or with the consent of the Director of Public Prosecutions.

[Section 65 amended by 1998:32 effective 13 July 1998; subsection (3) amended by 1999:8 s.2 & Sch 1 effective 1 April 1999; Section 65 subsection (1) repealed and substituted by 2019 : 1 s. 18 effective 31 October 2020]

Sexual intercourse with patients

66 (1) Without prejudice to section 183 of the Criminal Code [*title 8 item 31*], 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 a hospital or a mental nursing home to have unlawful sexual intercourse with a woman who is for the time being receiving psychiatric care 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 care 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 in his custody or care under 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 or has no reason to suspect her to be a mentally disordered patient.

(3) Where any person commits an offence under this section:

Punishment on conviction on indictment: imprisonment for 2 years.

MENTAL HEALTH ACT 1968

(4) No proceedings shall be instituted for an offence under this section except by or with the consent of the Director of Public Prosecutions.

[Section 66 amended by 1998:32 effective 13 July 1998; subsection (4) amended by 1999:8 s.2 & Sch 1 effective 1 April 1999]

Assisting patients to absent themselves without leave, etc

67 (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 II or recalled to hospital under Part IIIA, to absent himself without leave; or
- (b) being in legal custody by virtue of section 73, to escape from such custody,

commits an offence.

(2) Any person who knowingly harbours a patient who is absent without leave or is otherwise at large and liable to be re-taken under this Act, or gives him any assistance with intent to prevent, hinder or interfere with his being taken into custody or returned to a hospital, commits an offence.

(3) Where any person commits an offence under this section:

Punishment on conviction on indictment: imprisonment for 2 years;

Punishment on summary conviction: imprisonment for 6 months or a fine of \$720 or both such imprisonment and fine.

[Section 67 amended by 1998:32 effective 13 July 1998; Section 67 subsection (1) amended by 2019 : 1 s. 19 effective 31 October 2020]

Obstruction

68 (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, commits an offence.

(2) Without prejudice to the generality of subsection (1), 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, commits an offence.

(3) Where any person commits an offence under this section:

Punishment on summary conviction: imprisonment for 3 months or a fine of \$720 or both such imprisonment and fine.

MENTAL HEALTH ACT 1968

Prosecutions by the Board

69 The Board may institute proceedings for any offence under this Part, but without prejudice to any provision of this Part requiring the consent of the Director of Public Prosecutions for the institution of such proceedings.

[Section 69 amended by 1999:8 s.2 & Sch 1 effective 1 April 1999]

Correspondence of patients not subject to detention

70 (1) Section 17 shall apply in relation to any patient who is receiving treatment for mental disorder in a hospital or a 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 II.

(2) In relation to any patient to whom it applies by virtue of this section, section 17 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.

[Section 70 amended by 1998:32 effective 13 July 1998]

Warrant to search for and remove patients

71 (1) If it appears to a magistrate, 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; or
- (b) being unable to care for himself is living alone in any place,

the magistrate may issue a warrant authorising any police officer 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 II, or of other arrangements for his treatment or care.

(2) If it appears to the magistrate, on information on oath laid by any police officer 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 suspect that the patient is to be found on certain premises; and
- (b) that admission to such premises has been refused or that a refusal of such admission is apprehended,

the magistrate may issue a warrant authorising a police officer 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.

MENTAL HEALTH ACT 1968

(4) In the execution of a warrant issued under subsection(1), a police officer shall be accompanied by a mental welfare officer and by a medical practitioner, and in the execution of a warrant issued under subsection (2) a police officer may be accompanied by a medical practitioner or by any person authorised by or under this Act to take or re-take the patient.

(5) It shall not be necessary in any information or warrant issued under subsection (1) to name the patient concerned.

(6) In this section, “place of safety” means a hospital, a police station or any other suitable place the occupier of which is willing temporarily to receive the patient.

[Section 71 amended by 1998:32 effective 13 July 1998; amended by 2009:52 s.5 effective 4 January 2010]

Mentally disordered persons found in public places

72 (1) If a police officer 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 officer may, if he thinks it necessary to do so in the interests of that person or for the protection of other persons, remove that person to a place of safety within the meaning of section 71.

(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.

Provision as to custody, conveyances and detention

73 (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 is taken under section 39(5) shall, while being so conveyed, detained or kept, as the case may be, be deemed to be in legal custody.

(2) A police officer 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 of a police officer acting in the execution of his duty.

(3) In this section “convey” includes any other expression denoting removal from one place to another.

Re-taking of patients escaping from custody

74 (1) If any person being in legal custody by virtue of section 73 escapes, he may, subject to this section, be retaken—

- (a) in any case, by the person who had his custody immediately before the escape, or by any police officer 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 II, by any other person who could take him into custody under section 21 if he had absented himself without leave.

(2) A person who escapes as aforesaid when liable to be detained (not being a person subject to an order under Part III restricting his discharge or an order or direction having the like effect as such an order) shall not be re-taken under this section after the expiration of the period within which he could be re-taken under section 21 if he had absented himself without leave on the day of the escape; and section 21(3) shall apply with the necessary modifications accordingly.

(3) A person who escapes while being taken to or detained in a place of safety under sections 71 or 72 shall not be re-taken 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 II, shall apply in relation to a person who escapes while being taken to or detained in a place of safety in pursuance of an order under Part III pending his admission to a hospital, as if he were liable to be detained in the 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 36 and 37 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 re-taken by virtue of this section.

(6) Section 24 shall, with necessary modifications, apply in relation to a patient who is at large and liable to be re-taken by virtue of this section as it applies in relation to a patient who is absent without leave within the meaning of section 21, and references therein to section 21 shall be construed accordingly.

[Section 74 amended by 1998:32 effective 13 July 1998]

Protection for acts done on pursuance of this Act

75 (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 or Code thereunder, unless the act was done in bad faith or without reasonable care.

(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 Supreme Court and the Supreme 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.

MENTAL HEALTH ACT 1968

(3) This section does not apply to proceedings for an offence under this Act, being proceedings which, under this Act, can be instituted only by or with the consent of the Director of Public Prosecutions.

[Section 75 subsection (3) amended by 1999:8 s.2 & Sch 1 effective 1 April 1999; Section 75 subsection (1) amended by 2019 : 1 s. 20 effective 31 October 2020]

Nursing homes

76 (1) No patient suffering from mental disorder may be detained against his will in any place other than a hospital.

(2) Nothing in this section shall be construed so as to prevent a person being admitted to a nursing home for observation or treatment for mental disorder in pursuance of arrangements made in that behalf by the patient or any other person on his behalf, but in any such case the patient shall be at liberty to leave the nursing home at any time, and he shall not be required to give any notice such as is specified in section 7(3).

[Section 76 amended by 1998:32 effective 13 July 1998]

Regulations relating to fees, etc

77 (1) The Board may, subject to the approval of the Minister, make regulations providing for the payment for maintenance of patients in a hospital, and the rates to be paid by or in respect of paupers, indigent or paying patients.

(2) The affirmative resolution procedure shall apply to regulations made under this section.

[Section 77 amended by 1998:32 effective 13 July 1998]

Rules for the Mental Hospital

78 (1) The Board may make such rules as may from time to time be necessary for the internal administration of a hospital, and without prejudice to the foregoing, such rules may provide for the control of the conduct of patients while in a hospital and for the duties, obligations and discipline of members of the staff of a hospital.

(2) Rules made under this section shall be published in a prominent place within a hospital and shall be brought to the attention of all members of the staff of a hospital, and, where practicable, of the patients in a hospital.

[Section 78 amended by 1998:32 effective 13 July 1998]

Code of Practice

78A (1) The Minister shall prepare and issue a Code of Practice providing for—

- (a) the guidance of registered medical practitioners and other health professionals responsible for the care and treatment of patients suffering from mental disorder;
- (b) the guidance of persons acting in connection with the care or treatment of patients;

- (c) the guidance of persons assessing whether a patient has capacity in relation to any matter;
- (d) the guidance of persons responsible for assessing whether a patient gives consent in relation to a matter and shall include criteria for assessing the validity and applicability of any previous wishes made by the patient;
- (e) the appointment, and minimum qualifications, of a mental welfare officer;
- (f) the appointment, selection, training and utilisation of SOADs and other persons approved for the purposes of section 48Y; and
- (g) such other matters concerned with this Act as the Minister thinks fit.

(2) The Code may include a statement of principles which the Minister thinks should inform decisions under this Act.

(3) In preparing the statement of principles, the Minister shall in particular ensure that each of the following matters is addressed—

- (a) respect for patients' past and present wishes and feelings;
- (b) respect for diversity generally including, in particular, diversity of religion, culture and sexual orientation;
- (c) minimising restrictions on liberty;
- (d) involvement of patients in planning, developing and delivering care and treatment appropriate to them;
- (e) avoidance of unlawful discrimination;
- (f) effectiveness of treatment;
- (g) views of carers and other interested parties;
- (h) patient wellbeing and safety; and
- (i) public safety.

(4) The Minister may from time to time amend the whole or any part of the Code and issue that amended Code or part.

(5) The Minister may delegate the preparation or amendment of the whole or any part of the Code to the Board or such other body as he considers appropriate.

(6) The Minister shall publish on the Bermuda Government Portal at the web address: www.gov.bm—

- (a) the Code as first issued; and
- (b) any amendment to the Code.

(7) Before issuing or amending the Code, the Minister shall prepare and publish a draft of the Code or amendment and consider any representations made to it about the draft, and may modify the draft accordingly.

MENTAL HEALTH ACT 1968

(8) A failure on the part of any person to observe any provision of the Code shall not of itself render the person liable to any proceedings; but in any proceedings before a court, the Code shall be admissible in evidence and if any provision of the Code appears to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

(9) The Code shall not be subject to the Statutory Instruments Act 1977.

[Section 78A inserted by 2019 : 1 s. 21 effective 31 October 2020]

Transitional provisions

79 *[omitted].*

Repeal and amendments

80 *[omitted].*

Commencement

81 *[omitted].*

FIRST SCHEDULE

THE MENTAL HEALTH REVIEW TRIBUNAL

1 The members of the Review Tribunal shall be appointed by the Minister and shall consist of—

- (a) a number of persons (hereinafter referred to as “the legal members”) and having such legal experience as the Minister considers suitable;
- (b) a number of persons (hereinafter referred to as “the medical members”) being registered medical practitioners; and
- (c) a number of persons having such experience in administration, such knowledge of social services or such other qualifications as the Minister considers suitable.

2 The members of the Review Tribunal shall hold office during the Minister’s pleasure.

3 One of the legal members of the Review Tribunal shall be appointed by the Minister as Chairman of the Tribunal.

4 (1) Subject to rules made by the Chief Justice under section 63(2)(b) and sub-paragraph (2), the members who are to constitute a Review Tribunal for the purposes of any proceedings or class or group of proceedings under this Act shall be appointed by the chairman of the Tribunal or, if for any reason he is unable to act, by another member of the Tribunal appointed for the purpose by the chairman; and of the members so appointed—

- (a) one shall be appointed from the legal members;
- (b) one shall be appointed from the medical members; and
- (c) one shall be appointed from the members who are neither legal nor medical members.

(2) Notwithstanding sub-paragraph (1)—

- (a) in the case of a patient who was admitted to a hospital for treatment and who has been detained in that hospital for six months or more;
- (aa) in the case of a patient in respect of whom a community treatment order is made under section 48A, extended under section 48F or revoked under section 48M;
- (b) in the case of a patient in respect of whom a hospital order was made,

the Review Tribunal shall, consist of the members referred to in subparagraphs (a) and (c) and one medical practitioner who satisfies the Chairman of the Review Tribunal that he has experience in psychiatric care.

MENTAL HEALTH ACT 1968

5 Where the chairman of the Review Tribunal is included among the persons appointed under paragraph 4, 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.

6 Fees shall be paid to members of the Review Tribunal in accordance with the Government Authorities (Fees) Act 1971 [*title 14 item 6*].

[First Schedule amended by 1998:32 effective 13 July 1998; First Schedule amended by 2019 : 1 s. 22 effective 19 March 2019]

SECOND SCHEDULE

Section of Part II and subject matter	Hospital Order without restriction (s.36) Transfer direction without restriction (s. 44).	Hospital Order with restriction or committal to hospital (ss.38 and 41). Direction as to Minister's pleasure prisoners (s. 43). Transfer direction with restriction (s.45).
s.8 (Definition of "nearest relative")	None	The section shall not apply.
s.18 (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.	Subsection (1) shall not apply.
s.19 (Re-classification of patients)	In subsection (1), for references to an application for admission, there shall be substituted references to the order or direction under Part III by virtue of which the patient is liable to be detained.	The section shall not apply.
s.20 (Leave of absence from hospital)	None	In subsection (1), after the word "may", the words "subject to subsections (2A) and (2B)" shall be omitted and there shall be inserted the words "with the consent of the Minister".

Subsections (2A) and (2B) shall not apply. In subsection (4), after the words "the responsible medical officer" and after the words "that officer", there shall be in each case inserted the words "or the Minister".

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 "he has ceased" to the end of the sub-section, 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.22	Duration of authority)	In subsection (1), for words "day on which he was so admitted" there shall be substituted the words "date of the relevant order or direction under Part III".	The section shall not apply.
s.25	(Special provisions as to patients sentenced to imprisonment)	For references to an application for admission, there shall be substituted references to the order or direction under Part III by virtue of which the patient is liable to be detained.	Subsection (1) and paragraph (a) of subsection (2) shall not apply.

MENTAL HEALTH ACT 1968

s.26 (Discharge of patients)	In subsection (2), paragraph (a) [sic] and [sic] the words “or by the nearest relative of the patient” shall be omitted.	In subsection (1), after the word “made” there shall be inserted the words “with the consent of the Minister”. Subsection (1A) shall not apply. In subsection (2), paragraphs (a) and (c) paragraph (a) [sic] and [sic] the words “or by the nearest relative of the patient” shall be omitted.
s.28 (Children in care)	None	The section shall not apply.
s.31 (Rules)	None	The section shall not apply.

[Second schedule amended by 1998 : 32 effective 13 July 1998; amended by 1998 : 38 effective 1 January 2000; amended by 2019 : 1 s. 23 effective 31 October 2020]

THIRD SCHEDULE

[omitted]

MENTAL HEALTH ACT 1968

FOURTH SCHEDULE

[omitted]

[Assent Date: 30 April 1968]

[this Act was brought into operation on 7 June 1968]

[Amended by:

1970 : 384

1971 : 43

1977 : 35

1991 : 85

1998 : 32

1998 : 38

1999 : 8

2001 : 20

2002 : 36

BR 67 / 2007

2009 : 52

2015 : 38

2018 : 25

2019 : 1]