

UNITED KINGDOM

MENTAL HEALTH ACT, 1959*

(7 & 8 ELIZ. 2, C. 72)

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

[29th July, 1959]

General Note

The provisions of the Act are based very largely on the recommendations of the Royal Commission on the Law relating to Mental Illness and Mental Deficiency, 1954-1957 (Cmnd. 169).

The Act repeals the Lunacy and Mental Treatment Acts, 1890-1930, and the Mental Deficiency Acts, 1913-1938, and provides one legal code to cover both mental illness and mental deficiency instead of the two codes previously existing. It removes the requirement for treatment of persons of unsound mind in designated hospitals, thus enabling hospital authorities to permit any type of mental patient to be received in any kind of hospital. Informal treatment in hospital for mental disorders replaces the formalities previously applicable to voluntary treatment, and compulsory powers of detention or guardianship provide a new system regulating the use of compulsory powers which will be exercisable only where no other appropriate methods are available. It also provides for offenders who are mentally disordered being sent to hospital or placed under guardianship as a result of criminal proceedings.

The Act introduces many changes of terminology in accordance with modern thought on the subject, thus the term "mental disorder" is used to cover all forms of mental illness or disability. It codifies the powers of the judges and the Court of Protection to manage the property and affairs of persons who are incapable, by reason of mental disorder, of managing their property and affairs. It makes minor amendments to the National Health Service Act, 1946, and other Acts under which care and treatment are provided by local authorities and hospital authorities, and revises the system of registration of nursing homes and residential homes for mentally disordered persons.

PART I (ss. 1-5): PRELIMINARY

This Part repeals the Lunacy and Mental Treatment Acts, 1890-1930, and the Mental Deficiency Acts, 1913-1938 (s. 1), dissolves the Board of Control and transfers its rights, liabilities, obligations and property to the Minister of Health (s. 2). A Mental Health Review Tribunal is to be constituted for each of the fifteen Regional Hospital Board areas in England and Wales to deal with applications from patients (and their relatives) for release from hospital or guardianship (s. 3 and Sched. I). Mental disorder is defined as mental illness, arrested or incomplete development of mind, psychopathic disorder, and any other disorder or disability of mind (s. 4). The powers of compulsory detention are not to prevent patients being admitted to hospital without the powers of detention being invoked (s. 5).

PART II (ss.6-13): LOCAL AUTHORITY SERVICES

Local health authorities are empowered to provide under s. 28 of the National Health Service Act, 1946, certain community care services previously provided under the Mental Deficiency Acts. In addition, certain restrictions in the National Assistance Act, 1948, and the Children Act, 1948, are removed to give local authorities greater freedom to organise services for mentally disordered persons within the framework of their general health, welfare, or child care services, as appropriate (ss. 6-10).

The procedure under the Education Acts governing cases where children are found to be unsuitable for education at school by reason of mental disorder is revised. A new right is conferred on parents to apply for review in such cases and local health authorities can compel the attendance of such children at training centres under provisions similar to those in force under the Education Acts for compelling attendance at school. In informing parents of such a decision local authorities must, wherever possible, tell the parents of the arrangements proposed for the child's care or training by the local health authority or in hospital. In addition to their right of appeal to the Minister of Education against the original decision parents are given a new right to apply to the local education authority and the Minister once a year for the decision to be reviewed (ss. 11-13, Sched. II).

PART III (ss. 14-24): MENTAL NURSING HOMES, RESIDENTIAL HOMES, ETC.

This Part provides for nursing and residential homes for mentally disordered persons to be registered and inspected by local authorities under the same enactments as other nursing and disabled persons' homes, subject to some special provisions, and for the inspection of other premises in which mentally disordered persons are believed to be living without proper care. These provisions replace various arrangements for registration and powers of visiting premises under the Lunacy and Mental Treatment Acts and Mental Deficiency Acts (ss. 14-23). Application of this Part of the Act to London (s. 24).

PART IV (ss. 25-59): COMPULSORY ADMISSION TO HOSPITAL AND GUARDIANSHIP

This Part defines the circumstances in which mentally disordered patients may compulsorily be admitted to and detained in hospital or may be placed under guardianship otherwise than through the courts on criminal proceedings or on transfer from prison or approved schools. The most important change is that no longer are the magistrates required to make a reception order (commonly referred to as "certification") before a patient can be compulsorily detained.

Patients may be admitted to hospital either for a period of not more than twenty-eight days' observation (s. 25), or for a longer period of treatment (s. 26). An application for the patient's admission for treatment or observation may be made either by his nearest relative or by a mental welfare officer, but when admission is for treatment, and not for observation, the mental welfare officer must, where practicable, consult with the person appearing to be the nearest relative and (except in emergency) may not proceed if he objects (s. 27). Two medical recommendations are required in all cases, one of which must be by a doctor with special experience of

mental disorder (s. 28). In cases of urgent necessity for admission for observation (but not for treatment) an application may be made by any relative or the mental welfare officer and only one recommendation need be provided in the first place but patients must not be detained for more than seventy-two hours unless a second recommendation is given (s. 29). Applications may be made for admission of patients already in hospital (s. 30). An application for admission (no judicial order being required) is sufficient authority for the applicant or any person authorised by the applicant to take the patient and convey him to hospital and for the managers of the hospital to admit him. Patients may apply to a Mental Health Review Tribunal within six months after admission for treatment (s. 31). If, within fourteen days of admission, the application or medical recommendations are found to be incorrect or defective they may be rectified with the consent of the managers of the hospital (s. 32).

Application for reception into guardianship: local health authorities are empowered to act as guardian - other persons may only so act if the local health authority agrees (s. 33). A guardian has all such powers as would be exercisable if he were the father of the patient and the patient were under fourteen years old, and the patient may apply to a Mental Health Review Tribunal within six months of the acceptance of the application (s. 34). The Minister may make regulations as to powers and duties of guardians (s. 35).

A Member of Parliament is added to the list of persons to whom the patient's letters must be forwarded unopened (s. 36). Patients may be visited and examined in private by any doctor authorised by or on behalf of the patient or other person entitled to apply to a Mental Health Review Tribunal (s. 37). Provision is made for the reclassification of patients who appear to be suffering from a form of mental disorder other than that specified in the application for detention in hospital or for guardianship (s. 38). Detained patients may be given leave of absence from hospital at the responsible medical officer's discretion and the power to detain normally lapses after six months' leave of absence unless the patient is recalled to hospital or transferred to guardianship (s. 39). Provision is made as to the return and readmission patients absent without leave (s. 40); as to regulations with regard to transfer of patients to another hospital or guardian, from hospital to guardianship or *vice versa* (s. 41); and as to transfer of guardianship in case of death, incapacity, etc., of guardian (s. 42).

The authority to detain a patient in hospital or under guardianship lapses at the end of fixed periods unless removed. The periods are one year, another year, then two years and subsequently every two years. If the authority to detain is renewed, the patient has the right once on each occasion to apply to the Mental Health Review Tribunal (s. 43). Psychopathic and subnormal patients normally cease to be liable to be detained or subject to guardianship on attaining the age of 25 (s. 44). Special provisions exist as to patients absent without leave (s. 45). An application for admission for treatment or guardianship ceases to have effect if the patient is sentenced to imprisonment, etc. (s. 46). Generally, the nearest relative of all patients admitted to hospital or subject to guardianship under this Part will hold the power of discharge and this power also vests in the responsible doctor, the hospital managers, and in the local authority according to the circumstances (ss. 47, 48); definition of relative and nearest relative (s. 49). A local authority or other person in whom the rights and powers of a patient being a child or young person are vested is deemed with certain exceptions to be the nearest relative (s. 50); nearest relative of an infant under guardianship, etc. (s. 51).

Application for the transfer of the functions of the nearest relative may be made to the county court by any relative, a person with whom the patient is or, if in hospital, was residing, or mental welfare officer; the nearest relative who has been displaced may apply to a Mental Health Review Tribunal for the discharge of the patient, but not more than once a year (s. 52); discharge, amendment and termination of orders for transfer of functions (s. 53).

The mental welfare officer has a duty to make application for admission to hospital or for guardianship where necessary (s. 54). Provision is made for rules in regard to procedure on applications to the county court (s. 55) and for regulations for purposes of Part IV (s. 56). The Minister may refer a case at any time to a Mental Health Review Tribunal (s. 57). Special provisions exist as to wards of court (s. 58). Interpretation of Part IV (s. 59).

PART V (ss. 60-80): ADMISSION OF PATIENTS CONCERNED IN CRIMINAL PROCEEDINGS, ETC., AND TRANSFER OF PATIENTS UNDER SENTENCE

Courts of assize, quarter sessions and magistrates' courts may make orders authorising the detention in hospital or reception into guardianship of persons convicted before them of offences punishable with imprisonment for which a penalty is not fixed by law, and are found to be suffering from mental disorder. A magistrates' court may also make such orders, in certain categories of mental disorder, without convicting (s. 60). Additional powers are given to juvenile courts in the case of children and young persons suffering from mental disorder

who are found to be in need of care or protection or beyond control. There are requirements as to medical evidence (s. 62). The effects of hospital orders and guardianship orders are dealt with (s. 63) and there are supplementary provisions as to hospital orders (s. 64).

Where a patient is admitted to hospital under an order made by a court of assize or quarter sessions, or transferred to a hospital by directions of the Secretary of State, the court or the Secretary of State may impose special restrictions for the protection of the public. The effect will be to prevent the patient being discharged without the consent of the Secretary of State and debar him from access to the Mental Health Review Tribunal, although the Secretary of State will be able to refer to the Tribunal for advice at any time and, if requested by such patient shall do so within two months unless the patient is discharged in the meantime (ss. 65, 66). The magistrates' courts may commit an offender in custody to quarter sessions to enable a restriction order to be made (ss. 67, 68). A right of appeal is conferred against orders made by the courts under this Part where such a right does not otherwise exist (ss. 69, 70). The Secretary of State may direct that persons ordered to be kept in custody during Her Majesty's pleasure shall be detained in specified hospitals (s. 71). The Secretary of State may transfer mentally disordered persons to hospital from penal institutions and to hospital or guardianship from approved schools (ss. 72-79). Interpretation of this Part (s. 80).

PART VI (ss. 81-96): REMOVAL AND RETURN OF PATIENTS WITHIN UNITED KINGDOM, ETC.

This Part provides powers by which certain patients who are subject to detention in hospital or under guardianship may be transferred between England and Wales and Scotland and between England and Wales and Northern Ireland. It also provides for the transfer of patients from Northern Ireland to England or Wales and revises the provisions for the transfer of Broadmoor patients and State mental patients between England and Scotland to fit in with the new classifications and procedures for admission and detention introduced by Part V (ss. 81-88). Pro-visions is made for the transfer of certain patients from the Channel Islands and Isle of Man to England and Wales (s. 89), and the removal of mentally ill aliens (s. 90), and for the return of patients absent without leave as between England and Wales and Scotland and between England and Wales and Northern Ireland (ss. 91-93). Regulations for purposes of this Part (s. 94). Any authority for detention or guardianship under Part IV or V of this Act ceases to have effect when the patient is removed from England and Wales under this Part (s. 95). Interpretation of this part (s. 96).

PART VII (ss. 97-99): SPECIAL HOSPITALS

This Part makes provision for institutions for the treatment, under conditions of special security, called "special hospitals," and replaces provisions in Acts repealed by this Act which provide for the designation and management of Broadmoor institutions, the provision and management of institutions for mental defectives of violent or dangerous propensities and the transfer from one special hospital to another (ss. 97-99).

PART VIII (ss. 100-121): MANAGEMENT OF PROPERTY AND AFFAIRS OF PATIENTS

There were three reasons for recasting the statutory provisions on this subject whilst not departing in essentials from the existing law and practice, (1) the abolition of the ancient procedure of inquisition, which was seldom used, (2) the classification in the Lunacy Act, 1890, s. 116 ceased to be applicable and (3) the previous statutory provisions, scattered over a number of Acts were unnecessarily complex, verbose and, sometimes, archaic.

The functions conferred by this Part on the judge of the Supreme Court (nominated by the Lord Chancellor) are exercisable by the Lord Chancellor or by the judge and also, with certain reservations, by the Master, Deputy Master and other officers of the Court of Protection (s. 100). The jurisdiction is exercised in respect of persons whom, after consideration of medical evidence, the court consider to be incapable by reason of mental disorder of managing and administering their property and affairs, such persons being referred to as "patients" (s. 101). The principles on which the court may exercise its powers to manage the property and affairs of patients are clearly defined and special provision is made as to the rights of the creditors of patients (s. 102). Without prejudice to the generality of s. 102 the main powers are specified without setting out an exhaustive list, the most important being the control and management of any property (s. 103). Powers are conferred in cases of emergency (s. 104) and there is power to appoint a receiver, who must carry out the orders of the court and may do anything that the court authorises (s. 105) and to make a vesting order in respect of stock in favour of a curator appointed outside England and Wales (s. 106). The provisions as to the preservation of interests in a patient's property to protect the position of those who have expectations of benefiting from the estate of a patient on his death are extended (s. 107).

The Lord Chancellor's Visitors office is continued and there is a variation of the qualifications of Medical Visitors (s. 108). The functions of Visitors are to investigate and report on a patient's capacity to manage his affairs or concerning some aspect of the exercise of the court's functions and a penalty is imposed for unauthorised disclosure of a report (s. 109). General powers of judge with respect to proceedings; power of attachment or committal is only exercisable by the Lord Chancellor or nominated judge and the procedure for the issue of writs of subpoena in the High Court is to apply (s. 110). Appeals (s. 111). Rules making provisions (ss. 112-114). Supplementary provisions as to the Court of Protection; oath to be taken by the Master and qualifications of the Deputy Master (s. 115). Effect and proof of orders, etc. (s. 116). Reciprocal arrangements in relation to Scotland and Northern Ireland as to exercise of powers (s. 117). Construction of references in other Acts to the "judge" or "authority" having jurisdiction under Part VIII (*i.e.*, this Part) of the Act (s. 118). Interpretation of this Part (s. 119). Modifications of Lunacy Regulation (Ireland) Act, 1871 (s. 120). Repeal of certain enactments described in Sched. 5 in relation to patients and alleged patients (s. 121).

PART IX (ss. 122-151). MISCELLANEOUS AND GENERAL

The miscellaneous matters dealt with in this Part include the powers and procedure of the Mental Health Review Tribunals (ss. 122-124), offences, such as forgery, false statements, etc. (s. 125); ill-treatment of patients (s. 126), amendment of the Sexual Offences Act, 1956, in relation to sexual intercourse with a defective (s. 127); sexual intercourse with patients (s. 128); assisting patients to absent themselves without leave, etc. (s. 129); obstruction by any person refusing to allow inspection of premises, visiting, interviewing and examination, or production of documents (s. 130); prosecutions by local authorities (s. 131); notification of hospitals having arrangements for reception of urgent cases (s. 132); provision of pocket money for in-patients in hospital (s. 133); application of s. 36 to correspondence of patients not subject to detention (s. 134). A warrant may issue to search for and remove patients who are suspected of being ill-treated or neglected, etc. (s. 135), and there is power of removal to a place of safety by a constable of mentally disordered persons found in public places (s. 136). The provisions as to a Member of Parliament detained on the ground that he is suffering from mental illness are amended (s. 137). Pay, pensions, etc., of patients may be paid, in whole or in part, to institutions or relatives or others by a Government Department or relevant authority (s. 138).

Other matters include provisions as to custody, conveyance and detention (s. 139); retaking of patients escaping from custody (s. 140); protection for acts done in pursuance of this Act against any civil or criminal proceedings whether on the ground of want of jurisdiction or any other ground (s. 141); powers of the Minister over a local health authority who have failed to carry out their functions (s. 142); the Local Government Act, 1933, s. 290 (2) to (5), is applied to any inquiry the Minister may cause to be held (s. 143); expenses are to be defrayed out of moneys provided by Parliament (s. 144); general provisions as to regulations, orders and rules (s. 145); warrants of Secretary of State (s. 146); interpretations of the Act (s. 147); transitional provisions (s. 148 and Sched. VI); minor and consequential amendments and repeals (s. 149); application to Scotland (s. 150); powers of Northern Ireland to make consequential amendments (s. 151); application to Northern Ireland (s. 152).

The Act received the Royal Assent on July 29, 1959. The Act or Parts thereof will come into force on such dates as the Minister may appoint (s. 153).

For parliamentary debates, see H. C. Vol. 598, col. 704; Vol. 605, cols. 226, 403; Vol. 609, col. 1686; H. L. Vol. 216, col. 666; Vol. 217, cols. 91, 344, 579, 946, 961, 987, 1089 and 1201; Vol. 218, col. 150.

The Bill was considered by Standing Committee E at seventeen sittings between February 10, 1959, and April 21, 1959.

Scotland

Ss. 10 (1) and (2), 50, 51 (4), 81-83, 91, 93, 132 (3), 136 (3) (*b*), 137 (3), 138 (4), 140 (4), 148 (3) (and 8th Sched., Pt. II), 151 (2), 6th Sched., para. 15.

Northern Ireland

Ss. 49 (5), 51 (4), 85-88, 90, 92, 93, 120, 136 (3) (*a*), 136 (6), 137 (3), 138 (4), 140 (5), 143 (2), 146 (3), 148 (3) (and 8th Sched., Pt. II), 149, 151, 4th Sched.

PART I PRELIMINARY

Repeal of Lunacy and Mental Treatment Acts and Mental Deficiency Acts

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

DEFINITION

"mentally disordered patients" defined in s. 4.

GENERAL NOTE

For transitional provisions, see s. 14.8 and Sched. VI.

As to amendments and repeals, see s. 149 and Scheds. IV, VII and VIII.

The main provisions relating to the admission, detention and discharge of patients are contained in Part IV; those relating to the management and protection of patients' property and affairs, i.e., those mainly affecting the jurisdiction exercised in the Court of Protection, are contained in Part VIII.

Dissolution of Board of Control

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

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

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

DEFINITION

The "Minister" means the Minister of Health (s. 147 (1)).

GENERAL NOTE

In accordance with the recommendations of the Royal Commission, the Board of Control has been abolished (see Report, paras. 273, 274). Prior to the National Health Service Act, 1946, it was the central authority in regard to all matters relating to unsoundness of mind and mental deficiency (see Mental Deficiency Act, 1913, ss. 21, 25 and 65 (1)), but since the coming into force (in 1948) of the National Health Service Act, 1946, the functions of the Board were limited to those concerned with the liberty of the subject, and certain special functions with regard to mental deficiency, whilst those concerned with the supervision and regulation and general administration of the Mental Health Service, as being part of the general health service, were transferred to the Ministry of Health (see National Health Service Act, 1946, ss. 49 and 50).

Mental Health Review Tribunals

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

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

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

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

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

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

GENERAL NOTE

Subs. (1)

See the National Health Service (Determination of Regional Hospital Areas Order, 1946 (S.R. & O., No. 2158), and the National Health Service (Constitution of Regional Hospital Boards) Order, 1947 (S.R. & O., No. 1297).

There are fifteen regional areas since April 1, 1959, when the Minister by order sub-divided one regional area into two; see the National Health Service (Determination of Regional Hospital Areas) Amendment Order, 1958 (S.I. 1958, No. 2093).

Subs. (3)

As to proceedings of the Mental Health Review Tribunals, and the power to make rules relating thereto, see ss. 122, 123 and 124.

As to making of rules, see s. 145.

Subs. (5)

As to the application of this subsection to Scotland and Northern Ireland, see ss. 150 and 152.

Definition and classification of mental disorder

4.-(1) In this Act "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder, and any other disorder or disability of mind; and "mentally

disordered" shall be construed accordingly.

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

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

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

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

GENERAL NOTE

By defining those persons to whom the provisions of the Act shall apply, this section is the base on which the pyramid of administration is built.

Subs. (1)

Defines "mental disorder" as:

(a) "Mental illness" which is one of the four forms of mental disorder which may be one of the grounds on which a patient may become subject to compulsory admission to hospital or guardianship, is not defined. It is used without qualification and covers a wide range of illnesses, including senility, which may require treatment and for which the term is in general medical use. It does not render the patient liable to compulsory admission to hospital or guardianship unless it is of a nature or degree which warrants the detention of the patient in hospital for treatment or reception into guardianship (see ss. 26 (2) and 33 (2));

(b) "Arrested or incomplete development of mind." This makes it clear that "severe abnormality" and "subnormality," which are defined in subss. (2) and (3) as particular forms of arrested or incomplete development of mind, are forms of mental disorder within the meaning of the Act;

(c) "Psychopathic disorder." This makes it clear that this type of disorder, which is defined in subs. (4), is also a form of mental disorder within the meaning of the Act;

(d) "Any other disorder or disability of mind," i.e., which may, in some cases, not amount to an overt mental illness, but which may render the patient in need of health or welfare services, e.g., disabilities resulting from head injuries (if those are not serious enough to constitute overt mental illness or psychopathic disorder).

Subss. (2), (3) and (4) define the terms "severe subnormality," "subnormality" and "psychopathic disorder" which are three of the four forms of mental disorder, the existence of which may form one of the grounds on which a patient may become subject to compulsory admission to hospital or guardianship under Part IV or V. These three forms of mental disorder replace the four categories of mental defectives defined in s. 1 of the Mental Deficiency Act, 1913, as amended by s. 1 of the Mental Deficiency Act, 1927, which were idiots, imbeciles, feeble-minded persons and moral defectives.

Subs. (2)

"Severe subnormality." The main distinction between this and "subnormality," as defined in subs. (3), is that the patient's arrested or incomplete development of mind is of a nature or degree which renders, or will render, him incapable of living an independent life or of guarding himself against serious exploitation. The distinction is important, as severely subnormal patients are liable to compulsory admission to hospital or guardianship at *any* age, whereas subnormal patients *over* twenty-one are so liable only by order of a court or on transfer from a penal institution (ss. 60 (1) and 72 (1)). Moreover, subnormal patients compulsorily admitted to hospital or guardianship under the age of twenty-one, otherwise than by an order of a court or on transfer from a penal institution or approved school, may not be detained beyond the age of twenty-five, unless dangerous to themselves or others (s. 44).

The patients classified as "severely subnormal" were those previously classified under the Mental Deficiency Acts as idiots or imbeciles and the lower range of the feeble-minded. The Royal Commission expected that about one-half to two-thirds of patients in mental deficiency hospitals previously classified as feeble-minded would come into this group (Report, para. 193).

Subs. (3)

"Subnormality." The essential element of this definition is that the arrested or incomplete development of mind includes subnormality of intelligence. By contrast, psychopathic disorder as defined in subs. (4) does not necessarily include subnormality of intelligence.

Subs. (4)

For definition of "medical treatment," see s. 147 (1).

No patient is to be diagnosed as psychopathic for the purposes of compulsory admission to hospital or guardianship unless medical treatment is considered necessary. This criterion distinguishes psychopathic patients from other persons whose behaviour is aggressive or irresponsible but which, even if due to disorder of personality, is not considered to require or to be susceptible to medical treatment.

Psychopathic patients include those previously classified as feeble-minded who are not subnormal in intelligence and whose mental condition otherwise fulfils the definition in subs. (4); moral defectives, whether subnormal in intelligence or not; and other patients whose disorder falls within the definition in subs. (4) but could not have been classified as mental defectives under the Mental Deficiency Acts because their disorder did not arise before the age of eighteen.

Informal admission of patients

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

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

DEFINITIONS

"hospital" is defined in s. 147 (1);

"mental disorder" is defined in s. 4;

"mental nursing home" is defined in ss. 14 (2) and 147 (1).

GENERAL NOTE

Subs. (1)

The whole emphasis of the Report is that wherever possible admission and treatment should be on an informal basis and that compulsion should only be resorted to where it is absolutely essential in the interests of the patient and for his safety or that of the public.

Subs. (2)

This is to remove doubts as to the position of a patient under the age of twenty-one who wishes to receive or to continue to receive treatment, if his parent does not wish him to be admitted or wishes him to leave hospital. The wishes of the patient over sixteen are to take precedence over the wishes of the parent.

As to attaining the age of sixteen years, see ss. 147 (5) and 56 (2) (e).

PART II LOCAL AUTHORITY SERVICES

General Provisions

Functions of local health authorities

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

(2) The purposes for which arrangements are authorised or may be required to be made by a local health authority under subsection (1) of the said section twenty-eight for the care or after-care of such persons as aforesaid shall include the following, that is to say:-

(a) the provision, equipment and maintenance of residential accommodation, and the care of persons for the time being resident in accommodation so provided;

(b) the provision of centres or other facilities for training or occupation, and the equipment and maintenance of such centres;

(c) the appointment of officers to act as mental welfare officers under the following provisions of this Act;

(d) the exercise by the local health authority of their functions under the following provisions of this Act in respect of persons placed under guardianship thereunder (whether so placed under the guardianship of the local health authority or of other persons) ; and

(e) the provision of any ancillary or supplementary services for or for the benefit of any such persons as are referred to in subsection (1) of this section;

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

(3) Notwithstanding anything in subsection (1) of the said section twenty-eight, the reference in paragraph (a) of subsection (2) of this section to the care of persons for the time being resident in accommodation provided by a local health authority includes, in the case of persons so resident who are under the age of sixteen years, the payment to those persons of

such amounts as the local health authority think fit in respect of their occasional personal expenses where it appears to that authority that no such payment would otherwise be made.

DEFINITIONS

"local health authority" is defined in s. 147 (1);

"mental disorder" is defined in s. 4;

"patient" is defined in s. 147 (1).

GENERAL NOTE

This section is to implement the recommendation of the Royal Commission that local health authorities should be responsible for preventive services and all types of community care for patients who do not require in-patient hospital services or who have had a period of treatment or training in hospital and are ready to return to the community (see Report, para. 47 *et seq.*).

It brings within the ambit of the National Health Service Act, 1946, s. 28, services which hitherto it was the duty of local health authorities to provide under the Mental Deficiency Act, 1913, s. 30 (repealed Sched. VIII, Pt. I). The National Health Service Act, 1946, s. 28, enables local health authorities, subject to the Minister's approval and imposes a duty if, and to the extent that, the Minister directs to make arrangements for the prevention of illness (which includes mental illness) and the care and after-care of persons suffering from illness or mental defectiveness.

For transitional provisions, see Sched. VI, Pt. I.

See also s. 153 (3), whereunder the Minister's powers under the National Health Service Act, 1946, ss. 20, 28 (1), to give directions, etc., as to such matters may be exercised immediately after the passing of the Act.

Subs. (2)

As to (c), for functions of mental welfare officers, see ss. 22, 27 (1) and (2), 29 (1), 40 (1), 52 (2), 53 (2), 54, 63 (1), 91 (1), 92 and 135.

As to (d), guardianship, see s. 33 *et seq.*

As to (e), this is intended to cover such services as provision of meals and milk, medical and dental services for children attending training centres, and general social services.

Under the National Health Service Act, 1946, s. 28 (2), a local health authority may, with the approval of the Minister, recover reasonable charges having regard to the means of the persons concerned and, under *ibid.* (3), may, with like approval, contribute to any voluntary organisation formed for any of the purposes of that action.

Subs. (3)

This provision enables the local health authority to provide pocket-money for persons under the age of sixteen years in residential accommodation provided by the authority: this would otherwise be precluded by the National Health Service Act, 1946, s. 28 (1). The similar power of the Minister in respect of in-patients of any age in hospitals arises under section 133.

As to being under the age of sixteen years, see s. 147 (5).

Conduct of premises of local health authorities

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

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

DEFINITIONS

"local health authority" is defined in s. 147(1);

"mental disorder" is defined in s. 4.

GENERAL NOTE

Subs. (1)

As to residential accommodation, see s. 6 (2) (a); as to facilities for training or occupation, see s. 6 (2) (b).

Subs. (2)

As to making of regulations, see s. 145.

Functions of welfare authorities

8.-(1) For the purposes of subsection (8) of section twenty-one of the National Assistance Act, 1948 (which restricts the duties of local authorities in respect of the provision of accommodation under that section by reference to the provision authorised or required to be made under other enactments) no account shall be taken of the provision authorised or required to be made by local health authorities under section twenty-eight of the National Health Service Act, 1946, with respect to residential accommodation for persons who are or have been suffering from mental disorder.

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

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

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

DEFINITIONS

"local health authority" is defined in s. 147 (1);

"mental disorder" is defined in s. 4;

For definition of "local authority" in this section, see annotation to subs. (1).

GENERAL NOTE

Subs. (1)

This section, like s. 6, is directed towards integration and flexibility in practice of the various health and welfare services.

Under the National Assistance Act, 1948, s. 21, a local authority is charged with the duty to provide residential accommodation for persons who by reason of age, infirmity or any other circumstances, are in need of care and attention which is not otherwise available to them, and temporary accommodation for persons who are in urgent need thereof as the authority may in any particular case determine, but subs. (8), *ibid.*, states that, save as provided in subs. (7), nothing in the section should authorise or require a local authority to make any provision authorised or required to be made (whether by that or any other authority) by or under any enactment not contained in Part III of that Act. The result of this subsection is that provision may now be made for residential accommodation for mentally disordered persons under the National Assistance Act, 1948, s. 21, or the National Health Service Act, 1948, s. 28.

The local authorities for the purpose of Part III (which includes ss. 21 and 29) of the National Assistance Act, 1948, are the county councils and the county borough councils in England and Wales (*ibid.*, s. 33(1)).

As to residential accommodation, see s. 6(2) (a).

Subs. (2)

See Report, paras. 705 *et seq.*

Under the National Assistance Act, 1948, s. 29 (1), a local authority has power to make arrangements for promoting the welfare of persons who are blind, deaf or dumb and other persons who are substantially and permanently handicapped by illness, injury or congenital deformity or such other disabilities as may be prescribed by the Minister.

This extends the class of mentally disordered persons for whom services may be provided under s. 29 of the 1948 Act by including mentally disordered persons "of any description," thus removing the previous condition that the disability must be substantial and permanent.

Subs. (3)

As to registration of homes, see s. 19.

Subs. (4)

Where the residential accommodation is provided under Part III of the National Health Service Act, 1946, by virtue of s. 28 (3) of that Act and s. 6 (2) of this Act the patient may be liable to pay reasonable charges having regard to his means; where the accommodation is to be provided under Part III of the National Assistance Act, 1948, the patient's liability to pay for such accommodation, according to his means, arises under s. 22 (3) of the National Assistance Act, 1948.

Functions of children authorities

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

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

between the accounts kept by them as local health authority and the accounts kept by them as children authority.

(3) Nothing in this Act, or in any other enactment, shall be construed as preventing a children authority from receiving into their care under section one of the Children Act, 1948, a child who is mentally disordered, nor as preventing a local health authority from accommodating in pursuance of such arrangements as aforesaid any child who is in the care of that or any other authority as a children authority.

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

DEFINITIONS

"Child" for the purposes of the Children Act, 1948, means a person under the age of eighteen years (*ibid.*, s. 59), but the duty of a local authority under s. 1 (1) of that Act does not arise when the person is seventeen years of age or over;

"local health authority" is defined in s. 147(1);

"mental disorder" is defined in s. 4.

GENERAL NOTE

Subs. (1)

The Royal Commission envisaged that care would be needed for severely subnormal and psychopathic persons and young persons who have no home, or whose home is unsatisfactory, or inadequate to their special needs, or when the special care they need cannot be provided in their own home without placing too great a strain on other members of the family. Whilst most mentally disordered children need specialised care provided under the mental health services, the Commission held the view that neither the law nor administrative practice should rigidly exclude subnormal children from their child care services if they can suitably mix with other children (see Report, paras. 650-653).

This section will enable a suitable mentally disordered child to reside in a children's home notwithstanding that he is not in the care of the local authority under the provisions of Part II of the Children Act, 1948.

As to the term "children authority," the local authorities for the purposes of the Children Act, 1948, are the county councils and county borough councils (*ibid.*, s. 38 (1)).

As to "care" and "after-care" under the National Health Service Act, 1946, s. 28, see s. 6 (1) and (2) of this Act.

Subs. (3) 1

This further emphasises the general conception of flexibility and integration of the Health services and the Children services.

Welfare of certain hospital patients

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

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

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

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

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

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

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

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

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

DEFINITIONS

"Child" for the purposes of the Children and Young Persons Act, 1933, means a person under the age of fourteen years (*ibid.*, s. 107(1)); for the purpose of the Children Act, 1948, it means a person under the age of eighteen years (*ibid.*, s. 59), but the duty of a local authority under s. 1(1) of that Act does not arise when the person is seventeen or over;

"hospital" and "local health authority" are defined in s. 147(1);

"mental disorder" is defined in s. 4;

"Young person," for the purposes of the Children and Young Persons Act, 1933, means a person who has attained the age of fourteen years and is under the age of seventeen years (*ibid.*, s. 107(1)).

GENERAL NOTE

Subs. (1)

This section implements the Royal Commission's recommendations in paras. 653 and 668-672 of the Report.

As to (a), see above as to definitions of "child" and "young person." Under the Children and Young Persons Act, 1933, s. 75 (3), an order committing a child or young person to the care of a fit person, normally remains in force until he attains the age of eighteen years.

As to (b) guardianship, see ss. 33 *et seq.* and also s. 31(5).

As to (c) transfer of functions of the nearest relative, see ss. 62 *et seq.*

In this context the term "nursing home" would not appear to be confined to a mental nursing home within the meaning of s. 14(2).

The duty here imposed on local authorities does not apply to persons who prior to admission to hospital or

nursing home were receiving care from the authority under the National Health Service Act, 1946, s. 28, or were in the care of a local authority under the Children Act, 1948, s. 1, but were not within (a), (b) or (c) of this subsection.

As to the application of this section to Scotland, see s. 150.

Subs. (2)

The effect of the Children Act, 1948, s. 8, and the Matrimonial Proceedings (Children) Act, 1958, s. 6 (6), precluded the children's officers of the local authority from keeping in touch with children in mental deficiency hospitals. Accordingly, part of s. 8 of the 1948 Act, and the whole of s. 5 (6) of the 1968 Act, have been repealed as provided in Sched. VIII to this Act.

Provision for care and training of children in lieu of education

Examination and classification under Education Act, 1944

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

GENERAL NOTE

The Royal Commission's recommendations in regard to the training of severely sub-normal children are contained in paras. 637-649 of the Report. It was considered that distress was caused to parents by the reporting of their children as ineducable; hence the modification of the Education Act, 1944, s. 57(1), as now appearing in Sched. II. The Royal Commission were also called upon to consider whether the occupation and training of such children should not be under the administration of the local education authorities rather than the local health authorities. The Commission recommended that the local health authorities should have a duty to provide appropriate training for any child referred to them for training on proper medical advice for so long as they and the local education authority in consultation find it desirable. Children who need training under close psychiatric supervision or nursing in hospital should similarly be referred to the hospitals on medical recommendation, without being "ineducable" (Report, para. 641).

New s.57 replaces the Education Act, 1944, s.57, dealing with the procedure to be followed when a child appeared by reason of mental disability to be "incapable of receiving education at school" or to require supervision after leaving school.

New s. 57A replaces the Education (Miscellaneous Provisions) Act, 1948, s. 8, dealing with review and cancellation of reports.

New s. 57B provides that medical examinations under the Education Act, 1944, s. 34 (which relates to the ascertainment of children requiring special educational treatment by the educational authorities), and under the new s. 57, may be used reciprocally.

Power to compel attendance at training centres

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

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

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

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

(5) For the purposes of this section a child shall be treated as of compulsory school age so long as, under the Education Act, 1944, he would be deemed to be of compulsory school age if he were a registered pupil at a special school, and "parent" has the same meaning as in that Act.

DEFINITIONS

"local health authority" is defined in s. 147(1).

"parent" is defined in the Education Act, 1944, s. 114(1).

GENERAL NOTE

Subs. (1)

Previously, a child who under the old s. 57 of the Education Act, 1944, had been found incapable of receiving education at school, became, under the Mental Deficiency Act, 1913, s. 2(1) (b) (i) (v), a defective subject to be dealt with under the provisions of that Act, and this gave rise to the duties of the local health authority under *ibid.*, s. 30.

A decision recorded under the Education Act, 1944, s. 57, as appearing in the Second Schedule to this Act, is to the effect that the child is suffering from a disability of mind (N.B.: not mental disorder; cf. s. 4 of this Act) of such a nature or to such an extent as to make him unsuitable for education at school.

It will be noticed that the reference to a person who requires supervision after leaving school, appearing in the old s. 57(5) of the Education Act, 1944, is not re-enacted, on the basis that this is unnecessary and will be dealt with administratively.

As to training centres, see s. 6(2) (b).

Subs. (3)

These penalties are the same as under the Education Act, 1944, s. 40(1), for non-compliance with a school attendance order.

Subs. (5)

This is between ages of five and sixteen (*ibid.*, ss. 35 and 38(1)).

Provisions as to regular attendance for training

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

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

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

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

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

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

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

DEFINITION

"local health authority" is defined in s. 14.7 (1).

GENERAL NOTE

Subs. (1)

As to paragraph (c), *cf.* Education Act, 1944, s. 89(2) and (5).

Subs. (2)

This is similar to *ibid.*, s. 39(3).

Subs. (3)

This is similar to *ibid.*, s. 39(4).

Subs. (4)

This is similar to *ibid.*, s. 39(5).

PART III
MENTAL NURSING HOMES, RESIDENTIAL HOMES, ETC.

Nursing Homes

Registration of nursing homes under Public Health Act

14.-(1) Part VI of the Public Health Act, 1986 (which relates, among other things, to the registration of nursing homes) shall apply in relation to mental nursing homes as it applies to nursing homes to which the said Part VI applied immediately before the commencement of this Act, not being maternity homes, but shall so apply subject to the following provisions of this Part of this Act.

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

(a) a hospital as defined by this Act;

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

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

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

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

DEFINITIONS

"hospital" and "medical treatment" are defined in s. 147(1);

"mental disorder" is defined in s. 4;

the "Minister" means the Minister of Health (s. 147(1)).

GENERAL NOTE

The position formerly existing with regard to registration, approval and inspection of licensed houses, hospitals

and homes provided outside the National Health service, and other private care, is reviewed in paras. 792-805 of the Report of the Royal Commission; it was complicated and complex with many arbitrary distinctions and refinements. A simple and more direct system was advocated and the new system is based on this recommendation of the Royal Commission, appearing in paras. 806-823 of the Report.

In considering this section, the distinction between a "mental nursing home" (see subs. (2) of this section) and a "residential home for mentally disordered persons" (see s. 19(2)) must be noted.

See Sched. VI, Pt. II, for transitional provisions.

Subs. (1)

The Public Health Act, 1936, s. 187, contains provisions for the registration of nursing homes, and s. 188 empowers the registration authority to cancel the registration. *Ibid.*, s. 189 prescribes the right and procedure for appeal where registration is refused or cancelled. *Ibid.*, s. 190 empowers the registration authority to make by-laws as to nursing homes and s. 191 provides for entry and inspection. *Ibid.*, s. 192 relates to the exempting by the registration authority of certain voluntary institutions from registration, and s. 193 empowers the Minister of Health to exempt a Christian Science nursing home. *Ibid.*, s. 194 empowers a county council to delegate its powers and duties as a registration authority to the council of a county district and s. 195 makes offences by companies in respect of nursing homes offences of its officers.

Subs. (2)

It should be noted that premises are registrable if only one mentally disordered patient is to be received at any time.

Cf s. 19 (2), relating to registration of residential homes for mentally disordered persons.

Subs. (3)

The registration authority in respect of nursing homes under Part VI of the Public Health Act, 1936, also is the council of the county or county borough in which the home is situate (*ibid.*, s. 187(2)).

Subs. (4)

Here the intention is that all mental nursing homes shall be registered. It is to be observed, however, that s. 193 of the Public Health Act, 1936, empowering the Minister of Health to exempt Christian Science nursing homes, has not been excluded along with s. 192.

As regards the administrative county of London, the appropriate reference is to the Public Health (London) Act, 1936, s. 246 (see s. 24).

Subs. (5)

As to making of regulations, see s. 145.

Special provisions as to registration of nursing homes

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

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

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

DEFINITIONS

"mental nursing home" is defined in s. 14(2);

"patients" is defined in s. 147(1);

"registration authority" is defined in s. 14(3).

GENERAL NOTE

Subs. (1)

"Part VI" refers to Part VI of the Public Health Act, 1936.

"Patients who are liable to be detained," i.e., not those received informally under s. 5. Such persons may be received and detained in mental nursing homes specially registered under this section (ss. 59(2), 80(5) and 96(1)).

See Sched. VI, Pt. II, for transitional provisions.

Subs. (3)

Cf. the National Assistance Act, 1948, s. 40.

As regards the administrative county of London, the appropriate reference is to the Public Health (London) Act, 1936, s. 242 (s. 24).

Conduct of mental nursing homes

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

(a) make provision as to the facilities and services to be provided in such homes; and

(b) provide that a contravention or failure to comply with any specified provision of the regulations shall be an offence against the regulations.

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

(3) A registration authority may, and shall if so required by the; Minister, make separate

byelaws in respect of mental nursing homes under section one hundred and ninety of the Public Health Act, 1936 (which enables byelaws to prescribe the records to be kept and notices' to be given in respect of patients in nursing homes).

DEFINITIONS

"mental nursing home" is defined in s. 14(2);

the "Minister" means the Minister of Health (s. 147(1));

"patients" is defined in s. 147(1);

"registration authority" is defined in s. 14(3).

GENERAL NOTE

Subs. (1)

As to making of regulations, see s. 145. *Cf* s. 21.

Subs. (2)

A right of appeal to the magistrates' court against cancellation of registration is provided by the Public Health Act, 1936, s. 189.

As regards the administrative county of London, the appropriate reference into the Public Health (London) Act, 1936, s. 242 (s. 24).

Subs. (3)

By-laws under the Public Health Act, 1936, s. 190, are subject to confirmation by the Minister under *ibid.*, s. 312.

As regards the administrative county of London, the appropriate reference is to the Public Health (London) Act, 1936, s. 244 (s. 24).

Inspection of mental nursing homes and visiting of patients

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

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

(a) for the purpose of investigating any complaint as to his treatment made by or on behalf of the patient; or

(b) in any case where the person so authorised has reasonable cause to believe that the patient is not receiving proper care;

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

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

(a) for imposing conditions or restrictions with respect to the exercise of those powers in relation to mental nursing homes which, immediately before the commencement of this Act, were registered hospitals; and

(b) subject as aforesaid, for requiring the inspection of mental nursing homes under subsection (1) of this section to be carried out on such occasions, or at such intervals, as may be prescribed by the regulations.

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

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

DEFINITIONS

"medical practitioner" is defined in s. 147(1);

"mental disorder" is defined in s. 4;

"mental nursing home" is defined in s. 14(2);

the "Minister" means the Minister of Health (s. 147(1));

"patient" is defined in s. 147(1);

"registration authority" is defined in s. 14(3).

GENERAL NOTE

Subs. (1)

Note "at any time," *cf.* s. 22, where the words are "at all reasonable times." This provision does not confer power of forcible entry; as to this, see s. 135.

As to obstruction and penalties, therefore, see s. 130; as to prosecutions by registration authorities, see s. 23.

As regards the administrative county of London, the appropriate reference is to the Public Health (London) Act, 1936, s. 244 (s. 24).

Subs. (2)

See also s. 131(2).

Subs. (3)

As to making of regulations, see s. 145.

Para. (a) will enable the provision as to inspection to be waived or modified the case of The Retreat at York, Cheadle Royal, near Manchester, Barnwood, House at Gloucester and St. Andrews at Northampton.

Subs. (5)

As regards the administrative county of London, the appropriate reference is to the Public Health (London) Act,

1936, s. 245 (s. 24).

Continuance of special registration on cancellation or death

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

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

(a) as from the grant of representation to the estate of the deceased, for the benefit of the personal representative of the deceased; and

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

DEFINITIONS

"mental nursing home" is defined in s. 14(2);

"patient" is defined in s. 147(1);

"registration authority" is defined in s. 14(3).

GENERAL NOTE

Subs. (1)

Registration of particulars in a separate part of the register refers to homes where in it is intended to receive patients who are liable to be detained (see ss. 15, 59(2), 30(5) and 96(1)).

As regards the administrative county of London, the appropriate reference is to the Public Health (London) Act, 1936, s. 242 (s. 24).

Residential Homes

Registration of residential homes under National Assistance Act, 1948

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

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

(a) a mental nursing home;

(b) a hospital as defined by this Act; or

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

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

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

DEFINITIONS

"hospital" is defined in s. 147(1);

"mental nursing home" is defined in s. 14(2)

GENERAL NOTE

Subs. (1)

The National Assistance Act, 1948, s. 37 contains provisions for registration of disabled persons' and old persons' homes and subs. (9) thereof, as amended by Sched. VII, Pt. II of this Act, excludes from such expression a mental nursing home (see s. 14 (2) of this Act) and, except as provided by this Part of this Act, any residential home for mentally disordered persons within the meaning of this Part of the Act.

The National Assistance Act, 1948, s. 38 prescribes the procedure and right of appeal where registration is refused or cancelled and s. 39 provides for entry and inspection of disabled persons' and old persons' homes, s. 40, *ibid.*, contains provisions as to the making and enforcing of regulations; but see s. 20(3) of this Act.

Subs. (2)

As to the term "registration authority," the National Assistance Act, 1948, s. 37(2), provides that the registration authority is the council of the county or county borough in which the home is situate.

Subs. (3)

The effect of this subsection is to avoid the necessity of complying with the requirements of these Acts in regard to notification, etc.

Special provisions as to registration of residential homes

20.-(1) It shall be a condition of the registration of any person in respect of a residential home for mentally disordered persons that the number of persons kept at any one time in the home (excluding persons carrying on or employed in the home and their families) does not exceed

such number as may be specified in the certificate of registration; and without prejudice to the foregoing provision, the registration may be effected subject to such conditions (to be specified in the certificate) as the registration authority consider appropriate for regulating the age, sex or other category of persons who may be received in the home.

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

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

DEFINITIONS

"registration authority" and "residential home for mentally disordered persons" are defined in s. 19(2).

GENERAL NOTE

Subs. (1)
Cf. s. 15(2).

Subs. (2)
Cf. s. 15(3).

Records and inspection of residential homes

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

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

DEFINITION

The "Minister" means the Minister of Health (s. 147(1)).

GENERAL NOTE

See also s. 20(3).

Miscellaneous

Powers of entry and inspection of other premises

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

DEFINITIONS

"hospital," local health authority, " mental welfare officer" and "patient" are defined in s. 147(1);

"mental disorder" is defined in s. 4.

GENERAL NOTE

This section is confined to cases where the welfare officer has reasonable cause to believe that a patient is not under proper care. If as a result the welfare officer considers it to be necessary he may then take steps to secure the patient's admission to hospital, or for guardianship under Part IV or where possible, voluntarily under s. 5. It does not confer powers of forcible entry.

See s. 135 as to warrant to search for and remove where it is suspected that a mentally disordered patient has been or is being ill treated, neglected or kept otherwise than under proper control.

As to obstruction and penalties therefore, see s. 130 and as to prosecutions by registration authorities, see s. 23.

Prosecution of offences

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

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

DEFINITIONS

"mental nursing home" is defined in s. 14(2);

"registration authority" (which in this instance relates to both mental nursing homes and residential homes for mentally disordered persons) is defined in ss. 14(3) and 19(2).

GENERAL NOTE

Subs. (2)

The Public Health Act, 1936, s. 298, excluded here, requires the consent of the Attorney-General in regard to certain prosecutions.

Application to London

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

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

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

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

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

GENERAL NOTE

See s. 14. The effect of this section is shown in the following table:

Section of this Act	Section of P.H. Act, 1936	Section of P.H. (London) Act
15(3), 16(2) and 18(1).....188	242
16(3) and 17(1).....190	244
17(5).....191	245
14(4).....192	246

PART IV COMPULSORY ADMISSION TO HOSPITAL AND GUARDIANSHIP

Procedure for hospital

Admission for observation

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

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

(a) that he is suffering from mental disorder of a nature or degree which warrants the detention of the patient in a hospital under observation (with or without other medical treatment) for at least a limited period; and

(b) that he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons.

(3) An application for admission for observation shall be founded on the written

recommendations in the prescribed form of two medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in paragraphs (a) and (b) of subsection (2) of this section are complied with.

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

DEFINITIONS

"hospital" is defined in s.147(1);

"hospital" here may include certain mental nursing homes, see ss. 14(2), 15 and 59(2);

"medical practitioner" and "medical treatment" are defined in s.147(1);

"mental disorder" is defined in s.4;

"patient" is defined in s. 147(1);

As to "nearest relative," see s.49, also ss. 50-53 and 147(1).

GENERAL NOTE

Subs. (1)

This is the procedure which supersedes the procedure for reception orders previously, conveniently but inaccurately, known as "certification" It is to be noted that the application is both the "means and the end"; the application itself (duly supported by two medical recommendations, see s. 32(3)) becomes the authority for detention (see s. 31), there being no magistrates' order as formerly. The main accent of the Report was that compulsory detention should be reduced to minimum; see s. 5, as to informal admission.

Subs. (2)

By reference to s. 33(2) (a), it will be noted that the forms of mental disorder (see s. 4) required to base a guardianship application are the same as for an application for admission for treatment, but the words "patient's health or safety" do not appear in s. 33(2) (b).

The effect of para. (a) is that whereas a patient under twenty-one can be dealt with under this section if he is suffering from mental illness, severe subnormality, subnormality or psychopathic disorder, a patient over twenty-one can only be so dealt with thereunder if he is suffering from mental illness or severe subnormality.

As to being under the age of twenty-one years, see s.147 (5).

Subs. (3)

As to requirements as to medical recommendations, see s.28. As to making of regulations, see s. 145.

Subs. (4)

See s. 52 (4).

Admission fro treatment

26.-(1) A patient may be admitted to a hospital, and there detained for the allowed by the

following provisions of this Act, in pursuance of an application (in this Act referred to as an application for admission for treatment) made in accordance with the following provisions of this section.

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

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

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

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

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

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

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

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

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

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

DEFINITIONS

"hospital" is defined in s.147; "hospital" here may include certain mental nursing homes, see ss.14(2), 15 AND 59(2).

"medical practitioner" and "medical treatment" are defined in s.147(1).

"mental disorder" is defined in s.4.

"patient" is defined in s.147(1).

GENERAL NOTE

Subs. (1)

This is the procedure which supersedes the procedure for reception orders previously, conveniently but inaccurately, known as "certification." It is to be noted that the application is both the "means and the end"; the application itself (duly supported by two medical recommendations, see s.32(3) becomes the authority for detention (see s.31), there being no magistrates' order as formerly. The main accent of the Report was that compulsory detention should be reduced to minimum; see s.5, as to informal admission.

Subs (2)

By reference to s.33(2) (a), it will be noted that the forms of mental disorder (see s.4) required to base a guardianship application are the same as for an application for admission for treatment, but the words "patient's health or safety" do not appear in s.33(2) (b).

The effect of para. (a) is that whereas a patient under twenty-one can be dealt with under this section if he is suffering from mental illness, severe subnormally, subnormally or psychopathic disorder, a patient over twenty-one can only be so dealt with thereunder if he is suffering from mental illness or severe subnormality.

As to being under the age of twenty-one years, see s.147(5).

Subs. (3)

As to requirements as to medical recommendations, see s.28.

As to making of regulations, see s. 145.

Subs. (5)

See subs. (2) (a) (ii) as to the need for this requirement as to age in the case of a psychopathic or subnormal patient.

By s. 56(2) (e) the Minister may make regulations to provide for the determination of the age of a patient. See also s. 147(5).

General provisions as to applications

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

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

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

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

DEFINITIONS

"hospital" is defined in s. 147(1);

"hospital" here may include certain mental nursing homes, see ss. 14(2), 15 and 59(2);

"managers" is defined in ss. 59(1) and 147(1);

"medical practitioner" and "mental welfare officer" are defined in s. 147(1);

"nearest relative" is defined; in s. 49, also ss. 50 to 53 and 147(1);

"patient" is defined in s. 147(1).

GENERAL NOTE

Subs. (1)

As to application for admission for observation, see s. 25; as to application for admission for treatment, see s. 26. As to the application of this section to a guardianship application, see s. 33 (5).

Subs. (2)

It is to be noted that the mental welfare officer cannot make an application in the face of an objection by the nearest relative, until the functions of that relative have been transferred to some other person by an order of the County Court under s. 52.

See also s. 54 as to the duty of a mental welfare officer to make an application for admission or guardianship.

Subs. (3)

This derives from the Lunacy Act, 1890, s. 5(2).

Subs. (4)

As to requirements as to medical recommendations, see s. 28.

General provisions as to medical recommendations

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

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

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

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

say -

(a) the applicant;

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

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

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

(e) except as provided by subsection (8) of this section, a practitioner on the staff of the hospital to which the patient is to be admitted, 'by the husband, wife, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister or sister-in-law of the patient, or of any such person as aforesaid, of a practitioner by whom another medical recommendation is given the purposes of the same application.

DEFINITIONS

"hospital" is defined in s. 147(1);

"local health authority" and "medical practitioner" are defined in s. 147(1);

"mental disorder" is defined in s. 4;

"patient" is defined in s. 147(1);

As to "mental nursing home," see ss. 14(2), 15 and 59(2).

GENERAL NOTE

Subs. (1)

This derives from the Lunacy Act, 1890, s. 29 and the Mental Treatment Act, 1930, s.5 (5).

"Application for admission," i.e., whether for observation under s. 25, or for treatment under s. 26. See also s. 29 as to emergency admission.

Subs. (2)

The requirement that one of the medical recommendations shall be given by a mental specialist approved by a local health authority derives from the Mental Deficiency Act, 1913, s. 5(2), the Mental Treatment Act, 1930, s. 5(3); there was no similar provision in the Lunacy Act, 1890. The remainder of this subsection derives from the Lunacy Act, 1890, s. 31 and the Mental Treatment Act, 1930, s. 5(3).

See also s. 56(2) (d) as to regulations in connection with the approval of medical practitioners for the purpose of this section.

Subs. (3)

This derives from the Lunacy Act, 1890, s. 32, the Mental Treatment Act, 1930, s. 5(3) and the Mental Deficiency Regulations, 1948, reg. 18 (4) (c).

Subs. (4)

This derives from the Lunacy Act, 1890, ss. 30 and 32 and the Mental Deficiency Regulations, reg. 18 (3) and (4).

Admission for observation in case of emergency

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

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

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

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

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

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

DEFINITIONS

"hospital" is defined in s. 147(1);

"hospital" here may include certain mental nursing homes, see ss. 14(2), 15 and 59(2);

"managers" is defined in ss. 59(1) and 147(1);

"mental welfare officer" and "patient" are defined in s. 147(1);

"relative" is defined in s. 49(1).

GENERAL NOTE

Subs. (1)

This procedure in case of emergency replaces that for an urgency order under the Lunacy Act, 1890, s. 11. It is confined to admission for observation; see s. 25.

Subs. (2)

Note that an emergency application can be made by any relative and not necessarily the nearest relative. *Cf.* s. 27(1).

Subs. (3)

Normally both medical recommendations require to be signed on or before the date of the application (see s. 28(1)).

Subs. (4)

The effect of the reference to s. 27(3) is that the applicant shall have personally seen the patient within the period of three days previous to the date of the emergency application. In the case of an urgency order under the Lunacy Act, 1890, s. 11, the period was two days (*ibid.*; s. 11(4)).

Applications in respect of patients already in hospital

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

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

(b) in the case of an application for admission for treatment, notwithstanding that the patient is for the time being liable to be detained in the hospital in pursuance of an application for his admission for observation;

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

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

DEFINITIONS

"hospital" is defined in s. 147(1);

"hospital" here may include certain mental nursing homes, see ss. 14(2), 15 and 59(2);

"managers" is defined in ss. 59(1) and 147(1);

"medical practitioner" and "patient" are defined in s. 147(1).

GENERAL NOTE

Subs. (1)

"Application for admission," i.e., whether for observation under s. 25 or for treatment under s. 26, and including an emergency application under s. 29.

As to patient being in hospital informally and not liable to be detained, see s. 5.

Effect of application for admission

31.-(1) An application for the admission of a patient to a hospital under this Part of this Act,

duly completed in accordance with the foregoing provisions of this Part of this Act, shall be sufficient authority for the applicant, or any person authorised by the applicant, to take the patient and convey him to the hospital at any time within the following period, that is to say -

(a) in the case of an application other than an emergency application, the period of fourteen days beginning with the date on which the patient was last examined by a medical practitioner before giving a medical recommendation for the purposes of the application;

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

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

(3) Any application for the admission of a patient under this Part of this Act which appears to be duly made and to be founded on the necessary medical recommendations may be acted upon without further proof of the signature or qualification of the person by whom the application or any such medical recommendation, is made or given, or of any matter of fact or opinion stated therein.

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

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

DEFINITIONS

"hospital" is defined in s. 147(1);

"hospital" here may include certain mental nursing homes, see ss. 14(2), 15 and 59(2);

"managers" is defined in ss. 59(1) and 147(1);

"medical practitioner" and "patient" are defined in s. 147(1).

GENERAL NOTE

Subs. (1)

This section derives from the Lunacy Act, 1890, ss. 35 and 36, but it should be observed that whereas under section 35 the reception order was the authority for reception and detention, now it is the application itself (duly supported by two medical recommendations - see s. 32(3)), which is such authority and there is no judicial order.

"Application for admission," i.e., whether for observation under s. 25 or for treatment under s. 26, and including

an emergency application under s. 29, and including an application in respect of a patient already in hospital under s. 30.

The normal time within which a patient had previously to be received under a reception order was seven clear days from its date (Lunacy Act, 1890, s. 35).

An urgency order under the Lunacy Act, 1890, s. 11 remained in full force for seven days and accordingly had to be executed within that time.

Medical recommendations must be given by medical practitioners who have personally examined the patient either together or at an interval of not more than seven days (s. 28(1)).

Subs. (3)

As to "application for admission," see annotation to subs. (1), *supra*.

As to general provisions as to medical recommendations, see s. 28; see also s. 25(2) in the case of admission for observation, s. 26(3) and (4) in the case of admission for treatment, and s. 29 (2) and (3) in the case of an emergency application.

Subs. (4)

As to application for admission for treatment, see s. 26.

As to Mental Health Review Tribunal, see ss. 3, 122, 123 and 124 and Sched. I.

As to attaining the age of sixteen, see s. 147(5) and s. 56(2) (*e*).

Rectification of application and recommendations

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

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

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

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

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

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

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

DEFINITIONS

"hospital" is defined in s. 147(1);

"hospital" here may include certain mental nursing homes, see ss. 14(2), 15 and 59(2);

"managers" is defined in ss. 59(1) and 147(1);

"patient" is defined in s. 147(1).

GENERAL NOTE

Subs. (1)

Cf. s. 34(4) as to guardianship applications.

This section derives from the Lunacy Act, 1890, s. 34, and the Mental Deficiency Regulations, 1948, reg. 20.

As to application for admission for observation, see s. 25; for treatment, see s. 26. As to general provisions as to medical recommendations, see s. 28; see also s. 25(2) in the case of admission for observation, s. 26(3) and (4) in the case of admission for treatment, and s. 29(2) and (3) in the case of an emergency application.

Subs. (2)

See annotation to subs. (1), *supra*.

As to time of signature and interval between examinations, see s. 28(1).

Subs. (4)

See s. 38 as to reclassification of patients.

Procedure for reception into guardianship

Application for guardianship

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

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

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

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

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

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

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

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

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

(5) Subsections (3) to (5) of section twenty-six and sections twenty-seven and twenty-eight of this Act shall apply in relation to a guardianship application as they apply in relation to an application for admission for treatment, but subject to the following modifications, that is to say-

(a) in section twenty-six, references to subsection (2) of that section, and to paragraph (a) or paragraph (b) of that subsection, shall be construed as references to subsection (2) of this section and to paragraph (a) or paragraph (b) of that subsection, and in paragraph (b) of subsection (3) of that section the words from "specifying" to the end of the paragraph shall be omitted;

(b) in subsection (1) of section twenty-seven, the words "shall be addressed to the managers of the hospital to which admission is sought, and" shall be omitted;

(c) subsection (3) of section twenty-eight shall be omitted and for paragraph (e) of subsection (4) of that section there shall be substituted the following paragraph:-

"(e) the person named as guardian in the application".

DEFINITIONS

"local health authority" is defined in s. 147(1);

"mental disorder" is defined in s. 4;

"patient" is defined in s. 147(1).

GENERAL NOTE

Subs. (1)

One of the main themes of the Report was that so far as possible a person who is mentally disordered should be regarded as part of the general community, participating in such aspects of the general community life and activities as he is fitted for and by no means to be regarded, by himself or others, as a person apart.

Nevertheless, it was realised that community care can be given only if the patient can be persuaded to co-operate with the officers of the local health authority and to accept the help and advice which they have to offer and the arrangements which are made for employment, occupation and training. In some cases, however, compulsory powers, involving legal authority over the patient personally, may be required to achieve this end, or to ensure proper care for people with mild or chronic forms of mental illness or infirmity who do not need to be in hospital, or at any rate as in-patients. In a great many cases all this can be achieved without any powers of compulsion being vested in anyone, but where such powers are necessary the appointment of a guardian is the appropriate remedy. (See Report, para. 399).

No guardianship application under this Part of the Act can be made in respect of an infant who is a ward of court (s. 58(3)) or person suffering from psychopathic disorder or subnormality, unless he is under the age of twenty-one (subs. (2) (a) (ii) of this section).

Subs. (2)

By reference to s. 26(2) (a) it will be noted that the forms of mental disorder (see s. 4) which are required to base an application for admission for treatment are the same as for a guardianship application but the words "patient's health and safety" do not appear in (a) of this section.

As to being under the age of twenty-one years, see s. 147(5).

Subs. (3) and (4)

There was no express provision under the Mental Deficiency Act for a local authority to become guardian.

The effect of these provisions is that when the local health authority is not the proposed guardian, it must itself approve the person proposed. Subs. (4) provides machinery to ensure that every case comes to the notice of the responsible local health authority.

Subs. (5)

S. 26 (3) to (5) relates to applications for admission to hospital for treatment and s. 27 contains general provisions regulating applications and medical recommendations; s. 28 contains further provisions as to medical recommendations and, in particular, as to who may or may not give such recommendations.

Effect of guardianship application, etc.

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

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

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

(4) If within the period of fourteen days beginning with the day on which a guardianship application has been accepted by the local health authority the application, or any medical recommendation given for the purposes of the application, is found to be in any respect

incorrect or defective, the application or recommendation may, within that period and with the consent of that authority, be amended by the person by whom it was signed; and upon such amendment being made the application or recommendation shall have effect and shall be deemed to have had effect as if it had been originally made as so amended.

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

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

DEFINITIONS

"guardianship application" is defined in s. 33(1);

"local health authority," "medical practitioner" and "patient" are defined in s. 147(1).

GENERAL NOTE

Cf. s. 31 as to the effect of an application for admission.

Subs. (1)

As in the case of an application for admission to hospital (see s. 31), a guardianship application itself becomes the authority for the guardianship, there being no judicial order.

As to the making of regulations, see ss. 56 and 145.

The correlation of the powers of a guardian under this Part of the Act to those of a father over a patient under the age of fourteen years is taken from the Mental Deficiency Act, 1913, s. 10(2).

Subss. (2) and (3)

As to requirements or medical recommendations for guardianship, see s. 33(5).

Subs. (4)

Cf. s. 32(1) and (3). See s. 38 as to reclassification of patients.

Subs. (5)

Cf. s. 31(4).

As to Mental Health Review Tribunals, see ss. 3, 122, 123 and 124 and Sched. I. As to attaining the age of sixteen, see ss. 147(5) and 56(2) (*e*).

Care and treatment of patients Regulations as to guardianship

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

(2) Regulations under this section may in particular make provision for requiring the patients

to be visited, on such occasions or at such intervals as may be prescribed by the regulations, on behalf of such local health authorities as may be so prescribed, and shall provide for the appointment, in the case of every patient subject to the guardianship of a person other than a local health authority, of a medical practitioner to act as the nominated medical attendant of the patient.

DEFINITIONS

For definition of "local health authority" and "medical practitioner," see s. 147(1).

The "Minister" is the Minister of Health (s. 147(1));

"patient" is defined in s. 147(1).

GENERAL NOTE

See also s. 56 as to general power to make regulations for the purpose of this part of the Act. As to making of regulations, see s. 145.

The section envisages that the local health authority will have certain supervisory duties in respect of guardians not being local health authorities. The set-up in regard to a patient subject to such guardianship will accordingly be tripartite in character. There will be (1) the guardian, (2) the local authority, and (3) the nominated medical attendant.

As to the application of this section to patients dealt with under Part V, i.e., as a result of criminal proceedings, see ss. 63 (3, 65(3) and Sched III.

Correspondence of patients

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

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

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

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

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

(i) to the Minister;

(ii) to any Member of the Commons House of Parliament;

(iii) to the Master or Deputy Master or any other officer of the Court of Protection;

(iv) to the managers of the hospital;

(v) to any other authority or person having power to discharge the patient under this Part of this Act;

(vi) at any time when the patient is entitled to make application to a Mental Health Review Tribunal, to that tribunal,

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

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

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

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

(a) for any reference to the managers of the hospital there were substituted a reference to the guardian; and

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

(6) In this section "postal packet" has the same meaning as in the Post Office Act, 1953; and the provisions of this section shall have effect notwithstanding anything in section fifty-six of that Act.

DEFINITIONS

"hospital" is defined in s. 147(1);

"hospital" here may include certain mental nursing homes, see ss. 14(2), 15 and 59(2);

"managers" is defined in ss. 59(1) and 147(1);

"mental disorder" is defined in s. 4;

The "Minister" means the Minister of Health, see s. 147(1);

"patient" is defined in s. 147(1);

"responsible medical officer" is defined in s. 59(1).

GENERAL NOTE

As to the application of this section to patients liable to be detained or subject to guardianship by virtue of Part V, i.e., as a result of criminal proceedings, see ss. 63 (3) and 65 (3) and Sched. III.

Subs. (1)

The power to withhold correspondence is partly new, though this may in some instances have been done in the past without statutory authority where the medical authorities considered it proper so to do in the interests of the patient. There were certain powers in regard to defectives under the Mental Deficiency Regulations, 1948, reg. 44, and in regard to Broadmoor patients under the Broadmoor Institution (Amendment) Rules, 1952. See Report, paras. 299 and 489.

As to application of this section to patients not subject to detention or guardian ship, see s. 134.

Subs. (2)

This derives from the Lunacy Act, 1890, s. 41, and the Mental Deficiency Regulations, 1948, reg. 44. There are some differences. In particular the Lord Chancellor and the Judge in Lunacy (now the judge having jurisdiction under Part VIII of the Act) are no longer included in the list, but the Master or the Deputy Master or any other officer of the Court of Protection (see s. 100 (2)) are now included in their place; the inclusion of any Member of Parliament is new.

As to (e), "any other authority or person having power to discharge the patient under this part of the Act," see s. 47 (2) and (3).

As to the Mental Health Review Tribunal, see ss. 3, 122, 123 and 124 and Sched. I. As to making regulations, see ss. 56 and 145.

Subs. (5)

This derives from the Mental Deficiency Regulations, 1948, reg. 82.

Subs. (6)

The Post Office Act, 1953, s. 87 (1), defines a "postal packet" as "a letter, postcard, reply postcard, newspaper, printed packet, sample packet, or parcel, and every packet or article transmissible by post, and includes a telegram." *Ibid.*, s. 56, relates to criminal diversion of letters from the addressee and subs. (4) thereof provides that for the purposes of that section "postal packet" means a postal packet which is in course of transmission by post or which has been delivered by post.

Visiting and examination of patients

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

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

(a) any medical practitioner authorised by that authority or board; and

(b) any other person (whether a medical practitioner or not) authorised under Part III of this Act to inspect the home,

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

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

DEFINITIONS

"medical practitioner" is defined in s. 147(1);

"mental nursing home" is defined in ss. 14(2), 15, 59(2) and 147(1);

As to "nearest relative," see s. 49, also ss. 50-53 and 147(1);

"patient" is defined in s. 147(1);

"registration authority" is defined in s. 14(3).

GENERAL NOTE

As to the application of this section to patients liable to be detained or subject to guardianship by virtue of Part V, i.e., as a result of criminal proceedings, see ss. 63(3) and 65(3) and Sched. III.

Subs. (1)

As to Mental Health Review Tribunal, see ss. 3, 122, 123 and 124 and Sched. I. As to power of nearest relative to order discharge, see ss. 47 and 48.

As to obstruction and penalties therefore, see s. 130; and as to prosecutions by local authorities, see s. 131.

Subs. (2)

As to order for discharge by a registration authority or regional hospital board, see s. 47(3).

As to inspection under Part III of the Act, see s. 17.

As to obstruction, etc., see annotation to subs. (1), *supra*.

Subs. (3)

In most cases the documents constituting the authority for detention will be the application duly supported by the necessary medical recommendations (ss. 31 and 34). As to obstruction, etc., see annotation to subs. (1), *supra*.

Re-classification of patients

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

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

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

DEFINITIONS

"application for admission for treatment" is defined in s. 26(1);

"guardianship application" is defined in s. 33(1);

"hospital" is defined in s. 147(1);

"hospital" here may include certain mental nursing homes, see ss. 14(2), 15 and 59(2);

"local health authority" is defined in s. 147(1);

"managers" is defined in ss. 59(1) and 147(1);

"mental disorder" is defined in s. 4;

As to "nearest relative," see s. 49; see also ss. 50-53 and 147(1);

"nominated medical attendant" is defined in s. 59(1);

"patient" is defined in s. 147(1);

"responsible medical officer" is defined in s. 59(1).

GENERAL NOTE

As to the application of this section to patients liable to be detained or subject to guardianship by virtue of Part V, i.e., as a result of criminal proceedings, see s. 63(3) and Sched. III.

Subs. (1)

The forms of disorder in question are the four forms mentioned in ss. 26(2) and 33(2), i.e., mental illness, severe subnormality, subnormality and psychopathic disorder. See s. 32 as to rectification of applications for admission and recommendations, and s. 34(4) as regards guardianship applications and recommendations.

As to detention in pursuance of an application for admission for treatment, see s. 26; as to a guardianship application, see s. 33.

As to transitional provisions, see Sched. VI, Pt. III, para. 8(2).

Subs. (2)

As to attaining the age of sixteen years, see s. 147(5).

As to Mental Health Review Tribunal, see ss. 3, 122, 123 and 124 and Sched. I.

Leave of absence from hospital

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

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

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

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

(5) A patient to whom leave of absence is granted under this section, shall not be recalled under subsection (4) of this section after he has ceased to be liable to be detained under this Part of this Act; and without prejudice to any other provision of this Part of this Act any such patient shall cease to be so liable at the expiration of the period of six months beginning with the first day of his absence on leave unless either -

(a) he has returned to the hospital, or has been transferred to another hospital under the following provisions of this Act, before the expiration of that period; or

(b) he is absent without leave at the expiration of that period.

DEFINITIONS

"hospital" is defined in s. 147(1);

"hospital" here may include certain mental nursing homes, see ss. 14(2), 15 and 59(2);

"managers" is defined in s. 59(1);

"patient" is defined in s. 147(1);

"responsible medical officer" is defined in s. 59(1).

GENERAL NOTE

This section derives from the Lunacy Act, 1890, s. 55, the Mental Treatment Rules, 1948, rules 4 and 5, and the Mental Deficiency Regulations, 1948, reg. 95.

As to transitional provisions, see Sched. VI, Pt. III, paras. 8 (3), 16 (2) and 21.

As to the application of this section to patients liable to be detained or subject to guardianship by virtue of Part V, i.e., as a result of criminal proceedings, see ss. 63(3), 65(3) and Sched. III.

This enables leave of absence to be given to patients who could not otherwise be allowed out of hospital, e.g., patients with dangerous propensities who may escape and do harm. A person authorised under this provision could lock the patient in a room.

Subs. (5)

Apart from the exceptions (a) and (b) after six months absence on leave a fresh application for admission or guardianship will be required if further compulsory detention or guardianship is necessary.

Return and re-admission of patients absent without leave

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

(a) absents himself from the hospital without leave granted under section thirty-nine of this Act; or

(b) fails to return to the hospital on any occasion on which, or at the expiration of any period for which, leave of absence was granted to him under that section, or upon being recalled thereunder; or

(c) absents himself without permission from any place where he is required to reside in accordance with conditions imposed on the grant of leave of absence under that section,

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

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

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

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

(b) in any other case, twenty-eight days;

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

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

DEFINITIONS

"absent without leave" is defined in subs. (4) of this section and s. 147(1);

"application for admission for treatment" is defined in s. 26(1);

"guardianship application" is defined in s. 33(1);

"hospital" is defined in s. 147(1);

"hospital" here may include certain mental nursing homes, see ss. 14(2), 15 and 59(2);

"local health authority" and "patient" are defined in s. 147(1);

"managers" is defined in ss. 59 (1) and 147(1);

"psychopathic disorder" and "subnormality" are defined in s. 4;

"welfare officer" is defined in s. 147(1).

GENERAL NOTE

This section derives from the Lunacy Act, 1890, ss. 55(8) and 85, under which the time limit for reception was fourteen days from the expiration of the period of absence on trial or after the escape, and the Mental Deficiency Act, 1913, s. 42, under which no period was limited.

As to the application of this section to retaking of patients escaping from legal custody, see s. 140(2).

As to retaking a patient, absent from England and Wales, and his return from Scotland, Northern Ireland, the Channel Islands and the Isle of Man, see s. 93.

As to reciprocal provisions in respect of patients in England and Wales and absent from Scotland or Northern Ireland, see ss. 91 and 92.

As to application of this section to Scotland and Northern Ireland, so far as applied by s. 93, see ss. 150 and 152.

As to transitional provisions, see Sched. VI, Pt. III, paras. 8 (3), 16 (2) and 21. As to the application of this section to patients liable to be detained or subject to guardianship by virtue of Part V, i.e., as a result of criminal proceedings, see ss. 63 (3) and 65, (3) and Sched. III.

Subs. (3)

The effect of para. (a) is that a patient suffering from psychopathic disorder or subnormality, if under the age of twenty-one (see s. 147 (5)) on the first day of absence without leave, can only be retaken within the twenty-eight-day period limited by para. (b). After that time a fresh application under s. 26 or s. 33 would be required. The reason given in the Report (see para. 481) that the power of retaking a psychopathic or subnormal patient over the age of twenty-one should be six months, as against twenty-eight days in other cases, is "that it might take more than twenty-eight days to find such a patient," and if such a patient is not retaken within the prescribed period, the compulsory powers would lapse, and he could not be compulsorily detained again unless he were convicted of a criminal offence (see Part V).

Regulations as to transfer of patients

41.-(1) In such circumstances and subject to such conditions as may be prescribed by

regulations made by the Minister -

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

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

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

(a) where the patient, being liable to be detained in a hospital by virtue of an application for admission for observation or for treatment, is transferred to another hospital, as if the application were an application for admission to that other hospital and as if the patient had been admitted to that other hospital at the time when he was originally admitted in pursuance of the application;

(b) where the patient, being liable to be detained as aforesaid, is transferred into guardianship, as if the application were a guardianship application duly accepted at the time aforesaid;

(c) where the patient, being subject to guardianship by virtue of a guardianship application, is transferred into the guardianship of another authority or person, as if the application were for his reception into the guardianship of that authority or person and had been accepted at the time when it was originally accepted;

(d) where the patient, being subject to guardianship as aforesaid, is transferred to a hospital, as if the guardianship application were an application for admission to that hospital (being an application for admission for treatment) and as if the patient had been admitted to the hospital at the time when the application was originally accepted.

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

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

(5) A patient who, having attained the age of sixteen years, is transferred from guardianship

to a hospital in pursuance of regulations made under this section may, within the period of six months beginning with the day on which he is so transferred, apply to a Mental Health Review Tribunal.

DEFINITIONS

"application for admission for treatment" is defined in s. 26(1);

"guardianship application" is defined in s. 33(1);

"hospital" is defined in s. 147(1);

"hospital" here may include certain mental nursing homes, see ss. 14(2), 15 and 59(2);

"local health authority" is defined in s. 147(1);

"managers" is defined in ss. 59 (1) and 147(1);

The "Minister" means the Minister of Health, see s. 147(1);

"patient" is defined in s. 147(1).

GENERAL NOTE

As to the application of this section to patients liable to be detained or subject to guardianship by virtue of Part V, i.e., as a result of criminal proceedings, see ss. 63 (3) and 65 (3) and Sched. III.

Subs. (1)

As to making of regulations, see ss. 56 and 145.

As to (a), an application under this Part of the Act is an application for admission for observation under s. 25, an application for admission for treatment under s. 26, or an emergency application under s. 29, including an application in respect of a patient already in hospital (s. 30).

As to guardianship, see s. 33.

Subs. (2)

By virtue of this subsection, when there has been a transfer it is retrospective in effect as if the patient had been in the state to which he has been transferred when the application was originally accepted.

Subs. (3)

This provision enables the hospital authorities to move patients from one unit of a hospital to another unit without formality.

Under Part II of the National Health Service Act, 1946, the Minister of Health has to provide hospitals for free treatment (*ibid.*, s. 3), and may make available hospital accommodation on the basis of payment of part cost - usually known as "amenity wards" (*ibid.*, s. 4) - or on the basis of payment of the full cost for private patients (*ibid.*, s. 5).

Subs. (5)

As to attaining the age of sixteen, see ss. 147 (5) and 56 (2) (e).

As to Mental Health Review Tribunal, see ss. 3, 122, 123 and 124 and Sched. I.

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

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

(a) dies; or

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

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

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

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

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

DEFINITIONS

"local health authority," "mental welfare officer" and "patient" are defined in s. 147 (1).

GENERAL NOTE

As to the application of this section to patients liable to be detained or subject to guardianship by virtue of Part V, i.e., as a result of criminal proceedings, see ss. 63 (3) and 65 (3) and Sched. III.

Subs. (1)

As to guardianship, see ss. 33 *et seq.*

The transfer of the guardianship under this provision works automatically by operation of law.

Subs. (2)

Here there is no actual transfer of the guardianship, which will revive automatically if and when the guardian is fit to resume his guardianship duties. This does not enable a local health authority to take over against the wishes of the guardian.

Subs. (3)

It is to be noted that no application can lie to the county court to oust the local health authority as guardian. Presumably, the only course where it is contended that an authority has acted improperly as guardian is to endeavour to persuade the Minister to direct an inquiry under ss. 142 and 143.

As to making of County Court Rules, see s. 55.

Duration of authority for detention or guardianship and discharge of patients

Duration of authority

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

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

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

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

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

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

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

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

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

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

(5) Where a report is duly furnished under subsection (3) or sub-section (4) of this section, the authority for the detention or guardianship of the patient shall be thereby renewed for the

period prescribed in that case by subsection (2) of this section.

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

DEFINITIONS

"application for admission for treatment" is defined in s. 26(1);

"guardianship application" is defined in s. 33(1);

"hospital" is defined in s. 147(1);

"hospital" here may include certain mental nursing homes, see ss. 14(2), 15 and 59(2);

"local health authority" is defined in s. 147(1);

"managers" is defined in ss. 59(1) and 147(1);

"nominated medical attendant" is defined in s. 59(1);

"patient" is defined in s. 147(1);

"responsible local health authority" is defined in s. 59(4);

"responsible medical officer" is defined in s. 59(1);

GENERAL NOTE

This derives from the Lunacy Act, 1890, s. 38, the Mental Deficiency Act, ss. 11 and 12 and the Mental Treatment Act, 1930, s. 5 (11), (12) and (13).

As to transitional provisions, see Sched. VI, Part III, paras. 8 (4), 11 (2) and 12 (2).

As to the application of this section to patients liable to be detained or subject to guardianship by virtue of Part V, i.e., as a result of criminal proceedings, see ss. 63 (3) and 65 (3) and Sched. III.

Subs. (1)

As to an admission for treatment, see ss. 26 and 30; as to guardianship application, see s. 33. The authority for a patient's detention or guardianship is the application (duly supported by the appropriate medical recommendations) upon which he was originally dealt with; see ss. 31 and 84.

Subs. (2)

Thus the duration of the authority for detention or guardianship lasts for one year whereupon it can be renewed for another year, and then for successive periods of two years (no five year periods as previously).

As to the authority for the detention or guardianship, see annotation to subs. (1).

Subs. (3)

The authority for detention or guardianship is thus renewed automatically by operation of law upon the furnishing of the report. The form of these reports is to be prescribed by the Minister by regulations under s. 56.

Subs. (6)

As to attaining the age of sixteen, see ss. 147 (5) and 56 (2) (e).

The reason why the nearest relative is not included here (*cf.* s. 44 (3)) is because he has a power of discharge

under s. 47 (2) (b) and (c) and should discharge be barred under s. 48 (2), then s. 48 (4) gives him a right to apply to the Tribunal.

Only one application is allowed during the period of renewal (s. 122 (2)). As to Mental Health Review Tribunal, see ss. 3, 122, 123 and 124 and Sched. I.

Special provisions as to psychopathic and subnormal patients

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

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

(3) Where a report under subsection (2) of this section is furnished in respect of a patient, the managers shall cause the patient and the nearest relative of the patient to be informed, and the patient and that relative may, at any time before the expiration of the period of twenty-eight days beginning with, the day on which the patient attains the age of twenty-five years, apply to a Mental Health Review Tribunal.

DEFINITIONS

"application for admission for treatment" is defined in s. 26(1);

"guardianship application" is defined in s. 33(1);

"hospital" is defined in s. 147(1);

"hospital" here may include certain mental nursing homes, see ss. 14(2), 15 and 59(2);

"managers" is defined in ss. 59(1) and 147(1);

"patient" is defined in s. 147(1);

"psychopathic disorder" is defined in s. 4;

"responsible medical officer" is defined in s. 59(1);

"subnormality" is defined in s. 4;

As to "nearest relative," see s. 49 and also ss. 50-53 and 147(1).

GENERAL NOTE

As to transitional provisions, see Sched. VI, Part III, paras. 8 (4) and 12 (3). This section does not apply to patients liable to be detained or subject to guardianship by virtue of Part V, i.e., as a result of criminal proceedings; see ss. 63 (3) and 65 (3) and Sched. III.

Subs. (1)

The Royal Commission recommended that whilst compulsory powers should, if necessary, be resorted to if a psychopathic person has not reached the age of twenty-one nevertheless these powers should normally lapse when he became twenty-five (Report, paragraphs 354 and 367). The two classes of subnormal and psychopathic may be said to cover between them the field comprehended in the Report by the term "psychopathic."

It will be noted from this subsection that in the case of guardianship of a psychopathic or subnormal patient there is no renewal when the age of twenty-five is reached. The authority for detention is the application (duly supported by the appropriate medical recommendations) under which the patient was admitted (s. 31).

This section only applies to psychopathic or subnormal patients dealt with under a guardianship application (s. 33) or an application for admission for treatment (s. 26).

As to attaining the age of twenty-five, see s. 147 (5); as to determination of age, see s. 56 (2) (e).

Subs. (2)

It will be noted that whereas (as for any other patient) the qualifying factor for compulsory admission of a psychopathic or subnormal patient is that "it is necessary in the interests of the patient's health or safety or for the protection of other persons" here the test as to whether such a patient should continue to be detained after attaining the age of twenty-five is that he "would be likely to act in a manner dangerous to other persons or to himself."

Cf. Sched. VI, para. 13 (1) for transitional provision.

Subs. (3)

As to Mental Health Review Tribunal, see ss. 3, 122, 123 and 124 and Sched. I. *Cf.* s. 43 (5).

Special provisions as to patients absent without leave

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

(a) in any case, until the expiration of the period during which he can be taken into custody under section forty of this Act, or the day on which he is returned or returns himself to the hospital or place where he ought to be, whichever is the earlier; and

(b) if he is returned or returns himself as aforesaid within the period first mentioned in the foregoing paragraph, until the expiration of the period of one week beginning with the day on which he is returned or returns as aforesaid.

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

(3) Where the authority for the detention or guardianship of a patient is renewed by virtue of this section after the day on which, apart from this section, that authority would have expired under section forty-three 1 or section forty-four of this Act, the renewal shall take effect as

from that day.

DEFINITIONS

"absent without leave" is defined in ss. 40 (4) and 147(1);

"hospital" is defined in s. 147(1);

"hospital" here may include certain nursing homes, see ss. 14 (2), 15 and 59 (2);

"patient" is defined in s. 147(1);

"psychopathic disorder" and "subnormality" are defined in s. 4.

GENERAL NOTE

The object of this section is to give the hospital authorities or the guardian a week to take the necessary steps for renewal when the patient returns. This is new; previously the detention would have lapsed.

As to the application of this section to the retaking of patients escaping from legal custody, see s. 140 (6).

As to transitional provisions, see Sched. VI, Pt. III, para. 8 (4).

As to the application of this section to patients liable to be detained or subject to guardianship by virtue of Part V, i.e., as a result of criminal proceedings, see ss. 63 (3) and 65 (3) and Sched. III.

Special provisions as to patients sentenced to imprisonment, etc.

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

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

(a) if apart from this subsection the patient would have ceased to be liable to be detained or subject to guardianship as aforesaid on or before the day on which he is discharged from custody, he shall not cease and shall be deemed not to have ceased to be so liable or subject until the end of that day; and

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

DEFINITIONS

"application for admission for treatment" is defined in s. 26(1);

"guardianship application" is defined in s. 33(1);

"patient" is defined in s. 147 (1);

"psychopathic disorder" and "subnormality" are defined in s. 4.

GENERAL NOTE

As to application of this section to Scotland and Northern Ireland, so far as applied by s. 93, see ss. 150 and 152.

As to the application of this section to patients liable to be detained or subject to guardianship by virtue of Part V, i.e., as a result of criminal proceedings, see ss. 63 (3) and 65 (3) and (5) and Sched. III.

Subs. (2)

This section relates to a patient who is detained in custody as a result of criminal proceedings after he has already become liable to be detained or subject to guardianship under this Part (i.e., Part IV) of the Act.

S. 40 thus attracted under this subsection relates to the retaking and return of patients absent without leave; and s. 45 thus attracted gives the hospital authorities or the guardian a week to take the necessary steps for renewal (s. 43) at the end of a period in custody of not exceeding six months.

Discharge of patients

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

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

(a) where the patient is liable to be detained in a hospital in pursuance of an application for admission for observation, by the responsible medical officer or by the managers of the hospital;

(b) where the patient is liable to be so detained in pursuance of an application for admission for treatment, by the responsible medical officer, by the managers or by the nearest relative of the patient; and

(c) where the patient is subject to guardianship, by the responsible medical officer, by the responsible local health authority or by the nearest relative of the patient.

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

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

DEFINITIONS

"application for admission for observation" is defined in s. 25(1);

"application for admission for treatment" is defined in s. 26(1);

"hospital" is defined in s. 147(1);

"hospital" here may include certain mental nursing homes, see ss. 14(2), 15 and 59(2);

"managers" is defined in ss. 59(1) and 147(1);

"mental nursing home" is defined in ss. 14(2), 15 and 147(1);

"nearest relative" is defined in s. 49, also ss. 50-53 and 147(1);

"registration authority" is defined in s. 14(3);

"responsible local health authority" is defined in ss. 59(4) and 147(1);

"responsible medical officer" is defined in s. 59(1).

GENERAL NOTE

This section derives from the Lunacy Act, 1890, ss. 72, 73, 77, 78, 79 and the Mental Deficiency Act, 1913, s. 12 (1) and (3).

As to transitional provisions, see Sched. VI, Pt. III, paras. 8(5), (6), (7) and 12 (4).

As to the application of this section to patients liable to be detained or subject to guardianship by virtue of Part V, i.e., as a result of criminal proceedings, see ss. 63 (3), 65 (3) and Sched. III.

Restrictions on discharge by nearest relative

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

(2) An order for the discharge of a patient who is liable to be detained in a hospital shall not be made by his nearest relative except after giving not less than seventy-two hours' notice in writing to the managers of the hospital; and if, within seventy-two hours after such notice has been given, the responsible medical officer furnishes to the managers a report certifying that in the opinion of that officer the patient, if discharged, would be likely to act in a manner dangerous to other persons or to himself, -

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

(b) no further order for the discharge of the patient shall be made by that relative during the period of six months beginning with the date of the report.

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

DEFINITIONS

"hospital" is defined in s. 147(1);

"hospital" here may include certain mental nursing homes, see ss. 14(2), 15 and 59(2);

"managers" is defined in ss. 59(1) and 147(1);

"nearest relative" is defined in s. 49, also ss. 50-53 and 147(1);

"patient" is defined in s. 147(1);

"responsible medical officer" is defined in s. 59(1).

GENERAL NOTE

This section does not apply to patients liable to be detained by virtue of Part V, *i.e.*, as a result of criminal proceedings; see ss. 63 (3) and 65 (3) and Sched. III.

Subs. (1)

S. 44(2) relates to the special procedure required when it is considered necessary to continue to detain a psychopathic or subnormal patient after he has attained the age of twenty-five years.

As to power of nearest relative to order discharge, see s. 47(2) (*b*).

Subs. (3)

As to Mental Health Review Tribunal, see ss. 3, 122, 123 and 124 and Sched. I.

Functions of relatives of patients

Definition of relative and nearest relative

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

(*a*) husband or wife;

(*b*) son or daughter;

(*c*) father;

(*d*) mother;

(*e*) brother or sister;

(*f*) grandparent;

(*g*) grandchild;

(*h*) uncle or aunt;

(*i*) nephew or niece.

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

(3) In this Part of this Act, subject to the provisions of this section and to the following provisions of this Part of this Act, the "nearest relative" means the person first described in

subsection (1) of this section who is for the time being surviving, relatives of the whole blood being preferred to relatives of the same description of the half-blood and the elder or eldest of two or more relatives described in any paragraph of that subsection being preferred to the other or others of those relatives, regardless of sex.

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

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

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

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

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

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

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

(6) In this section "husband" and "wife" include a person who is living with the patient as the patient's husband or wife, as the case may be (or, if the patient is for the time being an in-patient in a hospital, was so living until the patient was admitted), and has been or had been so living for a period of not less than six months; but a person shall not be treated by virtue of this subsection as the nearest relative of a married patient unless the husband or wife of the patient is disregarded by virtue of paragraph (b) of subsection (4) of this section.

GENERAL NOTE

As to the application of this section to patients liable to be detained or subject to guardianship by virtue of Part V, i.e., as a result of criminal proceedings, see ss. 63 (3) and 65 (3) and Sched. III.

Subs. (1)

The main functions of any relative are to make an emergency application for the patient's admission to hospital for observation under s. 29 (2), and to apply to the county court for the functions of the nearest relative to be transferred to some other person (ss. 52 (1) and 53 (2)).

Subs. (3)

The main functions of the nearest relative of patient are to make an application for admission under ss. 25, 26 and 27, or a guardianship application under ss. 33 and 27, to order a patient's discharge under s. 47 (2). He also has many other functions and powers, e.g., to apply to a Mental Health Review Tribunal, under s. 44 (3) when a psychopathic or subnormal patient is detained after attaining the age of twenty-five, or under s. 48 (3) where discharge of any patient is resisted by the hospital authorities.

Subs. (4)

As to (d), see also s. 127 (2) (and annotation thereto) which enables the court to rescind an order under the Sexual Offences Act, 1956, so far as it has effect for any of the purposes of this Act.

Subs. (5)

As to enactments of Northern Ireland, see s. 147 (3).

Children and young persons in care of local authority

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

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

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

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

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

DEFINITION

For definition of "patient," see s. 147 (1).

GENERAL NOTE

See also s. 10 (1) and annotation thereto.

As to the application of this section to patients liable to be detained or subject to guardianship by virtue of Part V, i.e., as a result of criminal proceedings, see ss. 63 (3) and 65 (3) and Sched. III.

Nearest relative of infant under guardianship, etc.

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

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

(b) is, by virtue of an order made by a court in the exercise of such jurisdiction as aforesaid or in matrimonial proceedings, or by virtue of a separation agreement between his father and mother, in the custody of any such person,

the person or persons having the guardianship or custody of the patient shall, to the exclusion

of any other person, be deemed to be his nearest relative.

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

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

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

DEFINITION

"patient" is defined in s. 147 (1).

GENERAL NOTE

As to the application of this section to patients liable to be detained or subject to guardianship by virtue of Part V, i.e., as a result of criminal proceedings, see ss. 63 (3) and 65 (3) and Sched. III.

Subs. (1)

As to attaining the age of twenty-one, see ss. 147 (5) and 56 (2) (e).

As to the Sexual Offences Act, 1956, s. 38, see s. 127 (2) and annotation thereto.

Subs. (3)

S. 34 relates to the effect of a guardianship application and the powers of the guardian under this Act.

Subs. (4)

As to enactments of the Parliament of Northern Ireland, see s. 147 (3).

Appointment by court of acting nearest relative

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

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

(a) any relative of the patient;

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

(c) a mental welfare officer,

but in relation to an application made by such an officer subsection (1) of this section shall

have effect as if for the words "the applicant" there were substituted the words "the local health authority".

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

(a) that the patient has no nearest relative within the meaning of this Act, or that it is not reasonably practicable to ascertain whether he has such a relative, or who that relative is;

(b) that the nearest relative of the patient is incapable of acting as such by reason of mental disorder or other illness;

(c) that the nearest relative of the patient unreasonably objects to the making of an application for admission for treatment or a guardianship application in respect of the patient; or

(d) that the nearest relative of the patient has exercised without due regard to the welfare of the patient or the interests of the public his power to discharge the patient from hospital or guardianship under this Part of this Act, or is likely to do so.

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

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

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

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

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

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

force.

DEFINITIONS

"application for admission for observation" is defined in s. 25(1);

"application for admission for treatment" is defined in s. 26(1);

"guardianship application" is defined in s. 33(1);

"hospital" is defined in s. 147(1);

"hospital" here may include certain mental nursing homes, see ss. 14 (2), 15 and 59 (2);

"local health authority" is defined in s. 147(1);

"mental disorder" is defined in s. 4;

"nearest relative" is defined in s. 49; see also ss. 50-53 and 147 (1);

"patient" is defined in s. 147(1);

"relative" is defined in s. 49(1).

GENERAL NOTE

This section does not apply to patients liable to be detained or subject to guardianship by virtue of Part V, i.e., as a result of criminal proceedings, see ss. 63 (3) and 65 (3) and Sched. III.

Subs. (1)

The Royal Commission recommended that the procedure to displace and override the wishes and powers of the nearest relative should be by way of application to the magistrates (Report, paras. 496 and 497). It will be noted that this jurisdiction is conferred on the county courts instead.

As to functions of the nearest relative, see annotation to s. 49 (1).

Subs. (4)

As to application for admission for observation, see s. 25.

Subs. (6)

As to Mental Health Review Tribunal, see ss. 3, 122, 123 and 124 and Sched. I.

Discharge and variation of orders under s. 52

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

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

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

(2) An order made under the said section fifty-two in respect of a patient may be varied by the county court, on the application of the person having the functions of the nearest relative

by virtue of the order or on the application of a mental welfare officer, by substituting for the first mentioned person a local health authority or any other person who in the opinion of the court is a proper person to exercise those functions, being an authority or person who is willing to do so.

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

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

(a) if the patient was on the date of the order liable to be detained in pursuance of an application for admission for treatment or subject to guardianship under this Part of this Act, or becomes so liable or subject within the period of three months beginning with that date, when he ceases to be so liable or subject (otherwise than on being transferred in pursuance of regulations under section forty-one of this Act);

(b) if the patient was not on the date of the order, and has not within the said period become, so liable or subject, at the expiration of that period.

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

DEFINITIONS

See annotation to preceding section.

GENERAL NOTE

This section does not apply to patients liable to be detained or subject to guardianship by virtue of Part V, i.e., as a result of criminal proceedings; see ss. 63 (3) and 65 (3) and Sched. III.

Subs. (4)

Para. (b) clarifies the position in cases where an application is made to the county court under s. 52 for the transfer of the functions of the nearest relative with a view to the patient's compulsory admission to hospital or guardianship, but where in fact no such admission then takes place. This might happen, for example, if the patient became willing to enter hospital informally or if his mental condition improved and admission to hospital was found to be unnecessary.

Supplemental

Duty of mental welfare officer to make application for admission or guardianship

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

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

DEFINITIONS

"mental welfare officer" and "patient" are defined s. 147(1).

GENERAL NOTE

Subs. (1)

"Application for admission to hospital," i.e., either for observation (ss. 25 or 29) or for treatment (s. 26). As to guardianship application, see s. 33.

Procedure on applications to county court

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

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

(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.

DEFINITION

"patient" is defined in s. 147(1).

GENERAL NOTE

As to the application of this section to patients liable to be detained or subject to guardianship by virtue of Part V, i.e., as a result of criminal proceedings, see ss. 63 (3) and 65 (3) and Sched. III.

Regulations for purposes of Part IV

56.-(1) The Minister may make regulations for prescribing anything which, under this Part of this Act, is required or authorised to be prescribed, and otherwise for carrying this Part of this Act into full effect.

(2) Regulations under this section may in particular make provision -

(a) for prescribing the form of any application, recommendation, report, order, notice or other document to be made or given under this Part of this Act;

(b) for prescribing the manner in which any such application, recommendation, report, order, notice or other document may be proved, and for regulating the service of any

such application, report, order or notice;

(c) for requiring the managers of hospitals and local health authorities to keep such registers or other records as may be prescribed by the regulations in respect of patients liable to be detained or subject to guardianship under this Part of this Act, and to furnish or make available to those patients, and their relatives, such written statements of their rights and powers under this Act as may be so prescribed;

(d) for requiring local health authorities to consult such bodies or persons as may be prescribed by or determined under the regulations in connection with the approval of medical practitioners for the purposes of section twenty-eight of this Act, and for confining approval to such practitioners as may be agreed upon between those authorities and any bodies or persons required to be consulted by them respectively;

(e) for the determination in accordance with the regulations of the age of any person whose exact age cannot be ascertained by reference to the registers kept under the Births and Deaths Registration Act, 1953; and

(f) for enabling the functions under this Part of this Act of the nearest relative of a patient to be performed, in such circumstances and subject to such conditions (if any) as may be prescribed by the regulations, by any person authorised in that behalf by that relative;

and for the purposes of this Part of this Act any application, report or notice the service of which is regulated under paragraph (b) of this subsection shall be deemed to have been received by or furnished to the authority or person to whom it is authorised or required to be furnished, addressed or given if it is duly served in accordance with the regulations;

(3) Without prejudice to the foregoing provisions of this section, but subject to subsection (4) of section forty-seven of this Act, regulations under this section may determine the manner in which functions under this Part of this Act of the managers of hospitals, local health authorities or regional hospital boards are to be exercised, and such regulations may in particular specify the circumstances in which, and the conditions subject to which, any such functions may be performed by officers of or other persons acting on behalf of those managers, authorities or boards.

DEFINITIONS

"hospital" is defined in s. 147 (1); "hospital" here may include certain mental nursing homes, see ss. 14 (2), 15 and 59 (2);

"local health authority" is defined in s. 147 (1);

"managers" is defined in ss. 59 (1) and 147 (1);

the "Minister" means the Minister of Health, see s. 147 (1);

"nearest relative" and "relative" are defined in s. 49; also ss. 50-53 and 147 (1).

GENERAL NOTE

As to the application of this section to patients liable to be detained or subject to guardianship by virtue of Part V, i.e., as a result of criminal proceedings, see ss. 63 (3) and 65 (3) and Sched. III.

Subs. (1)

As to making regulations, see s. 145.

Subs. (3)

S. 47 (4) provides for any three or more members of any authority or body of persons to exercise powers under the section.

As to "regional hospital boards," see annotation to s. 3(1).

Power of Minister to refer to Tribunal

57. The Minister may, if he thinks fit, at any time refer to a Mental Health Review Tribunal the case of any patient who is liable to be detained or subject to guardianship under this Part of this Act.

DEFINITIONS

The "Minister" is the Minister of Health, see s. 147(1);

"patient" is defined in s. 147(1).

GENERAL NOTE

As to Mental Health Review Tribunal, see ss. 3, 122, 123 and 124 and Sched. I. As to application of this section to patients liable to be detained or subject to guardianship by virtue of Part V, *i.e.*, as a result of criminal proceedings, see ss. 63 (3) and 65 (3) and Sched. III.

Special provisions as to wards of court

58.-(1) An application for the admission to hospital of an infant who is a ward of court may be made under this Part of this Act with the leave of the court; and subsection (2) of section twenty-seven of this Act shall not apply in relation to an application so made.

(2) Where an infant being a ward of court is liable to be detained in a hospital by virtue of an application for admission under this Part of this Act, any power exercisable under this Part of this Act in relation to the patient by his nearest relative shall be exercisable by or with the leave of the court.

(3) Nothing in this Part of this Act shall be construed as authorising the making of a guardianship application in respect of an infant who is a ward of court, or the transfer into guardianship of any such infant.

DEFINITIONS

"guardianship application" is defined in s.33(1);

"hospital" is defined in s.147(1);

"hospital" here may include certain mental nursing homes, see ss.14 (2), 15 and 59 (2).

GENERAL NOTE

This section does *not* apply to patients liable to be detained or subject to guardianship by virtue of Part V, *i.e.*, as a result of criminal proceedings; see ss. 63 (3), 65 (3) and Sched. III.

Subs. (1)

The object of this section is to preserve the jurisdiction of the Chancery Division of the High Court in regard to wards of court. An infant is a person under twenty-one years of age.

Subs. (2)

As to powers of nearest relative, see annotation to s.49 (1).

Subs. (3)

Guardianship under this Act is not applicable since the ward is already under the court's guardianship.

Interpretation of Part IV

59.-(1) In this Part of this Act the following expressions have the meanings hereby respectively assigned to them, that is to say:-

"the managers" means -

(a) in relation to a hospital vested in the Minister under the National Health Service Act, 1946, and in relation to any accommodation provided by a local authority and used for hospital and specialist services under Part II of that Act, the hospital management committee or board of governors;

(b) in relation to a special hospital, the Minister;

(c) in relation to a mental nursing home registered in pursuance of Part III of this Act, the person or persons registered in respect of the home;

"the nominated medical attendant", in relation to a patient who is subject to the guardianship of a person other than a local health authority, means the person appointed in pursuance of regulations made under subsection (2) of section thirty-five of this Act to act as the medical attendant of the patient.

"the responsible medical officer" means -

(a) in relation to a patient liable to be detained by virtue of an application for admission for observation or an application for admission for treatment, the medical practitioner in charge of the treatment of the patient;

(b) in relation to a patient subject to guardianship, the medical officer of health of the responsible local health authority or any other medical officer authorised by that authority to act (either generally or in any particular case or for any particular purpose) as the responsible medical officer.

(2) Except where otherwise expressly provided, this Part of this Act applies in relation to a mental nursing home, being a home in respect of which the particular of registration are for the time being entered in the separate part of the register kept for the purposes of subsection (1) of section fifteen of this Act, as it applies in relation to a hospital, and references in this Part of this Act to a hospital, and any reference in this Act to a hospital to which this Part of this Act applies, shall be construed accordingly.

(3) For the purposes of this Part of this Act a patient who is liable to be detained or subject to guardianship by virtue of an application for admission for treatment or a guardianship

application shall be treated as being so liable or subject as a psychopathic or subnormal patient if the form of disorder specified in the application, or in the application as amended under section thirty-eight of this Act, is psychopathic disorder or subnormality, or psychopathic disorder and subnormality, and no other form of mental disorder.

(4) In relation to a patient who is subject to guardianship in pursuance of a guardianship application, any reference in this Part of this Act to the responsible local health authority is a reference -

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

(b) where the patient is subject to the guardianship of a person other than a local health authority, to the local health authority for the area in which that person resides.

DEFINITIONS

"application for admission for treatment" is defined in s. 26(1);

"guardianship application" is defined in s. 33(1);

"hospital" and "local health authority" are defined in s. 147(1);

"medical practitioner" is defined in s. 147(1);

"mental disorder" is defined in s. 4;

"mental nursing home" is defined in ss. 14 (2) and 147(1);

"patient" is defined in s. 147(1);

"psychopathic disorder" is defined in s. 4;

"responsible local health authority" is defined in subs. (4);

"special hospital" is defined in ss. 97(3) and 147(1);

"subnormality" is defined in s. 4.

GENERAL NOTE

As to application of this section to patients liable to be detained or subject to guardianship by virtue of Part V, i.e., as a result of criminal proceedings, see ss. 63 (3) and 65 (3) and Sched. III.

Subs. (2)

As to transitional provisions, see Sched. VI, Pt. III, para. 23 (2).

Subs. (3)

The effect of this is that if a patient is recorded as suffering from mental illness or severe subnormality in addition to subnormality or psychopathic disorder he is to be treated for the purposes of the Act as mentally ill or severely subnormal and not as subnormal or psychopathic.

Subs. (4)

As to guardianship application, see s. 33.

PART V

ADMISSION OF PATIENTS CONCERNED IN CRIMINAL PROCEEDINGS, ETC.,

AND TRANSFER OF PATIENTS UNDER SENTENCE

Provisions for compulsory admission or guardianship of patients convicted of criminal offences, etc.

Powers of courts to order hospital admission or guardianship

60.-(1) Where a person is convicted before a court of assize or quarter sessions of an offence other than an offence the sentence for which is fixed by law, or is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment, and the following conditions are satisfied, that is to say -

(a) the court is satisfied, on the written or oral evidence of two medical practitioners (complying with the provisions of section sixty-two of this Act), -

(i) that the offender is suffering from mental illness, psychopathic disorder, subnormality or severe subnormality; and

(ii) that the mental disorder is of a nature or degree which warrants the detention of the patient in a hospital for medical treatment, or the reception of the patient into guardianship under this Act; and

(b) the court is of opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the offender, and to the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of an order under this section,

the court may by order authorise his admission to and detention in such hospital as may be specified in the order or, as the case may be, place him under the guardianship of a local health authority or of such other person approved by a local health authority as may be so specified.

(2) Where a person is charged before a magistrates' court with any act or omission as an offence and the court would have power, on convicting him of that offence, to make an order under subsection (1) of this section in his case as being a person suffering from mental illness or severe subnormality, then, if the court is satisfied that the accused did the act or made the omission charged, the court may, if it thinks fit, make such an order without convicting him.

(3) An order for the admission of an offender to a hospital (in this Part of this Act referred to as a hospital order) shall not be made under this section unless the court is satisfied that arrangements have been made for the admission of the offender to that hospital in the event of such an order being made by the court, and for his admission thereto within a period of twenty-eight days beginning with the date of the making of such an order.

(4) An order placing an offender under the guardianship of a local health authority or of any other person (in this Part of this Act referred to as a guardianship order) shall not be made under this section unless the court is satisfied that that authority or person is willing to receive the offender into guardianship.

(5) A hospital order or guardianship order shall specify the form or forms of mental disorder

referred to in paragraph (a) of subsection (1) of this section from which, upon the evidence taken into account under that paragraph, the offender is found by the court to be suffering; and no such order shall be made unless the offender is described by each of the practitioners whose evidence is taken into account as aforesaid as suffering from the same one of those forms of mental disorder, whether or not he is also described by either of them as suffering from another of those forms.

(6) Where an order is made under this section, the court shall not pass sentence of imprisonment or impose a fine or make a probation order in respect of the offence, but may make any other order which the court has power to make apart from this section; and for the purposes of this subsection "sentence of imprisonment" includes any sentence or order for detention, including an order sending an offender to an approved school.

DEFINITIONS

"approved school" is defined in s. 80(1), and the Children and Young Persons Act, 1933, ss. 79 and 107 (1);

"court of quarter sessions" includes an appeal committee of quarter sessions, see s. 80(6);

"hospital" is defined in s. 147 (1); "hospital" here may include certain mental nursing homes, see ss. 14 (2), 15, 59 (2) and 80 (5);

"local health authority" is defined in s. 147(1);

"medical practitioner" and "medical treatment" are defined in s. 147(1);

"mental disorder" and its four forms mentioned here are defined in s. 4.

GENERAL NOTE

This section derives in some measure from the Mental Deficiency Act, 1913, s.8, and the Magistrates' Courts Act, 1952, s. 30, both of which enactments are repealed by this Act (Sched. VIII). The provisions are new in so far as they empower courts of assize and quarter sessions to make hospital orders or guardianship orders in respect of mentally ill persons, and are completely new in relation to any psychopath who would not have been a feeble-minded person or moral defective within the meaning of the Mental Deficiency Act, 1913.

In connection with this section the provisions of the Criminal Lunatics Act, 1800, and the Trial of Lunatics Act, 1883, should be borne in mind. See annotation to s. 71.

Subs. (1)

"Sentence which is fixed by law" this phrase has reference to murder (either capital or non-capital), treason, piracy and arson in Government Dockyards.

Under the Criminal Appeal Act, 1907, s. 3 (c), there is no appeal against a sentence fixed by law.

A magistrates' court can only make an order hereunder if the offence is one which in an adult is punishable on summary conviction with imprisonment (see s. 80 (2)). Where there has been a conviction and the other requirements of the subsection are fulfilled an order thereunder can be made in respect of a person suffering from any one of the four forms of mental disorder mentioned in paragraph (a) (i), with no age qualification in the case of a psychopathic or subnormal person as is required by ss. 26 and 33. As to making a hospital order or a guardianship order without conviction, see subs. (2).

Generally as to admission for treatment, and as to guardianship, see Part IV.

Subs. (2)

A person suffering psychopathic disorder or subnormality cannot be made the subject of a hospital order or a guardianship order without being convicted. As to a child or young person, however, see s. 61.

Subs. (5)
Cf. s. 26 (4).

Subs. (6)

The Criminal Justice Act, 1948, s. 4, as amended by this Act (Sched. VII), enables probation orders to be made requiring treatment for mental condition and s. 7, *ibid.*, enables the court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law) where it is inexpedient to inflict punishment and a probation order is not appropriate, to make an order for absolute or conditional discharge.

Where the court is of the opinion that the best course would be for the offender to go into hospital voluntarily or compulsorily under normal procedure under Part IV, it may dispose of the case in the ordinary way, e.g., by fine or absolute discharge, as above stated.

Additional powers in respect of children and young persons

61.-(1) If in the case of a child or young person brought before a juvenile court under section sixty-two or section sixty-four of the Children and Young Persons Act, 1933, -

(a) the court is satisfied that the child or young person is in need of care or protection, or that his parent or guardian is unable to control him, as the case may be; and

(b) the conditions which, under section sixty of this Act, are required to be satisfied for the making of a hospital order or guardianship order in respect of a person convicted as therein mentioned are so far as applicable satisfied in the case of the child or young person,

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

(2) A juvenile court shall not make a hospital order or guardianship order in respect of a person brought before the court under section sixty-four of the Children and Young Persons Act, 1933, as being beyond the control of his parent or guardian unless the court is satisfied that the parent or guardian understands the results which will follow from the order and consents to its being made.

(3) Where a hospital order is made by virtue of this section in respect of a child or young person, the court may also make an order committing him to the care of a fit person under the Children and Young Persons Act, 1933; but except as aforesaid no order shall be made under section sixty-two or sixty-four of that Act in conjunction with a hospital order or guardianship order.

DEFINITIONS

As to "child" and "young person" in this section, see s. 80 (1) and the Children and Young Persons Act, 1933, s. 107 (1), which for the purposes of that Act defines a "child" to mean a person under the age of fourteen years and "young person" to mean a person who has attained the age of fourteen years and is under the age of seventeen years;

As to "guardian" in this section, see s. 80 (1) and the Children and Young Persons Act, 1933, s. 107 (1), which defines "guardian" to include any person who, in the opinion of the court, has for the time being

charge or control over the child or young person;

"guardianship order" is defined in ss. 60 (4) and 147 (1);

"hospital order" is defined in ss. 60 (3) and 147 (1).

GENERAL NOTE

Subs. (1)

These powers given to the juvenile courts are in addition to those given to all magistrates' courts under section 60.

The Children and Young Persons Act, 1933, s. 62, relates to the powers of the juvenile courts in respect of children and young persons in need of care or protection and s. 64 enables a parent or guardian to bring a child or young person before a juvenile court.

Subs. (2)

This is in conformity with the Children and Young Persons Act, 1933, s. 64 (1), which requires the consent of the parent or guardian to the making of orders.

Subs. (3)

See the Children and Young Persons Act, 1933, ss. 62 (1) (*b*) and 64.

Requirements as to medical evidence

62.-(1) Of the medical practitioners whose evidence is taken into account under paragraph (*a*) of subsection (1) of section sixty of this Act, at least one shall be a practitioner approved for the purposes of section twenty-eight of this Act by a local health authority as having special experience in the diagnosis or treatment of mental disorders.

(2) For the purposes of the said paragraph (*a*) a report in writing purporting to be signed by a medical practitioner may, subject to the provisions of this section, be received in evidence without proof of the signature or qualifications of the practitioner; but the court may in any case require that the practitioner by whom such a report was signed be called to give oral evidence.

(3) Where, in pursuance of directions of the court, any such report as aforesaid is tendered in evidence otherwise than by or on behalf of the accused, then -

(*a*) if the accused is represented by counsel or solicitor, a copy of the report shall be given to his counsel or solicitor;

(*b*) if the accused is not so represented, the substance of the report shall be disclosed to the accused or, where he is a child or young person, to his parent or guardian if present in court;

(*c*) in any case, the accused may require that the practitioner by whom the report was signed be called to give oral evidence, and evidence to rebut the evidence contained in the report may be called by or on behalf of the accused.

(4) In relation to a child or young person brought before a juvenile court under section sixty-two or section sixty-four of the Children and Young Persons Act, 1933, subsection (3) of this section shall have effect as if for references to the accused there were substituted references to the child or young person; and in the case of a child or young person brought before the

court under the said section sixty-four paragraphs (a) to (c) of that subsection shall have effect as if those references included references to his parent or guardian, and as if in the said paragraph (b) the words from "or, where" to the end of the paragraph were omitted.

DEFINITIONS

As to "child" and "young person" in this section, see s. 80 (1) and the Children and Young Persons Act, 1933, s. 107 (1), which for the purposes of that Act defines a "child" to mean a person under the age of fourteen years and "young person" to mean a person who has attained the age of fourteen years and is under the age of seventeen years;

As to "guardian" in this section, see s. 80 (1) and the Children and Young Persons Act, 1933, s. 107 (1), which defines "guardian" to include any person who, in the opinion of the court, has for the time being charge or control over the child or young person;

"local health authority" and "medical practitioner" are defined in s. 147 (1);

"mental disorder" is defined in s. 4.

Effects of hospital orders and guardianship orders

63.-(1) A hospital order shall be sufficient authority -

(a) for a constable, a mental welfare officer or any other person directed to do so by the court to convey the patient to the hospital specified in the order within a period of twenty-eight days; and

(b) for the managers of the hospital to admit him at any time within that period and thereafter detain him in accordance with the provisions of this Act.

(2) A guardianship order shall confer on the authority or person therein named as guardian the like powers as a guardianship application made and accepted under Part IV of this Act.

(3) A patient who is admitted to a hospital in pursuance of a hospital order, or placed under guardianship by a guardianship order, shall be treated for the purposes of Part IV of this Act (other than sections thirty-one and thirty-two, or section thirty-four, as the case may be) as if he had been so admitted or placed on the date of the order in pursuance of an application for admission for treatment or a guardianship application, as the case may be, duly made under the said Part IV, except that -

(a) the power to order the discharge of the patient under section forty-seven shall not be exercisable by his nearest relative; and

(b) the special provisions relating to the expiration and renewal of authority for detention and guardianship in the case of psychopathic and subnormal patients shall not apply;

and accordingly the provisions of the said Part IV specified in the first column of the Third Schedule to this Act shall apply in relation to him subject to the exceptions and modifications set out in the second column of that Schedule and the remaining provisions of the said Part IV shall not apply.

(4) Without prejudice to any provision of Part IV of this Act as applied by this section, an

application to a Mental Health Review Tribunal may be made in respect of a patient admitted to a hospital in pursuance of a hospital order, or placed under guardianship by a guardianship order, as follows, that is to say -

(a) by the patient, within the period of six months beginning with the date of the order or with the day on which he attains the age of sixteen years, whichever is the later;

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

(5) Where a patient is admitted to a hospital in pursuance of a hospital order, or placed under guardianship by a guardianship order, any previous application, hospital order or guardianship order by virtue of which he was liable to be detained in a hospital or subject to guardianship shall cease to have effect:

Provided that if the first-mentioned order, or the conviction on which it was made, is quashed on appeal, this subsection shall not apply and section forty-six of this Act shall have effect as if during any period for which the patient was liable to be detained or subject to guardianship under the order, he had been detained in custody as mentioned in that section.

DEFINITIONS

"guardianship order" is defined in s. 60 (4);

"hospital" is defined in s. 147 (1);

"hospital" here may include certain mental nursing homes, see s. 14 (2), 15, 59 (2) and 80 (5);

"hospital order" is defined in ss. 60 (3) and 147 (1);

"managers" is defined in ss.59 (1) and 147 (1);

"nearest relative" is defined in ss. 49 to 53 and 147 (1);

"patient" is defined in s. 147 (1);

"psychopathic disorder" and "subnormality" are defined in s. 4;

"welfare officer" is defined in s. 147 (1).

GENERAL NOTE

Subs. (1)

Cf. s. 31. See s. 139 as to provision for custody, conveyance and detention.

A condition precedent to the making of a hospital order is that the hospital authorities in question have agreed to admit the patient (s. 60 (3)). If these arrangements break down by reason of an emergency or other special circumstances, the Minister may direct admission to some other hospital (s. 64 (2)).

Subs. (2)

See s. 34.

Subs. (3)

As to an application for admission for treatment and a guardianship application, see ss. 26 to 33.

As to para. (b), see s. 44.

Accordingly ss. 35 to 43, 45 to 47, 49 to 51, 55 to 57 and 59 apply subject to the provisions of Sched. III.

Sched. III must be studied carefully as to the applicability of the provisions of Part IV to an offender in respect of whom a hospital order (with or without an order restricting discharge under s. 65) or a guardianship order has been made.

Subs. (4)

As to Mental Health Review Tribunal, see as. 3, 122, 123 and 124 and Sched. I.

Subs. (5)

Thus a subsequent hospital or a guardianship order or a direction under Part V supersedes any previous authority for detention in hospital or guardianship under Parts IV and V and the effect of the proviso (read with s. 46) is that if the new Part V order is quashed on appeal within six months the previous authority for detention will revive.

Supplementary provisions as to hospital orders

64.-(1) The court by which a hospital order is made may give such directions as it thinks fit for the conveyance of the patient to a place of safety and his detention therein pending his admission to the hospital within the period of twenty-eight days referred to in subsection (1) of section sixty-three of this Act.

(2) If within the said period of twenty-eight days it appears to the Minister that by reason of an emergency or other special circumstances it is not practicable for the patient to be received into the hospital specified in the order, he may give directions for the admission of the patient to such other hospital as appears to be appropriate in lieu of the hospital so specified; and where such directions are given the Minister shall cause the person having the custody of the patient to be informed, and the hospital order shall have effect as if the hospital specified in the directions were substituted for the hospital specified in the order.

DEFINITIONS

"hospital" is defined in s. 147 (1);

"hospital" here may include certain mental nursing homes, see ss. 14 (2), 15, 59 (2) and 80 (5);

"hospital order" is defined in ss. 60 (3) and 147 (1);

"mental disorder" is defined in s. 4;

the "Minister" means the Minister of Health, see s. 147 (1);

"patient" is defined in s. 147 (1);

"psychopathic disorder" and "subnormality" are defined in s. 4;

"place of safety" is defined in s. 80 (1).

GENERAL NOTE

Subs. (1)

See s. 139 as to provisions for custody, conveyance and detention and s. 140 as to retaking of patients escaping from custody.

Subs. (2)

Although the consent of the proposed hospital to admit the patient is required before a hospital order is made

(see s. 60 (3)), this subsection gives the Minister an overriding power to give a direction in the case of an emergency.

Power of higher courts to restrict discharge from hospital

65.-(1) Where a hospital order is made in respect of an offender by a court of assize or quarter sessions, and it appears to the court, having regard to the nature of the offence, the antecedents of the offender and the risk of his committing further offences if set at large, that it is necessary for the protection of the public so to do, the court may, subject to the provisions of this section, further order that the offender shall be subject to the special restrictions set out in this section, either without limit of time or during such period as may be specified in the order.

(2) An order under this section (in this Act referred to as an order restricting discharge) shall not be made in the case of any person unless at least one of the medical practitioners whose evidence is taken into account by the court under paragraph (a) of subsection (1) of section sixty of this Act has given evidence orally before the court.

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

(a) none of the provisions of Part IV of this Act relating to the duration, renewal and expiration of authority for the detention of patients shall apply, and the patient shall continue to be liable to be detained by virtue of the relevant hospital order until he is duly discharged under the said Part IV or absolutely discharged under the next following section;

(b) no application shall be made to a Mental Health Review Tribunal in respect of the patient under section sixty-three of this Act or under any provision of the said Part IV;

(c) the following powers shall be exercisable only with the consent of the Secretary of State, that is to say -

(i) power to grant leave of absence to the patient under section thirty-nine of this Act;

(ii) power to transfer the patient in pursuance of regulations under section forty-one of this Act; and

(iii) power to order the discharge of the patient under section forty-seven of this Act;

and if leave of absence is granted under the said section thirty-nine the power to recall the patient under that section shall be vested in the Secretary of State as well as the responsible medical officer; and

(d) the power of the Secretary of State to recall the patient under the said section thirty-nine, and the power to take the patient into custody and return him under section forty of this Act, may be exercised at any time;

and in relation to any such patient the provisions of the said Part IV described in the first column of the Third Schedule to this Act shall have effect subject to the exceptions and modifications set out in the third column of that Schedule in lieu of those set out in the second column of that Schedule.

(4) A hospital order shall not cease to have effect under subsection (5) of section sixty-three of this Act if an order restricting the discharge of the patient is in force at the material time.

(5) Where an order restricting the discharge of a patient ceases to have effect while the relevant hospital order continues in force, the provisions of section sixty-three of this Act and the Third Schedule to this Act shall apply to the patient as if he had been admitted to the hospital in pursuance of a hospital order (without an order restricting his discharge) made on the date on which the order restricting his discharge ceased to have effect.

DEFINITIONS

"court of quarter sessions" includes an appeal committee of quarter sessions, see s. 80 (6);

"hospital order" is defined in ss. 60 (3) and 147 (1);

"medical practitioner" and "patient" are defined in s. 147 (1);

"responsible medical officer" is defined in s. 80 (1);

The "Secretary of State" refers to the Home Secretary.

GENERAL NOTE

Subs. (1)

The essential condition of an order restricting discharge being made is that it is necessary for the protection of the public.

See s. 67 as to power of magistrates' courts to commit to quarter sessions for a restriction order under this section.

Subs. (3)

Sched. III shows in tabular form the applicability (and variations) of the provisions of Part IV to an offender in respect of whom a hospital order (with or without an order restricting discharge) or a guardianship order has been made under this Part of the Act.

As to Mental Health Review Tribunal, see ss. 3, 122, 123 and 124 and Sched. I.

Powers of Secretary of State in respect of patients subject to restriction orders

66.-(1) If the Secretary of State is satisfied that an order restricting the discharge of a patient is no longer required for the protection of the public, he may direct that the patient shall cease to be subject to the special restrictions set out in section sixty-five of this Act; and where the Secretary of State so directs, the order restricting the discharge of the patient shall cease to have effect, and subsection (5) of the last foregoing section shall apply accordingly.

(2) At any time while an order restricting the discharge of a patient is in force, the Secretary of State may, if he thinks fit, by warrant discharge the patient from hospital, either absolutely or subject to conditions; and where a person is absolutely discharged under this subsection, he shall thereupon cease to be liable to be detained by virtue of the relevant hospital order, and the order restricting his discharge shall cease to have effect accordingly.

(3) The Secretary of State may at any time during the continuance in force of an order restricting the discharge of a patient who has been conditionally discharged under the last foregoing subsection, by warrant recall the patient to such hospital as may be specified in the warrant; and thereupon -

(a) if the hospital so specified is not the hospital from which the patient was conditionally discharged, the hospital order and the order restricting his discharge shall have effect as if the hospital specified in the warrant were substituted for the hospital specified in the hospital order;

(b) in any case, the patient shall be treated for the purposes of section forty of this Act as if he had absented himself without leave from the hospital specified in the warrant, and if the order restricting his discharge was made for a specified period, that period shall not in any event expire until the patient returns to the hospital or is returned to the hospital under that section.

(4) If an order restricting the discharge of a patient ceases to have effect after the patient has been conditionally discharged under this section, the patient shall, unless previously recalled under the last foregoing subsection, be deemed to be absolutely discharged on the date when the order ceases to have effect, and shall cease to be liable to be detained by virtue of the relevant hospital order accordingly.

(5) The Secretary of State may, if satisfied that the attendance at any place in Great Britain of a patient who is subject to an order restricting discharge is desirable in the interests of justice or for the purposes of any public inquiry, direct him to be taken to that place; and where a patient is directed under this subsection to be taken to any place he shall, unless the Secretary of State otherwise directs, be kept in custody while being so taken, while at that place and while being taken back to the hospital in which he is liable to be detained.

(6) The Secretary of State may at any time refer to a Mental Health Review Tribunal for their advice the case of a patient who is for the time being subject to an order restricting his discharge, and, where so requested in writing in accordance with the following provisions of two section by such a patient who is detained in hospital, shall do so within the period of two months beginning with the receipt of the request unless during that period the patient is discharged absolutely or conditionally under subsection (2) of this section or the order restricting his discharge ceases to have effect.

(7) A patient shall not be entitled to make a request to the Secretary of State under the last foregoing subsection before the expiration of the period of one year beginning with the date of the relevant hospital order, but subject as aforesaid may make one such request during each period during which he could have made an application to a Mental Health Review Tribunal if he had been subject to a hospital order without an order restricting his discharge and the authority for his detention had been renewed at the requisite intervals.

(8) Where a patient subject to an order restricting his discharge has been conditionally discharged under subsection (2) of this section and subsequently recalled to hospital, the last foregoing subsection shall apply as if the relevant hospital order had been made on the day on which he returns or is returned to hospital, but he may also make one such request as aforesaid between the expiration of the period of six months and the expiration of the period

of one year beginning with that day.

DEFINITIONS

"hospital" is defined in s. 147 (1);

"hospital" here may include certain mental homes, see ss. 14 (2), 15, 59 (2) and 80 (5);

"hospital order" is defined in ss. 60 (3) and 147 (1);

"order restricting discharge" is defined in ss. 65 (2) and 147 (1);

"patient" is defined in s. 147 (1);

The "Secretary of State" refers to the Home Secretary.

GENERAL NOTE

Subs. (1)

An order restricting discharge may cease to be necessary because the patient has improved under treatment and is no longer dangerous, or because he is no longer dangerous on other grounds, e.g., he may have become so weak and senile as to cease to be a potential danger to the community.

Subs. (2)

This derives from the Criminal Lunatics Act, 1884, s. 5, which is repealed by this Act (Sched. VIII).

As to transitional provisions, see Sched. VI, Pt. III, para. 16.

The patient may also, with the consent of the Secretary of State, be discharged by the responsible medical officer or the hospital managers (ss. 47 (2) (b), 65 (3) (c) (iii)) but not by the nearest relative (s. 63 (3) (a)).

Subs. (3)

This derives from the Criminal Lunatics Act, 1884, s. 5, which is repealed by this Act (Sched. VIII). As to para. (b), and applicability of s. 40, see Sched. III.

Subs. (5)

This replaces the Criminal Justice Act, 1948, s. 63 (1) (a), which is repealed by this Act (Sched. VIII). See s. 139 as to provisions as to custody, conveyance and detention.

As to the application of this section to Scotland, see s. 150.

Subs. (6)

As to Mental Health Review Tribunal, see ss. 3, 122, 123 and 124 and Sched. I. Note that such a reference to a Tribunal by the Secretary for State is for advice only and the Tribunal cannot discharge the patient, and that application can be made to the Tribunal under s. 63 (4). See s. 65 (3) (b).

As to the right of appeal to the Court of Criminal Appeal against an order restricting discharge, see s. 69.

Subs. (7)

Thus a patient will be able to exercise the right to make a request once during the second year, once during the third or fourth year and once during every successive period of two years. This corresponds to the right to apply to the Tribunal under s. 43. See s. 63 (4).

Subs. (8)

The patient will thus have the same right to initiate consideration of his case by the Tribunal as he had when he was originally admitted to hospital and will have the additional right during the first half of the first year.

Power of magistrates' courts to commit for restriction order

67.-(1) If in the case of a person of or over the age of fourteen years who is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment -

(a) the conditions which, under subsection (1) of section sixty of this Act, are required to be satisfied for the making of a hospital order are satisfied in respect of the offender; but

(b) it appears to the court, having regard to the nature of the offence, the antecedents of the offender and the risk of his committing further offences if set at large, that if a hospital order is made an order restricting his discharge should also be made,

the court may, instead of making a hospital order or dealing with him in any other manner, commit him in custody to quarter sessions to be dealt with in respect of the offence.

(2) Subsection (2) of section twenty-nine of the Criminal Justice Act, 1948 (which specified the court of quarter sessions by which an offender committed to quarter sessions for sentence is to be dealt with) shall apply in relation to the committal of an offender for sentence under section twenty-nine of the Magistrates' Courts Act, 1952.

(3) Where an offender is committed to quarter sessions under this section, the court of quarter sessions shall inquire into the circumstances of the case and may -

(a) if that court would have power so to do under the foregoing provisions of this Part of this Act upon the conviction of the offender before that court of such an offence as is described in subsection (1) of section sixty of this Act, make a hospital order in his case, with or without an order restricting his discharge;

(b) if the court does not make such an order, deal with the offender in any other manner in which the magistrates' court might have dealt with him;

and the Poor Prisoners Defence Act, 1930, shall apply as if the offender were committed for trial for an indictable offence, subject to the modifications specified in subsections (4) and (5) of section eighteen of the Legal Aid and Advice Act, 1949.

(4) The power of a magistrates' court under section twenty-nine of the Magistrates' Courts Act, 1952 (which enables such a court to commit an offender to quarter sessions where the court is of opinion that greater punishment should be inflicted for the offence than the court has power to inflict) shall also be exercisable by a magistrates' court where it is of opinion that greater punishment should be inflicted as aforesaid on the offender unless a hospital order is made in his case with an order restricting his discharge.

(5) The power of a court of quarter sessions to make a hospital order, with or without an order restricting discharge, in the case of a person convicted before that court of an offence may, in the like circumstances and subject to the like conditions, be exercised by such a court in the case of a person committed to the court under section five of the Vagrancy Act, 1824 (which provides for the committal to quarter sessions of persons being incorrigible rogues within the meaning of that section).

DEFINITIONS

"court of quarter sessions" includes an appeal committee of quarter sessions, see s.80 (6);

"hospital order" is defined in ss. 60 (3) and 147 (1);

"order restricting discharge" is defined in ss 65 (2) and 147 (1).

GENERAL NOTE

Subs. (1)

A magistrates' court cannot itself make an order restricting discharge; it can, however, make a hospital order under s. 60. Instead of committing the offender in custody, the court may order the offender to be admitted to hospital pending the disposal of the case (s.68).

See s. 65 as to power of a court of quarter sessions to make a restriction order.

Subs.2

The Criminal Justice Act, 1948, s. 29 (2), as amended by the Magistrates' Courts Act, 1952, provides as follows:

"(2) An offender committed by a court of summary jurisdiction to quarter sessions for sentence under section twenty-nine of the Magistrates' Courts Act, 1952, shall be committed:

(a) where the court of summary jurisdiction acts for a county other than the County of London or for a borough not having a separate court of quarter sessions, to the appeal committee of the quarter sessions for that county or for the county in which that borough is situated, as the case may be;

(b) in any other case, to the next court of quarter sessions having jurisdiction in the county, borough or place for which the court of summary jurisdiction acts;

and where the offender is so committed to an appeal committee, the clerk to the court of summary jurisdiction shall notify the clerk of the peace, and the clerk of the peace shall give notice to the prosecutor and to the governor of the prison or remand centre to which the offender is committed of the date on which the case will be dealt with by the appeal committee, being the next available sitting of a court consisting of members of that committee."

Subs. (4)

This is to cover the case where the magistrates' court is of the view that unless a hospital order (with an order restricting discharge) is made greater punishment should be inflicted.

Subs. (5)

This provision is necessary because under the Vagrancy Act, 1824, s. 5, the court of quarter sessions does not have all the powers that it would have had, had the offender been convicted before that court and accordingly ss. 60 and 65 would, but for this subsection, not be available in such a case.

Committal to hospital under s. 67

68.-(1) Where an offender is committed under subsection (1) of section sixty-seven of this Act and the magistrates' court by which he is committed is satisfied that arrangements have been made for the admission of the offender to a hospital in the event of an order being made under this section, the court may, instead of committing him in custody, by order direct him to be admitted to that hospital, specifying it, and to be detained there until the case is disposed of by quarter sessions, and may give such directions as it thinks fit for his production from the hospital to attend the court of quarter sessions by which his case is to be dealt with.

(2) Subsection (1) of section sixty-three and section sixty-four of this Act shall apply in relation to an order under this section as they apply in relation to a hospital order, but as if

references to the period of twenty-eight days mentioned in the said subsection (1) were omitted; and subject as aforesaid an order under this section shall, until the offender's case is disposed of by quarter sessions, have the like effect as a hospital order together with an order restricting his discharge, made without limitation of time.

(3) Where an order has been made under this section in respect of an offender, the notice of the date on which the case will be dealt with required by subsection (2) of section twenty-nine of the Criminal Justice Act, 1948, to be given by the clerk of the peace to the governor of the prison or remand centre shall instead be given to the managers of the hospital in which he is detained.

DEFINITIONS

"court of quarter sessions" includes an appeal committee of quarter sessions, see s. 80 (6);

"hospital" is defined in s. 147 (1);

"hospital" here may include certain mental homes, see ss. 14 (2), 15, 59 (2) and 80 (5);

"hospital order" is defined in ss. 60 (3) and 147 (1);

"managers" is defined in ss. 59 (1) and 147 (1);

"order restricting discharge" is defined in ss. 65 (2) and 147 (1);

"place of safety" is defined in s. 80 (1).

GENERAL NOTE

Subs. (3)

See annotation to s. 67 (2) where the Criminal Justice Act, 1948, s. 29 (2) is set out.

Appeals from assizes and quarter sessions

69.-(1) Where an order restricting discharge is made by a court of quarter sessions in respect of a person committed under section twenty-nine of the Magistrates' Courts Act, 1952, under section five of the Vagrancy Act, 1824, or under section sixty-seven of this Act, that person may appeal to the Court of Criminal Appeal against the order in like manner as against an order made on his conviction on indictment, and the provisions of the Criminal Appeal Act, 1907, shall apply accordingly.

(2) On any appeal to the Court of Criminal Appeal against an order restricting the discharge of an offender (including an appeal under subsection (1) of this section) the court shall have the like powers under subsection (3) of section four of the Criminal Appeal Act, 1907, as if the appeal were an appeal against the hospital order in respect of him as well as against the order restricting his discharge.

(3) On any appeal to the Court of Criminal Appeal by an offender against a hospital order or guardianship order, the court shall have the like powers under subsection (3) of the said section four as if the appeal were an appeal against any further order made by the court which made the hospital order or guardianship order, as well as against the hospital order or guardianship order.

DEFINITIONS

"court of quarter sessions" includes an appeal committee of quarter sessions, see s. 80 (6);

"guardianship order" is defined in as. 60 (4) and 147 (1);

"hospital order" is defined in ss. 60 (3) and 147 (1);

"order restricting discharge" is defined in as 65 (2) and 147 (1).

GENERAL NOTE

Subs. (1)

As to the Magistrates' Courts Act, 1952, s. 29, and the Vagrancy Act, 1824, s. 5, see s. 67 (4) and (5).

This section only applies to cases where a person has been *committed* to quarter sessions under the enactments mentioned. Where a hospital order, or an order restricting discharge, has been made by a court of assize or quarter sessions in respect of an offender *convicted before it*, an appeal will lie as a matter of course under the Criminal Appeal Act, 1907.

Subs. (2)

Under the Criminal Appeal Act, 1907, s. 4 (3), the Court of Criminal Appeal shall, if they think that a different sentence should have been passed, quash the sentence passed at the trial, and pass such other sentence warranted by law by the verdict (whether more or less) in substitution therefore as they think ought to have been passed, and in any other case shall dismiss the appeal. See also Criminal Justice Act, 1948, s. 38 (3).

This provision enables the court to consider the means of disposal chosen by the lower court as a whole, and, if it considers the order of quarter sessions to be inappropriate, to exercise its power under s. 4 (3) of the 1907 Act to quash not only the restriction but also the hospital order, and substitute therefore such other sentence warranted by law as it thinks "ought to have been passed." In cases committed under s. 67 (1) these words will limit the Court of Criminal Appeal to such a sentence as the magistrates' court could have passed.

Subs. (3)

This is necessary because under s. 60 (6) the lower court may have made some other order (e.g., an order for conditional or absolute discharge) in addition to a hospital order, and that other order has to be quashed before the Court of Criminal Appeal can substitute a sentence.

Appeals from magistrates' courts

70.-(1) Where on the trial of an information charging a person with an offence a magistrates' court makes a hospital order or guardianship order in respect of him without convicting him, he shall have the like right of appeal against the order as if it had been made on his conviction; and on any such appeal quarter sessions shall have the like powers as if the appeal had been against both conviction and sentence.

(2) Where a juvenile court, on being satisfied that a child or young person brought before the court is in need of care or protection or that his parent or guardian is unable to control him, makes such an order as aforesaid, the child or young person may appeal to quarter sessions against the order.

(3) An appeal by a child or young person with respect to whom any such order has been made, whether the appeal is against the order or against the finding upon which the order was made, may be brought by him or by his parent or guardian on his behalf.

(4) Section two of the Summary Jurisdiction (Appeals) Act, 1933 (which relates to legal aid) shall with the necessary modifications apply in relation to an appeal against a hospital order or guardianship order made by a magistrates' court (whether or not brought under this

section) as it applies in relation to an appeal against sentence.

DEFINITIONS

"child," "young person" and "guardian" are defined in s. 80 (1) and the annotation to s. 61;

"guardianship order" is defined in ss. 60 (4) and 147 (1);

"hospital order" is defined in ss. 60 (3) and 147 (1).

GENERAL NOTE

Subs. (1)

See s. 60 (2). Under the Magistrates' Courts Act, 1952, s. 83 (1), a person convicted may appeal to a court of quarter sessions -

(a) if he pleaded guilty, against his sentence;

(b) if he did not, against the conviction or sentence.

This is to enable the quarter sessions to rehear the case completely; if the court was minded to substitute a sentence for the hospital or guardianship order, obviously it would have to see whether a conviction could be justified.

Subs. (2) and (3)

See s. 61.

See also the Children and Young Persons Act, 1933, s. 102.

Persons ordered to be kept in custody during Her Majesty's pleasure

71.-(1) Where under any enactment to which this subsection applies any person is ordered to be kept in custody during Her Majesty's pleasure, that person shall, until detained in pursuance of any directions under subsection (2) of this section, be detained in such place of safety as the court may order, and the order shall be sufficient authority for his conveyance to that place.

(2) The Secretary of State may by warrant direct that any person who, by virtue of any enactment to which this subsection applies, s[sic] required to be kept in custody during Her Majesty's pleasure or until the directions of Her Majesty are known shall be detained in such hospital (not being a mental nursing home) as may be specified in the warrant and, where that person is not already detained in the hospital, give directions for his removal there.

(3) The enactments to which subsection (1) of this section applies are section two of the Criminal Lunatics Act, 1800, section two of the Trial of Lunatics Act, 1883, and subsection (4) of section five of the Criminal Appeal Act, 1907; and the enactments to which subsection (2) of this section applies are the aforementioned enactments and subsection (4) of section six of the Courts-Martial (Appeals) Act, 1951, section one hundred and sixteen of the Army Act, 1955, section one hundred and sixteen of the Air Force Act, 1955, and section sixty-three of the Naval Discipline Act, 1957.

(4) A direction under this section in respect of any person shall have the like effect as a hospital order together with an order restricting his discharge, made without limitation of time; and where such a direction is given in respect of a person while he is in the hospital, he

shall be deemed to be admitted in pursuance of, and on the date of, the direction.

(5) Where the Secretary of State is notified by the responsible medical officer that a person detained in a hospital, being a person ordered under section two of the Criminal Lunatics Act, 1800, to be kept in custody, no longer, requires treatment for mental disorder, the Secretary of State may remit that person to prison, or to a remand centre provided under section forty-three of the Prison Act, 1952, for trial at the next quarter sessions or, as the case may be, assizes for the place where, but for the order, he would have been tried, and on his arrival at the prison or remand centre the direction under this section shall cease to have effect.

DEFINITIONS

"hospital" is defined in s. 147 (1);

"hospital order" is defined in ss. 60 (3) and 147 (1);

"mental nursing home" is defined in ss. 14 (2) and 147 (1);

"order restricting discharge" is defined in ss. 65 (2) and 147 (1);

"place of safety" is defined in s. 80 (1);

The "Secretary of State" refers to the Home Secretary.

GENERAL NOTE

Subs. (1)

This relates to the power of the court (whereas subs. (2) relates to the power of the Secretary of State) and, by virtue of the definition of "place of safety" (s. 80 (1)), confers on the court a discretion to send the patient to hospital rather than prison, where it thinks fit, pending the giving of a direction by the Secretary of State under subs. (2).

Subs. (2)

This replaces the Criminal Lunatic Asylums Act, 1860, s. 2, the Criminal Lunatics Act, 1884, s. 5, and the Mental Deficiency Act, 1913, s. 9, the whole of which Acts are repealed by this Act (Sched. VIII).

These persons will normally be detained in special hospitals (see s. 97), but suitable cases may be sent to National Health Service hospitals.

As to transitional provisions, see Sched. VI, Pt. III, para. 15 (1) and (2).

Subs. (3)

The Criminal Lunatics Act, 1800, s. 2, relates to indicted persons who are found insane on arraignment or trial and consequently unfit to plead, and to any person brought up to be discharged for want of prosecution and found to be insane, and provides for their being kept in custody during Her Majesty's pleasure.

The Trial of Lunatics Act, 1883, s. 2 (1) and (2), provides for a special verdict where the accused is found guilty but insane at the date of the act or omission and for the convicted person to be kept in custody till Her Majesty's pleasure is known (see repeal in Sched. VIII, Pt. 1).

Under the Criminal Appeal Act, 1907, s. 5 (4), where it appears to the court that, although the appellant was guilty of the act or omission charged against him, he was insane at the time so as not to be responsible according to law for his actions, the court may quash the sentence passed at the trial and order the appellant to be kept in custody under the Trial of Lunatics Act, 1883, in the same manner as if a special verdict had been found by the jury under that Act.

Under the Courts-Martial (Appeals) Act, 1951, s. 6 (4) (as amended by the Revision of the Army and Air Force Acts (Transitional Provisions) Act, 1955, Sched. II, para. 15 (2), and the Naval Discipline Act, 1957, Sched. V),

the court may in a similar case quash the sentence and order that the appellant be kept in custody under the Naval Discipline Act, 1957, s. 63, the Army Act, 1955, s. 116, and the Air Force Act, 1955, s. 116, as the case may require, in like manner as on a finding of insanity by the court-martial by which the appellant was convicted. All these three enactments make provision for the case of the accused being found insane, whether at the trial or at the time he did the act or made the omission charged, and for him being detained during Her Majesty's pleasure (Navy), or until the directions of Her Majesty are known (Army and Air Force) (see amendments and repeals in Scheds. VII and VIII-Part II).

Subs. (5)

This power, which is discretionary, derives from the Criminal Lunatics Act, 1884, s. 3, the whole of which Act is repealed by this Act (Sched. VIII).

As to the Criminal Lunatics Act, 1884, s. 2, see annotation to subs. (3).

Transfer to hospital or guardianship of prisoners, etc.

Removal to hospital of persons serving sentences of imprisonment, etc.

72.-(1) If in the case of a person serving a sentence of imprisonment the Secretary of State is satisfied, by reports from at least two medical practitioners (complying with the provisions of this section) -

(a) that the said person is suffering from mental illness, psychopathic disorder, subnormality or severe subnormality; and

(b) that the mental disorder is of a nature or degree which warrants the detention of the patient in a hospital for medical treatment; the Secretary of State may, if he is of opinion having regard to the public interest and all the circumstances that it is expedient so to do, by warrant direct that that person be removed to and detained in such hospital (not being a mental nursing home) as may be specified in the direction.

(2) A direction under this section (in this Act referred to as a transfer direction) shall cease to have effect at the expiration of the period of fourteen days beginning with the date on which it is given unless within that period the person with respect to whom it was given has been received into the hospital specified therein.

(3) A transfer direction with respect to any person shall have the like effect as a hospital order made in his case.

(4) Of the medical practitioners whose reports are taken into account under subsection (1) of this section, at least one shall be a practitioner approved for the purposes of section twenty-eight of this Act by a local health authority as having special experience in the diagnosis or treatment of mental disorders.

(5) A transfer direction shall specify the form or forms of mental disorder referred to in paragraph (a) of subsection (1) of this section from which, upon the reports taken into account under that subsection, the patient is found by the Secretary of State to be suffering; and no such direction shall be given unless the patient is described in each of those reports as suffering from the same one of those forms, whether or not he is also described in either of them as suffering from another of those forms.

(6) References in this section to a person serving a sentence of imprisonment include

references-

(a) to a person detained in pursuance of any sentence or order for detention made by a court in criminal proceedings, or made or having effect as if made in any proceedings under the Children and Young Persons Act, 1933 (other than an order under say enactment to which section seventy-one of this Act applies or an order for detention in a remand home under section fifty-four or in a place of safety under section sixty-seven of the said Act of 1933);

(b) to a person committed to custody under subsection (3) of section ninety-one of the Magistrates' Courts Act, 1952 (which relates to persons who fail to comply with an order to enter into recognisances to keep the peace or be of good behaviour); and

(c) to a person committed by a court to a prison or other institution to which the Prison Act, 1952, applies in default of payment of any sum adjudged to be paid on his conviction.

DEFINITIONS

"hospital" is defined in s. 147 (1);

"hospital order" is defined in ss. 60 (3) and 147 (1);

"local health authority," "medical practitioners" and "medical treatment" are defined in s.147 (1);

"mental disorder" is defined in s. 4;

"mental nursing home" is defined in ss. 14 (2) and 147 (1) "transfer direction" is defined in s. 147 (1);

"patient" is defined in s. 147 (1);

"place of safety" and "remand home" are defined in s. 80 (1);

The "Secretary of State" refers to the Home Secretary.

GENERAL NOTE

Subs. (1)

This derives from the Criminal Lunatics Act, 1884, s. 2 (1), and the Mental Deficiency Act, s. 9, the whole of which Acts are repealed by this Act (Sched. VIII).

As to construction of the words "serving a sentence of imprisonment," see subs. (6) of this section, also s. 80 (7).

As to provisions as to custody, conveyance and detention, see s. 139.

As to transitional provisions, see Sched. VI, Pt. III, para. 15 (1) and (3).

Subs. (4)

See s. 56 (2) (d).

Subs. (5)

Cf. ss. 26 (3) and 60 (5).

Subs. (6)

See s. 80 (7).

Removal to hospital of other prisoners

73.-(1) If in the case of a person to whom this section applies the Secretary of State is satisfied by the like reports as are required for the purposes of the last foregoing section that that person is suffering from mental illness or severe subnormality of a nature or degree which warrants the detention of the patient in a hospital for medical treatment, the Secretary of State shall have the like power of giving a transfer direction in respect of him under that section as if he were serving a sentence of imprisonment.

(2) This section applies to the following persons, that is to say -

(a) persons committed in custody for trial at assizes or quarter sessions;

(b) persons committed in custody to quarter sessions under section twenty-eight or section twenty-nine of the Magistrates' Courts Act, 1952, section five of the Vagrancy Act, 1824, or section sixty-seven of this Act;

(c) persons remanded in custody by a court of assize or quarter sessions to await a judgment or sentence which has been respited;

(d) persons remanded in custody by a magistrates' court;

(e) civil prisoners, that is to say, persons committed by a court to prison for a limited term (including persons committed to prison in pursuance of a writ of attachment), not being persons falling to be dealt with under section seventy-two of this Act;

(f) aliens detained in a prison or other institution to which the Prison Act, 1952, applies, in pursuance of the Aliens Order, 1953, or any order amending or replacing that Order.

(3) Subsections (2) to (5) of the last foregoing section shall apply for the purposes of this section and of any transfer direction given by virtue of this section as they apply for the purposes of that section and of any transfer direction thereunder.

DEFINITIONS

"court of quarter sessions" includes an appeal committee of quarter sessions, see s. 80 (6);

"hospital" is defined in s. 147 (1);

"hospital" here does not include a mental nursing home, see s. 72 (1);

"medical treatment" is defined in s. 147 (1);

"transfer direction" is defined in ss. 72 (2) and 147 (1);

As to "mental illness" and "severe subnormality," see s. 4;

The "Secretary of State" refers to the Home Secretary.

GENERAL NOTE

Subs. (1)

This derives from the Criminal Lunatics Act, 1884, s. 2 (1). It should be noted that the section only applies if the prisoners here mentioned are suffering from mental illness or severe subnormality.

Cf. s. 72 (1).

As to transitional provisions, see Sched. VI, Pt. III, para. 15 (1) and (6).

Subs. (2)

Para. (f) relates to aliens detained in prison pending deportation or removal from the United Kingdom.

Restriction on discharge of prisoners removed to hospital

74.-(1) Where a transfer direction is given in respect of any person, the Secretary of State, if he thinks fit, may by warrant further direct that that person shall be subject to the special restrictions set out in section sixty-five of this Act; and where the Secretary of State gives a transfer direction in respect of any such person as is described in paragraphs (a) to (d) of subsection (2) of the last foregoing section, he shall also give a direction under this section applying the said restrictions to him.

(2) A direction under this section (in this Act referred to as a direction restricting discharge) shall have the like effect as an order restricting the discharge of the patient made under the said section sixty-five.

DEFINITIONS

"order restricting ... discharge" is defined in ss. 65 (2) and 147 (1);

"patient" is defined in s. 147 (1);

The "Secretary of State" refers to the Home Secretary;

"transfer direction" is defined in ss. 72 (2) and 147 (1).

GENERAL NOTE

As to transitional provisions, see Sched. VI, Pt. III, para. 15 (1), (3) and (6).

Subs. (2)

This derives from the Criminal Lunatics Act, 1884, s. 2 (1); see also the Mental Deficiency Act, 1913, s. 9, and the Criminal Justices Act, 1948, s. 64, which enactments are repealed by this Act (Sched. VIII).

Further provisions as to prisoners under sentence

75.-(1) Where a transfer direction and a direction restricting discharge have been given in respect of a person serving a sentence of imprisonment (other than a person detained in a remand home) and the Secretary of State is notified by the responsible medical officer at any time before the expiration of that person's sentence that that person no longer requires treatment for mental disorder, the Secretary of State may -

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

(b) exercise, or authorise the Prison Commissioners or, as the case may be, the

managers of any approved school to which he might have been remitted to exercise, any power of releasing him on licence or discharging him under supervision which would have been exercisable if he had been remitted to such a prison or institution as aforesaid,

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

(2) A direction restricting the discharge of a person serving a sentence of imprisonment (including an order for detention in a remand home under section sixty-nine of the Children and Young Persons Act, 1933), shall cease to have effect on the expiration of the sentence.

(3) Subject to the next following subsection, references in this section to the expiration of a person's sentence are references to the expiration of the period during which he would have been liable to be detained in a prison or other institution if the transfer direction had not been given.

(4) For the purposes of subsection (2) of section forty-nine of the Prison Act, 1952 (which provides for discounting from the sentence of certain prisoners periods while they are unlawfully at large) a patient who, having been transferred in pursuance of a transfer direction from any such institution as is referred to in that subsection, is at large in circumstances in which he is liable to be taken into custody under any provision of this Act, shall be treated as unlawfully at large and absent from that institution.

DEFINITIONS

"approved school" is defined in s. 80 (1);

"direction restricting discharge" is defined in ss. 74 (2) and 147 (1);

"mental disorder" is defined in s. 4;

For definition of "remand home" and "responsible medical officer," see s. 80 (1);

The "Secretary of State" refers to the Home Secretary;

"transfer direction" is defined in ss. 72 (2) and 147 (1).

GENERAL NOTE

Subs. (1)

This provision derives from the Criminal Lunatics Act, 1884, s. 3 and the Criminal Justice Act, 1948, s. 64, which enactments are repealed by this Act (Sched. VIII). As to construction of the words "serving a sentence of imprisonment," see ss. 72 (6) and 80 (7) of this Act. The exclusion of a person detained in a remand home refers to a person sent to a remand home under the Children and Young Persons Act, 1933, s. 69 (2), pending admission to an approved school.

As to provision as to custody, conveyance and detention, see s. 139.

Further provisions as to persons committed for trial or sentence, etc.

76.-(1) Any transfer direction given in respect of any such person as is described in paragraphs (a) to (c) of subsection (2) of section seventy-three of this Act shall cease to have

effect when his case is disposed of by the court to which he was committed or by which he was remanded, as the case may be, but without prejudice to any power of that court to make a hospital order or other order under this Part of this Act in his case.

(2) Where a transfer direction has been given in respect of any such person as aforesaid, then-

(a) if the Secretary of State is notified by the responsible medical officer at any time before that person is brought before the court to which he was committed or by which he was remanded that he no longer requires treatment for mental disorder, the Secretary of State may by warrant direct that he be remitted to any place where he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed, and on his arrival at the place to which he is so remitted the transfer direction shall cease to have effect;

(b) if (no direction having been given under paragraph (a) of this subsection) it appears to that court that it is impracticable or inappropriate to bring that person before the court and the conditions set out in the next following subsection are satisfied, the court may make a hospital order (with or without an order restricting discharge) in his case in his absence and, in the case of a person committed for trial, without convicting him.

(3) A hospital order may be made in respect of a person under paragraph (b) of the last foregoing subsection if the court is satisfied, on the oral evidence of at least two medical practitioners (complying with subsection (1) of section sixty-two of this Act), that that person is suffering from mental illness or severe subnormality of a nature or degree which warrants the detention of the patient in a hospital for medical treatment, and is of opinion, after considering any depositions or other documents required to be sent to the proper officer of the court, that it is proper to make such an order.

(4) Where a person committed to quarter sessions to be dealt with under section sixty-seven of this Act is admitted to a hospital in pursuance of an order under section sixty-eight of this Act, paragraph (b) of subsection (2) and subsection (3) of this section shall apply as if he were a person subject to a transfer direction.

DEFINITIONS

"hospital order" is defined in ss. 60 (3) and 147 (1);

"medical treatment" is defined in s. 147 (1);

"mental disorder" is defined in s. 4;

"order restricting discharge" is defined in ss. 65 (2) and 147 (1);

"responsible medical officer" is defined in s. 80 (1);

The "Secretary of State" refers to the Home Secretary;

"transfer direction" is defined in ss. 72 (2) and 147 (1).

GENERAL NOTE

Subs. (1)

This is limited to cases of mental illness and severe subnormality under s. 73 (2) (a), (b) and (c); as regards *ibid.* (d), see s. 77.

Once the case has been disposed of, the transfer direction (which in the cases here mentioned was in the nature of an interim measure) is no longer appropriate and if detention for treatment in hospital for mental illness or severe subnormality (subs. (3)) is required then a hospital order should be made under s. 60, or subs. (2) (b) of this section.

Subs. (2)

As to (a), this in effect makes no real change; (b) is new.

Subs. (3)

This is limited to cases of mental illness or severe subnormality (*cf.* s. 60 (2)).

To make a hospital order in the case of psychopathic disorder or subnormality the court would have to proceed under s. 60 (1) or s. 67 (3).

Subs. (4)

This enables the court to make a hospital order in the person's absence in a case in which a person admitted to hospital (under s. 68) on committal for sentence becomes unfit to appear before the court.

Further provisions as to persons remanded by magistrates' courts

77.-(1) A transfer direction given in respect of a person remanded in custody by a magistrates' court shall cease to have effect on the expiration of the period of remand unless, upon his being brought before the magistrates' court, he is committed in custody for trial at assizes or quarter sessions.

(2) Where, on the expiration of the period of remand of any such person, he is committed in custody for trial as aforesaid, section seventy-six of this Act shall apply as if the transfer direction given in his case were a direction given in respect of a person so committed.

(3) Where a transfer direction has been given in respect of a person remanded as aforesaid, the power of further remanding him under section one hundred and five of the Magistrates' Courts Act, 1952, may be exercised by the court without his being brought before the court; and if the court further remands such a person in custody (whether or not he is brought before the court) the period of remand shall, for the purposes of this section, be deemed not to have expired.

(4) Where a transfer direction in respect of any person ceases to have effect under this section, then unless the court before which he is brought on the expiration of the period of remand -

(a) passes a sentence of imprisonment (within the meaning of sub-section (6) of section sixty of this Act) on him; or

(b) makes a hospital order or guardianship order in his case,

he shall continue to be liable to be detained in the hospital in which he was detained under the transfer direction as if he had been admitted thereto, on the date on which that direction ceased to have effect, in pursuance of an application for admission for treatment made under Part IV of this Act, and the provisions of this Act shall apply accordingly.

DEFINITIONS

"application for admission for treatment" is defined in s. 26 (1);

"guardianship order" is defined in ss. 60 (4) and 147 (1);

"hospital" is defined in s. 147 (1);

"hospital" here does not include a mental nursing home, see s. 72 (1);

"hospital order" is defined in ss. 60 (3) and 147 (1);

"mental disorder" is defined in s. 4;

"transfer direction" is defined in ss. 72 (2) and 147 (1).

GENERAL NOTE

Subs. (1)

This is limited to cases of mental illness or severe subnormality under s. 73 (1) (d). As to committal in custody, see ss. 67 and 68.

Subs. (2)

As to transfer direction in respect of persons so committed, see s. 73 (2) (a).

Subs. (3)

The effect of this is that this transfer direction would continue during the further period of remand.

Subs. (4)

The effect of this is that the nearest relative of the patient will have right of discharge under s. 47 (2) (b).

Further provisions as to civil prisoners

78.-(1) Any transfer direction given in respect of a civil prisoner shall cease to have effect on the expiration of the period during which he would, but for his removal to hospital, be liable to be detained in prison.

(2) Where a transfer direction given in respect of any person ceases to have effect by virtue of this section, he shall continue to be liable to be detained in the hospital in which he was detained under that direction as if he had been admitted thereto, on the date on which the direction ceased to have effect, in pursuance of an application for admission for treatment made under Part IV of this Act, and the provisions of this Act shall apply accordingly.

DEFINITIONS

"application for admission for treatment" is defined in s. 26 (1);

"civil prisoner" is defined in ss. 73 (2) (e) and 80 (1);

"hospital" is defined in s. 147 (1);

"hospital" here does not include a mental nursing home, see s. 72 (1);

"transfer direction" is defined in ss. 72 (2) and 147 (1).

GENERAL NOTE

Subs. (1)

This derives from the Criminal Lunatics Act, 1884, ss. 6 and 7. See also s. 73 (2) (e).

Subs. (2)

This derives from the Criminal Lunatics Act, 1884, s. 8. The effect of this provision is that the nearest relative of the patient will have right of discharge under s. 47 (2) (b).

Reception into guardianship of persons sent to approved schools

79.-(1) If in the case of a child or young person detained in an approved school the Secretary of State is satisfied by the like reports as are required for the purposes of section seventy-two of this Act -

(a) that the child or young person is suffering from mental illness, psychopathic disorder, subnormality or severe subnormality; and

(b) that the mental disorder is of a nature or degree which warrants the reception of the patient into guardianship under this Act;

the Secretary of State may, if he is of opinion having regard to the public interest and to all the circumstances that it is expedient so to do, by warrant direct that he be placed under the guardianship of a local health authority or of any such other person approved by a local health authority as may be specified in the direction.

(2) A direction shall not be given under this section placing a person under the guardianship of a local health authority or other person unless the Secretary of State is satisfied that that authority or person is willing to receive that person into guardianship.

(3) A direction under this section with respect to any person shall have the like effect as a guardianship order made in his case.

DEFINITIONS

"approved school" is defined in s. 80 (1);

"child" and "young person" are defined in s. 80 (1) and annotation to s. 61;

"guardianship order" is defined in ss. 60 (4) and 147 (1);

"local health authority" is defined in s. 147 (1);

"mental disorder" is defined in s. 4;

The "Secretary of State" refers to the Home Secretary.

GENERAL NOTE

This derives from the Mental Deficiency Act, 1913, s. 9, repealed by this Act (Sched. VIII).
As to guardianship, see ss. 33 *et seq.*

Supplemental

Interpretation of Part V

80.-(1) In this Part of this Act the following expressions have the meanings hereby respectively assigned to them, that is to say:-

"approved school" means a school approved under section seventy-nine of the Children and Young Persons Act, 1933; "child" and "young person" have the same meaning as in the Children and Young Persons Act, 1933;

"civil prisoner" has the meaning assigned to it by paragraph (e) of subsection (2) of section seventy-three of this Act;

"guardian", in relation to a child or young person, has the same meaning as in the Children and Young Persons Act, 1933;

"place of safety", in relation to a person not being a child or young person, means any police station, prison or remand centre, or any hospital the managers of which are willing temporarily to receive him, and in relation to a child or young person means a place of safety within the meaning of the Children and Young Persons Act, 1933;

"remand home" means premises established or used by the council of a county or county borough under section seventy-seven of the Children and Young Persons Act, 1933;

"responsible medical officer", in relation to a person liable to be detained in a hospital within the meaning of Part IV of this Act, means the medical practitioner in charge of the treatment of the patient.

(2) Any reference in this Part of this Act to an offence punishable on summary conviction with imprisonment shall be construed without regard to any prohibition or restriction imposed by or under any enactment on the imprisonment of young offenders.

(3) Where a patient who is liable to be detained in a hospital in pursuance of an order or direction under this Part of this Act is treated by virtue of any provision of this Part of this Act as if he had been admitted to the hospital in pursuance of a subsequent order or direction under this Part of this Act or a subsequent application for admission for treatment under Part IV thereof, he shall be treated as if the subsequent order, direction or application had described him as suffering from the form or forms of mental disorder specified in the earlier order or direction or, where he is treated as if he had been so admitted by virtue of a direction under subsection (1) of section sixty-six of this Act, such form of mental disorder as may be specified in the direction under that subsection.

(4) In the following provisions of this Part of this Act, that is to say -

subsections (2) to (5) of section sixty-three;

subsections (3) to (5) of section sixty-five; and section sixty-six,

any reference to a hospital order, a guardianship order or an order restricting the discharge of a patient subject to a hospital order shall be construed as including a reference to any order or direction under this Part of this Act having the like effect as the first-mentioned order; and the exceptions and modifications set out in the Third Schedule to this Act in respect of the provisions of Part IV of this Act described in that Schedule accordingly include those which are consequential on the provisions of this subsection.

(5). Subsection (2) of section fifty-nine of this Act shall apply for the purposes of this Part of this Act as it applies for the purposes of Part IV of this Act.

(6) References in this Part of this Act to a court of quarter sessions include references to an appeal committee of quarter sessions.

(7) References in this Part of this Act to persons serving a sentence of imprisonment shall be construed in accordance with subsection (6) of section seventy-two of this Act.

(8) Section ninety-nine of the Children and Young Persons Act, 1933 (which relates to the presumption and determination of age) shall apply for the purposes of this Part of this Act as it applies for the purposes of that Act.

DEFINITIONS

"application for admission for treatment" is defined in s. 26 (1);

"guardianship order" is defined in s. 60 (4);

"hospital" is defined in s. 147 (1);

"hospital order" is defined in ss. 60 (3) and 147 (1);

"mental disorder" is defined in s. 4;

"order restricting discharge" is defined in ss. 65 (2) and 147 (1).

GENERAL NOTE

Subs. (1)

As to definitions of "child," "guardian" and "young person," see annotation to s. 61.

Subs. (2)

A magistrates' court may not impose imprisonment on any person under seventeen years of age (Magistrates' Courts Act, 1952, s. 107 (2)).

Subs. (3)

See ss. 65 (5), 77 (4) and 78 (2).

Subs. (4)

The Third Schedule shows in tabular form the applicability (and variation) of the provisions of Part IV to an offender in respect of whom a hospital order (with or without an order restricting discharge) or a guardianship order has been made under this Part of the Act.

Subs. (5)

This has the effect of interpreting the word "hospital" to include certain mental nursing homes (see ss. 14 and 15), except where otherwise expressly provided.

Subs. (8)

Under the enactment referred to this age should be deemed to be what the court, after due inquiry, presumes it to be.

PART VI REMOVAL AND RETURN OF PATIENTS WITHIN UNITED KINGDOM, ETC.

Removal to and from Scotland

Removal to Scotland of patients not subject to restriction

81.-(1) If it appears to the Minister, in the case of a patient who is for the time being liable to be detained or subject to guardianship under this Act, being -

(a) a patient who is so liable or subject by virtue of an application under Part IV of this Act;

(b) a patient who is so liable or subject by virtue of a hospital order or transfer direction without an order or direction restricting discharge;

(c) a patient who is so liable or subject by virtue of a guardianship order or a direction under section seventy-nine of this Act,

that it is in the patient's interests to remove him to Scotland, and that arrangements have been made for his reception into a mental hospital, asylum or house in Scotland where persons of unsound mind may be detained under the Lunacy (Scotland) Acts, 1857 to 1913, or for placing him in an institution for defectives or under guardianship within the meaning of the Mental Deficiency and Lunacy (Scotland) Act, 1913, the Minister may authorise the removal of the patient to Scotland and give any necessary directions for his conveyance to his destination.

(2) Where a person removed in pursuance of an authority under this section is received into any such hospital, asylum or house as is mentioned in subsection (1) of this section, then -

(a) if; immediately before his removal, he was liable to be detained in a hospital within the meaning of Part IV of this Act, he shall on his reception be treated for all purposes as having been so received by virtue of an order under section fourteen of the Lunacy (Scotland) Act, 1862;

(b) if, immediately before his removal, he was subject to guardianship under this Act, he shall on his reception be treated for all purposes as a person in whose case an order under section thirteen of the Lunacy (Scotland) Act, 1866 is in force;

and for the purposes of paragraph (b) of subsection (1) of section nine of the said Act of 1866 the person entitled to discharge a patient transferred to Scotland under the foregoing provisions of this section shall be ascertained as if the person at whose instance he is detained were dead.

(3) Where a person removed in pursuance of an authority under this section is placed in an institution for defectives or under guardianship within the meaning of the Mental Deficiency and Lunacy (Scotland) Act, 1913, then -

(a) if before the removal the patient was liable to be detained or subject to guardianship as mentioned in paragraph (a) of subsection (1) of this section, he shall on being so placed be treated for all purposes as having been so placed by his parent or guardian under section four of that Act;

(b) if before the removal the patient was liable to be detained or subject to guardianship as mentioned in paragraph (b) or paragraph (c) of the said subsection (1), he shall on being so placed be treated for all purposes as if he were detained in the institution or placed under guardianship in pursuance of a judicial order under section seven of the Mental Deficiency and Lunacy (Scotland) Act, 1913, made on the date on which he is so placed.

DEFINITIONS

"direction restricting discharge" is defined in ss. 74 (2) and 147 (1);

"guardianship order" is defined in ss. 60 (4) and 147 (1);

"hospital order" is defined in ss. 60 (3) and 147 (1);

"hospital within the meaning of Part IV of this Act" is defined in s. 147 (1);

"hospital" here may include a mental nursing home, see ss. 14 (2), 15, 59 (2), 80 (5), 96 (1) and 147 (1);

"order restricting discharge" is defined in ss. 65 (2) and 147 (1);

"patient" is defined in s. 147 (1);

The "Minister" means the Minister of Health, see s. 147 (1);

"transfer direction" is defined in ss. 72 (2) and 147 (1).

GENERAL NOTE

The effect of this section is to ensure that patients removed to Scotland thereunder, will there be detained, etc., under provisions corresponding, as nearly as may be, to those to which they were subject in England or Wales. The main effect of this and the following sections up to s. 88 is to enable patients to be moved to places nearer their family and friends. There were no similar facilities prior to the Act, save as regards transfer between England and Wales and Scotland of Broadmoor patients and Scottish state mental patients.

Cf. the power of the Minister in this section with the power of the Secretary of State in s. 82 in respect of removal of patients subject to restriction on discharge. For provisions as to custody, conveyance and detention, and as to legal protection, see ss. 139 and 141.

As to the application of this section to Scotland, see s. 150

Removal to Scotland of patients subject to restriction on discharge

82.-(1) If it appears to the Secretary of State, in the case of a patient who is for the time being liable to be detained by virtue of an order or direction under Part V of this Act, not being a patient to whom section eighty-one of this Act applies, that it is in the patient's interests to remove him to Scotland and that arrangements have been made for him in accordance with the following provisions of this section, the Secretary of State may by warrant authorise the removal of the patient to Scotland, and may give any necessary directions for his conveyance to his destination.

(2) Where the patient is liable to be detained by virtue of a hospital order and an order restricting his discharge is in force, arrangements may be made for his reception into a State Mental Hospital within the meaning of the Criminal Justice (Scotland) Act, 1949, or a mental hospital, asylum or house where persons of unsound mind may be detained in pursuance of an order under section fourteen of the Lunacy (Scotland) Act, 1862, or for placing him in a

State institution within the meaning of section twenty-eight of the Mental Deficiency and Lunacy (Scotland) Act, 1913.

(3) Where the patient is liable to be detained by virtue of a transfer direction and a direction restricting his discharge is in force, arrangements may be made for his reception into a hospital eligible to receive patients under section six of the Criminal and Dangerous Lunatics (Scotland) Amendment Act, 1871, or under subsection (1) of section four of the Criminal Lunatics (Scotland) Act, 1935, or for placing him in an institution for defectives within the meaning of the Mental Deficiency and Lunacy (Scotland) Act, 1913.

(4) Where the patient is liable to be detained in a hospital by virtue of a direction under section seventy-one of this Act, arrangements may be made for his reception into a State Mental Hospital within the meaning of the Criminal Justice (Scotland) Act, 1949, or a mental hospital, asylum or house where persons of unsound mind may be detained in pursuance of an order under section fourteen of the Lunacy (Scotland) Act, 1862.

DEFINITIONS

"direction restricting discharge" is defined in ss. 74 (2) and 147 (1);

"hospital order" is defined in ss. 60 (3) and 147 (1);

"order restricting discharge" is defined in ss. 65 (2) and 147 (1);

"patient" is defined in s. 147 (1);

The "Secretary of State" refers to the Home Secretary;

"transfer direction" is defined in ss. 72 (2) and 147 (1).

GENERAL NOTE

This section and s. 83 are complementary and the intention is to ensure that patients removed to Scotland thereunder, will be detained, etc., under provisions and conditions corresponding, as nearly as may be, to those to which they were subject in England or Wales.

Under the Criminal Justice Act, 1948, s. 63 (2) now repealed (Sched. VIII, Part I), there was provision for the transfer to Scotland of Broadmoor patients, but there was no corresponding provision for the transfer of mental defectives dealt with under the Mental Deficiency Act, 1913, ss. 8 or 9.

Subs. (1) is a general enabling provision; subs. (2), (3) and (4) set out the particular provisions which are to apply to the different categories of patients.

See s. 81 as to removal, under the authority of the Minister, of patients not subject to restriction on discharge.

See s. 139 for provisions as to custody, conveyance and detention and s. 141 as to legal protection.

As to the application of this section to Scotland, see s. 150.

Application of Scottish enactments to patients removed under s. 82

83.-(1) Where a patient is removed to Scotland in pursuance of such arrangements as are mentioned in subsection (2) of section eighty-two of this Act, then -

(a) if in pursuance of those arrangements he is received into a mental hospital, asylum

or house where persons of unsound mind may be detained in pursuance of an order under section fourteen of the Lunacy (Scotland) Act, 1862, subsection (2) of section eighty-one of this Act shall apply to him as it applies to a patient removed under that section to such a hospital, asylum or house as aforesaid, but, unless the Secretary of State otherwise directs, any power to discharge the patient, to grant him leave of absence or to transfer him from the hospital, asylum or house shall, so long as the order restricting the discharge of the patient would have continued in force apart from his removal, be exercisable only with the consent of the Secretary of State;

(b) if in pursuance of those arrangements he is placed in a State institution, he shall be treated as if he were detained therein in pursuance of a judicial order under section seven of the Mental Deficiency and Lunacy (Scotland) Act, 1913, made on the date on which he is so placed;

and for the purposes of paragraph (a) of this subsection any reference in section fourteen of the Lunacy (Scotland) Act, 1862, to a mental hospital shall be construed as including a reference to a State Mental Hospital.

(2) Where a patient is removed in pursuance of such arrangements as are mentioned in subsection (3) of the said section eighty-two, then-

(a) if in pursuance of those arrangements he is received into a hospital being a State Mental Hospital, he shall be treated as if he had been ordered to be detained therein under subsection (1) of section four of the Criminal Lunatics (Scotland) Act, 1935;

(b) if in pursuance of those arrangements he is detained in any other hospital described in that subsection, he shall be treated as if he had been ordered to be removed to that hospital under section six of the Criminal and Dangerous Lunatics (Scotland) Amendment Act, 1871;

(c) if in pursuance of those arrangements he is removed to an institution for defectives, he shall be treated as if he were detained under an order for his transfer to that institution made under section ten of the Mental Deficiency and Lunacy (Scotland) Act, 1913, on the date of his removal;

and in any such case the patient shall be treated as if the sentence or order by virtue of which he was detained before the transfer direction was given had been imposed or made by a court in Scotland.

(3) Where a patient is removed in pursuance of such arrangements as are mentioned in subsection (4) of the said section eighty-two, the patient shall be treated as if he had been ordered by a court in Scotland to be kept in strict custody until Her Majesty's pleasure shall be known in pursuance of section eighty-seven or section eighty-eight of the Lunacy (Scotland) Act, 1857, and as if an order for his safe custody in the place of reception had been made on behalf of Her Majesty under the said section eighty-seven or the said section eighty-eight.

GENERAL NOTE

See preceding section.

As to the application of this section to Scotland, see s. 180.

Removal to England and Wales of state mental patients

84.-(1) In subsection (2) of section sixty-four of the Criminal Justice (Scotland) Act, 1949 (which provides for the removal of state mental patients from mental hospitals in Scotland to mental hospitals in England and Wales) the reference to a mental hospital in England shall be construed as a reference to any hospital within the meaning of this Act.

(2) Where, under the said subsection (2) an order is made by the Secretary of State for the removal of a state mental patient from a mental hospital in Scotland to a hospital in England and Wales, then -

(a) if the patient is a person ordered to be kept in safe custody during Her Majesty's pleasure in pursuance of section eighty-seven or section eighty-eight of the Lunacy (Scotland) Act, 1857, the patient shall, on his reception into the hospital in England and Wales, be treated as if he had been removed to that hospital in pursuance of a direction of the Secretary of State under section seventy-one of this Act;

(b) in any other case, the patient shall be treated, on his reception into the hospital in England and Wales, as if he had been removed to that hospital in pursuance of a transfer direction under Part V of this Act, and a direction restricting his discharge may be given under section seventy-four of this Act accordingly;

and in any such case the patient shall be treated as if the sentence or order by virtue of which he was detained before being removed under this section had been imposed or made by a court in England and Wales.

DEFINITIONS

"direction restricting discharge" is defined in ss. 74 (2) and 147 (1);

"hospital in England and Wales" is defined in s. 147 (1);

"hospital" here may sometimes include a mental nursing home, see ss. 14 (2), 15, 59 (2), 96 (1) and 147 (1) but notwithstanding s. 80 (5), a patient cannot be removed to a mental nursing home under s. 71, nor, in view of s. 72 (1), can a patient in respect of whom a direction has been given under s. 74;

The "Secretary of State" refers to the Home Secretary;

"transfer direction" is defined in ss. 71 (2) and 147 (1).

GENERAL NOTE

This section is reciprocal to the two previous sections and ensures that patients removed to England or Wales thereunder will there be detained, etc., under provisions corresponding, as nearly as may be, to those to which they were subject, in Scotland. It is, however, confined to "state mental patients," i.e., persons comparable to previous English Broadmoor patients. See annotation to s. 81.

The last part of subs. (2) derives from the Criminal Justice Act, 1948, s. 63 (3) which enactment is repealed by this Act (Sched. VIII).

As to transitional provisions, see Sched. III, Pt. III, para. 15 (1) and (4).

See s. 139 as to provisions as to custody, conveyance and detention, and s. 141 as to legal protection.

As to the application of this section to Scotland, see s. 150.

Removal to and from Northern Ireland

Removal to Northern Ireland of patients not subject to restriction

85.-(1) If it appears to the Minister, in the case of a patient who is for the time being liable to be detained or subject to guardianship as mentioned in subsection (1) of section eighty-one of this Act, that it is in the patient's interest to remove him to Northern Ireland and that arrangements have been made -

(a) for his reception into a mental hospital within the meaning of the Mental Health Act (Northern Ireland), 1948; or

(b) for his reception into an institution within the meaning of that Act or for placing him under the guardianship of the Northern Ireland Hospitals Authority;

the Minister may authorise the removal of the patient to Northern Ireland and give any necessary directions for his conveyance to his destination.

(2) Where a person is removed under this section to Northern Ireland, and is received in pursuance of the arrangements into a mental hospital, he shall, on his reception, be treated for all purposes as having been so received in pursuance of a judicial order made under Part II of the Mental Health Act (Northern Ireland), 1948, on the date on which he is so received.

(3) Where a person is removed under this section to Northern Ireland, and is received in pursuance of the arrangements into an institution within the meaning of the said Act of 1948, or is placed under the guardianship of the Northern Ireland Hospitals Authority, he shall, on being so received or placed, be treated for all purposes as if he had been so received or placed in pursuance of a judicial order made under Part III of that Act on the date on which he is so received or placed.

DEFINITIONS

The "Minister" means the Minister of Health, see s. 147 (1);

"patient" is defined in s. 147 (1).

GENERAL NOTE

The provisions of this section are entirely new, and the effect thereof is to ensure that patients removed to Northern Ireland thereunder will there be detained, etc., under provisions corresponding, as nearly as may be, to those to which they were subject in England and Wales.

Cf. the power of the Minister under this section with the power of the Secretary of State under s. 86 in respect of patients subject to restriction on discharge.

See s. 139 for provision as to custody, conveyance and detention, and s. 141 as to legal protection.

As to the application of this section to Northern Ireland, see s. 152; and as to enactments of Northern Ireland, see s. 147 (3).

Removal to Northern Ireland of patients subject to restriction on discharge

86.-(1) If it appears to the Secretary of State, in the case of a patient who is for the time being liable to be detained by virtue of an order or direction under Part V of this Act, not being a patient to whom section eighty-five of this Act applies, that it is in the patient's interests to remove him to Northern Ireland and that arrangements have been made -

(a) for his reception into a mental hospital within the meaning of the Mental Health Act (Northern Ireland), 1948; or

(b) for his reception into an institution within the meaning of that Act,

the Secretary of State may by warrant authorise the removal of the patient to Northern Ireland, and may give any necessary directions for his conveyance to his destination.

(2) Where a patient liable to be detained by virtue of a hospital order and subject to an order restricting his discharge is removed under this section, then -

(a) if in pursuance of the arrangements he is received into a mental hospital, he shall be treated as if he were subject to a judicial order made under Part II of the said Act of 1948 on the date of his reception and continued under section fourteen of that Act on any occasion on which it would otherwise have expired during the continuance of the order restricting his discharge;

(b) if in pursuance of the arrangements he is received into an institution within the meaning of that Act, he shall be treated as if he were subject to a judicial order made under Part III of the said Act on the date of his reception and continued under section thirty-nine of that Act on any occasion on which it would otherwise have expired during the continuance of the order restricting his discharge, and section thirty-four of that Act (which provides for the revocation or variation of judicial orders) shall have effect accordingly;

but in either case, unless the Ministry of Home Affairs for Northern Ireland otherwise directs, any power to discharge the patient, to grant him leave of absence or to transfer him from the hospital or institution shall, during the continuance of the order restricting the discharge of the patient, be exercisable only with the consent of that Ministry.

(3) Where a patient liable to be detained by virtue of a transfer direction and subject to a direction restricting his discharge is removed under this section, he shall, upon being received into such a hospital or institution as aforesaid in pursuance of the arrangements, be treated as if the sentence or order by virtue of which he was detained before the transfer direction was given had been imposed or made by a court in Northern Ireland, and as if -

(a) where the patient is received into such a mental hospital as aforesaid, he had been transferred to that hospital under section sixteen of the Prison Act (Northern Ireland) 1953;

(b) where he is received into such an institution as aforesaid, he had been transferred to that institution under section thirty-seven of the said Act of 1948.

(4) Where a patient who is liable to be detained by virtue of a direction under section

seventy-one of this Act is removed under this section, he shall, on his reception into a mental hospital or institution in pursuance of the arrangements, be treated as if he had been ordered by a court in Northern Ireland to be kept in safe custody during the pleasure of the Governor of Northern Ireland in pursuance of section seventeen of the Lunacy (Ireland) Act, 1821, or of section two of the Trial of Lunatics Act, 1883, as the case may be, and as if -

(a) where he is received into a mental hospital, an order had been made by or on behalf of the Governor of Northern Ireland for his safe custody in that hospital;

(b) where he is received into an institution within the meaning of the said Act of 1948, he had been transferred to that institution under section thirty-seven of that Act.

(5) References in this section to the continuance of the order restricting the discharge of a patient are references to the time for which that order would have continued in force apart from removal of the patient under this section.

DEFINITIONS

"direction restricting discharge" is defined in ss. 74 (2) and 147 (1);

"hospital order" is defined in ss. 60 (3) and 147 (1);

"order restricting discharge" is defined in ss. 65 (2) and 147 (1);

"patient" is defined in s. 147 (1);

The "Secretary of State" refers to the Home Secretary;

"transfer direction" is defined in ss. 72 (2) and 147 (1).

GENERAL NOTE

The provisions of this section are entirely new.

As to removal to Northern Ireland, under the authority of the Minister, of patients not subject to restriction on discharge, see s. 85.

See also annotation to s. 85.

As to the application of this section to Northern Ireland, see s. 152.

Removal to England and Wales of patients other than criminal patients

87.-(1) If it appears to the Ministry of Health and Local Government for Northern Ireland, in the case of a patient being -

(a) a certified patient within the meaning of the Mental Health Act (Northern Ireland), 1948, or

(b) a person declared under Part III of that Act to be a person requiring special care (other than a person to whom section eighty-eight of this Act applies),

that it is in the patient's interests to remove him to England and Wales, and that arrangements have been made for his admission to a hospital or for placing him under guardianship there,

the Ministry may authorise his removal to England and Wales, and may give any necessary directions for his conveyance to his destination.

(2) Where a patient removed under this section is received into a hospital in pursuance of such arrangements as aforesaid, this Act shall apply to him as if he had been admitted to the hospital in pursuance of an application for admission for treatment under Part IV of this Act, and had been so admitted on the date on which he is so received.

(3) Where a patient so removed is received into guardianship in pursuance of such arrangements as aforesaid, this Act shall apply to him as if he had been received into guardianship in pursuance of a guardianship application under the said Part IV accepted on the date on which he is so received.

DEFINITIONS

"application for admission for treatment" is defined in s. 26 (1);

"guardianship application" is defined in s. 33 (1);

"hospital in England and Wales" is defined in s. 147 (1);

"hospital" here may include a mental nursing home, see ss. 14 (2), 15, 59 (2), 96 (1) and 147 (1);

"mental disorder" is defined in s. 4;

The "Minister" means the Minister of Health, see s. 147 (1);

"patient" is defined in s. 147 (1).

GENERAL NOTE

The provisions of this section are entirely new.

This and the following section are reciprocal to the two previous sections and ensure that patients removed to England or Wales thereunder will there be detained, etc., under provisions corresponding, as nearly as may be, to those to which they are subject in Northern Ireland.

See s. 139 as to provisions as to custody, conveyance and detention, and s. 141 as to legal protection.

As to the application of the section to Northern Ireland, see s. 152; and as to enactments of Northern Ireland, see s. 147 (3).

See following section as to removal of criminal lunatics.

Removal to England and Wales of criminal patients

88.-(1) If it appears to the Ministry of Home Affairs for Northern Ireland, in the case of a patient being a criminal lunatic within the meaning of this section, that it is in the patient's interests to remove him to England and Wales, and that arrangements have been made for his admission to a hospital there, the Ministry may authorise his removal to England and Wales, and may give any necessary directions for his conveyance to his destination.

(2) Where a patient removed under this section is received into a hospital in England and Wales in pursuance of such arrangements as aforesaid, then -

(a) if the patient is a person ordered to be kept in custody under section seventeen of the Lunacy (Ireland) Act, 1821, or under section two of the Trial of Lunatics Act, 1883, he shall, on his reception into the hospital in England and Wales, be treated as if he had been removed to that hospital in pursuance of a direction under section seventy-one of this Act;

(b) in any other case, the patient shall be treated, on his reception into the hospital in England and Wales, as if he had been removed to that hospital in pursuance of a transfer direction under Part V of this Act, and as if a direction restricting his discharge had been given under section seventy-four of this Act;

and in any such case the patient shall be treated as if the sentence or order by virtue of which he was detained before being removed under this section had been imposed or made by a court in England and Wales.

(3) In this section "criminal lunatic" means a criminal lunatic within the meaning of the Lunacy (Ireland) Act, 1901, or a person detained in a mental hospital or institution within the meaning of the Mental Health Act (Northern Ireland), 1948, in pursuance of an order made by the Governor of Northern Ireland or the Minister of Home Affairs for Northern Ireland under section thirty-seven of that Act, or of directions given by the Ministry of Home Affairs for Northern Ireland under section sixteen of the Prison Act (Northern Ireland), 1953.

DEFINITIONS

"direction restricting discharge" is defined in ss. 74 (2) and 147 (1);

"transfer direction" is defined in ss. 72 (2) and 147 (1);

As to "hospital in England and Wales" and the exclusion of a mental nursing home in this context, see annotation to s. 84.

GENERAL NOTE

The provisions of this section are entirely new.

See also previous section relating to the removal to England and Wales of patients other than criminal patients, and annotation.

As to the application of this section to Northern Ireland, see s. 152.

Other provisions as to removal

Removal of certain patients from Channel islands and Isle of Man to England and Wales

89.-(1) The Secretary of State may by warrant direct that any offender found by a court in any of the Channel Islands or in the Isle of Man to be insane or to have been insane at the time of the alleged offence, and ordered to be detained during Her Majesty's pleasure, be removed to a hospital in England and Wales.

(2) A patient removed under this section shall, on his reception into the hospital in England and Wales, be treated as if he had been removed to that hospital in pursuance of a direction under section seventy-one of this Act.

(3) The Secretary of State may by warrant direct that any patient removed under this section from any of the Channel Islands or from the Isle of Man be returned to the Island from which he was so removed, there to be dealt with according to law in all respects as if he had not been removed under this section.

DEFINITIONS

"hospital in England and Wales" is defined in s. 147 (1);

"hospital" here does not include a mental nursing home, see annotation to s. 84;

"patient" is defined in s. 147 (1);

The "Secretary of State" refers to the Home Secretary.

GENERAL NOTE

These provisions are new. The section is confined to criminal cases. Previously where it was expedient to remove from the Channel Islands to Broadmoor a person ordered to be detained during Her Majesty's pleasure, the matter was dealt with by an Order in Council; similar cases from the Isle of Man were sometimes dealt with by an order of the Secretary of State under the Criminal Lunatic Asylums Act, 1860, s. 2. As to transitional provisions, see Sched. VI, Pt. III, para. 15 (1) and (5).

See s. 139 as to provisions as to custody, conveyance and detention.

Removal of alien patients

90.-If it appears to the Secretary of State, in the case of any patient being an alien who is receiving treatment for mental illness as an in-patient -

(a) in a hospital in England and Wales; or

(b) in a mental hospital or institution within the meaning of the Mental Health (Northern Ireland) Act, 1948,

that proper arrangements have been made for the removal of the patient to a country or territory outside the United Kingdom, the Isle of Man and the Channel Islands and for his care or treatment there, the Secretary of State may by warrant authorise the removal of the patient from the place where he is receiving treatment as aforesaid, and may give such directions as the Secretary of State thinks fit for the conveyance of the patient to his destination in that country or territory and for his detention in any place or on board any ship or aircraft until his arrival at any specified port or place in any such country or territory.

DEFINITIONS

"hospital in England and Wales" is defined in s. 147 (1);

"hospital" here may include a mental nursing home, see ss. 14 (2), 15, 59 (2), 80 (5), 96 (1) and 147 (1);

"patient" is defined in s. 147 (1);

The "Secretary of State" refers to the Home Secretary.

GENERAL NOTE

This derives from the Lunacy Act, 1890, s. 71, which is repealed by this Act (Sched. VIII).

This section is confined to an alien who is receiving treatment for mental illness, i.e., not severe subnormality, subnormality or psychopathic disorder as defined by s. 4. It is, however, wider than the Lunacy Act, s. 71, in that it is not confined to the persons subject to detention, and it is not confined to repatriation of a person to his native land.

For provisions as to custody, conveyance and detention, see s. 139, and s. 141 as to legal protection.

As to the application of this section to Northern Ireland, see s. 152; and as to enactments of Northern Ireland, see s. 147 (3).

Return of patients absent without leave

Persons absent from Scottish institutions

91.-(1) Where a lunatic, defective, or state mental patient liable to detention under the Lunacy (Scotland) Acts, 1857 to 1913, the Mental Deficiency (Scotland) Acts, 1913 and 1940, the Criminal Justice (Scotland) Act, 1949, in an institution which this section applies is absent from institution without leave, he may, not later than the expiration of any period within which he might be retaken in Scotland under the said enactments, be constable or by any person for the time being authorised by or by virtue of any such enactment to apprehend him without warrant and may be returned to that institution by any person so authorised.

(2) The institutions to which this section applies are mental hospitals, institutions for mental defectives and State Mental Hospitals within the meaning of the enactments specified in the foregoing subsection, and private asylums licensed thereunder.

DEFINITION

"mental welfare officer" is defined in s. 147 (1).

GENERAL NOTE

This derives from the Lunacy Act, 1890, s. 87, now repealed, but see s. 149 (2) annotation. This section, however, is wider in that in addition to applying to lunatics, it applies to mental defectives and state mental patients detained in Scotland during Her Majesty's pleasure. This section is confined to persons absent from Scottish institutions and does not apply to persons under any Scottish form of guardianship.

As to provisions as to custody, conveyance and detention and legal protection, see ss. 139 and 141.

As to the application of this section to Scotland, see s. 150.

Patients absent from Northern Irish institutions

92.-(1) Any person who, under section sixty-three of the Mental Health Act (Northern Ireland), 1948 (which provides for the retaking of patients absent without leave), is liable to be retaken in Northern Ireland may, within the period within which he might be so retaken, be taken into custody in England or Wales by a mental welfare officer, by any constable or by any person for the time being authorised by or by virtue of that section to retake him, and may be returned by any person so authorised to any hospital, institution or place to which he could lawfully be returned if retaken under that enactment.

(2) Any person being a criminal lunatic within the meaning of section eighty-eight of this Act who is unlawfully at large in England or Wales may be, taken into custody in England or Wales by a mental welfare officer, by any constable or by any person authorised by subsection (1) of section thirty-eight of the Prison Act (Northern Ireland), 1953, to arrest him without warrant, and may be returned by any person so authorised to the place in which he is required by the law in force in Northern Ireland to be detained.

DEFINITION

"mental welfare officer" is defined in s. 147 (1).

GENERAL NOTE

This derives from the Lunacy Act, 1890, s. 88, now repealed, but see s. 149 (2) annotation. The section is, however, wider in that it extends to mental defectives. As to provisions as to custody, conveyance, detention and legal protection, see ss. 139 and 141.

As to the application of this section to Northern Ireland, see s. 152; and as to enactments of Northern Ireland, see s. 147 (3).

Patients absent from hospitals in England and Wales

93.-(1) Subject to the provisions of this section, any person who, under section forty or section one hundred and forty of this Act or under the said section forty as applied by section forty-six of this Act, may be taken into custody in England and Wales may be taken into custody in, and returned to England and Wales from, any other part of the United Kingdom or the Channel Islands or the Isle of Man.

(2) For the purposes of the enactments referred to in subsection (1) of this section, in their application by virtue of this section to Scotland, Northern Ireland, the Channel Islands or the Isle of Man, the expression "constable" includes a Scottish constable, an officer or constable of the Royal Ulster Constabulary, a member of the police in Jersey, an officer of police within the meaning of section forty-three of the Larceny (Guernsey) Law, 1958, or any corresponding law for the time being in force, or a constable in the Isle of Man, as the case may be.

(3) For the purposes of the said enactments in their application by virtue of this section to Scotland or Northern Ireland, any reference to a mental welfare officer shall be construed as including a reference-

(a) in Scotland, to any person (other than a constable) who, under the Lunacy (Scotland) Acts, 1857 to 1913, the Mental Deficiency (Scotland) Acts, 1918 and 1940, or the Criminal Lunatics (Scotland) Act, 1935, would have power to apprehend a person absent without leave from an institution to which section ninety-one of this Act applies;

(b) in Northern Ireland, to any person (other than a constable) who, under section sixty-three of the Mental Health Act (Northern Ireland), 1948, would be authorised to retake a patient absent without leave from a hospital to which that section applies.

(4) This section shall not apply to any person who is subject to guardianship.

GENERAL NOTE

This section derives from the Lunacy Act, 1890, s. 86, but is wider in that that section only related to the escape of a person of unsound mind to Scotland or Ireland. The definition of "mental disorder" (see s. 4) will include persons other than those who would previously have been dealt with as of unsound mind, and further, the section extends to the Channel Islands and the Isle of Man.

S. 40 relates to return and re-admission of patients absent without leave; s. 140 relates to retaking of patients escaping from custody. As to provisions as to custody, conveyance, detention and legal protection, see ss. 139 and 141.

As to the application of this section to Scotland and Northern Ireland, see ss. 150 and 152; and as to enactments of Northern Ireland, see s. 147 (3).

Supplemental

Regulations for purposes of Part VI

94. Section fifty-six of this Act shall have effect as if references therein to Part IV of this Act included references to this Part of this Act so far as it applies to patients removed to England and Wales thereunder or under subsection (2) of section sixty-four of the Criminal Justice (Scotland) Act, 1949.

Section 56 confers on the Minister of Health power to make regulations. As to making regulations, see s. 145.

General provisions as to patients removed from England and Wales

95. Where a patient liable to be detained or subject to guardianship by virtue of an application, order or direction under Part IV or Part V of this Act is removed from England and Wales in pursuance of arrangements under this Part of this Act, the application, order or direction shall cease to have effect when he is duly received into a hospital or other institution, or placed under guardianship, in pursuance of those arrangements.

Interpretation of Part VI

96.-(1) References in this Part of this Act to a hospital, being a hospital in England and Wales, shall be construed as references to a hospital within the meaning of Part IV of this Act.

(2) Where a patient is treated by virtue of this Part of this Act as if he had been removed to a hospital in England and Wales in pursuance of a direction under Part V of this Act, that direction shall be deemed to have been given on the date of his reception into the hospital.

(3) A patient removed to England and Wales under this Part of this Act or under subsection (2) of section sixty-four of the Criminal Justice (Scotland) Act, 1949, shall be treated for the purposes of this Act as suffering from such form of mental disorder as may be recorded in his case in pursuance of regulations made by virtue of section ninety-four of this Act, and references in this Act to the form or forms of mental disorder specified in the relevant application, order or direction shall be construed as including references to the form or forms of mental disorder so recorded.

GENERAL NOTE

The effect of this section is, except as mentioned in the annotation, to include in the definition of "hospital" (see s. 147 (1)), for the purposes of this Part of the Act, a mental nursing home in respect of which particulars have been registered in the separate part of the register (see ss. 14 (2), 15, 59 (2), 80 (5) and 147 (1)).

PART VII SPECIAL HOSPITALS

Provision of institutions for treatment under conditions of special security

97.-(1) The Minister shall provide such institutions as appear to him to be necessary for persons subject to detention under this Act, being persons who, in the opinion of the Minister, require treatment under conditions of special security on account of their dangerous, violent or criminal propensities.

(2) The institutions vested in the Minister by subsection (3) of section sixty-two of the Criminal Justice Act, 1948, and by subsection (4) of section forty-nine of the National Health Service Act, 1946, shall be deemed to be institutions provided by the Minister under this section.

(3) Institutions provided, or deemed to be provided, by the Minister under this section are in this Act referred to as special hospitals.

DEFINITION

The "Minister" means the Minister of Health, see s. 147 (1).

GENERAL NOTE

Subs. (1)

This is a new omnibus provision covering all institutions established or to be established to house patients requiring treatment under special security conditions, including those previously dealt with as criminal lunatics (Broadmoor Patients.) and mental defectives of violent or dangerous propensities.

The Act does not provide for designation of certain special hospitals for particular categories of patients as was previously the case, namely, Rampton and Moss Side Hospitals for mental defectives and Broadmoor institutions for what were originally known as criminal lunatics. A far less rigid system of classification is envisaged based on considerations of the patient's mental condition and degree of special security required.

Subs. (2)

The institutions referred to in the Criminal Justice Act, 1948, s. 62 (3), were Broadmoor institutions, previously criminal lunatic asylums, established under the Criminal Lunatic Asylums Act, 1860, s. 1; those referred to in the National Health Service Act, 1946, s. 49 (4), were institutions for defectives of violent or dangerous propensities established under the Mental Deficiency Act, 1913, s. 35. For repeals of those sections, see Sched. VIII.

Administrative provisions

98.-(1) The special hospitals shall be under the control and management of the Minister, and the provisions of Part II of the National Health Service Act, 1946, relating to the local administration of hospital and specialist services shall not apply to those hospitals.

(2) Subsection (1) of section fifty-eight of the National Health Service Act, 1946 (which enables the Minister to acquire land for the purposes of that Act) shall have effect as if the

reference to the purposes of that Act included a reference to the purposes of this Part of this Act and as if the reference to any hospital vested in the Minister included a reference to any special hospital.

DEFINITIONS

The "Minister" means the Minister of Health, see s. 147 (1);

"special hospital" is defined in s. 97 (3) and 147 (1).

GENERAL NOTE

Subs. (1)

Broadmoor institutions and institutions for defectives of violent or dangerous propensities were under the management of the Board of Control (Criminal Justice Act, 1948, s. 62 (3), and National Health Service Act, 1946, s. 49 (4), which sections are repealed by this Act (Sched. VIII, Pt. 1)).

Transfers to and from special hospitals

99.-(1) Without prejudice to any other provisions of this Act with respect to the transfer of patients, any patient who is for the time being liable to be detained under this Act in a special hospital may, upon the directions of the Minister, at any time be removed into any other special hospital.

(2) Without prejudice to any such provision as aforesaid, the Minister may give directions for the transfer of any patient who is for the time being liable to be detained under this Act in a special hospital into a hospital not being a special hospital.

(3) Subsections (2) and (4) of section forty-one of this Act shall apply in relation to the transfer or removal of a patient under this section as they apply in relation to the transfer or removal of a patient from one hospital to another under that section.

DEFINITIONS

"hospital" and "patient" are defined in s. 147 (1);

The "Minister" means the Minister of Health, see s. 147 (1);

"special hospital" is defined in as. 97 (3) and 147 (1).

PART VIII MANAGEMENT OF PROPERTY AND AFFAIRS OF PATIENTS

Judicial authorities and Court of Protection

100.-(1) The Lord Chancellor shall from time to time nominate one or more judges of the Supreme Court (hereinafter referred to as "nominated judges") to act for the purposes of this Part of this Act.

(2) There shall continue to be an office of the Supreme Court, called the Court of Protection, for the protection and management, as provided by this Part of this Act, of the property of persons under disability; and there shall be a Master and a Deputy Master of the Court of Protection appointed by the Lord Chancellor.

(3) The Lord Chancellor may nominate other officers of the Court of Protection to act for the purposes of this Part of this Act.

(4) The functions expressed to be conferred by this Part of this Act on the judge shall be exercisable by the Lord Chancellor or by any nominated judge, and shall also be exercisable by the Master or Deputy Master of the Court of Protection or by any officer nominated under the foregoing subsection, but -

(a) in the case of the Master, Deputy Master or any such nominated officer, subject to any express provision to the contrary in this Part of this Act or any rules thereunder;

(b) in the case of the Deputy Master or any such nominated officer, subject to any directions of the Master;

(c) in the case of any such nominated officer, so far only as may be provided by the instrument by which he is nominated;

and references in this Part of this Act to the judge shall be construed accordingly.

GENERAL NOTE

Subs. (1)

This subsection replaces the Lunacy Act, 1890, s. 108 (1). Under that section the jurisdiction of the Judge in Lunacy was to be exercised by either the Lord Chancellor for the time being entrusted by the sign manual of Her Majesty with the care and commitment of the custody of persons and estates of persons of unsound mind, acting alone or jointly with any one or more of such judges of the Supreme Court as might from time to time be entrusted as aforesaid, or by any one of such judges as aforesaid.

The comprehensive statutory jurisdiction created by s. 102 (1) renders perpetuation of the general inherent jurisdiction, based on the Royal Prerogative, unnecessary and, accordingly, a Royal Warrant under the sign manual will no longer be needed, and the simpler machinery of nomination of judges has thus been made possible.

The Chancery judges are the nominated judges, as they were previously judges in Lunacy under the Lunacy Act, 1890, s. 108 (1).

Subs. (2)

As to the Court of Protection, this subsection derives from the Supreme Court of Judicature (Consolidation) Act, 1925, s. 124, repealed by this Act (Sched. VIII, Pt. I), and the Patients' Estates (Naming of Master's Office) Order, 1947 (SR. & O. 1947, No. 1235-L.16).

As regards the Master and Deputy Master (formerly Assistant) this replaces the Lunacy Act, 1890, s. 111 (1), and the Lunacy Act, 1922, s. 1 (1). For transitional provisions, see Sched. VI, Pt. IV, para. 24 (1).

The qualification for appointment of Master is now (i) a practising barrister of not less than ten years' standing, (ii) a Master of the Queen's Bench Division, (iii) an Official Referee and (iv) the Deputy Master (Supreme Court of Judicature (Consolidation) Act, 1925, s. 126 (1) and Sched. IV, as amended by this Act (Sched. VII, Pt. I)).

Subs. (3)

This replaces the Administration of Justice (Miscellaneous Provisions) Act, 1933, s. 8 (1), repealed by this Act (Sched VIII, Pt. I).

Subs. (4)

It will be noted that the jurisdiction of the Master, the Deputy Master and a nominated officer is no longer

limited and defined by reference to the term "management and administration"; cf. Lunacy Act, 1891, s. 27 (1).

Cf. s. 118 in respect of jurisdiction arising under other enactments.

Persons within the jurisdiction of the judge: "the patient"

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

DEFINITION

"mental disorder" is defined in s. 4.

GENERAL NOTE

As to exercise of the "functions of the judge," see s. 100 (4).

In place of the seven categories of patients in respect of whom the jurisdiction of the court could be invoked previously (see Lunacy Act, 1890, s. 116 (1), as amended, and the Mental Defectives Act, 1913, s. 64), there is now one class based on the objective test of mental capacity. This was recommended by the Royal Commission (para. 850 of Report).

As to emergency jurisdiction pending determination of question of mental capacity, see s. 104.

As to certain jurisdiction to make an order relating to stock in recognition of a foreign curatorship, see s. 106.

The definition of "patient" in s. 147 (1) applies only to other parts of the Act.

It should be noted that the section does not provide for medical evidence from two doctors. Cf., e.g., ss. 25 (2), 26 (2), 27 (4), 28, 32 (2), 33 (2) and 60 (1).

For transitional provisions, see Sched. VI, Pt. IV, para. 26.

General functions of the judge with respect to property and affairs of patient

102.-(1) The judge may, with respect to the property and affairs of a patient, do or secure the doing of all such things as appear necessary or expedient -

(a) for the maintenance or other benefit of the patient;

(b) for the maintenance or other benefit of members of the patient's family;

(c) for making provision for other persons or purposes for whom of which the patient might be expected to provide if he were not mentally disordered; or

(d) otherwise for administering the patient's affairs.

(2) In the exercise of the powers conferred by this section regard shall be had first of all to the requirements of the patient, and the rules of law which restricted the enforcement by a creditor of rights against property under the control of the judge in lunacy shall apply to property under the control of the judge; but subject to the foregoing provisions of this subsection the judge shall, in administering a patient's affairs, have regard to the interests of creditors and also to the desirability of making provision for obligations of the patient

notwithstanding that they may not be legally enforceable.

DEFINITIONS

As to construction of the term "judge," see ss. 100 (4) and 119 (1);

"patient" in this Part of the Act is defined in ss. 101 and 119 (1).

GENERAL NOTE

Subs. (1)

This does more than replace the Lunacy Act, 1890, s. 116 (4), which was confined to the powers of that Act relating to management and administration.

Prior to the coming into operation of Part VIII of this Act, the jurisdiction "in Lunacy," exercised in the Court of Protection, was in part statutory and in part inherent, derived from the Royal Prerogative. This subsection creates a new comprehensive statutory jurisdiction.

Subs. (2)

The first part of this subsection derives from the Lunacy Act, 1890, s. 116 (5), and the last part is based on principles upon which the court has long worked. Once the property of a patient has become subject to the jurisdiction of the court, it will apply it first in the proper maintenance of the patient (not including his family), and a judgment creditor cannot levy execution, but subject to being satisfied that adequate means are available for the patient's maintenance, the court will have due regard to the just and proper claims of creditors (see *Re Plenderith* [1893] 3 Ch. 332; *Re Winkle* [1894] 2 Ch. 519, and *Re Seager-Hunt* [1906] 2 Ch. 295).

Powers of the judge as to patient's property and affairs

103.-(1) Without prejudice to the generality of the foregoing section, the judge shall have power to make such orders and give such directions and authorities as he thinks fit for the purposes of that section, and in particular may for those purposes make orders or give directions or authorities for -

(a) the control (with or without the transfer or vesting of property or the payment into or lodgement in court of money or securities) and management of any property, of the patient;

(b) the sale, exchange, charging or other disposition of or dealing with any property of the patient;

(c) the acquisition of any property in the name or on behalf of the patient;

(d) the settlement of any property of the patient, or the gift of any property of the patient to any such persons or for any such purposes as are mentioned in paragraphs (b) and (c) of subsection (1) of the foregoing section, so however that in such cases as a nominated judge may direct the powers conferred by this paragraph shall not be exercisable except by the Lord Chancellor or a nominated judge;

(e) the carrying on by a suitable person of any profession, trade or business of the patient;

(f) the dissolution of a partnership of which the patient is a member;

(g) the carrying out of any contract entered into by the patient;

(h) the conduct of legal proceedings in the name of the patient or on his behalf, so however that an order, direction or authority to present a petition in the name or on behalf of the patient for divorce or nullity of marriage, for presumption of death and dissolution of marriage, or for judicial separation shall be made or given only by the Lord Chancellor or a nominated judge;

(i) the reimbursement out of the property of the patient, with or without interest, of money applied by any person either in payment of the patient's debts (whether legally enforceable or not) or for the maintenance or other benefit of the patient or members of his family or in making provision for other persons or purposes for whom or which he might be expected to provide if he were not mentally disordered;

(j) the exercise of any power (including a power to consent) vested in the patient, whether beneficially, or as guardian or trustee, or otherwise, so however that the powers of a patient as patron of a benefice shall be exercisable by the Lord Chancellor only.

(2) If under the foregoing subsection provision is made for the settlement of any property of a patient, or the exercise of a power vested in a patient of appointing trustees or retiring from a trust, the judge may also make as respects the property settled or trust property such consequential vesting or other orders as the case may require, including (in the case of the exercise of such a power as aforesaid) any order which could have been made in such a case under Part IV of the Trustee Act, 1925.

(3) The power of the judge to provide for the settlement of the property of a patient shall not be exercisable at any time when the patient is an infant.

(4) Where under this section a settlement has been made of any property of a patient, and the Lord Chancellor or a nominated judge is satisfied, at any time before the death of the patient, that any material fact was not disclosed when the settlement was made, or that there has been any substantial change in circumstances, he may by order vary the settlement in such manner as he thinks fit, and give any consequential directions.

DEFINITIONS

As to construction of the term "judge," see ss. 100 (4) and 119 (1);

For definition of "property," see s. 119 (1);

"nominated judge" is defined in ss. 100 (1) and 119 (1);

"patient" in this Part of the Act is defined in ss. 101 and 119 (1).

GENERAL NOTE

Subs. (1)

This, in the main, replaces matters previously dealt with in the Lunacy Act, 1890, in ss. 117, 118, 129, 130 and 133.

Paragraph (a) in some measure derives from the Lunacy Act, 1891, ss. 108 (2), 116 (4) and 133, and otherwise from the inherent jurisdiction.

Paragraph (b) derives from the Lunacy Act, 1890, ss. 117, 120 (a), (b), (d), (e), (f), (g), (h) and (j).

Paragraph (c) previously depended on the inherent jurisdiction.

Paragraph (d), in so far as it relates to settlement, replaces the Law of Property Act, 1925, s. 171, which is repealed by this Act (Sched. VIII). The reported cases show that most of s. 171, *supra*, was little more than illustrative of the instances and examples in which a settlement might be granted and the matters to be borne in mind (see *Re Freeman* [1927] 1 Ch. 479; *Re Greene* [1928] Ch. 528 and *Re C.W.M.* [1951] 2 K.B. 714). Gifts were previously made under the general inherent jurisdiction and in view of the restriction on the alienation of lands and tenements imposed by the Statute *De Prerogativa Regis*, the relevant parts of this ancient statute are repealed by this Act (Sched. VIII).

Paragraph (e) corresponds to the Lunacy Act, 1890, s. 120 (c), but adds "profession."

Paragraph (f) corresponds to the Lunacy Act, 1890, s. 119.

Paragraph (g) corresponds to the Lunacy Act, 1890, s. 120 (i), and is not now confined to contracts entered into before incapacity.

Paragraph (h) is new, previously being done under the inherent jurisdiction. Paragraph (i) and paragraph (b)-in reference to charging - together replace the Lunacy Act, 1890, s. 117, but extend the scope to payments for the benefit of a patient's family or for any of the causes to which he would have contributed if he had not been incapacitated.

Paragraph (j) replaces the Lunacy Act, 1890, ss. 120 (k) and (l), 128 and will, incidentally, now be the jurisdiction as to the exercise of the patient's powers as mortgagee previously dealt with under *ibid.*, s. 135.

Subs. (2)

This derives from the Lunacy Act, 1890, s. 129, and Law of Property Act, s. 171 (2). See also Trustee Act, 1925, s. 54, as amended by this Act (Sched. VII, Pt. I).

Subs. (3)

This derives from the Law of Property Act, 1925, s. 171 (3), and avoids any conflict with the jurisdiction of the Chancery Division under the Infants Settlements Act, 1855. See Ord. 55, r. 2, R.S.C.

Subs. (4)

This replaces the Law of Property Act, 1925, s. 171 (7).

Judge's powers in cases of emergency

104. Where it is represented to the judge, and he has reason to believe, that a person may be incapable, by reason of mental disorder, of managing and administering his property and affairs, and the judge is of opinion that it is necessary to make immediate provision for any of the matters referred to in section one hundred and two of this Act, then pending the determination of the question whether the said person is incapable as aforesaid the judge may exercise in relation to the property and affairs of that person any of the powers conferred on him in relation to the property and affairs of a patient by this Part of this Act so far as is requisite for enabling that provision to be made.

DEFINITIONS

"mental disorder" is defined in s. 4;

"property" is defined in s. 119 (1);

As to construction of the term "judge," see ss. 100 (4) and 119 (1).

Power to appoint receiver

105.-(1) The judge may by order appoint as receiver for a patient a person specified in the order or the holder for the time being of an office so specified; and the receiver shall do all such things in relation to the property and affairs of the patient as the judge, in the exercise of the powers conferred on him by sections one hundred and two and one hundred and three of this Act, orders or directs him to do and may do any such thing in relation thereto as the judge, in the exercise of those powers, authorises him to do.

(2) A receiver appointed for any person shall be discharged by order of the judge on the judge being satisfied that that person has become capable of managing and administering his property and affairs, and may be discharged by order of the judge at any time if the judge considers it expedient to do so; and a receiver shall be discharged (without any order) on the death of the patient.

DEFINITIONS

"patient" in this Part of the Act is defined in ss. 101 and 119 (1);

"property" is defined in s. 119 (1);

As to construction of the term "judge," see ss. 100 (4) and 119 (1).

GENERAL NOTE

Subs. (1)

This derives from the Lunacy Act, 1908, s. 1. See s. 148 (1) and Sched. VI, Part IV, paras. 25 and 26 as to transitional provisions.

Subs. (2)

So far as discharge of the receiver on death is concerned, this gives effect to present law (*Re Walker* [1907] 2 Ch. 120; *Re Bennett* [1913] 2 Ch. 318; and *Re Wheater* [1928] Ch. 223). Notwithstanding the death, the receiver remains liable to account for moneys received prior to the death and the sureties remain liable in respect of such moneys (*Re Walker, supra*). See also a. 111 (2).

Vesting of stock in curator appointed outside England and Wales

106.-(1) Where the judge is satisfied -

(a) that under the law prevailing in a place outside England and Wales a person has been appointed to exercise powers with respect to the property or affairs of any other person on the ground (however formulated) that that other person is incapable, by reason of mental disorder, of managing and administering his property and affairs; and

(b) that having regard to the nature of the appointment and to the circumstances of the case it is expedient that the judge should exercise his powers under this section, the judge may direct any stock standing in the name of the said other person or the right to receive the dividends thereof to be transferred into the name of the person so appointed or otherwise dealt with as requested by that person, and may give such directions as the judge thinks fit for dealing with accrued dividends thereof.

(2) In this section "stock" includes shares and also any fund, annuity or security transferable

in the books kept by any body corporate or unincorporated company or society, or by an instrument of transfer either alone or accompanied by other formalities, and "dividends" shall be construed accordingly.

DEFINITIONS

"property" is defined in s. 119 (1);

As to construction of the term "judge," see ss. 100 (4) and 119 (1).

GENERAL NOTE

Subs. (1)

This is in wider terms than the Lunacy Act, 1890, s. 134, which it replaces, and avoids certain difficulties of interpretation which that section presented (see *Re Brown* [1895] 2 Ch. 666).

Subs. (2)

This derives from the Lunacy Act, 1890, s. 341, but the reference to a share in a ship is omitted.

Preservation of interests in patient's property

107.-(1) Where any property of a person has been disposed of under this Part of this Act, and under his will or any codicil thereto or his intestacy, or by any gift perfected or nomination taking effect on his death, any other person would have taken an interest in the property but for the disposal, he shall take the like interest, if and so far as circumstances allow, in any property belonging to the estate of the deceased which represents the property disposed of; and if the property disposed of was real property any property representing it shall so long as it remains part of his estate be treated as if it were real property.

(2) The judge, in ordering, directing or authorising under this Part of this Act any disposal of property which apart from this section would result in the conversion of personal property into real property, may direct that the property representing the property disposed of shall, so long as it remains the property of the patient or forms part of his estate, be treated as if it were personal property.

(3) In the foregoing subsections references to the disposal of property are references to the sale, exchange, charging or other dealing with property other than money, the removal of property from one place to another, the application of money in acquiring property or the transfer of money from one account to another, and references to property representing property disposed of shall be construed accordingly and as including the result of successive disposals.

(4) The judge may give such directions as appear to him necessary or expedient for the purpose of facilitating the operation of subsection (1) of this section, including the carrying of money to a separate account and the transfer of property other than money.

(5) Where the judge has ordered, directed or authorised the expenditure of money for the carrying out of permanent improvements on, or otherwise for the permanent benefit of, any property of the patient, he may order that the whole or any part of the money expended or to be expended shall be a charge upon the property, whether without interest or with interest at a specified rate; and -

(a) a charge under this subsection may be made in favour of such person as may be just, and in particular, where the money charged is paid out of the patient's general estate, may be made in favour of a person as trustee for the patient;

(b) an order under this subsection may provide for excluding or restricting the operation of subsection (1) of this section:

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

DEFINITIONS

"patient" in this Part of the Act is defined in ss. 101 and 119 (1);

"property" is defined in s.119 (1);

As to construction of the term "judge," see ss. 100 (4) and 119 (1).

GENERAL NOTE

Subs. (1) to (4)

These provisions replace the provisions of the Lunacy Act, 1890, s. 123 (1) and (3), and the Lunacy Act, 1922, s. 2 (8). The Lunacy Act, 1890, s. 123 (1), only applied to transactions wherein the element of conversion into money was present and did not apply, e.g., to investment of money previously at a bank (*Re Walker* [1921] 2 Ch. 63), purchase of property (*Re Searle* [1912] 2 Ch. 365) and the lodgment in court of funds which a testator had described as being under the custody or control of a named bank (*Re Palmer* [1945] 1 Ch. 8). The definition of "disposal" in subs. (3) nullifies the effect of these decisions. By virtue of s. 148 (1) and Sched. VI, Pt. IV, para. 27, the provisions of subs. (1) (which attracts subs. (3)) are made retrospective.

As to "gift perfected," see *Strong v. Bird* (1874) 18 Eq. 315; the reference to nomination enacts the decision in *Re Stillwell* [1936] Ch. 637.

Subs. (5)

This replaces the Lunacy Act, 1890, s: 118.

Lord Chancellor's Visitors

108.-(1) There shall continue to be Medical and Legal Visitors of patients, appointed by the Lord Chancellor, and the Visitors shall be known as the Lord Chancellor's Visitors.

(2) As respects appointments of Lord Chancellor's Visitors made after the commencement of this Act, the concurrence of the Treasury shall be required as to numbers.

(3) A person shall not be qualified to be appointed a Medical Visitor unless he is a medical practitioner who appears to the Lord Chancellor to have special knowledge and experience of cases of mental disorder.

(4) Subsection (3) of section one hundred and sixteen of the Supreme Court of Judicature (Consolidation) Act, 1925 (which precludes the appointment as deputy in any office of the Supreme Court of a person who is not qualified for appointment to that office) shall not prevent a person who has previously held an appointment as Medical Visitor or as Legal Visitor being appointed as deputy for a Medical Visitor or, as the case may be, a Legal Visitor.

(5) The Lord Chancellor may, with the concurrence of the Treasury as to numbers, appoint persons to be clerks and other officers of the Lord Chancellor's Visitors.

DEFINITIONS

"medical practitioner" is defined in s. 146 (1);

"mental disorder" defined in s. 4.

GENERAL NOTE

Subs. (1)

This replaces the Lunacy Act, 1890, s. 163 (1).

Subs. (2)

At present there are two Medical Visitors and one Legal Visitor.

Subs. (3)

This replaces the Lunacy Act, 1890, s. 163 (2). The qualification for appointment of a Legal Visitor is a practising barrister or practising solicitor of not less than ten years' standing (Supreme Court of Judicature (Consolidation) Act, 1925, s. 126 (1) and Sched. IV, as amended by this Act).

Functions of Visitors

109.-(1) It shall be the duty of the Lord Chancellor's Visitors to visit patients in accordance with the directions of the judge for the purpose of investigating matters relating to the capacity of any patient to manage and administer his property and affairs or otherwise relating to the exercise, in relation to him, of the functions of the judge under this Part of this Act; and the Visitors shall make such reports on their visits as the judge may direct.

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

(3) A Medical Visitor making a visit under this section may carry out in private a medical examination of the patient and may require the production of and inspect any medical records relating to the patient.

(4) The Master or Deputy Master of the Court of Protection may visit any patient for the purpose mentioned in subsection (1) of this section, and subsection (2) thereof shall have effect accordingly.

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

(6) If any person discloses any report or information in contravention of the last foregoing subsection, he shall be guilty of an offence and shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred pounds or both.

(7) In this section references to patients include references to persons alleged to be incapable, by reason of mental disorder, of managing and administering their property and affairs.

DEFINITIONS

"mental disorder" is defined in s. 4;

"patient" in this Part of the Act is defined in ss. 101 and 119 (1);

"property" is defined in s. 119 (1);

As to construction of the term "judge," see ss. 100 (4) and 119 (1).

GENERAL NOTE

Subs. (1)

This derives from the Lunacy Act, 1890, s. 183 (1).

Subs. (2) and (3)

As to penalties for obstruction, see s. 180.

Subs. (4)

Previously under the Lunacy Act, 1890, s. 166, the Master and the Assistant (now Deputy) Master were ex officio visitors. The practical result is the same.

Subs. (5)

This derives from the Lunacy Act, 1890, s. 186, but subsection (2) thereof, as to destruction of the Lord Chancellor's Visitors' reports on the death or recovery of the patient, which the Lords Justices in Lunacy in *Roe v. Nix* [1893] P. 55 regarded as an insuperable bar to their permitting their production in a probate action, is not re-enacted. As to power to destroy, see the Public Records Act, 1958.

Subs. (6)

This creates a new offence.

Subs. (7)

This derives from the Lunacy Act, 1890, s. 184 (1). (Cf. s. 104.)

General powers of the judge with respect to proceedings

110.-(1) For the purposes of any proceedings before him with respect to persons suffering or alleged to be suffering from mental disorder, the judge shall have the like powers as are vested in the High Court in respect of securing the attendance of witnesses and the production of documents.

(2) Subject to the provisions of this section, any act or omission in the course of such proceedings as aforesaid which, if occurring in the course of proceedings in the High Court would have been a contempt of the Court, shall be punishable by the judge in any manner in which it could have been punished by the High Court.

(3) The foregoing subsection shall not authorise the Master or Deputy Master, or any other officer, of the Court of Protection to exercise any power of attachment or committal, but the Master, Deputy Master or officer may certify any such act or omission to the Lord Chancellor or a nominated judge, and the Lord Chancellor or judge may thereupon inquire into the alleged act or omission and take any such action in relation thereto as he could have taken if the proceedings had been before him.

(4) Subsections (1) to (4) of section forty-nine of the Supreme Court of Judicature (Consolidation) Act, 1925 (which provides a special procedure for the issue of writs of subpoena ad testificandum and duces tecum so as to be enforceable throughout the United

Kingdom) shall apply in relation to proceedings under this Part of this Act with the substitution for references to the High Court of references to the judge and for references to such writs as aforesaid of references to such document as may be prescribed by rules under this Part of this Act for issue by the judge for securing the attendance of witnesses or the production of documents.

DEFINITIONS

"nominated judge" is defined in ss. 100 (1) and 119 (1);

As to construction of the term "judge," see ss. 100 (4) and 119 (1).

GENERAL NOTE

Subs. (1) and (2)

These derive from the Lunacy Act, 1890, s. 114; Lunacy Act, 1891, s. 26; Lunacy Act, 1908, s. 3.

Subs. (3)

Cf. the Administration of Justice Act, 1956, s. 15 (1) (b).

Subs. (4)

As to the application of this subsection to Scotland and Northern Ireland, see ss. 150 and 152.

Appeals

111.-(1) Subject to and in accordance with rules under this Part of this Act, an appeal shall lie to a nominated judge from any decision of the Master or Deputy Master of the Court of Protection or any officer of the Court of Protection nominated under subsection (8) of section one hundred of this Act.

(2) The Court of Appeal shall have the like jurisdiction as to appeals from any decision of the Lord Chancellor or from any decision of a nominated judge, whether given in the exercise of his original jurisdiction or on the hearing of an appeal under the foregoing subsection, as they had immediately before the coming into operation of this Part of this Act as to appeals from orders in lunacy made by the Lord Chancellor or any other person having jurisdiction in lunacy, and the provisions of the Supreme Court of Judicature (Consolidation) Act, 1925, relating to appeals shall have effect accordingly.

DEFINITION

"nominated judge" is defined in ss. 100 (1) and 119 (1).

GENERAL NOTE

Subs. (1)

This derives from the Lunacy Act, 1908, s. 8 and the Management of Patients' Estates Rules, 1934, r. 13. As to Master or Deputy Master of the Court of Protection, see s. 100 (2).

Subs. (2)

This replaces the relevant provisions in the Supreme Court of Judicature (Consolidation) Act, 1925, s. 26 (2) (c), which are repealed by this Act (Eighth Schedule, Part 1.) That subsection provided that there should be vested in the Court of Appeal, subject to the provisions of that Act, all jurisdiction formerly vested in or capable of being exercised by His late Majesty in Council, or the Judicial Committee of the Privy Council, on appeal from any judgment or order of the High Court of Admiralty, or from any order in lunacy made by the Lord Chancellor, or any other person having jurisdiction in lunacy. The words from "or from any order" are repealed by this Act (Sched. VIII).

From the Court of Appeal an appeal lies to the House of Lords; for leave to appeal, see Administration of Justice Act, 1984, s. 1.

Rules of procedure

112.-(1) Proceedings before the judge with respect to persons suffering or alleged to be suffering from mental disorder (in this section referred to as "proceedings") shall be conducted in accordance with the provisions of rules made under this Part of this Act.

(2) Rules under this Part of this Act may make provision as to the carrying out of preliminary or incidental inquiries, as to the persons by whom and manner in which proceedings may be instituted and carried on, as to the persons who are to be entitled to be notified of, to attend, or to take part in proceedings, as to the evidence which may be authorised or required to be given in proceedings and the manner (whether on oath or otherwise and whether orally or in writing) in which it is to be given, as to the administration of oaths and taking of affidavits for the purposes of proceedings, and as to the enforcement of orders made and directions given in proceedings.

(3) Without prejudice to the provisions of subsection (1) of section one hundred and ten of this Act, rules under this Part of this Act may make provision for authorising or requiring the attendance and examination of persons suffering or alleged to be suffering from mental disorder, the furnishing of information and the production of documents.

(4) Rules under this Part of this Act may make provision as to the termination of proceedings, whether on the death or recovery of the person to whom the proceedings relate or otherwise, and for the exercise, pending the termination of the proceedings, of powers exercisable under this Part of this Act in relation to the property or affairs of a patient.

(5) Rules under this Part of this Act made with the consent of the Treasury may make provision as to the scale of costs, fees and percentages payable in relation to proceedings, and as to the manner in which and funds out of which such costs, fees and percentages are to be paid, may contain provision for charging any percentage upon the estate of the person to whom the proceedings relate and for the payment of costs, fees and percentages within such time after the death of the person to whom the proceedings relate or the termination of the proceedings as may be provided by the rules, and may provide for the remission of fees and percentages.

(6) A charge upon the estate of a person created by virtue of the foregoing subsection shall not cause any interest of that person in any property to fail or determine or to be prevented from recommencing.

(7) Rules under this Part of this Act may authorise the making of orders for the payment of costs to or by persons attending, as well as persons taking part in, proceedings.

DEFINITIONS

As to construction of the term "judge," see as. 100 (4) and 119 (1);

"mental disorder" is defined in s. 4;

"property" is defined in s. 119 (1).

GENERAL NOTE

This replaces the Lunacy Act, 1890, ss. 148 and 338 (2) and (3); Lunacy Act, 1891, s. 27 (2) and (8); Lunacy Act, 1908, s. 3.

As to making of rules, see ss. 144 and 145.

Subs: (6)

In substance this replaces the proviso to the Lunacy Act, 1890, s. 148 (3), which was added by the Law Reform (Miscellaneous Provisions) Act, 1949, in view of the decision in *Re Custance, Koppel v. Douglas* [1946] Ch. 42, which decision was, however, reversed in *Re Westby, Westby v. Ashby* [1950] Ch. 296.

Security and accounts

113.-(1) Rules under this Part of this Act may make provision as to the giving of security by a receiver and as to the enforcement and discharge of the security.

(2) It shall be the duty of a receiver to render accounts in accordance with the requirements of rules under this Part of this Act, as well after his discharge as during his receivership; and rules under this Part of this Act may make provision for the rendering of accounts by persons, not being receivers, ordered, directed or authorised under this Part of this Act to carry out any transaction.

Subs. (2)

See also s. 105 (2).

General provisions as to rules under Part VIII

114.-(1) Any power to make rules conferred by this Part of this Act shall be exercisable by the Lord Chancellor.

(2) Rules under this Part of this Act may contain such incidental and supplemental provisions as appear requisite for the purposes of the rules.

Subs. (1)

See also s. 145.

Supplementary provisions as to Court of Protection

115.-(1) The Master of the Court of Protection shall take in the presence of the Lord Chancellor the oath of allegiance and judicial oath; and the Promissory Oaths Act, 1868, shall have effect as if the officers named in the Second Part of the Schedule to that Act included the Master of the Court of Protection.

(2) A person shall not be qualified for appointment as Deputy Master of the Court of Protection unless at the time of his appointment he is a barrister or solicitor of not less than five years' standing or is an officer of the Court of Protection who for not less than five years (whether continuously or not) has been an officer nominated under subsection (3) of section one hundred of this Act.

(3) The Lord Chancellor may, with the concurrence of the Treasury as to numbers, appoint persons to be clerks and other officers of the Court of Protection.

GENERAL NOTE

Subs. (1)

See also s. 100 (2)

The oath of allegiance and the judicial oath are prescribed by ss. 2 and 4 respectively of the Promissory Oaths Act, 1868.

For transitional provisions, see Sched. VI, Pt. IV, para. 24 (1).

Subs. (2)

This replaces and modifies the provisions of the Lunacy Act, 1922, s. 2 (3), relating to the qualifications for the Deputy Master (previously the Assistant Master). For transitional provisions, see Sched. VI, Pt. IV, para. 24 (2).

Subs. (3)

This derives from the Supreme Court of Judicature (Consolidation) Act, 1925, s. 124, now repealed by this Act (Sched. VIII).

For transitional provisions, see Sched. VI, Pt. IV, para. 24, (3).

Effect and proof of orders, etc.

116.-(1) Section two hundred and four of the Law of Property Act, 1925 (by which orders of the High Court are made conclusive in favour of purchasers) shall apply in relation to orders made and directions and authorities given by the judge as it applies in relation to orders of the High Court.

(2) Office copies of orders made, directions or authorities given, or other instruments issued by the judge and sealed with the official seal of the Court of Protection shall be admissible in all legal proceedings as evidence of the originals without any further proof.

GENERAL NOTE

Subs. (1)

The Law of Property Act, 1925, s. 204, did not previously extend to Court of Protection Orders in view of the definition of "court" in s. 203, *ibid.*

Subs. (2)

This derives from the Lunacy Act, 1890, s. 144.

Reciprocal arrangements in relation to Scotland and Northern Ireland as to exercise of powers

117.-(1) This Part of this Act shall apply in relation to the property and affairs in Scotland or Northern Ireland of a patient in relation to whom powers have been exercised under this Part of this Act, or a person as to whom powers are exercisable and have been exercised under section one hundred and four of this Act, as it applies in relation to his property and affairs in England and Wales unless a curator bonis, tutor, judicial factor, committee, receiver or guardian has been appointed for him in Scotland or, as the case may be, Northern Ireland.

(2) Where under the law in force in Scotland or Northern Ireland with respect to the property and affairs of persons suffering from mental disorder a curator bonis, tutor, judicial factor, committee, receiver or guardian has been appointed for any person, the provisions of that law shall apply in relation to that person's property and affairs in England and Wales unless he is

a patient in relation to whom powers have been exercised under this Part of this Act, or a person as to whom powers are exercisable and have been exercised under section one hundred and four of this Act.

(3) In this section references to property do not include references to land or interests in land:

Provided that this subsection shall not prevent the receipt of rent or other income arising from land or interests in land.

DEFINITIONS

"patient" in this Part of the Act is defined in ss. 101 and 119 (1).

"property" is defined in s. 119 (1).

GENERAL NOTE

This simple reciprocal jurisdiction replaces the excessively complicated provisions of the Lunacy Act, 1890, ss. 107 and 131.

Briefly the effect is that, as between Scotland or Northern Ireland on the one hand and England and Wales on the other, so long as jurisdiction has been invoked in one country only (treating England and Wales as one country), that jurisdiction is effective to deal with property, other than land or interests in land, in the other country.

See annotation to s. 149 (1) and (2) as to reciprocal jurisdiction as between Scotland and Northern Ireland based on the Lunacy Act, 1890, s. 131, as amended by Sched. VIII, Pt. II, of this Act, which remains part of the law of Northern Ireland and Scotland.

As to the application of this section to Scotland and Northern Ireland, see ss. 150 and 152.

Construction of references in other Acts to judge or authority having jurisdiction under Part VIII

118.-(1) The functions expressed to be conferred by any enactment not contained in this Part of this Act on the judge having jurisdiction under this Part of this Act shall be exercisable by the Lord Chancellor or by a nominated judge.

(2) The functions expressed to be conferred by any such enactment on the authority having jurisdiction under this Part of this Act shall, subject to any express provision to the contrary, be exercisable by the Lord Chancellor, a nominated judge, the Master or Deputy Master of the Court of Protection or any officer nominated under subsection (3) of section one hundred of this Act:

Provided that the exercise of those functions by the Deputy Master or any such nominated officer shall be subject to any directions of the Master, and the said functions shall be exercisable by any such nominated officer so far only as may be provided by the instrument by which he is nominated.

(3) Subject to the provisions of the foregoing subsections, -

(a) references in any enactment not contained in this Part of this Act to the judge having jurisdiction under this Part of this Act shall be construed as references to the Lord Chancellor or a nominated judge; and

(b) references in any such enactment to the authority having jurisdiction under this Part of this Act shall be construed as references to the Lord Chancellor, a nominated judge, the Master or Deputy Master of the Court of Protection or any officer nominated under subsection (3) of section one hundred of this Act.

GENERAL NOTE

As regards references in other statutes, the sharp distinction between the formula "the judge having jurisdiction" under Part VIII of this Act (subs. (1)) and the formula "the authority having jurisdiction" under Part VIII of this Act created by subs. (2) must be noted. At present the "judge" formula occurs only in one Act, *nix.*, the Fines and Recoveries Act, 1833, ss. 33, 48, 49 and 91, as amended by this Act (Sched. VII). An example of the "authority" formula occurs in the Trustee Act, 1925, s. 54, as amended by this Act (Sched. VII, Pt. 1). This section requires close comparison with s. 100.

Interpretation of Part VIII

119.-(1) In this Part of this Act, unless the context otherwise requires, -

"nominated judge" means a judge nominated in pursuance of sub-section (1) of section one hundred of this Act;

"patient" has the meaning assigned to it by section one hundred and one of this Act;

"property" includes any thing in action, and any interest in real or personal property;

"the judge" shall be construed in accordance with section one hundred of this Act.

(2) Any power conferred by this Part of this Act to make an order shall be construed as including a power, exercisable in like manner and subject to the like conditions if any, to revoke or vary the order.

GENERAL NOTE

Subs. (1)

The definition of "patient" for the purpose of this Part of the Act should be compared with the definition in s. 147 (1) for the other parts of the Act. Further, the word "patient" is not used in this Part unless the patient in question strictly falls within s. 101. See ss. 104, 106 and 117, where the word "person" is used.

Modifications of Lunacy Regulation (Ireland) Act, 1871

120. The provisions of the Lunacy Regulation (Ireland) Act, 1871, described in the Fourth Schedule to this Act (which relate to the management and protection of the property of mentally disordered persons and to the procedure on inquisitions) shall have effect subject to the modifications specified in that Schedule.

GENERAL NOTE

The matters dealt with in Sched. IV are with a view to improving the administration of patients' estates in Northern Ireland, and, in particular, by raising from £2,000 to £10,000 (capital value) and from £100 to £500 (annual income) the limits for dealing with a patient's estate and affairs without an inquisition.

As to the application of this section to Northern Ireland, see s. 152.

Repeal of certain enactments in relation to persons within the jurisdiction of the judge

121. The provisions of the Acts described in the Fifth Schedule to this Act which are specified in the third column of that Schedule, so far as they make special provision for persons suffering from mental disorder, shall cease to have effect in relation to patients and to persons as to whom powers are exercisable and have been exercised under section one hundred and four of this Act.

DEFINITION

"mental disorder" is defined in s. 4;

"patients" is defined in ss. 101 and 119 (1).

GENERAL NOTE

The reason and purpose of this section will not be readily apparent. The enactments mentioned in Sched. V make special provision, in the language of the day, as to what is to happen when a "lunatic" or an "idiot" has to do something, or suffer something being done, and in some instances provide as to how any money arising shall be dealt with or applied. Usually the enabling power was to the effect that the committee (if any) should act on behalf of the patient.

The provisions of this Part of the Act, and, in particular s. 103 (*b*) and (*j*), render unnecessary any special enabling provision in specific statutes, since under this Part of the Act anything which the patient can do can be done by his receiver under an order of the court. Further, some of these enactments apply to infants and to Scottish curators and cannot therefore be totally repealed.

PART IX MISCELLANEOUS AND GENERAL

Powers and proceedings of Mental Health Review Tribunals

Applications to tribunals

122.-(1) Where, under any provision of this Act, an application to a Mental Health Review Tribunal is authorised to be made by or in respect of a patient, the application shall be made by notice in writing addressed to the tribunal for the area in which the hospital or nursing home in which the patient is detained is situated or in which the patient is residing under guardianship, as the case may be.

(2) Except in such cases and at such times as are expressly provided by this Act, no application shall be made to a Mental Health Review Tribunal by or in respect of a patient; and where, under any provision of this Act, any person is authorised to make an application to such a tribunal within a specified period, not more than one such application shall be made by that person within that period.

DEFINITION

"hospital" and "patient" are defined in s. 147 (1).

GENERAL NOTE

Subs. (1)

As to constitution of Mental Health Review Tribunal, see s. 3 and Sched. I; as to the power of the Lord Chancellor to make rules as to procedure in regard thereto, see ss. 124 and 145.

The function of the Tribunal is to provide the patient, and, in some instances, relatives, with an independent body to whom they can apply to review any case in which it is contended that the patient should not be liable to be detained or subject to guardianship. The Minister of Health may refer a case under s. 57, and so may the Home Secretary (but for advice only) under s. 66 (6) (see s. 123 (4)).

The legality of the detention of a patient (as distinct from the justification for his continued detention on medical grounds) will continue to be a matter for the courts, and not for the Tribunals.

The term "nursing home" here includes a "mental nursing home" (see ss. 14 (2), 15, 59 (2), 80 (5) and 96 (1)) in so far as this subsection relates to a patient detained in a nursing home; a patient under guardianship can, presumably, reside in any nursing home according to his need and circumstances.

As to guardianship, see ss. 33 *et seq.*

Applications and references to the Tribunal may be made under or by virtue of the following sections:

Part IV - ss. 31 (4), 34 (5), 38 (2), 43 (6), 44 (3), 48 (3), 52 (6);

Part V - ss. 63 (8) and (4), 65 (5), 66 (6) and (7), 72 (3), 73 (3), 74 (1) and (2), 77 (4), 78 (2), 79 (3);

Part VI - ss. 84 (2), 87 (2) and (3), 88 (2), 89 (2);

and under the transitional provisions for patients detained immediately before the commencement of this Act under the statutes repealed by this Act:

Sched. VI - paras. 9 (3) (c), 10 (2), 12 (3) and (4), 13 (2), 15 (2)-(6).

Powers of tribunals

123.-(1) Where application is made to a Mental Health Review Tribunal by or in respect of a patient who is liable to be detained under this Act, the tribunal may in any case direct that the patient be discharged, and shall so direct if they are satisfied -

(a) that he is not then suffering from mental illness, psychopathic disorder, subnormality or severe subnormality; or

(b) that it is not necessary in the interests of the patient's health or safety or for the protection of other persons that the patient should continue to be liable to be detained; or

(c) in the case of an application under subsection (3) of section forty-four or subsection (3) of section forty-eight of this Act, that the patient, if released, would not be likely to act in a manner dangerous to other persons or to himself.

(2) Where application is made to a Mental Health Review Tribunal by or in respect of a patient who is subject to guardianship under this Act, the tribunal may in any case direct that the patient be discharged, and shall so direct if they are satisfied -

(a) that he is not then suffering from mental illness, psychopathic disorder, subnormality or severe subnormality; or

(b) that it is not necessary in the interests of the patient, or for the protection of other persons, that the patient should remain under such guardianship.

(3) Where application is made to a Mental Health Review Tribunal under any provision of

this Act by or in respect of a patient and the tribunal do not direct that the patient be discharged, the tribunal may, if satisfied that the patient is suffering from a form of mental disorder other than the form specified in the relevant application, order or direction, direct that that application, order or direction be amended by substituting for the form of mental disorder specified therein such other form of mental disorder as appears to the tribunal to be appropriate.

(4) This section applies in relation to any reference to a Mental Health Review Tribunal made by the Minister under section fifty-seven of this Act as it applies in relation to an application made to such tribunal by or in respect of a patient, but does not apply in relation to any reference by the Secretary of State under subsection (6) of section sixty-six of this Act.

DEFINITIONS

"hospital" is defined in s. 147 (1);

"hospital" here may include certain mental nursing homes, see ss. 14 (2), 15, 59 (2), 80 (5) and 96;

"mental disorder" is defined in s. 4;

The "Minister" means the Minister of Health, see s. 142 (1);

"patient" is defined in s. 147 (1);

The "Secretary of State" refers to the Home Secretary.

GENERAL NOTE

Subs. (1)

Mental illness or severe subnormality at any age is a basis for an application for admission or for guardianship, but psychopathic disorder or subnormality is only a basis when the patient is under twenty-one (see ss. 26 (2) (a) and 33 (2) (a)).

S. 44 (3) relates to the reference to the Tribunal in the case of a psychopathic or subnormal patient whom, it is considered, should not be released on his attaining the age of twenty-five years; s. 48 (3) relates to the case where the power of the nearest relative to discharge is vetoed.

As to transitional provisions, see Sched. VI, Pt. III, para. 12 (3).

Subs. (2)

The only differences of substance between this and subs. (1) are that subs. (1) (c) has no counterpart because ss. 44 (3) and 48 (3) do not apply to guardianship, and the criteria in para. (b) include "the interests of the patient" instead of "the interests of the patient's health or safety." This reflects the difference between ss. 26 (2) (b) and 33 (2) (b).

Subs. (3)

Since the legality or otherwise of a person's detention or guardianship will depend on the category of his mental disorder it is essential that the appropriate category is recorded on the application. Cf. s. 32 as to rectification of application and medical recommendations.

Subs. (4)

As case which as a result of criminal procedure is referred to a tribunal under s. 66 (6) is referred for advice only.

Rules as to procedure

124.-(1) The Lord Chancellor may make rules with respect to the making of applications to

Mental Health Review Tribunals, and with respect to the proceedings of such tribunals and matters incidental to or consequential on such proceedings.

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

(a) for enabling a tribunal, or the chairman of a tribunal, to postpone the consideration of any application by or in respect of a patient, or of any such application of any specified class, until the expiration of such period (not exceeding twelve months) as may be specified in the rules from the date on which an application by or in respect of the same patient was last considered and determined by that or any other tribunal under this Act;

(b) for the transfer of proceedings from one tribunal to another in any case where, after the making of the application, the patient is removed out of the area of the tribunal to which it was made;

(c) for restricting the persons qualified to serve as members of a tribunal for the consideration of any application, or of an application of any specified class;

(d) for enabling a tribunal to dispose of an application without a formal hearing where such a hearing is not requested by the applicant or it appears to the tribunal that such a hearing would be detrimental to the health of the patient;

(e) for enabling a tribunal to exclude members of the public, or any specified class of members of the public, from any proceedings of the tribunal, or to prohibit the publication of reports of any such proceedings or the names of any persons concerned in such proceedings;

(f) for regulating the circumstances in which, and the persons by whom, applicants and patients in respect of whom applications are made to a tribunal may, if not desiring to conduct their own case, be represented for the purposes of those applications;

(g) for regulating the methods by which information relevant to an application may be obtained by or furnished to the tribunal, and in particular for authorising the members of a tribunal, or any one or more of them, to visit and interview in private any patient by or in respect of whom an application has been made;

(h) for making available to any applicant, and to any patient in respect of whom an application is made to a tribunal, copies of any documents obtained by or furnished to the tribunal in connection with the application, and a statement of the substance of any oral information so obtained or furnished except where the tribunal considers it undesirable in the interests of the patient or for other special reasons;

(i) for requiring a tribunal, if so requested in accordance with the rules, to furnish such statements of the reasons for any decision given by the tribunal as may be prescribed by the rules, subject to any provision made by the rules for withholding such a statement from a patient or any other person in cases where the tribunal considers that furnishing it would be undesirable in the interests of the patient or for other special reasons;

(j) for conferring on the tribunals such ancillary powers as the Lord Chancellor thinks necessary for the purposes of the exercise of their functions under this Act.

(3) The foregoing provisions of this section apply in relation to references to Mental Health Review Tribunals as they apply in relation to applications to such tribunals by or in respect of patients.

(4) Rules under this section may be so framed as to apply to all applications or references or to applications or references of any specified class and may make different provision in relation to different cases.

(5) A Mental Health Review Tribunal may, and if so required by the High Court shall, state in the form of a special case for determination by the High Court any question of law which may arise before them.

(6) The Arbitration Act, 1950, shall not apply to any proceedings before a Mental Health Review Tribunal except so far as any provisions of that Act may be applied, with or without modifications, by rules made under this section.

DEFINITION

"patient" is defined in s. 147 (1).

GENERAL NOTE

See also s. 145 and Sched. I, para. 4.

Offences

Forgery, false statements, etc.

125.-(1) Any person who, with intent to deceive, forges any of the following documents, that is to say:-

(a) any application under Part IV of this Act;

(b) any medical recommendation or report under this Act; or

(c) any other document required or authorised to be made for any of the purposes of this Act,

or who uses, allows another person to use or makes or has in his possession any such document which he knows to have been forged or any document so closely resembling any such document as to be calculated to deceive, shall be guilty of an offence.

(2) Any person who wilfully makes a false entry or statement in any application, recommendation, report, record or other document required or authorised to be made for any of the purposes of this Act or, with intent to deceive, makes use of any such entry or statement which he knows to be false, shall be guilty of an offence.

(3) Any person guilty of an offence under this section shall be liable -

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds, or to both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

(4) In this section "forge" has the same meaning as in the Forgery Act, 1913.

GENERAL NOTE

This section derives from the Lunacy Act, 1890, ss. 317 and 318; and Mental Deficiency Act, 1913, ss. 57, 58 and 60.

See the Forgery Act, 1913, s. 1, as to the definition of "forge."

Ill-treatment of patients

126.-(1) It shall be an offence for any person being an officer on the staff of or otherwise employed in, or being one of the managers of, a hospital or mental nursing home -

(a) to ill-treat or wilfully neglect a patient for the time being receiving treatment for mental disorder as an in-patient in that hospital or home; or

(b) to ill-treat or wilfully neglect, on the premises of which the hospital or home forms part, a patient for the time being receiving such treatment there as an out-patient.

(2) It shall be an offence for any individual to ill-treat or wilfully neglect a mentally disordered patient who is for the time being subject to his guardianship under this Act or otherwise in his custody or care (whether by virtue of any legal or moral obligation or otherwise).

(3) Any person guilty of an offence under this section shall be liable -

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

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

DEFINITIONS

"hospital" and "patient" are defined in s. 147 (1);

"mental nursing home" is defined in ss. 14 (12), 15 and 147 (1).

GENERAL NOTE

This section derives from the Criminal Lunatic Asylums Act, 1860, s. 13, the Lunacy Act, 1890, ss. 322 and

325, and the Mental Deficiency Act, 1913, ss. 55 and 60, repealed by this Act (Sched. VIII, Pt. I).

Subs. (1)

Note that in respect of an in-patient, an offence is committed whether the ill-treatment takes place on or off the premises; as regards an out-patient it must take place on the premises to constitute an offence.

Subs. (2)

As to guardianship, see ss. 33 *et seq.*

Amendment of Sexual Offences Act, 1956

127.-(1) The Sexual Offences Act, 1956, shall be amended as follows:-

(a) for section seven there shall be substituted the following section:-

"Intercourse with defective.

7.- (1) It is an offence, subject to the exception mentioned in this section, for a man to have unlawful sexual intercourse with a woman who is a defective.

(2) A man is not guilty of an offence under this section because he has unlawful sexual intercourse with a woman if he does not know and has no reason to suspect her to be a defective.";

(b) for section forty-five there shall be substituted the following section:-

"Meaning of 'defective'

45. In this Act 'defective' means a person suffering from severe subnormality within the meaning of the Mental Health Act, 1959.";

and section eight of that Act shall cease to have effect.

(2) An order under section thirty-eight of the said Act made on conviction of an offence against a girl under the age of twenty-one who is a defective within the meaning of that Act may, so far as it has effect for any of the purposes of this Act, be rescinded under that section either before or after the girl has attained that age.

GENERAL NOTE

Subs. (1)

The effect of these substitutions is that the Sexual Offences Act, 1956, s. 7, now has reference to unlawful sexual intercourse with a woman suffering from severe abnormality (see s. 4 (2)) in place of a woman who is an idiot or imbecile.

The Sexual Offences Act, 1956, s. 8 and para. 12 of the Second Schedule thereto, as to intercourse with a defective (as defined in *ibid.*, s. 45), are repealed by this Act (Sched. VIII, Pt. I).

Cf. s. 128, relating to sexual intercourse by certain specified persons with a woman suffering from mental disorder in any of the forms mentioned in s. 4.

Subs. (2)

The Sexual Offences Act, 1956, s. 38, enables the court, on a man's conviction for incest with a girl under the age of twenty-one, or of attempting to commit such an offence, by order to divest him of all authority over her,

remove her from his guardianship, if he is her guardian, and appoint some other person to be the girl's guardian during her minority or any less period; such an order may be varied or rescinded by the High Court.

As to the effect of such an order (unless rescinded under this provision) against a man who would otherwise be the nearest relative of the patient for the purposes of this Act, see s. 49 (4) (d).

Sexual intercourse with patients

128.-(1) Without prejudice to section seven of the Sexual Offences Act, 1956, it shall be an offence, subject to the exception mentioned in this section, -

(a) for a man who is an officer on the staff of or is otherwise employed in, or is one of the managers of, a hospital or mental nursing home to have unlawful sexual intercourse with a woman who is for the time being receiving treatment for mental disorder in that hospital or home, or to have such intercourse on the premises of which the hospital or home forms part with a woman who is for the time being receiving such treatment there as an out-patient;

(b) for a man to have unlawful sexual intercourse with a woman who is a mentally disordered patient and who is subject to his guardianship under this Act or is otherwise in his custody or care under this Act or in pursuance of arrangements under the National Health Service Act, 1946, or Part III of the National Assistance Act, 1948, or as a resident in a residential home for mentally disordered persons within the meaning of Part III of this Act.

(2) It shall not be an offence under this section for a man to have sexual intercourse with a woman if he does not know and has no reason to suspect her to be a mentally disordered patient.

(3) Any person guilty of an offence under this section shall be liable on conviction on indictment to imprisonment for a term not exceeding two years.

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

(5) This section shall be construed as one with the Sexual Offences Act, 1956; and section forty-seven of that Act (which relates to the proof of exceptions) shall apply to the exception mentioned in this section.

DEFINITIONS

"hospital" is defined in s. 147 (1);

"managers" is defined in ss. 59 (1) and 147 (1);

"mental disorder" is defined in s. 4;

"mental nursing home" is defined in ss. 14 (2) and 147 (1);

"residential home for mentally disordered persons" is defined in s. 19 (2).

GENERAL NOTE

This section derives from the Lunacy Act, 1890, s. 324, and the Sexual Offences Act, 1956, s. 8, which are repealed by this Act (Sched. VIII).

Cf. s. 127 relating to intercourse by any person with a woman suffering from severe subnormality.

Subs. (1)

Under (a), if the woman is an in-patient, an offence is committed whether the intercourse takes place on the premises or elsewhere; as regards out-patients an offence is committed only if the intercourse takes place on the premises. Cf. s. 126 (1) in regard to ill-treatment of patients.

As regards (b), cf. s. 124 (2). As to guardianship, see ss. 33 *et seq.*

Subs. (3)

Offences under this section can only be dealt with on indictment and not summarily. The penalty is the same as for corresponding offences under the Sexual Offences Act, 1956, ss. 7 and 8, and the Lunacy Act, 1890, s. 324.

Subs. (5)

Under the Sexual Offences Act, 1956, s. 47, the onus of proof of the exception, i.e., that the man did not know and had no reason to suspect the woman to be a defective, is upon the person charged (see subs. (2) of this section).

Assisting patients to absent themselves without leave, etc.

129.-(1) Any person who induces or knowingly assists any other person -

(a) being liable to be detained in a hospital within the meaning of Part IV of this Act, or being subject to guardianship under this Act, to absent himself without leave; or

(b) being in legal custody by virtue of section one hundred and thirty-nine of this Act, to escape from such custody;

shall be guilty of an offence.

(2) Any person who knowingly harbours a patient who is absent without leave or is otherwise at large and liable to be retaken under this Act, or gives him any assistance with intent to prevent, hinder or interfere with his being taken into custody or returned to the hospital or other place where he ought to be, shall be guilty of an offence.

(3) Any person guilty of an offence under this section shall be liable -

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds, or to both;

(b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine, or to both.

DEFINITIONS

"absent without leave" is defined in s. 40 (4);

"hospital" is defined in s. 147 (1);

"hospital" here may include a "mental nursing home," see ss. 14 (2), 15, 59 (2), 80 (5), 96 (1) and 147 (1);

"legal custody" is defined in s. 139 (1).

GENERAL NOTE

This section replaces the Criminal Lunatic Asylums Act, 1860, s. 12, the Lunacy Act, 1890, s. 323, and the Mental Deficiency Act, 1913, s. 53, repealed by the Act (Sched. VIII, Pt. I).

As to application of this section to Scotland and Northern Ireland, see ss. 150 and 152. The exclusion of guardianship cases is in line with s. 93 (4).

Subs. (2)

See ss. 40 and 140.

Subs. (3)

Cf. similar penalties under ss. 125 and 126.

Obstruction

130.-(1) Any person who refuses to allow the inspection of any premises, or without reasonable cause refuses to allow the visiting, interviewing or examination of any person by a person authorised in that behalf by or under this Act or to produce for the inspection of any person so authorised any document or record the production of which is duly required by him, or otherwise obstructs any, such person in the exercise of his functions, shall be guilty of an offence.

(2) Without prejudice to the generality of the foregoing subsection, any person who insists on being present when requested to withdraw by a person authorised as aforesaid to interview or examine a person in private, shall be guilty of an offence.

(3) Any person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred pounds, or to both.

GENERAL NOTE

This section derives from the Lunacy Act, 1890, s. 321, and the Mental Deficiency Act, 1913, s. 54, repealed by this Act (Sched. VIII, Pt. I).

Generally as to application of this section, see ss. 17, 22, 37, 109, 112 (3), 135, 136 (2) and 137 (3).

Subs. (1)

As to the power of the judge having jurisdiction under Part VIII of the Act (Court of Protection), for securing production of documents, see s. 110 (1).

Apart from the provision of this section, to refuse to allow a receiver or his agent to enter upon and take possession of premises belonging to a patient, and otherwise carry into effect the directions of the court is contempt of court (see *Re Seaton* [1928] W.N. 307), so also is interference with the Lord Chancellor's Visitors on their visiting a patient, or supposed patient, contempt of court (see *Re Anon.* (1881) 18 Ch. D. 26).

Subs. (2)

See ss. 17 (3), 37, 55 (c), 109 (2) and (3), and 124 (2) (g).

Subs. (3)

Obstruction is an offence which may be only dealt with summarily and not on indictment.

Prosecutions by local authorities

131.-(1) A local health authority may institute proceedings for any offence under this Part of this Act, but without prejudice to any provision of this Part of this Act requiring the consent of the Director of Public Prosecutions for the institution of such proceedings.

(2) In relation to an offence under section one hundred and thirty of this Act in connection with the inspection of any premises, or the visiting, interviewing or examination of any patient, by a person authorised in that behalf by a registration authority within the meaning of Part III of this Act, subsection (1) of this section shall have effect as if the reference to a local health authority included a reference to that authority.

DEFINITIONS

"local health authority" and "patient" are defined in s. 147 (1);

"registration authority" is defined in ss. 14 (3) and 19 (2) and see the annotation thereto.

GENERAL NOTE

Subs. (1)

See ss. 126 (4) and 128 (4).

Subs. (2)

As to prosecutions for offences under Part III, see s. 23.

Miscellaneous provisions

Notification of hospitals having arrangements for reception of urgent cases

132. It shall be the duty of every Regional Hospital Board to give notice to every local health authority for an area wholly or partly comprised within the area of the Board specifying the hospital or hospitals administered by the Board in which arrangements are from time to time in force for the reception, in case of special urgency, of patients requiring treatment for mental disorder.

DEFINITIONS

"hospital," "local health authority" and "patient" are defined in s. 147 (1);

"mental disorder" is defined in s. 4.

GENERAL NOTE

As to Regional Hospital Boards, see annotation to s. 3 (1); as to emergency case, see ss. 29 and 64 (2).

Provision of pocket money for in-patients in hospital

133.-(1) The Minister may pay to persons who are receiving treatment as in-patients (whether liable to be detained or not) in special hospitals or other hospitals, being hospitals wholly or mainly used for the treatment of persons suffering from mental disorder, such amounts as he thinks fit in respect of their occasional personal expenses where it appears to him that they would otherwise be without resources to meet those expenses.

(2) For the purposes of the National Health Service Act, 1946, the making of payments under

this section to persons for whom hospital and specialist services are provided under Part II of that Act shall be treated as included among those services.

(3) In the application of this section to Scotland -

(a) for any reference to the Minister there shall be substituted a reference to the Secretary of State;

(b) for the words from "special hospitals" to "mental disorder" there shall be substituted the words "institutions to which section ninety-one of this Act applies";

(c) for the reference to the National Health Service Act, 1946, there shall be substituted a reference to the National Health Service (Scotland) Act, 1947.

DEFINITIONS

"hospital" is defined in s. 147 (1);

For definition of "mental disorder," see s. 4;

The "Minister" means the Minister of Health, see s. 147 (1);

"special hospital" is defined in s. 97 (3).

GENERAL NOTE

Subs. (1)
Cf. s. 6 (3)

Subs. (3)
As to the application of this section to Scotland, see s. 150.

Correspondence of patients not subject to detention

134.-(1) Section thirty-six of this Act shall apply in relation to any patient who is receiving treatment for mental disorder in a hospital or mental nursing home, having been admitted for that purpose but not being liable to be detained therein, as it applies in relation to a patient, detained in a hospital under Part IV of this Act.

(2) In relation to any patient to whom it applies by virtue of this section, the said section thirty-six shall have effect as if for any reference to the responsible medical officer there were substituted a reference to the medical practitioner in charge of the treatment of the patient.

DEFINITIONS

"hospital" and "medical practitioner" are defined in s. 147 (1);

"mental disorder" is defined in s. 4;

"mental nursing home" is defined in ss. 14 (2) and 147 (1);

"patient" is defined in s. 147 (1);

"responsible medical officer" is defined in s. 59 (1).

GENERAL NOTE

Subs. (1)

S. 36 relates to the power to withhold from a patient detained in a hospital, mental nursing home, or under guardianship, letters, etc., calculated to be detrimental to the patient and not to post letters addressed to certain specified persons.

As to informal admission of patients, being neither liable to be detained nor subject to guardianship, see s. 5.

Warrant to search for and remove patients

135.-(1) If it appears to a justice of the peace, on information on oath laid by a mental welfare officer, that there is reasonable cause to suspect that a person believed to be suffering from mental disorder -

(a) has been, or is being, ill-treated, neglected or kept otherwise than under proper control, in any place within the jurisdiction of the justice; or

(b) being unable to care for himself, is living alone in any such place, the justice may issue a warrant authorising any constable named therein to enter, if need be by force, any premises specified in the warrant in which that person is believed to be, and, if thought fit, to remove him to a place of safety with a view to the making of an application in respect of him under Part IV of this Act, or of other arrangements for his treatment or care.

(2) If it appears to a justice of the peace, on information on oath laid, by any constable or other person who is authorised by or under this Act to take a patient to any place, or to take into custody or retake a patient who is liable under this Act to be so taken or retaken, -

(a) that there is reasonable cause to believe that the patient is to be found on premises within the jurisdiction of the justice; and

(b) that admission to the premises has been refused or that a refusal of such admission is apprehended,

the justice may issue a warrant authorising any constable named therein 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 warrant issued under this section may be detained there for a period not exceeding seventy-two hours.

(4) In the execution of a warrant issued under subsection (1) of this section, the constable to whom it is addressed shall be accompanied by a mental welfare officer and by a medical practitioner, and in the execution of a warrant issued under subsection (2) of this section the constable to whom it is addressed may be accompanied -

(a) by a medical practitioner;

(b) by any person authorised by or under this Act to take or retake the patient.

(5) It shall not be necessary in any information or warrant under subsection (1) of this section

to name the patient concerned.

(6) In this section "place of safety" means residential accommodation provided by a local authority under Part III of the National Health Service Act, 1946, or under Part III of the National Assistance Act, 1948 a hospital as defined by this Act, a police station, a mental nursing home or residential home for mentally disordered persons or any other suitable place the occupier of which is willing temporarily to receive the patient.

DEFINITIONS

"hospital" and "medical practitioner" are defined in s. 147 (1);

"mental disorder" is defined in s. 4;

"mental nursing home" is defined in ss. 14 (2), 15 and 147 (1);

"mental welfare officer" is defined in s. 147 (1);

"place of safety" is defined in subs. (6);

"residential home for mentally disordered persons" is defined in s. 19 (2).

GENERAL NOTE

Subs. (1)

There was a somewhat similar provision in the Mental Deficiency Act, 1913, s. 15 (2), but none in the Lunacy and Mental Treatment Acts, all of which are repealed by this Act (Sched. VIII, Pt. I).

This section applies to any person believed to be suffering from mental disorder (see s. 4) and is not limited as in the case of ss. 26 and 33.

See also s. 29 as to application for admission in case of emergency.

Subs. (2)

This is new. See ss. 31, 40 and 140.

Subs. (3)

Under the Mental Deficiency Act, 1913, s. 15 (2) there was no specific time limit for the detention of a defective. *Cf.* s. 29 (3).

Mentally disordered persons found in public places

136.-(1) If a constable finds in a place to which the public have access a person who appears to him to be suffering from mental disorder and to be in immediate need of care or control, the constable may, if he thinks it necessary to do so in the interests of that person or for the protection of other persons, remove that person to a place of safety within the meaning of the last foregoing section.

(2) A person removed to a place of safety under this section may be detained there for a period not exceeding seventy-two hours for the purpose of enabling him to be examined by a medical practitioner and to be interviewed by a mental welfare officer and of making any necessary arrangements for his treatment or care.

DEFINITIONS

"mental disorder" is defined in s. 4;

"medical practitioner" and "mental welfare officer" are defined in s. 147 (1).

GENERAL NOTE

This section derives in particular from the Lunacy Act, 1890, ss. 15 and 20, and the Mental Deficiency Act, 1913, s. 15 (1), repealed by this Act (Sched. VIII, Pt. I). See also ss. 22 and 133, As to subs. (2), *cf.* ss. 29 (3) and 135 (3).

Amendment of provisions as to members of Parliament

137.-(1) The following provisions shall have effect in substitution for the provisions of the Lunacy (Vacating of Seats) Act, 1886.

(2) Where a member of the House of Commons is authorised to be detained on the ground. (however formulated) that he is suffering from mental illness, it shall be the duty of the court, authority or person on whose order or application, and of any medical, practitioner upon whose recommendation or certificate, the detention was authorised, and of the person in charge of the hospital or other place in which the member is authorised to be detained, to notify the Speaker of the House of Commons that the detention has been authorised.

(3) Where the Speaker receives a notification under the foregoing subsection, or is notified by two members of the House of Commons that they are credibly informed that such an authorisation has been given, the Speaker shall cause the member to whom the notification relates to be visited and examined by two medical practitioners appointed as follows, that is to say -

(a) where the member is to be visited in England and Wales or in Northern Ireland, by the President of the Royal College of Physicians of London;

(b) where the member is to be visited in Scotland, by the President of the Royal College of Physicians of Edinburgh and the President of the Royal Faculty of Physicians and Surgeons of Glasgow, acting jointly,

being in either case practitioners appearing to the President or Presidents have special experience in the diagnosis or treatment of mental disorders; and the medical practitioners so appointed shall report to the Speaker whether the member is suffering from mental illness and is authorised to be detained as such.

(4) If the report is to the effect that the member is suffering from mental illness and authorised to be detained as aforesaid, the Speaker shall at the expiration of six months from the date of the report, if the House is then sitting, and otherwise as soon as may be after the House next sits, again cause the member to be visited and examined by two such medical practitioners as aforesaid, and the medical practitioners shall report as aforesaid.

(5) If the second report is that the member is suffering from mental illness and authorised to be detained as aforesaid, the Speaker shall forthwith lay both reports before the House of Commons, and thereupon the seat of the member shall become vacant.

(6) This section shall apply in relation to the House of Commons of Northern Ireland as it applies in relation to the House of Commons and references therein to the Speaker shall be

construed accordingly.

DEFINITIONS

"hospital" and "medical practitioner" are defined in s. 146 (1).

GENERAL NOTE

Subs. (1) to (5)

The Lunacy (Vacating of Seats) Act, 1886, is repealed by this Act (Sched. VIII, II).

It will be noted that not only is the member to be suffering from mental illness (see s.4) but must be authorised to be detained as such.

Subs. (6)

As to the application of this section to Scotland and Northern Ireland, see ss. 150 and 152.

Pay pensions, etc., of mentally disordered persons

138.-(1) Where a periodic payment falls to be made to any person by way of pay or pension or otherwise in connection with the service or employment of that or any other person, and the payment falls to be made directly out of moneys provided by Parliament or the Consolidated Fund, or other moneys administered by or under the control or supervision of a Government department, the authority by whom the sum in question is payable, if satisfied after considering medical evidence that the person to whom it is payable (hereinafter referred to as "the patient") is incapable by reason of mental disorder of managing and administering his property and affairs, may, instead of paying the sum to the patient, apply it in accordance with the next following subsection.

(2) The authority may pay the sum or such part thereof as they think fit to the institution or person having the care of the patient, to be applied for his benefit, and may pay the remainder (if any) or such part thereof as they think fit -

(a) to or for the benefit of persons who appear to the authority to be members of the patient's family or other persons for whom the patient might be expected to provide if he were not mentally disordered; or

(b) in reimbursement, with or without interest, of money applied by any person either in payment of the patient's debts (whether legally enforceable or not) or for the maintenance or other benefit of the patient or such persons as are mentioned in the foregoing paragraph.

(3) In this section "Government department" does not include a department of the Government of Northern Ireland.

GENERAL NOTE

Subs. (1)

This replaces the Lunacy Act, s. 335, repealed (Sched. VIII, Pt. 1). In contrast to that section, it is specifically limited to periodic payments and so excludes lump sums, but is wider in the class of paying bodies included.

As regards the term "patient" *cf.* ss. 101 and 147 (1).

Subs. (2)

Cf. ss. 102 and 103 (1) (*i*).

Subs. (3)

As to the application of this section to Scotland and Northern Ireland, see ss. 150 and 152.

Supplemental

Provisions as to custody, conveyance and detention

139.-(1) Any person required or authorised by or by virtue of this Act to be conveyed to any place or to be kept in custody or detained in a place of safety or at any place to which he is taken under subsection (5) of section sixty-six of this Act shall, while being so conveyed, detained or kept, as the case may be, be deemed to be in legal custody.

(2) A constable or any other person required or authorised by or by virtue of this Act to take any person into custody, or to convey or detain any person shall, for the purposes of taking him into custody or conveying or detaining him, have all the powers, authorities, protection and privileges which a constable has within the area for which he acts as constable.

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

DEFINITIONS

As to "place of safety," *cf.* ss. 80 (1) and 135 (6);

As to retaking of patients escaping from custody, see next section;

As to application of this section to Scotland and Northern Ireland, see ss. 150 and 152.

GENERAL NOTE

This derives from the Mental Deficiency Act, 1913, s. 62, repealed by this Act (Sched. VIII, Pt. I).

Retaking of patients escaping from custody

140.-(1) If any person being in legal custody by virtue of section one hundred and thirty-nine of this Act escapes, he may, subject to the provisions of this section, be retaken -

(*a*) in any case by the person who had his custody immediately before the escape, or by any constable or mental welfare officer;

(*b*) if at the time of the escape he was liable to be detained in a hospital within the meaning of Part IV of this Act, or subject to guardianship under this Act, by any other person who could take him into custody under section forty of this Act if he had absented himself without leave.

(2) A person who escapes as aforesaid when liable to be detained or subject to guardianship as mentioned in paragraph (*b*) of the foregoing subsection (not being a person subject to an order under Part V of this Act restricting his discharge or an order or direction having the like effect as such an order) shall not be retaken under this section after the expiration of the period within which he could be retaken under section forty of this Act if he had absented himself without leave on the day of the escape; and subsection (3) of the said section forty

shall apply with the necessary modifications accordingly.

(3) A person who escapes while being taken to or detained in a place of safety under section one hundred and thirty-five or section one hundred and thirty-six of this Act shall not be retaken under this section after the expiration of the period of seventy-two hours beginning with the time when he escapes or the period during which he is liable to be so detained, whichever expires first.

(4) This section, so far as it relates to the escape of a person liable to be detained in a hospital within the meaning of Part IV of this Act, shall apply in relation to a person who escapes -

(a) while being taken to or from such a hospital in pursuance of regulations under section forty-one of this Act, or of any order, direction or authorisation under Parts V to VII of this Act; or

(b) while being taken to or detained in a place of safety in pursuance of an order under Part V of this Act pending his admission to such a hospital,

as if he were liable to be detained in that hospital and, if he had not previously been received therein, as if he had been so received.

(5) In computing for the purposes of sections sixty-three and sixty-four of this Act the period of twenty-eight days therein mentioned, no account shall, be taken of any time during which the patient is at large and liable to be retaken by virtue of this section.

(6) Section forty-five of this Act shall, with any necessary modifications, apply in relation to a patient who is at large and liable to be retaken virtue of this section as it applies in relation to a patient who is absent without leave within the meaning of section forty of this Act, and references therein to the said section forty shall be construed accordingly.

DEFINITIONS

"absent without leave" is defined in ss.40 (4) and 147 (1);

As to "hospital," see annotation to subs. (1);

"order restricting discharge" is defined in ss. 65 (2) and 147 (1);

"patient" and "mental welfare officer" are defined in s. 147 (1);

As to "place of safety," *cf.* ss. 80 (1) and 135 (6).

GENERAL NOTE

Subs. (1)

This section confers a general power to retake patients in legal custody under s. 139, i.e., those who escape while being conveyed from one place to another or while being detained in a place of safety, or place to which he is taken under s. 66 (5).

Generally as to return and readmission of patients absent without leave, see s. 14. As to retaking a patient escaping from England and Wales and his return from Scotland, Northern Ireland, the Channel Islands and the Isle of Man, see s. 93, and as to retaking in England and Wales of patients escaping from Scottish and Northern Irish institutions, see ss. 91 and 92.

As to (b) a "hospital" within the meaning of Part IV includes not only a hospital as defined by s. 147 (1) but a mental nursing home (s. 14 (2)) if registered in the separate part of the register under s. 15. See also ss. 59 (2), 80 (5) and 96 (1).

Subs. (2)

The periods for retaking under s. 40 are six months in the case of a psychopathic or subnormal patient over twenty-one years of age, and twenty-eight days in any other case. If the patient is subject to an order restricting discharge (see s. 64) or an order (see s. 67) or direction (see ss. 70 and 73) having the like effect he may be retaken at any time during the currency of the order or direction.

Subs. (4)

As to (b), see ss. 64 and 68.

Protection for acts done in pursuance of this Act

141.-(1) No person shall be liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings to which he would have been liable apart from this section in respect of any act purporting to be done in pursuance of this Act or any regulations or rules there under, or in, or in pursuance of anything done in, the discharge of functions conferred by any other enactment on the authority having jurisdiction under Part VIII of this Act, unless the act was done in bad faith or without reasonable care.

(2) No civil or criminal proceedings shall be brought against any person in any court in respect of any such act without the leave of the High Court, and the High Court shall not give leave under this section unless satisfied that there is substantial ground for the contention that the person to be proceeded against has acted in bad faith or without reasonable care.

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

(4) In this section, references to the High Court shall be construed, in relation to Northern Ireland, as references to a judge of the High Court of Northern Ireland.

GENERAL NOTE

Subs. (1)

This derives from the Lunacy Act, 1890, s. 330 (1) (as substituted by the Mental Treatment Act, 1930, s. 16) and the Mental Deficiency Act, 1913, s. 13. The onus of proof is still upon the plaintiff to prove bad faith or lack of reasonable care. As regards Court of Protection proceedings, no such general indemnity provision, as was conferred by the Lunacy Act, 1890, s. 333 and the Lunacy Act, 1922, s. 2 (7), is included, protection for all matters now resting on this one section.

As to the authority leaving jurisdiction under Part VIII of the Act, which relates in the main to Court of Protection matters, see s. 110 (2).

As to the application of this subsection to Scotland, see s. 150; and as to the application of the whole section to Northern Ireland, see s. 152.

Subs. (2)

This is substantially the same as the Lunacy Act, 1890, s. 330 (2), as substituted by the Mental Treatment Act, 1930, s. 16, repealed by this Act (Sched. VIII, Pt. I).

Subs. (3)

See ss. 126 (4) and 128 (4).

Default powers of Minister

142.-(1) Where the Minister is of opinion, on complaint or otherwise, that a local health authority have failed to carry out functions conferred or imposed on the authority by or under this Act or have in carrying out those functions failed to comply with any regulations relating thereto, he may after such inquiry as he thinks fit make an order declaring the authority to be in default.

(2) Subsections (8) to (5) of section fifty-seven of the National Health Service Act, 1946 (which relates to orders declaring, among others, a local authority to be in default under that Act) shall apply in relation to an order under this section as they apply in relation to an order under that section.

DEFINITIONS

"local health authority" is defined in s. 147 (1);

The "Minister" means the Minister of Health, see s. 147 (1).

GENERAL NOTE

Subs. (1)

This is to the same effect as the National Health Service Act, 1946, s. 57 (1).

Subs. (2)

The National Health Service Act, 1946, s. 57 (3), (4) and (5) provides as follows:

"57.- (3) If the body in default is a local health authority, the order shall direct them, for the purpose of remedying the default, to discharge such of their functions, in such manner and within such time or times, as may be specified in the order, and if the authority fail to comply with any direction given under this subsection, within the time limited for compliance therewith, the Minister, in lieu of enforcing the order by mandamus or otherwise, may make an order transferring to himself such of the functions of the authority as he thinks fit.

"(4) Any expenses certified by the Minister to have been incurred by him in discharging functions transferred to him under this section from a local health authority shall on demand be paid to him by that authority and shall be recoverable by him from them as a debt due to the Crown, and the authority or (in the case of a joint board) any constituent local authority thereof shall have the like power of raising the money required as they have of raising money for paying expenses incurred directly by them, and the payment of any such expenses incurred by the Minister as aforesaid shall, to such extent as may be sanctioned by the Minister, be a purpose for which the authority may borrow money in accordance with the statutory provisions relating to borrowing by that authority.

"(5) An order made under this section may contain such supplementary and incidental provisions as appear to the Minister to be necessary or expedient, including provision for the transfer to the Minister of property and liabilities of the body in default, and where any such order is varied or revoked by a subsequent order, the revoking order or a subsequent order may make provision for the transfer to the body in default of any property or liabilities acquired or incurred by the Minister in discharging any of the functions transferred to him."

Inquiries

143. The Minister may cause an inquiry to be held in any case where he thinks it advisable to do so in connection with any matter arising under this Act, and subsections (2) to (5) of section two hundred and ninety of the Local Government Act, 1933, shall apply to any inquiry held under this Act, except that no local authority shall be ordered to pay costs under

subsection (4) of that section in the case of any inquiry unless the authority is a party thereto.

DEFINITIONS

"local health authority" is defined in s. 147 (1);

The "Minister" means the Minister of Health, see s. 147 (1).

GENERAL NOTE

The Local Government Act, 1933, s. 290 (2), (3), (4) and (5) provides as follows:

"290.- (2) For the purpose of any such inquiry, the person appointed to hold the inquiry may by summons require any person to attend, at such time and place as is set forth in the summons, to give evidence or to produce any documents in his custody or under his control which relate to any matter in question at the inquiry and may take evidence on oath, and for that purpose administer oaths, or may, instead of administering an oath, require the person examined to make and subscribe a declaration of the truth of the matter respecting which he is examined:

"Provided that:

(a) no person shall be required, in obedience to such a summons, to go more than ten miles from his place of residence, unless the necessary expenses of his attendance are paid or tendered to him; and

(b) nothing in this section shall empower the person holding the inquiry to require the production of the title, or of any instrument relating to the title, of any land not being the property of a local authority.

"(3) Every person who refuses or wilfully neglects to attend in obedience to a summons issued under this section, or to give evidence, or who wilfully alters, suppresses, conceals, destroys, or refuses to produce any book or other document which he may be required to produce for the purposes of this section, shall be liable, on summary conviction, to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

"(4) Where a department cause any such inquiry to be held, the costs incurred by them in relation to that inquiry (including such reasonable sum not exceeding five guineas a day as they may determine for the services of any officer engaged in the inquiry) shall be paid by such local authority or party to the inquiry as the department may direct, and the department may certify the amount of the costs so incurred, and any amount so certified and directed by the department to be paid by any authority or person shall be recoverable from that authority or person either as a debt to the Crown or by the department summarily as a civil debt.

"(5) The department may make orders as to the costs of the parties at any such inquiry and as to the parties by whom such costs shall be paid, and every such order may be made a rule of the High Court on the application of any party named in the order."

Expenses

144.-(1) There shall be defrayed out of moneys provided by Parliament -

(a) any expenses incurred by the Minister or a Secretary of State under this Act;

(b) any sums required for the payment of fees and expenses to medical practitioners acting in relation to a member of the House of Commons under section one hundred and thirty-seven of this Act;

(c) any increase attributable to this Act in the sums payable out of moneys provided by Parliament under any other enactment.

(2) Any sums required for the payment of fees and expenses to medical practitioners acting in relation to a member of the House of Commons of Northern Ireland under section one hundred and thirty-seven of, this Act shall be defrayed in such manner as may be provided by the Parliament of Northern Ireland.

DEFINITIONS

The "Minister" means the Minister of Health, see s. 147 (1);

A "Secretary of State" has reference to the Home Secretary.

GENERAL NOTE

As to the application of subs. (2) to Northern Ireland, see s. 152.

General provisions as to regulations, orders and rules

145.-(1) Any power of the Minister or the Lord Chancellor to make regulations, orders or rules under this Act shall be exercisable by statutory instrument.

(2) Any Order in Council under this Act and any statutory instrument containing regulations or rules made under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

DEFINITION

The "Minister" means the Minister of Health, see s. 147 (1).

GENERAL NOTE

See ss. 7, 16, 17 (1), 21, 35, 41, 55, 56, 94, 112, 113 114 and 124 and Sched. VI, paras. 22 and 28.

See the Statutory Instruments Act, 1946.

As to the application of this section to Scotland and Northern Ireland, see ss. 150 and 152.

Warrants of Secretary of State

146. Any warrant of a Secretary of State under this Act shall be given under the hand of the Secretary of State or of an Under Secretary of State.

GENERAL NOTE

As to such warrants, see ss. 66 (2) and (3), 71 (1), 72 (1), 73 (1), 74 (1), 75 (1) (a), 76 (2) (a), 79 (1), 82 (1), 86 (1), 89 (1) and (3) and 90.

A "Secretary of State" has reference to the Home Secretary.

As to the application of this section to Scotland and Northern Ireland, see ss. 150 and 152.

Interpretation

147.-(1) In this Act, unless the context otherwise requires, the following expressions have meanings hereby respectively assigned to them, that is to say: -

"absent without leave" has the meaning assigned to it by section forty of this Act;

"direction restricting discharge" has the meaning assigned to it by section seventy-four of this Act;

"hospital" means -

(a) any hospital vested in the Minister under the National Health Service Act, 1946;

(b) any accommodation provided by a local authority and used for hospital and specialist services under Part II of that Act; and

(c) any special hospital;

and "hospital within the meaning of Part IV of this Act" has the meaning assigned to it by subsection (2) of section fifty-nine of this Act;

"hospital order" and "guardianship order" have the meanings respectively assigned to them by section sixty of this Act;

"local health authority" has the same meaning as in the National Health Service Act, 1946, and includes a joint board constituted under section nineteen of that Act;

"the managers" has the meaning assigned to it by Part IV of this Act;

"medical practitioner" means a registered medical practitioner within the meaning of the Medical Act, 1956;

"medical treatment" includes nursing, and also includes care and training under medical supervision;

"mental nursing home" has the meaning assigned to it in Part III of this Act;

"mental welfare officer" means an officer of a local health authority appointed to act as mental welfare officer for the purposes of this Act;

"Minister" means the Minister of Health;

"nearest relative", in relation to a patient, has the meaning assigned to it in Part IV of this Act;

"order restricting discharge" has the meaning assigned to it by section sixty-five of this Act;

"patient" (except in Part VIII of this Act) means a person suffering or appearing to be suffering from mental disorder;

"special hospital" has the meaning assigned to it in Part VII of this Act;

"transfer direction" has the meaning assigned to it by section seventy-two of this Act.

(2) Any reference in this Act to any other enactment is a reference thereto as amended, and includes a reference thereto as extended or applied, by or under any other enactment, including this Act.

(3) Without prejudice to the last foregoing subsection, any reference in this Act to an enactment of the Parliament of Northern Ireland, or to an enactment which that Parliament has power to amend, shall be construed, in relation to Northern Ireland, as a reference to that enactment as amended by any Act of that Parliament, whether passed before or after this Act.

(4) In relation to a person who is liable to be detained or subject to guardianship by virtue of an order or direction under Part V of this Act, any reference in this Act to any enactment contained in Part IV of this Act shall be construed as a reference to that enactment as it applies to that person by virtue of the said Part V.

(5) For the purposes of this Act a person shall be deemed not to have attained the age of sixteen, twenty-one or twenty-five years, as the case may be, until the commencement of the sixteenth, twenty-first or twenty-fifth anniversary of the date of his birth.

DEFINITIONS

"local health authority" is a county council or a county borough council; see National Health Service Act, 1946, s. 19 (1);

"managers" is defined in s. 59 (1);

"mental disorder" is defined in s. 4;

"mental nursing home" is defined in ss. 14 (2), 15, 59 (2), 80(5), 96 (1) and 147(1);

"nearest relative" is defined in ss. 49, 50-53 and 147 (1);

"special hospital" is defined in s. 97 (3);

As to "patient," *cf.* ss. 101 and 147 (1).

Transitional provisions

148.-(1) The transitional provisions set out in the Sixth Schedule to this Act shall have effect for the purposes of the transition to the provisions of this Act from the law in force before the commencement of this Act.

(2) For the purposes of Part III of the said Sixth Schedule, an order sending a person to an institution or placing a person under guardianship, made before the ninth day of March, nineteen hundred and fifty-six, on a petition presented under the Mental Deficiency Act, 1913, shall be deemed to be valid notwithstanding that that person may not have been found neglected within the meaning of section two of that Act when that order was made if -

(a) that order has been continued, at any time after that date, by order made by the

Board of Control under section eleven of that Act after consideration of the reports and certificate required by that section; or

(b) the period for which that order was in force on the said date has not expired before the commencement of this Act, but the Board, after considering a report by a medical practitioner qualified to make a special report under the said section eleven, have determined that the patient is not a proper person to be discharged.

GENERAL NOTE

Subs. (2)

This provision is included in view of the decision in *R. v. Board of Control and Others, ex p. Ratty* [1956] 2 Q.B. 109.

Up to the time of that decision a somewhat wide view was taken as to the expression "found neglected" in the Mental Deficiency Act, 1913, s. 2 (1) (b) (i); but see *Richardson v. London County Council* [1957] 2 All E.R. 330.

Minor and consequential amendments and repeals

149.-(1) The enactments described in the first column of the Seventh Schedule to this Act shall have effect subject to the amendments specified in the second column of that Schedule, being minor amendments and amendments consequential on the foregoing provisions of this Act.

(2) The enactments described in the Eighth Schedule to this Act (which include certain obsolete enactments relating to persons of unsound mind) are hereby repealed to the extent specified in the third column of that Schedule.

(3) Her Majesty may by Order in Council repeal or amend any local enactment so far as appears to Her Majesty to be necessary in consequence of any provision of this Act.

(4) The repeal by this Act of the Mental Treatment Act, 1930, shall not affect any amendment effected by section twenty of that Act in any enactment not repealed by this Act.

(5) The repeal by this Act of the provisions of the Lunacy Act, 1890, and of the Mental Deficiency Act, 1913, relating to the superannuation of officers or employees shall not affect any arrangements for the payment of allowances or other benefits made in accordance with those provisions and in force at the commencement of this Act.

GENERAL NOTE

Subs. (1) and (2)

Scheds. VII and VIII are each divided into two parts, Part I dealing with amendments and repeals extending to England and Wales only and Part II dealing with other amendments which include not only those which must, but those which may, have a Great Britain or United Kingdom application.

Ss. 150 and 152 provide that this section shall extend to Scotland and Northern Ireland respectively except so far as it relates to the amendments and repeals contained in Part I of Scheds. VII and VIII.

As regards the inclusion in Sched. VIII, Pt. II of ss. 86, 87, 88, 107 and 131 of the Lunacy Act, 1890, it should be noted that s. 2 of that Act provided that save as in that Act otherwise expressly provided, the Act should not extend to Scotland and Ireland (now Northern Ireland and the Republic of Ireland); where, however, the Act did

expressly so relate (and these sections did) it became part of the law of Scotland or Ireland as the case required. Parliament at Westminster no longer legislates for the Republic of Ireland and this Act does not extend to Scotland and Northern Ireland except so far as provided in ss. 150 and 152. Accordingly the general repeal of the Lunacy Act, 1890, in Sched. VIII, Pt. I, is not effective to repeal or partially repeal any provisions of the Act of 1890 which expressly related to Scotland and Ireland and for this reason these provisions are included in Sched. VIII, Pt. II.

The result is that ss. 87 and 88, relating to reciprocal recapture provisions upon escape as between Scotland and Northern Ireland, and s. 131 (2) and (3) (*ibid.*), relating to reciprocal jurisdiction in respect of personal property in Scotland and Northern Ireland remain part of the law of those countries.

Subs. (4)

The Mental Treatment Act, 1930, s. 20 was directed to the discontinuance of the terms "asylum," "pauper," "lunatic," etc., and in particular subss. (5) and (6) thereof provided as follows:

"(5) The word 'lunatic' (except in the following contexts, that is to say, in the phrase 'criminal lunatic,' and in relation to persons detained as lunatics outside England) shall cease to be used in relation to any person of or alleged to be of unsound mind and there shall be substituted for that word wherever it occurs (except in the above-mentioned contexts) in any enactment or in any order, regulation or other document issued under any enactment the expression 'person of unsound mind' 'person' 'patient' 'patient of unsound mind' or 'of unsound mind' or such other expression as the context may require.

"(6) The Minister of Health may by order modify the wording of any enactment so far as is necessary to bring it into conformity with the provisions of this section."

No order was ever evaded under subs. (6) modifying the wording of any enactment to make it conform to the provisions of the section. The basis of the present subs. (5), *supra*, is that the substitutions and amendments directed by s. 20 of the 1930 Act had taken place automatically.

As regards subs. (5) of s. 20 of the 1930 Act, a "criminal lunatic" became known as a "Broadmoor Patient" by virtue of the Criminal Justice Act, 1948, s. 62 (2). That enactment is now repealed by this Act (Sched. VIII), but no new term has been introduced.

Application to Scotland

150.-The following provisions of this Act shall extend to Scotland, that is to say -

subsection (5) of section three; section ten;

subsection (5) of section sixty-six; sections eighty-one to eighty-four; section ninety-one;

section ninety-three and, so far as applied by that section, sections forty, forty-six and one hundred and forty;

subsection (4) of section one hundred and ten;

section one hundred and seventeen and so much of Part VIII as is applied in relation to Scotland by that section;

section one hundred and twenty-nine except so far as it relates to patients subject to guardianship;

section one hundred and thirty-three;

sections one hundred and thirty-seven to one hundred and thirty-nine;

subsection (1) of section one hundred and forty-one;

section one hundred and forty-five so far as applicable to any Order in Council extending to Scotland;

section one hundred and forty-six;

section one hundred and forty-nine except so far as it relates to the amendments and repeals contained in Part I of the Seventh and Eighth Schedules;

Part II of the Seventh Schedule;

Part II of the Eighth Schedule;

but except as aforesaid, and except so far as it relates to the interpretation or commencement of the said provisions, this Act shall not extend to Scotland.

See annotation to s. 149.

Power of Parliament of Northern Ireland to make consequential amendments of this Act

151. Notwithstanding any limitation imposed on the powers of the Parliament of Northern Ireland by the Government of Ireland Act, 1920, that Parliament may by any Act re-enacting (with or without modifications) or amending the law in force in Northern Ireland with respect to persons suffering from mental disorder make such amendments of the provisions of this Act which extend to Northern Ireland (except section ninety and any provision of Part VIII) as may be necessary for the purpose of bringing the said provisions into conformity with the provisions of that Act.

GENERAL NOTE

As to the application of this section to Northern Ireland, see s. 152.

S. 147 (3) provides that any reference in the Act to an enactment of the Parliament of Northern Ireland, or to an enactment which that Parliament has power to amend, shall be construed, in relation to Northern Ireland, as a reference to that enactment as amended by any Act of that Parliament. This section goes further. It ensures that should the Northern Irish Statute Law on mental health be considerably altered, ss. 84 to 87, relating to the transfer of patients as between England and Northern Ireland can continue to operate without further English legislation.

Whilst mental health legislation is within the competence of the Parliament of Northern Ireland this section is required because under the Government of Ireland Act, 1920, s. 6, the Parliament of Northern Ireland is precluded from repealing or altering any provision of a United Kingdom Act passed since May 3, 1921, and extending to Northern Ireland, and further because ss. 84 to 87 have inter-relation between England and Northern Ireland. S. 90 relates to the removal of alien patients.

Application to Northern Ireland

152. The following provisions of this Act shall extend to Northern Ireland, that is to say -

subsection (5) of section three; sections eighty-five to eighty-eight; section ninety;

section ninety-two;

section ninety-three and, so far as applied by that section, sections forty, forty-six and one hundred and forty;

subsection (4) of section one hundred and ten;

section one hundred and seventeen and so much of Part VIII as is applied in relation to Northern Ireland by that section; section one hundred and twenty;

section one hundred and twenty-nine, except so far as it relates to patients subject to guardianship;

sections one hundred and thirty-seven to one hundred and thirty-nine;

section one hundred and forty-one;

subsection (2) of section one hundred and forty-four;

section one hundred and forty-five so far as applicable to any Order in Council extending to Northern Ireland;

section one hundred and forty-six;

section one hundred and forty-nine except so far as it relates to the amendments and repeals contained in Part I of the Seventh and Eighth Schedules;

section one hundred and fifty-one; the Fourth Schedule;

Part II of the Seventh Schedule;

Part II of the Eighth Schedule;

but except as aforesaid, and except so far as it relates to the interpretation or commencement of the said provisions, this Act shall not extend to Northern Ireland.

See annotation to s. 149.

Commencement

153.-(1) This Act (except this section) shall come into operation on such date as the Minister may by order appoint.

(2) Different dates may be appointed by order under this section for different purposes of this Act; and any reference in any provision of this Act to the commencement of this Act shall, unless otherwise provided by any such order, be construed as a reference to the date on which that provision comes into operation.

(3) Without prejudice to section thirty-seven of the Interpretation Act, 1889 (which authorises the exercise of statutory powers between the passing and the commencement of an Act conferring them), the following powers, that is to say -

(a) the power of the Minister to give directions under subsection (1) of section twenty-eight of the National Health Service Act, 1946, for defining the duties of local health authorities under that section as amended by this Act; and

(b) the powers of the Minister and of local health authorities with respect to the submission, approval or making of proposals under section twenty of that Act for modifying in the light of such directions the proposals in force at the passing of this Act for the carrying out of the duties of those authorities under the said section twenty-eight,

may be exercised at any time after the passing of this Act.

DEFINITIONS

"local health authorities" is defined in s. 147 (1);

The "Minister" means the Minister of Health, see s. 147 (1).

GENERAL NOTE

Subs. (3)

The object of this provision is to enable the Minister to convert into duties the functions of local health authorities under the enactments mentioned as soon as possible. See s. 6.

Short title and application to Scilly Isles

154.-(1) This Act may be cited as the Mental Health Act, 1959. (2) Subsection (3) of section eighty of the National Health Service Act, 1946 (which provides for the extension of that Act to the Isles of Scilly) shall have effect as if the references to that Act included references to this Act.

GENERAL NOTE

Subs. (2)

As to the application to the Isles of Scilly of the National Health Service Act, 1946, see the Isles of Scilly (National Health Service) Order, 1948 (S.I. 1948, No. 167).

SCHEDULES

Section 3

FIRST SCHEDULE

MENTAL HEALTH REVIEW TRIBUNALS

1. Each of the Mental Health Review Tribunals shall consist of -

(a) a number of persons (hereinafter referred to as "the legal members") appointed by the Lord Chancellor and having such legal experience as the Lord Chancellor considers suitable;

(b) a number of persons (hereinafter referred to as "the medical members") being medical practitioners appointed by the Lord Chancellor after consultation with the Minister; and

(c) a number of persons appointed by the Lord Chancellor after consultation with the Minister and having such experience in administration, such knowledge of social Services or such other qualifications or experience as the Lord Chancellor considers suitable.

2. The members of Mental Health Review Tribunals shall hold and vacate office under the terms of the instrument under which they are appointed, but may resign office by notice in writing to the Lord Chancellor; and any such member who ceases to hold office shall be eligible for re-appointment.

3. One of the legal members of each Mental Health Review Tribunal shall be appointed by the Lord Chancellor as chairman of the Tribunal.

4. Subject to rules made by the Lord Chancellor under paragraph (c) of sub-section (2) of section one hundred and twenty-four of this Act, the members who are to constitute a Mental Health Review Tribunal for the purposes of any proceedings or class or group of proceedings under this Act shall be appointed by the chairman of that Tribunal or, if for any reason he is unable to act, by another member of that Tribunal appointed for the purpose by the chairman; and of the members so appointed -

(a) one or more shall be appointed from the legal members;

(b) one or more shall be appointed from the medical members; and

(c) one or more shall be appointed from the members who are neither legal nor medical members.

5. A member of a Mental Health Review Tribunal for any area may be appointed under paragraph 4 of this Schedule as one of the persons to constitute a Mental Health Review Tribunal for any other area for the purposes of any proceedings or class or group of proceedings; and for the purposes of this Act, a person so appointed shall, in relation to the proceedings for which he was appointed, be deemed to be a member of that other Tribunal.

6. Where the chairman of the Tribunal is included among the persons appointed under paragraph 4 of this Schedule, he shall be president of the Tribunal; and in any other case the president of the Tribunal shall be such one of the members so appointed (being one of the legal members) as the chairman may nominate.

This Schedule lays down the constitution of Mental Health Review Tribunals. See also ss. 3, 122, 123 and 124; and annotations thereto.

SECOND SCHEDULE

Section 11

SECTIONS SUBSTITUTED FOR EDUCATION ACT, 1944, s. 57

Medical examination and classification of children unsuitable for education

57.-(1) It shall be the duty of every local education authority to ascertain what children in their area are suffering from a disability of mind of such a nature or to such an extent as to make them unsuitable for education at school; and for the purpose of fulfilling that duty any officer of a local education authority authorised in that behalf by the authority may by notice in writing served upon the parent of any child who has attained the age of two years require him to submit the child for examination by a medical officer of the authority.

(2) If a parent upon whom such a notice is served fails without reasonable excuse to comply with the requirements of the notice, he shall be liable on summary conviction to a fine not exceeding five pounds.

(3) Before any child is medically examined as aforesaid, the local education authority shall cause notice to be given to the parent of the time and place at which the examination will be held, and the parent shall be entitled to be present at the examination if he so desires.

(4) If, after considering the advice given with respect to any child by a medical officer in consequence of a medical examination under this section, and any reports or information which the local education authority are able to obtain from teachers or other persons with respect to the ability and aptitude of the child, the authority decide that the child is suffering from such a disability of mind as aforesaid, they shall (subject to subsection (5) of this section) cause the decision to be recorded and furnish to the local health authority a report of the decision, together with a copy of any written advice, report or information which was taken into account for the purposes of the decision.

(5) Before recording a decision under this section with respect to any child, the local education authority shall give to the parent of the child not less than twenty-one days' notice in writing of their intention to do so, and if within that period the parent refers to the Minister of Education the question whether such a decision should be recorded, the decision shall not be recorded except by direction of that Minister.

(6) Any notice under subsection (5) of this section shall contain a statement of the functions of the local health authority with respect to the making of arrangements for the treatment, care or training of the child in the event of the decision being recorded, and, if known to the local education authority, a statement of the arrangements proposed to be made by the local health authority in the discharge of those functions.

Review of classification

57A.-(1) Where a decision has been recorded under section fifty-seven of this Act in the case of a child -

(a) the parent of the child may, at any time (but not earlier than twelve months after the recording of the decision nor more often than once in any subsequent period of twelve months) by notice in writing request the local education authority to review the decision; and

(b) if at any time it appears to the local health authority, or to any authority or body responsible for the management of an institution in which the child is under care, that the decision ought to be reviewed, they shall give notice to that effect to the local education authority.

(2) Where any such notice is given to the local education authority, the local education authority shall cause to be served on the parent of the child the notice authorised by subsection (1) of section fifty-seven of this Act, and subsections (2) and (3) of that section shall apply accordingly; and if they decide, after considering the advice given by the medical officer and any reports or information available to them with respect to the child (including, in the case of a notice under paragraph (b) of sub-section (1) of this section, any reports or information from the authority or body by whom the notice is given) that the child is no longer unsuitable to receive education at school, they shall cancel the original decision.

(3) Where a decision recorded under section fifty-seven of this Act is reviewed under this section, the local education authority shall serve on the parent of the child a notice stating whether they have decided that the child is still unsuitable to receive education at school; and where the notice states that the authority have so decided -

(a) the parent may, before the expiration of the period of twenty-one days beginning with the day next following that on which the notice is served upon him, appeal to the Minister of Education against the decision of the authority; and

(b) if that Minister is of opinion that the authority ought to have decided that the child is no longer unsuitable to receive education at school, he may direct the authority to cancel the original decision recorded with respect to the child.

(4) Any notice under subsection (1) of this section shall be given to the local education authority who would be responsible for the education of the child if the decision were cancelled; and where a decision recorded in respect of a child by one local education authority is cancelled under this section by a different local education authority, the authority by whom the decision is cancelled shall give notice to that effect to the authority by whom the decision was recorded.

Supplementary provisions as to classification

57B.-(1) For the purposes of section fifty-seven of this Act a child for whom education is provided by one local education authority in the area of another local education authority shall be treated as if he were in the area of the first-mentioned authority; but any functions of the local education authority under that section may, in accordance with arrangements made between them, be performed on behalf of the first-mentioned authority by the other authority, and the reference in subsection (1) of that section to a medical or other officer of the authority shall be construed accordingly.

(2) If, after considering the advice given with respect to a child by a medical officer in

consequence of a medical examination carried out under section thirty-four of this Act, the local education authority decide, not that the child requires special educational treatment, but that he is suffering from such a disability as is referred to in subsection (1) of section fifty-seven of this Act, the provisions of the said section fifty-seven shall apply as if the examination had been carried out and the decision made under that section.

(3) If, after considering the advice given with respect to a child by a medical officer in consequence of a medical examination carried out under section fifty-seven of this Act, or under the said section fifty-seven as applied by section fifty-seven A of this Act, and any such reports or information as are referred to in subsection (4) of the said section fifty-seven or subsection (2) of the said section fifty-seven A, the local education authority decide that the child is not suffering from such a disability as aforesaid, but that he requires special educational treatment, subsections (4) to (6) of the said section thirty-four shall apply as if the examination had been carried out and the decision made under that section.

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This Schedule contains three new sections which, under s. 11, are inserted into the Education Act, 1944, as ss. 57, 57A and 57B. For annotation, see s. 11.

THIRD SCHEDULE

Sections 63, 65, 66, 68, 71, 72, 74, 78

APPLICATION OF PART IV TO PATIENTS ADMITTED TO HOSPITAL OR PLACED UNDER GUARDIANSHIP UNDER PART V

	Exceptions and Modifications	
	Section of Part IV and subject matter	Hospital order without restriction (s.63) Transfer direction without restrictions (ss. 72 & 73) Guardianship order or direction (ss.63 & 79)
S. 35 (Regulations as to guardianship).	None	Not applicable
S.36 (Correspondence of patients).	None	In subsection (2), at the end of paragraph (a), there shall be inserted the words "or the Secretary of State", and subsection (5) shall be omitted.

S.37 (Visiting and examination of patients).	In subsection (1), the words "or of advising as to the exercise by the nearest relative of any such patient of any power to order his discharge" and the words "or by the nearest relative of the patient, as the case may be" shall be omitted.	Subsection (1) shall not apply.
S. 38 (Visiting and examination of patients).	In subsection (1), for references to an application for admission or a guardianship application there shall be substituted references to the order or direction under Part V of this Act by virtue of which the patient is liable to be detained or subject to guardianship.	The section shall not apply.
S. 39 (Leave of absence from hospital).	None	In subsection (1), after the word "may" there shall be inserted the words "or the Secretary of State".
		In subsection (4), after the words "the responsible medical officer" and after the words "that officer" there shall in each case be inserted the words "or the Secretary of State". In subsection (5), after the word "recalled", where that word first occurs, there shall be inserted the words "by the responsible medical officer", and for the words from "he has ceased" to the end of the subsection there shall be substituted the words "the expiration of the period of six months beginning with the first day of his absence on leave".
S. 40 (Return and re-admission of patients absent without leave).	None	Subsections (2) and (3), and in subsection (1), the words "within the period allowed by this section", shall be omitted.

S.41 (Regulations as to transfer of patients).	In subsection (2), for the words from "as follows" to the end of the subsection there shall be substituted the words "as if the order or direction under Part V of this Act by virtue of which he was liable to be detained or subject to guardianship before being transferred, or placing him under the guardianship of the authority or person into whose guardianship he is transferred, as the case may be".	In subsection (1), after the word "may" in paragraph (a), there shall be inserted the words "with the consent of the Secretary of State", and the words form "or into" to the end of subsection shall be omitted.
S 42 (Transfer of guardianship in case of death, in capacity, etc. of guardian)	None	Not applicable
S.43 (Duration of Authority).	In subsection (1) for the words from "day on which he was" to "as the case may be" there shall be substituted the words "date of the relevant order or direction under Part V of this Act".	The section shall not apply
S.45 (Special provisions as to patients absent without leave).	In subsection (2), the words "or subsection (2) of section forty-four" shall be omitted	This section shall not apply.
S.46 (Special provisions as to patients sentenced to imprisonment, etc.).	For references to an application for admission or a guardianship application there shall be substituted references to the order or direction under Part V of this Act by virtue of which the patient is liable to be detained or subject to guardianship.	Subsection (1) and paragraph (a) of subsection (2) shall not apply.
S.47 (Discharge of patients).	In subsection (2), paragraph (a) and the words "or by the nearest relative of the patient", in both places where those words occur, shall be omitted.	In subsection (1), references to guardianship shall be omitted, and after the word "made" there shall be inserted the words "with the consent of the Secretary of State and".
S.49 (Definition of relative and nearest	None	In subsection (2) paragraph (a) and (c), and in paragraph

relative).		(b) the words "or by the nearest relative of the patient";, shall be omitted
S.50 (Children and young persons in care of local authority).		The sections shall not apply.
S.51 (Nearest relative of infant under guardianship etc.).		
S.55 (Procedure on applications to county court).	None	The section shall not apply.
S.56 (Regulations for purposes of Part IV).	None	None
S.57 (Power of Minister to refer to Tribunal).	None	This section shall not apply.
S.59 (Interpretation of Part IV).	None	In subsection (1) the definition of "the nominated medication attendant", and subsections (3) and (4), shall be omitted.

This Schedule applies certain of the sections of Part IV relating to patients who are liable to be detained in hospital or subject to guardianship as the result of the normal application procedure under that Part, to patients admitted to hospital or placed under guardianship under Part V, i.e., as a result of criminal proceedings, including persons transferred from penal institutions. See as. 63 (3), 65 (3) and (5), 66 (1), 68 (2), 71 (4), 72 (3), 74 (2) and 79 (3).

The manner in which the relevant provisions of Part IV are so applied is set out in ss. 63 (3) and 65 (3) and these sections indicate the major respects in which patients dealt with under Part V are to be treated differently from those dealt with under Part IV. The object of the Schedule is to set out the provisions of Part IV which are relevant and to indicate in detail the exceptions and modifications which must be taken into account.

The main point to bear in mind in applying this Schedule is that where an order or direction restricting discharge exists, the patient cannot be discharged without the consent of the Home Secretary; there are also other consequentials.

FOURTH SCHEDULE

Section 120

MODIFICATIONS OF PROVISIONS OF LUNACY REGULATION (IRELAND) ACT, 1871

1. In the definitions in section two of the Lunacy Regulation (Ireland) Act, 1871 (in this Schedule referred to as "the Act"), the expression "stock" shall be defined to include shares and also any fund, annuity or security transferable in the books kept by any body corporate or unincorporated company or society, or by an instrument of transfer, either alone or accompanied by other formalities, and the expression "dividend" shall be construed accordingly.

2. Section eighteen of the Act (which contains provisions requiring an inquiry under the Act to be before a jury where the alleged lunatic is not within the jurisdiction and provisions respecting notice to be given to such a lunatic) shall cease to have effect.

3. In section sixty-eight of the Act (which provides that where the property of a lunatic does not exceed two thousand pounds in value or the income thereof one hundred pounds per annum the application thereof for his benefit may be ordered without any inquiry under a commission of lunacy) for the words "two thousand pounds" there shall be substituted the words "ten thousand pounds" for the words "one hundred pounds" there shall be substituted the words "five hundred pounds" for the words "for the purpose of rendering the property of such person or the income thereof," there shall be substituted the words "for the purpose of protecting the property of such person or the income thereof or of rendering such property or income"; and after the words "trade or business" there shall be inserted the words "or for otherwise administering the affairs of such person."

4. For section ninety-one of the Act (which authorises the making of orders with respect to stock standing in Northern Ireland in the name of a lunatic residing outside Northern Ireland) there shall be substituted the following section:-

"91. Where the Lord Chief Justice of Northern Ireland is satisfied-

(a) that under the law prevailing in a place outside Northern Ireland a person has been appointed to exercise powers with respect to the property or affairs of any other person on the ground (however formulated) that that other person is incapable, by reason of a disorder or disability of mind, of managing and administering his property or affairs; and

(b) that having regard to the nature of the appointment and to the circumstances of the case it is expedient that he should exercise his powers under this section

he may direct any stock standing in the name of the said other person or the right to receive the dividends thereof to be transferred into the name of the person so appointed or otherwise dealt with as requested by that person, and may give such directions as the judge thinks fit for dealing with accrued dividends thereof."

5. In section ninety-six of the Act (which prescribes the extent of the powers and authorities given by the Act) for the words "(except England, Wales and Scotland)", there shall be substituted the following words:-

"but shall not be exercisable in relation to any person -

(a) in relation to whom powers have been exercised in England or Wales

under any enactment there in force with respect to the management of property or affairs of mentally disordered persons: or

(b) for whom a curator bonis, tutor, or judicial factor has been appointed in Scotland".

As to the application of this Schedule to Northern Ireland, see s. 152.

This Schedule, which contains minor amendments of Northern Irish law, is introduced by s. 120. The object is to simplify and improve the administration of patients' estates in Northern Ireland.

Paragraph 1 extends the definition of the expression "stock" in the same terms as those provided for England and Wales by s. 106 (2).

Paragraph 2 renders a jury no longer obligatory for an inquisition where the patient is not within the jurisdiction and otherwise avoids the expense and complexity of the previous procedure.

Paragraph 3 raises the limits for non-inquisition proceedings to £10,000 capital or £500 a year income, and has some regard to the changes in economic conditions and in the value of money since 1871. It also extends the purposes for which an order may be made under s. 68 of the 1871 Act and has the effect of conferring powers comparable to those exercisable in England and Wales under s. 102.

Paragraph 4: cf. s. 106.

Paragraph 5; see s. 117 (1).

Session and Chapter	Short Title	Enactments
13 Geo. 3 c.81. 17 Geo. 3. c.53.	The Inclosure Act, 1773. The Clergy Residences Repair Act, 1776.	Sections twenty-two and twenty-four Section fourteen.
42 Geo. 3. c.116.	The Land Tax Redemption Act, 1802.	Section fourteen.
55 Geo 3. c.128.	The Admiralty (Signal Stations) Act, 1815.	Section three.
55 Geo. 3. c.147.	The Glebe Exchange Act, 1815.	Sections Twelve, thirteen and seventeen.
57 Geo. 3. c. xxix.	The Metropolitan Paving Act, 1817.	Section eighty-one.
7 Geo. 4.c.16.	The Chelsea and Kilmainham Hospitals Act, 1826.	Sections forty-four to forty-eight.
7 Geo. 4.c.66.	The Clergy Residence Act, 1826.	Sections one and three.
10 Geo. 4. c.50.	The Crown Lands Act, 1829.	Sections forty and forty-one.
2 & 3 Will. 4. c.80.	The Ecclesiastical Corporations Act, 1832.	Section three.
1 & 2 Vict.c.23.	The Parsonages Act, 1833.	Section twelve.
1 & 2 Vict.c.106.	The Pluralities Act, 1838.	Section one hundred and twenty-seven.
2 & 3 Vict.c.49.	The Church Building Act,	Section twenty.

4 & 5 Vict.c.38.	1839. The School Sites Act, 1841.	Section five.
5 & 6 Vict.c.26.	The Ecclesiastical Houses of Residence Act, 1842.	Section twelve.
5 & 6 Vict.c.27.	The Ecclesiastical Leases Act, 1842.	Section seven.
5 & 6 Vict.c.94.	The Defence Act, 1842.	Sections ten and eighteen.
5 & 6 Vict.c.108.	The Ecclesiastical Leasing Act, 1842.	Section twenty-four.
8 & 9 Vict.c.16.	The Companies Clauses Consolidation Act, 1845.	Section seventy-nine.
8 & 9 Vict.c.18.	The Lands Clauses Consolidation Act, 1845.	Sections seven, eight, nine, and sixty-nine to seventy-two.
8 & 9 Vict.c.56.	The Land Drainage Act, 1845.	Section three.
8 & 9 Vict.c.118.	The Inclosure Act, 1845.	Sections twenty, one hundred and thirty-three, one hundred and thirty-four and one hundred and thirty-seven.
9 & 10 Vict.c.73.	The Tithe Act, 1846.	Sections five, nine and ten.
17 & 18 Vict.c.112.	The Literary and Scientific Institutions Act, 1854.	Section five.
23 & 24 Vict.c.112.	The Defence Act, 1860.	Section eleven.
25 & 26 Vict.c.53.	The Land Registry Act, 1862.	Section one hundred and sixteen.
27 & 28 Vict.c.114.	The Improvement of Land Act, 1864.	Section twenty-four.
29 & 30 Vict.c.122.	The Metropolitan Commons Acts, 1866.	Section twenty-eight.
31 & 32 Vict.c.109.	The Compulsory Church Rate Abolition Act, 1868.	Section seven.
36 & 37 Vict.c.50.	The Places of Worship Sites Act, 1873.	Sections one and three.
40 & 41 Vict.c.59.	The Colonial Stock Act, 1877.	Section six.
56 & 57 Vict.c.39.	The Industrial and Provident Societies Act, 1893.	Sections twenty-nine and thirty.
57 & 58 Vict.c.46.	The Copyholds Act, 1894.	Section forty-five.
57 & 58 Vict.c.60.	The Merchant Shipping Act, 1894.	In section fifty-five, subsection (1).
3 & 4 Geo. 5.c.32.	The Ancient Monuments Consolidation and Amendment Act, 1913.	In section five, subsection (2).
13 & 14 Geo.5.c.16.	The Salmon and Fresh Water Fisheries Act, 1923.	In section fifty, subsection (2).

See s.121 and annotation thereto.

Section 148

SIXTH SCHEDULE

TRANSITIONAL PROVISIONS

PART I PROVISIONS RELATING TO PART II

1. Without prejudice to the power of the Minister to give directions under sub-section (1) of section twenty-eight of the National Health Service Act, 1946, for defining the extent of the duties of local health authorities under that section, and subject to any directions which may be given by the Minister thereunder, it shall be the duty of every such authority to continue to provide under that section services corresponding (subject to any necessary modifications) with the services which, under any enactment repealed by this Act, were required to be provided by that authority for or for the benefit of persons of unsound mind or mental defectives; and any proposals in force immediately before the commencement of this Act under section twenty of the said Act of 1946, being proposals with respect to the provision of such services as aforesaid, shall continue in force accordingly until modified by further proposals under the said section twenty.

2. Anything done before the commencement of this Act under any enactment referred to in section eleven of this Act shall have effect as if done under the corresponding provision of the Education Act, 1944, as amended by that section; and without prejudice to the generality of the foregoing provision, any decision reported by a local education authority under section fifty-seven of the said Act of 1944, and not cancelled before the commencement of this Act, shall be treated as a decision recorded under section fifty-seven of that Act as so amended, and references in section twelve of this Act to a child who is the subject of a decision recorded under that section shall be construed accordingly.

PART II PROVISIONS RELATING TO PART III

3.-(1) Until the expiration of the period of six months beginning with the commencement of this Act or until registration is effected under sub-paragraph (2) of this paragraph, whichever first occurs -

(a) any person who, immediately before the date of the commencement of this Act, was the holder of a licence granted and in force under Part VIII of the Lunacy Act, 1890, in respect of a licensed house;

(b) the management committee of a hospital which, immediately before that date, was a registered hospital as defined by section seventeen of this Act; and

(c) any person who, immediately before that date, was carrying on a nursing home for the time being approved for the purposes of section one or section five of the Mental Treatment Act, 1930,

shall be treated for the purposes of the provisions of Part III of this Act relating to mental nursing homes as if he or they were registered in respect of the house, hospital or home as a mental nursing home and (except in the case of a nursing home approved for the purposes of section one but not section five of the Mental Treatment Act, 1930) as if the particulars of registration were entered in the separate part of the register referred to in subsection (1) of

section fifteen of this Act.

(2) Before the expiration of the said period of six months the registration authority for the purposes of the provisions of Part III of this Act relating to mental nursing homes shall, without an application being made in that behalf, -

(a) register any person or committee mentioned in the foregoing sub-paragraph in respect of the relevant house, hospital or home as a mental nursing home and (except as mentioned in that sub-paragraph) enter the particulars of registration in the said separate part of the register; and

(b) issue to him or them a certificate of registration specifying as the number of persons permitted to be kept at any one time in the home the number permitted to be kept there immediately before the commencement of this Act.

4. During the period of six months beginning with the commencement of this Act -

(a) the managers of any institution in respect of which a certificate under section thirty-six of the Mental Deficiency Act, 1913, was in force immediately before the date of the commencement of this Act;

(b) any person who, immediately before that date, had the custody at any place of a patient under section fifty-seven of the Lunacy Act, 1890; and

(c) any person who, immediately before that date, had the charge of a certified or temporary patient as a single patient under the Lunacy and Mental Treatment Acts, 1890 to 1930, in any place not being a licensed house or nursing home to which paragraph 3 of this Schedule applies,

shall be treated for the purposes of the provisions of Part II of this Act relating to mental nursing homes as if they or he were registered in respect of that institution or place as a mental nursing home and as if the particulars of registration were entered in the separate part of the register referred to in subsection (1) of section fifteen of this Act.

5. During the period of six months beginning with the commencement of this Act -

(a) the managers of any premises, or the person approved under the Mental Deficiency Act, 1913, in respect of any house which, immediately before the date of the commencement of this Act, were or was an approved home within the meaning of section fifty of that Act;

(b) any person who, immediately before that date, had the care and control in any place of any defectives with the consent of the Board of Control under subsection (1) of section fifty-one of that Act;

(c) any person who, immediately before that date, had the care and control in any place (not being a place to which paragraph 4 (c) of this Schedule applies) of any voluntary patient received as a single patient under section one of the Mental Treatment Act, 1930; and

(d) any person who, immediately before that date, was registered or exempted from registration under Part VI of the Public Health Act, 1936, or under Part XI of the Public Health (London) Act, 1936, in respect of a nursing home which, if this Act had been in force, would have been a mental nursing home within the meaning of Part III of this Act (not being a place to which paragraph 4 (c) of this Schedule applies),

shall be treated for the purposes of the provisions of the said Part III as if they or he were registered in respect of that home or place and, in the case of a home or place being a mental nursing home within the meaning of the said Part III, as if the particulars of registration were so entered otherwise than in the separate part of the register referred to in subsection (1) of section fifteen of this Act.

6. Where, by virtue of this Schedule any person is treated for the purposes of the provisions of Part III of this Act as if he were registered in respect of any premises, institution, home or place, the said Part III shall apply as if the number of patients specified in the certificate of registration in pursuance of subsection (2) of section fifteen or subsection (1) of section twenty of this Act were the number permitted to be kept there immediately before the commencement of this Act, including any single patients who were then kept in the premises, institution, home or place.

PART III PROVISIONS RELATING TO PARTS IV AND V

Patients other than transferred patients and short-period patients

7.-(1) This paragraph applies to patients who immediately before the commencement of this Act were patients of any of the following classes, that is to say -

(a) patients liable to be detained in a hospital or other place, or as single patients, in pursuance of a reception order under section six or section twelve of the Lunacy Act, 1890, or a summary reception order under section sixteen of that Act or an order having the like effect as a summary reception order (including patients who were treated by virtue of any enactment as liable to be so detained or in whose case a summary reception order (including patients who were treated by virtue of any enactment as liable to be so detained or in whose case a summary reception order was so treated as having been made);

(b) temporary patients liable to be so detained under section five of the Mental Treatment Act, 1930;

(c) patients liable to be so detained or subject to guardianship by virtue of section three, section six, subsection (1) of section eight, section sixteen or sub-section (3) of section sixty-seven of the Mental Deficiency Act, 1913, or, being patients whose sentence or other period of detention ordered by the court had expired before the commencement of this Act, by virtue of section nine of that Act.

(2) A patient to whom this paragraph applies shall, notwithstanding the repeal or exclusion by this Act of any enactment by virtue of which he was, or was treated as, liable to be so detained or subject to guardianship, continue to be liable to be detained in any hospital or other place in which he might have been detained immediately before the commencement of

this Act or, as the case may be, subject to guardianship until the expiration of the period of six months beginning with the commencement of this Act (in this Part of this Schedule referred to as the initial period).

(3) During the initial period the responsible medical officer shall record with respect to each such patient as aforesaid for whose treatment he is responsible his opinion whether the patient is suffering from mental illness, severe subnormality, psychopathic disorder or subnormality and whether his mental disorder is of a nature or degree which warrants the detention of the patient in a hospital for medical treatment, or his retention under guardianship.

8.-(1) In relation to any patient who by virtue of the last foregoing paragraph is liable to be detained in a hospital or subject to guardianship during the initial period, Part IV of this Act shall, subject to the exceptions and modifications specified in the following provisions of this paragraph, apply during that period as if he had been admitted to the hospital in pursuance of an application for admission for treatment under the said Part IV or had been received into guardianship in pursuance of a guardianship application thereunder, and the other provisions of this Act shall apply in relation to him accordingly.

(2) Section thirty-eight of this Act shall not apply in relation to the patient until the form or forms of mental disorder from which, in the opinion of the responsible medical officer, the patient is suffering have been recorded under the last foregoing paragraph and, on that being done, Part IV of this Act shall have effect as if the application had specified as the form or forms of mental disorder from which he is suffering the form or forms so recorded.

(3) If the patient is also a patient to whom paragraph 21 of this Schedule applies, sections thirty-nine and forty of this Act shall apply in relation to him subject to the modifications mentioned in that paragraph, and if he is not, but no form or forms of mental disorder have been recorded in his case under the last foregoing paragraph, the said section forty shall apply in relation to him as if for paragraphs (a) and (b) of subsection (3) of that section there were substituted the following sub-paragraphs:-

"(a) in the case of a patient mentioned in sub-paragraph (1) (c) of paragraph 7 of the Sixth Schedule to this Act, six months;

(b) in the case of any other patient to whom that paragraph applies, twenty-eight days."

(4) Sections forty-three to forty-five of this Act shall not apply in relation to the patient except in so far as provisions of the said section forty-three are applied by the following provisions of this Part of this Schedule.

(5) If the patient was immediately before the commencement of this Act liable to be detained by virtue of section six, subsection (1) of section eight or section nine of the Mental Deficiency Act, 1913, the power of discharging him under section forty-seven of this Act shall not be exercisable by the nearest relative.

(6) In its application to a patient who was immediately before the commencement of this Act in the custody of a relative or friend under section fifty-seven of the Lunacy Act, 1890, Part IV of this Act shall have effect as if -

(a) for references (except in section forty-seven of this Act) to the managers of the hospital in which the patient is detained there were substituted references to the person having the custody of the patient; and

(b) for references to those managers in the said section forty-seven there were substituted references to the managers of the hospital from which he was transferred to the custody of the relative or friend.

(7) In its application to any such patient who was immediately before the commencement of this Act liable to be detained as a single patient under the Lunacy and Mental Treatment Acts, 1890 to 1930, Part IV of this Act shall have effect as if-

(a) for references (except in section forty-seven of this Act) to the managers of the hospital in which the patient was detained there were substituted references to the person having charge of the patient; and

(b) the references in the said section forty-seven to those managers were omitted.

9.-(1) A patient to whom paragraph 7 of this Schedule applies shall unless previously discharged continue to be liable to be detained in a hospital or, as the case may be, subject to guardianship after the expiration of the initial period if -

(a) he satisfies the conditions specified in sub-paragraph (2) or sub-paragraph (3) of this paragraph; and

(b) the authority for his detention or guardianship is renewed under the following provisions of this Part of this Schedule before the expiration of the initial period or his current period of treatment would expire after the expiration of the initial period.

(2) Any such patient shall be so liable or subject if it is recorded under the said paragraph 7 that in the opinion of the responsible medical officer he is suffering from mental illness or severe subnormality and his mental disorder is of a nature or degree which warrants the detention of the patient in a hospital for medical treatment or, as the case may be, his retention under guardianship.

(3) Any such patient shall be so liable or subject if it is so recorded that in the opinion of the responsible medical officer he is suffering from subnormality or psychopathic disorder, but not from mental illness or severe subnormality, and his mental disorder is of such a nature or degree as aforesaid and either -

(a) he was immediately before the commencement of this Act liable to be detained or subject to guardianship in pursuance of an order under subsection (1) of section eight or section nine of the Mental Deficiency Act, 1913, or by virtue of an order made, or having effect as if made, under section thirty of the Magistrates' Courts Act, 1952; or

(b) he had not attained the age of twenty-one years when he was first detained or placed under guardianship and will not attain the age of twenty-five years before the expiration of the initial period; or

(c) in the case of any other patient liable to be detained in a hospital, the responsible

medical officer before the expiration of the initial period records his opinion under the following provisions of this Part of this Schedule that the patient is unfit for discharge.

10.-(1) The period for which a patient may by virtue of the last foregoing paragraph be detained or kept under guardianship after the expiration of the initial period, without renewal of the authority for his detention or guardianship, shall be the remainder of his current period of treatment.

(2) Where the current period of treatment of a patient who may be detained or kept as aforesaid would continue after the expiration of the period of two years beginning with the commencement of this Act, the patient may between the expiration of the said period of two years and the expiration of the current period of treatment apply to a Mental Health Review Tribunal.

11.-(1) Authority for the detention or guardianship of a patient to whom paragraph 7 of this Schedule applies may on the expiration of the relevant period, unless the patient has previously been discharged, be renewed for whichever of the follow periods is applicable, that is to say -

(a) where the period for which he has, at the expiration of the relevant period, already been detained or subject to guardianship on account of any description of mental disorder (whether before or after the appointed day) is not more than one year, a further period of one year;

(b) where the period for which he has already been so detained or subject is more than one year, a further period of two years.

(2) Subsections (3) to (6) of section forty-three of this Act shall apply in relation to the renewal of authority for the detention or guardianship of a patient under this paragraph as they apply in relation to the renewal of authority for the detention or guardianship of the patient under subsection (2) of that section.

(3) In this paragraph "the relevant period" means, in relation to a patient, the patient's current period of treatment or, if that period expires during the initial period, the initial period or any period subsequent to the said period for which authority for the detention or guardianship of the patient has previously been renewed under this paragraph.

12.-(1) In relation to any patient who by virtue of paragraph 9 of this Schedule is liable to be detained in a hospital or subject to guardianship after the expiration of the initial period, Part IV of this Act shall, subject to the exceptions and modifications specified in the following provisions of this paragraph, apply as if he had been admitted to the hospital in pursuance of an application for admission for treatment under the said Part IV or had been received into guardianship in pursuance of a guardianship application thereunder and had been so admitted or received as a patient suffering from the form or forms of mental disorder recorded under paragraph 7 of this Schedule or, if a different form or forms have been specified in a report under section thirty-eight of this Act as applied by that paragraph, the form or forms so specified, and the other provisions of this Act shall apply to him accordingly.

(2) Section forty-three of this Act shall not apply in relation to the patient, but the provisions

of paragraph 11 of this Schedule shall apply instead.

(3) Section forty-four of this Act shall not apply in relation to any such patient as is mentioned in sub-paragraph (3) of paragraph 9 of this Schedule, but any such patient as is mentioned in paragraph (b) of that sub-paragraph shall cease to be liable to be detained on attaining the age of twenty-five years unless, during the period of two months ending on the date when he attains that age, the responsible medical officer records his opinion under the following provisions of this Part of this Schedule that the patient is unfit for discharge.

(4) If the patient was immediately before the commencement of this Act liable to be detained by virtue of section six, subsection (1) of section eight or section nine of the Mental Deficiency Act, 1913, the power of discharging him under section forty-seven of this Act shall not be exercisable by his nearest relative, but his nearest relative may make an application in respect of him to a Mental Health Review Tribunal, during the period of twelve months beginning with the expiration of the initial period and in any subsequent period of twelve months.

13.-(1) The responsible medical officer may record for the purposes of paragraph (c) of sub-paragraph (3) of paragraph 9 of this Part of this Schedule or sub-paragraph (3) of paragraph 12 thereof his opinion that a patient detained in a hospital is unfit for discharge if it appears to the responsible medical officer, -

(a) that if that patient were released from the hospital he would be likely to act in a manner dangerous to other persons or to himself, or would be likely to resort to criminal activities; or

(b) that that patient is incapable of caring for himself and that there is no suitable hospital or other establishment into which he can be admitted and where he would be likely to remain voluntarily;

and where the responsible medical officer records his opinion as aforesaid he shall also record the grounds for his opinion.

(2) Where the responsible medical officer records his opinion under this paragraph in respect of a patient, the managers of the hospital or other persons in charge of the establishment where he is for the time being detained or liable to be detained shall cause the patient to be informed, and the patient may, at any time before the expiration of the period of twenty-eight days beginning with the date on which he is so informed, apply to a Mental Health Review Tribunal.

(3) On any application under the last foregoing sub-paragraph the Tribunal shall, if satisfied that none of the conditions set out in paragraphs (a) and (b) of sub-paragraph (1) of this paragraph are fulfilled, direct that the patient be discharged, and subsection (1) of section one hundred and twenty-three of this Act shall have effect in relation to the application as if paragraph (b) of that subsection were omitted.

14. Any person who immediately before the commencement of this Act was the guardian of any such patient as is mentioned in sub-paragraph (1) (c) of paragraph 7 of this Schedule shall be deemed for the purposes of this Act to have been named as the guardian of the patient in an application for his reception into guardianship under Part IV of this Act accepted

on that person's behalf by the relevant local authority.

Transferred patients

15.-(1) This paragraph applies to patients who immediately before the commencement of this Act were liable to be detained in a hospital or other place as Broadmoor patients or, not being Broadmoor patients, as patients of any of the following classes, that is to say -

(a) patients liable to be detained by virtue of section nine of the Mental Deficiency Act, 1913, not being patients whose sentence or other period of detention ordered by the court had expired before the commencement of this Act;

(b) patients liable to be detained by virtue of subsection (4) of section eight of, the said Act of 1913;

(c) patients liable to be detained by virtue of subsection (3) of section sixty-three or subsection (8) of section sixty-four of the Criminal Justice Act, 1948, or subsection (2) of section sixty-four of the Criminal Justice (Scotland) Act, 1949; or

(d) patients liable to be detained by virtue of section ten of the Colonial Prisoners Removal Act, 1884;

and any patient to whom this paragraph applies is in this Part of this Schedule referred to as a transferred patient.

(2) A transferred patient who immediately before the commencement of this Act was liable to be detained in a hospital as being or having been required to be kept in custody during Her Majesty's pleasure or until the directions of Her Majesty are known (including a patient of that or a similar description liable to be detained by virtue of section ten of the Colonial Prisoners Removal Act, 1884, but not including a patient transferred to England and Wales from Scotland, the Channel Islands or the Isle of Man) shall be treated for the purposes of this Act as if he were liable to be detained in a hospital in pursuance of a direction under section seventy-one of this Act.

(3) A transferred patient who immediately before the commencement of this Act was subject to a sentence of imprisonment within the meaning of section seventy-two of this Act (including a patient liable to be detained by virtue of section ten of the Colonial Prisoners Removal Act, 1884, who does not fall within the last foregoing sub-paragraph) shall be treated for the purposes of this Act as if he were liable to be detained in a hospital by virtue of a transfer direction under the said section seventy-two and as if a direction restricting his discharge had been given under section seventy-four of this Act.

(4) Section eighty-four of this Act shall apply to a transferred patient who having been a state mental patient in Scotland was immediately before the commencement of this Act liable to be detained in a hospital in England and Wales by virtue of subsection (3) of section sixty-three of the Criminal Justice Act, 1948, or subsection (2) of section sixty-four of the Criminal Justice (Scotland) Act, 1949, as if he had been removed to such a hospital from Scotland in pursuance of an order under the said subsection (2); and where he is treated by virtue of the said section eighty-four as if he had been removed to a hospital in pursuance of a transfer direction, he shall also be treated as if a direction restricting his discharge had been given as

aforesaid.

(5) Section eighty-nine of this Act shall apply to a transferred patient who having been ordered by a court in any of the Channel Islands or in the Isle of Man to be detained during Her Majesty's pleasure was removed to, and was immediately before the commencement of this Act liable to be detained in, a hospital in England and Wales as if he had been removed to such a hospital under that section.

(6) Any person to whom this paragraph applies and who does not fall within any of the four last foregoing sub-paragraphs shall be treated for the purposes of this Act as if he were liable to be detained in a hospital in pursuance of a transfer direction given under section seventy-three of this Act and as if a direction restricting his discharge had been given under section seventy-four of this Act, and he shall be so treated notwithstanding that he is not suffering from a form of mental disorder mentioned in the said section seventy-three.

16.-(1) References in the last foregoing paragraph to a patient who immediately before the appointed day was liable to be detained as a Broadmoor patient include references to a Broadmoor patient conditionally discharged by the Secretary of State before the commencement of this Act under section five of the Criminal Lunatics Act, 1884, and -

(a) any such patient shall be treated as if he had been conditionally discharged by the Secretary of State under section sixty-six of this Act; and

(b) any direction given before the commencement of this Act under the said section five to take any such patient into custody and convey him to a hospital shall be deemed to have been given under the said section sixty-six.

(2) Sections thirty-nine and forty of this Act, in their application to a transferred patient, who is also a patient to whom paragraph 21 of this Schedule applies shall have effect subject to the modifications mentioned in that paragraph.

17. Upon a direction restricting the discharge of a transferred patient ceasing to have effect, the responsible medical officer shall record his opinion whether the patient is suffering from mental illness, severe subnormality, psychopathic disorder or subnormality, and references in this Act to the form or forms of mental disorder specified in the relevant application, order or direction shall be construed as including references to the form or forms of mental disorder so recorded.

Short-period patients

18. A person who immediately before the commencement of this Act was detained under section eleven of the Lunacy Act, 1890, may continue to be detained until the expiration of the period of seven days mentioned in that section or, if at the commencement of this Act that period had expired and a petition for a reception order was pending, until the expiration of the period of twenty-eight days beginning with the commencement of this Act or until he becomes liable to be detained or subject to guardianship under this Act, whichever occurs first, and may be so detained in any place in which he might have been detained but for the repeal of that section.

19. A person who immediately before the commencement of this Act was detained by virtue

of section twenty, section twenty-one or section twenty-one A of the Lunacy Act, 1890, may continue to be detained until the expiration of his current period of treatment or until he becomes liable to be detained or subject to guardianship under this Act, whichever occurs first, and may be so detained in any place in which he might have been detained but for the repeal of that section.

20. A person who immediately before the commencement of this Act -

(a) was detained by virtue of subsection (3) of section eight of the Mental Deficiency Act, 1913, in an institution or place of safety within the meaning of that Act; or

(b) was detained under section fifteen of that Act in such a place of safety; may continue to be detained as aforesaid until the expiration of the period of twenty-eight days beginning with the commencement of this Act or until he becomes liable to be detained or subject to guardianship under this Act, whichever occurs first.

Patients on leave or absent without leave

21.-(1) Sections thirty-nine and forty of this Act shall apply to a patient to whom paragraph 7 of this Schedule applies or a transferred patient who immediately before the commencement of this Act was absent on trial or leave or in pursuance of a licence under any enactment repealed by this Act or any rules or regulations thereunder, as if he had been granted leave of absence under the said section thirty-nine at the commencement of this Act for an indefinite period, and accordingly a patient to whom paragraph 7 of this Schedule applies may be recalled under the said section thirty-nine at any time within the initial period and a transferred patient may be so recalled at any time within or after the initial period.

(2) Section forty of this Act shall, subject to the next following sub-paragraph, apply to a patient to whom paragraph 7 of this Schedule applies, a transferred patient or a short-period patient who immediately before the commencement of this Act was absent otherwise than as mentioned in the foregoing sub-paragraph from the hospital or other place where he was required to be by virtue of any such enactment, rules or regulations as if he had absented himself without leave or without permission from the hospital or other place as mentioned in subsection (1) of that section or, as the case may be, he were absent without his guardian's permission as mentioned in subsection (2) of that section.

(3) The period within which any patient to whom paragraph 7 of this Schedule applies or a short-period patient may be retaken and returned under the said section forty shall be whichever of the following periods is applicable instead of that specified in subsection (3) of that section, that is to say -

(a) in the case of a patient liable to be detained by virtue of any of the provisions of the Mental Deficiency Act, 1913 (not being a transferred patient), the initial period;

(b) in the case of any other patient to whom paragraph 7 of this Schedule applies or any other short-period patient, the period of twenty-eight days beginning with the commencement of this Act;

and a transferred patient may be retaken and returned under the said section forty at any time.

Supplemental

22. Any opinion recorded by the responsible medical officer under this Part of this Schedule shall be recorded in such form as may be prescribed by regulations made by the Minister.

23.-(1) In this Part of this Schedule the following expressions have the meanings hereby respectively assigned to them, that is to say -

"current period of treatment" mean, in relation to any patient, the period for which he would have been liable to be detained or subject to guardianship by virtue of any enactment repealed or excluded by this Act, or any enactment repealed or replaced by any such enactment as aforesaid, being a period which began but has not expired before the commencement of this Act;

"initial period" has the meaning assigned to it by paragraph 7 of this Schedule; "the responsible medical officer" means -

(a) in relation to a patient subject to guardianship, the medical officer of health of the responsible local health authority or any other medical officer authorised by that authority to act (either generally or in any particular case or for any particular purpose) as the responsible medical officer;

(b) in relation to any other class of patient, the medical practitioner in charge of the treatment of the patient;

"transferred patient" has the meaning assigned to it by paragraph 15 of this Schedule;

"short-period patient" means a patient to whom paragraph 18, 19, or 20 of this Schedule applies.

(2) Subsection (2) of section fifty-nine of this Act shall apply for the purposes of this Part of this Schedule as it applies for the purposes of Part IV of this Act.

(3) The sentence or other period of detention of a person who was liable to be detained or subject to guardianship immediately before the commencement of this Act by virtue of an order under section nine of the Mental Deficiency Act, 1913, shall be treated for the purposes of this Part of this Schedule as expiring at the end of the period for which that person would have been liable to be detained in a prison or other institution if the order had not been made.

**PART IV
PROVISIONS RELATING TO PART VIII**

24.-(1) The persons who immediately before the commencement of this Act were respectively Master in Lunacy and Assistant Master in Lunacy shall by virtue of this subparagraph continue in office as Master and Deputy Master of the Court of Protection; and it shall not be necessary for the Master to take the oaths required by subsection (1) of section one hundred and fifteen of this Act.

(2) Notwithstanding anything in subsection (2) of section one hundred and fifteen of this Act, a person who, immediately before the commencement of this Act, was authorised by an order

under section eight of the Administration of Justice (Miscellaneous Provisions) Act, 1933, to exercise the jurisdiction of the Master in Lunacy shall be qualified for appointment as Deputy Master of the Court of Protection if he is at the time of the appointment an officer nominated under subsection (3) of section one hundred of this Act.

(3) The persons who immediately before the commencement of this Act were clerks and other officers of the Master in Lunacy shall by virtue of this sub-paragraph continue in office as officers of the Court of Protection.

25. Any order or appointment made, direction or authority given, or thing done, which -

(a) had effect immediately before the commencement of this Act with respect to the property or affairs of a person falling within subsection (1) of section one hundred and sixteen of the Lunacy Act, 1890, or section sixty-four of the Mental Deficiency Act, 1913; and

(b) was such as could have been made, given or done under any provision of Part VIII of this Act if that provision had been in force at the material time, shall continue to have effect as if made, given or done under that provision; and where at the commencement of this Act any person's estate was subject to the jurisdiction of the Master in Lunacy under Part IV of the Lunacy Act, 1890, Part VIII of this Act shall apply in that person's case as if immediately after the commencement of this Act it had been determined that he was then a patient within the meaning of the said Part VIII.

26. A person who, immediately before the commencement of this Act, was the committee of the estate of a person of unsound mind so found by inquisition shall thereafter be deemed to be a receiver for that person appointed under section one hundred and five of this Act with such functions in relation to that person's property and affairs as were exercisable by him in relation thereto as committee of the estate, and references in any document to such a committee shall be construed accordingly.

27. Subsection (1) of section one hundred and seven of this Act shall apply in relation to any disposal of property (within the meaning of that subsection) of a person living at the commencement of this Act, being a disposal effected under the Lunacy Act, 1890, as it applies in relation to the disposal of the property of a person effected under Part VIII of this Act.

28. Rules under Part VIII of this Act may contain transitional provisions with respect to proceedings pending at the commencement of this Act and, notwithstanding anything in section one hundred and one of this Act, such rules may provide for treating as sufficient for conferring jurisdiction under the said Part VIII any evidence given in such proceedings, or in proceedings brought within one month after the commencement of this Act, being evidence which would have been sufficient to confer jurisdiction under Part IV of the Lunacy Act, 1890.

Part I, para. 1; s. 51 of the National Health Service Act, 1946, requires local health authorities to include in their proposals submitted to the Minister under s. 20 of that Act their plans for carrying out the duties imposed upon them by the Lunacy and Mental Treatment Acts, 1890 to 1930, and the Mental Deficiency Acts, 1913 to 1938.

S. 51 of the Act of 1946, and those Acts are repealed (Eighth Schedule).

Local authorities' powers under s. 28 of the 1946 Act, as clarified by s. 6 of this Act, will include power to provide services corresponding to those which it was their duty to provide under the Lunacy and Mental Treatment Acts and the Mental Deficiency Acts.

In general, the powers conferred by s. 28 of the 1946 Act are permissive, and the section imposes no duty unless the Minister so directs. But this Part of the Schedule imposes on local health authorities a duty to continue to provide services corresponding to the services which it was their duty to provide under the repealed Acts. Those duties will include (1) a duty to appoint mental welfare officers to exercise the functions of such officers in connection with the admission of patients to hospital or guardianship under Part IV and, (2) the ascertainment and supervision (including training) of persons in the community who would have been "subject to be dealt with" as mental defectives under s. 2 of the Mental Deficiency Act, 1913. See also s. 153(3).

Paragraph 2 contains transitional provisions in respect of anything done before the commencement of the Act under the Education Acts, having regard to the provisions of s. 11 of the Act and the Second Schedule.

Part II of the Schedule provides for the, application of Part III, which relates to registration, conduct and inspection of mental nursing homes and residential homes for mentally disordered persons, to premises and persons who, at the time the Act comes into force, are authorised to receive and care for persons of unsound mind or mental defectives under the present Lunacy and Mental Treatment Acts and the Mental Deficiency Acts.

Under paragraph 3(1) (a), (b) and (c) and (2) the present licensed houses, registered hospitals and approved nursing homes (with one exception), all of which fall within the definition of mental nursing home in s. 14, are to be treated as registered, and within six months in fact registered without an application being made, in a separate part of the register mentioned in s. 15(1). This will allow them to continue to receive detained patients under Parts IV, V and VI of the Act.

The one exception is for nursing homes which are, at present, approved for the reception of voluntary patients only. They are to be treated as registered mental nursing homes, but not as registered in the separate part of the register under s. 15(1). They will thus not be permitted to receive detained patients, unless they apply and are accepted for registration under s. 15(1).

Paragraph 4 provides that the persons specified in (a), (b) and (c) thereof, all of which are at present allowed to receive patients subject to detention, shall for a transitional period of six months be treated as registered in respect of a mental nursing home and as so registered in the separate part of the register referred to in s. 15(1). This will enable them to continue to detain existing patients for such transitional period. Before the end of that period it will be necessary for them to determine, in consultation with the responsible local authority, how they are to be registered or whether registration is not required under Part III of the Act.

Paragraph 5 provides that the persons mentioned in (a) to (d) thereof, none of which is at present authorised to receive patients subject to detention, shall for the transitional period of six months be treated as registered in respect of a mental nursing home, but not as registered in the separate part of the register under s. 15(1) so as to enable them to receive patients liable to be detained. Sub-paragraph (d) includes places already registered or exempted from registration as nursing homes under the Public Health Acts because at present there is no prohibition against such places receiving mentally disordered patients if they are not of unsound mind, but any such home providing nursing or other medical treatment for one or more mentally disordered patients will in the future be liable to registration as a mental nursing home under s. 15 by virtue of s. 14.

Part III contains transitional provisions relating to the continued detention or guardianship of patients who, when Parts IV and V of the Act come into operation, were already subject to detention or guardianship under Acts repealed by this Act. The main object is to determine

(a) which of those patients should continue to be liable to be detained or subject to guardianship;

(b) the extent to which the provisions of Parts IV and V of the Act should be applied to them, in particular:

(i) which of them should be treated as though subject to a restriction on discharge under Part

V of the Act and for how long;

(ii) the persons who should be authorised to discharge such patients;

(iii) for how long after the coming into operation of the Act the authority for detention should remain in force and the arrangements for the renewal of such an authority when otherwise due to expire, particularly the period between renewals;

(iv) various other modifications of Parts IV and V of the Act to those patients.

Paragraphs 7-14 relate to the general body of persons detained or subject to guardianship under the Lunacy and Mental Treatment Acts and the Mental Deficiency Acts other than transferred patients (see paras. 15-17) and short-period patients (paras. 18-20). There is a transitional period of six months during which the detention or guardianship may be continued, during which steps are to be taken to decide what is to happen to the patient in the future.

Paragraphs 15-17 relate to transferred patients, *i.e.*, Broadmoor patients and certain other persons liable to be detained as a result of criminal proceedings. Paragraphs 18-20 relate to short-period patients including, *inter alia*, those detained under an urgency order under the Lunacy Act, 1890, s. 11.

Paragraph 21 relates to patients on leave or absent without leave.

Paragraphs 22-23 contain supplemental provisions including definitions for the purposes of this Part of this Schedule.

Part IV contains transitional provisions relating to the judicial authorities and other officers of the Court of Protection, and the continuance of jurisdiction and as to pending proceedings.

Sections 149, 150, 152

SEVENTH SCHEDULE

MINOR AND CONSEQUENTIAL AMENDMENTS

PART I

AMENDMENTS EXTENDING TO ENGLAND AND WALES ONLY

Enactment

The Fines and Recoveries Act, 1833, 3 & 4 Will.4.c.74.

Amendment

In section thirty-three, for the words from "lunatic "where it first occurs to "unsound mind as aforesaid" there shall be substituted the words "incapable, by reason of mental disorder within the meaning of the Mental Health Act, 1959, of managing and administering his property and affairs, the judge having jurisdiction under Part VIII of that Act shall be the protector of the settlement in his stead so long as he is incapable as aforesaid".

In sections forty-eight and forty-nine, for the references to the Lord High Chancellor, Lord Keeper or Lords Commissioners for the custody of the Great Seal or other the person or persons intrusted as mentioned in those sections there shall be substituted references to the judge having jurisdiction under Part VIII of this Act.

In section ninety-one, for the words from "being a lunatic" to "inquisition or not" there shall be substituted the words "suffering from mental disorder" and for the reference to the Lord High Chancellor, Lord Keeper or Lords Commissioners for the custody of the Great Seal or other the person or persons intrusted as mentioned in that section there shall be substituted a reference to the judge having jurisdiction under Part VIII of this Act.

The Court of Chancery of Lancaster Act, 1850, 13 & 14 Vict.c.43.

In section nine, for the words from "person" to "inquisition" there shall be substituted the words "person suffering from mental disorder within the meaning of the Mental Health Act, 1959".

In section ten, for the words "lunatic, or person of unsound mind" there shall be substituted the words "or person suffering from mental disorder within the meaning of the Mental Health Act, 1959", and for the words from "committee" to "mind" there shall be substituted the words "receiver or guardian ad litem of a person suffering from mental disorder as aforesaid, and of the guardian ad litem of any infant,".

The Improvement of Land Act, 1864, 27 & 28 Vict.c.114.

In section sixty-eight, for the words "committee, or trustee" there shall be substituted the words "or receiver" and for the words "lunatic, idiot" there shall be substituted the words "or patient within the meaning of Part VIII of the Mental Health Act, 1959".

The Habitual Drunkards Act, 1879, 42 & 43 Vict.c.19.

In section three, in the definition of "habitual drunkard", for the words "amenable to any jurisdiction in lunacy" there shall be substituted the words "a mentally disordered person within the meaning of the Mental Health Act, 1959". In section seven, for the words from "who is licensed" to the end of the section there shall be substituted the words "in respect of premises which are a mental nursing home within the meaning of the Mental Health Act, 1959".

The Colonial Prisoners Removal Act, 1884, 47 & 48 Vict.c.31.

In section ten, after subsection (2), there shall be added the following subsection -

"(3) Without prejudice to the foregoing provisions of this section, where a criminal lunatic is removed to England and Wales, then -

(a) except where he is a criminal lunatic by virtue of having been convicted of an offence and afterwards certified or otherwise lawfully proved to be insane, the Secretary of State may give the like direction in respect of him under section seventy-one of the Mental Health Act, 1959, as

may be given in the case of a person to whom that section applies;

(b) in the said excepted case, the Secretary of State may give the like direction in respect of him under section seventy-two of that Act (with or without a direction under section seventy-four thereof) as may be given in the case of a person serving a sentence of imprisonment with respect to whom the Secretary of State is satisfied as mentioned in subsection (1) of that section."

The Forgery Act, 1913, 3 & 4 Geo. 5. c. 27.

In section three, in paragraph (d) of subsection (3), for the words "any master or registrar in lunacy" there shall be substituted the words "the authority having jurisdiction under Part VIII of the Mental Health Act, 1959".

In section five, in paragraph (b) of subsection (3), for the words "the office of any master or registrar in lunacy" there shall be substituted the words "the Court of Protection".

The Settled Land Act, 1925, 15 & 16 Geo. 5. c. 18.

In section sixty-eight, in subsection (3), for the words "a lunatic, or a defective" there shall be substituted the words "suffering from mental disorder".

The Trustee Act, 1925, 15 & 16 Geo.5.c.19.

In section thirty-six, the following subsection shall be substituted for subsection (9) -

"(9) Where a trustee is incapable, by reason of mental disorder within the meaning of the Mental Health Act, 1959, of exercising his functions as trustee and is also entitled in possession to some beneficial interest in the trust property, no appointment of a new trustee in his place shall be made by virtue of paragraph (b) of subsection (1) of this section unless leave to make the appointment has been given by the authority having jurisdiction under Part VIII of the Mental Health Act, 1959."

In section forty-one, in subsection (1), for the words "a lunatic or a defective" there shall be substituted the words "incapable, by reason of mental disorder within the meaning of the Mental Health Act, 1959, of exercising his functions as trustee".

"Jurisdiction in regard to mental patients.

The following section shall be substituted for section fifty-four -

54.-(1) Subject to the provisions of this section, the authority having jurisdiction under Part VIII of the Mental Health Act, 1959, shall not have power to make any order, or give any direction or authority, in relation to a patient who is a trustee if the High Court has power

under this Act to make an order to the like effect.

(2) Where a patient is a trustee and a receiver appointed by the said authority is acting for him or an application for the appointment of a receiver has been made but not determined, then, except as respects a trust which is subject to an order for administration made by the High Court, the said authority shall have concurrent jurisdiction with the High Court in relation to -

(a) mortgaged property of which the patient has become a trustee merely by reason of the mortgage having been paid off;

(b) matters consequent on the making of provision by the said authority for the exercise of a power of appointing trustees or retiring from a trust;

(c) matters consequent on the making of provision by the said authority for the carrying out of any contract entered into by the patient;

(d) property to some interest in which the patient is beneficially entitled but which, or some interest in which, is held by the patient under an express, implied or constructive trust.

The Lord Chancellor may make rules with respect to the exercise of the jurisdiction referred to in this subsection.

(3) In this section "patient" means a patient as defined by section one hundred and one of the Mental Health Act, 1959, or a person as to whom powers are exercisable and have been exercised under section one hundred and four of that Act."

In section fifty-five (except so far as it applies to vesting orders made before the commencement of this Act), for the words "the Lunacy Act, 1890" there shall be substituted the words "Part VIII of the Mental Health Act, 1959".

The Law of Property Act,
1925, 15 & 16
Geo.5.c.20.

The following section shall be substituted for section twenty-two-

"Conveyances on behalf of persons suffering from mental disorder and as to land held

22.-(1) Where a legal estate in land (whether settled or not) is vested in a person suffering from mental disorder, either solely or jointly with any other person or persons his receiver or (if no receiver is acting for him) any person authorised in that behalf shall, under an order of the authority having jurisdiction under Part VIII of the

by them on trust for sale.

Mental Health Act, 1959, or of the court, or under any statutory power, make or concur in making all requisite dispositions for conveying or creating a legal estate in his name and on his behalf.

(2) If land held on trust for sale is vested, either solely or jointly with any other person or persons, in a person who is incapable, by reason of mental disorder, of exercising his functions as trustee, a new trustee shall be appointed in the place of that person, or he shall be otherwise discharged from the trust, before the legal estate is dealt with under the trust for sale or under the powers vested in the trustees for sale."

In section twenty-six, in subsection (2), the words "committee or" shall be omitted, and for the words "lunatic or defective" there shall be substituted the words "person suffering from mental disorder".

In section twenty-eight, in proviso (i) of subsection (3), for the words "lunatic or defective" there shall be substituted the words "person suffering from mental disorder", and the word "committee or" shall be omitted.

In section two hundred and five, in subsection (1), the following paragraph shall be substituted for paragraph (xiii) -

"(xiii) 'Mental disorder' has the meaning assigned to it by section four of the Mental Health Act, 1959, and 'receiver', in relation to a person suffering from mental disorder, means a receiver appointed for that person under Part VIII of that Act;"

The Land Registration Act, 1925, 15 & 16 Geo.5.c.21.

In section one hundred and eleven, in subsection (5), for the words from "a lunatic" to the words "lunacy or" there shall be substituted the words "incapable, by reason of mental disorder within the meaning of the Mental Health Act, 1959, of managing and administering his property and affairs, his receiver or (if no receiver is acting for him) any person authorised in that behalf shall, under an order of the authority having jurisdiction under Part VIII of the Mental Health Act, 1959, or" and for the words "lunatic or defective" in each place where they occur there shall be substituted the words "the proprietor", and in subsection (6), for the words "the Lunacy Act, 1890" there shall be substituted the words "Part VIII of the Mental Health Act, 1959".

The Administration of Estates Act, 1925, 15 & 16 Geo. 5. c. 23.

In section forty-one, in subsection (1), in paragraph (ii) of the proviso, for the words "a lunatic or defective" there shall be substituted the words "is incapable, by reason of mental disorder within the meaning of the Mental Health Act, 1959, of managing

and administering his property and affairs" and the word "committee" shall be omitted, and in paragraph (iv) of the proviso, for the words from "committee" to "appointed" there shall be substituted the words "receiver is acting for a person suffering from mental disorder", and for the words "lunatic or defective" in the second place where they occur there shall be substituted the words "said person".

The Supreme Court of
Judicature
(Consolidation) Act,
1925, 15 & 16 Geo. 5. c.
49.

In section sixty-eight, in subsection (5), in paragraph (a) of the proviso, for the words "person of unsound mind, whether so found by inquisition or not" there shall be substituted the words "person who is incapable, by reason of mental disorder within the meaning of the Mental Health Act, 1959, of managing and administering his property and affairs", for the word "committee" there shall be substituted the word "receiver", and for the words from "any committee" to the end of the paragraph there shall be substituted the words "any receiver of a person suffering from mental disorder and that person, unless with the previous sanction of the authority having jurisdiction under Part VIII of the Mental Health Act, 1959".

In section one hundred and twenty-nine, in subsection (1), for the words "in matters and proceedings in lunacy a judge or master in lunacy" there shall be substituted the words "in proceedings before the authority having jurisdiction under Part VIII of the Mental Health Act, 1959, that authority".

In section one hundred and forty-nine, for the words "the Lord Chancellor and any person exercising the powers of the judge in lunacy" there shall be substituted the words "the authority having jurisdiction under Part VIII of the Mental Health Act, 1959".

In section two hundred and twenty-five, in the definition of "Officer of the Supreme Court", for the words from "salaries" to "lunacy" there shall be substituted the words "salaries, pensions and allowances of officers includes an officer of the Court of Protection or of the Lord Chancellor's Visitors".

In the Third Schedule, for the words "Master in Lunacy" there shall be substituted the words "Master of the Court of Protection", for the words "Legal Visitor in Lunacy" there shall be substituted the words "Lord Chancellor's Legal Visitor" and for the words "Medical Visitor in Lunacy" there shall be substituted the words "Lord Chancellor's Medical Visitor".

In the Fourth Schedule, for the words "Master in Lunacy" wherever they occur there shall be substituted the words "Master of the Court of Protection", and in paragraph 4, there shall be inserted at the end the words "or

(iv) the Deputy Master of the Court of Protection",

and in paragraph 8, for the words "Legal Visitor in Lunacy" there shall be substituted the words "Lord Chancellor's Legal Visitor".

The Children and Young Persons Act, 1933, 23 & 24 Geo.5. c. 12.

In section ninety-two, for the words from "but does not include" to the end of the section there shall be substituted the words "but does not include any mental nursing home or residential home for mentally disordered persons within the meaning of Part III of the Mental Health Act, 1959".

In the Fourth Schedule, in paragraph 4, the words from "and shall" to the end of the paragraph shall be omitted.

The Public Health Act, 1936, 26 Geo. 5 & 1 Edw.8.c.49.

In section one hundred and ninety-nine, in subsection (1), in the definition of "nursing home", for paragraphs (ii) and (iii) there shall be substituted the following paragraph:-

"(ii) except so far as Part of this Act is applied thereto by Part III of the Mental Health Act, 1959, any mental nursing home with the meaning of that Act."

The Public Health (London) Act, 1936, 26 Geo.5 & 1 Edw. 8.c.50.

In section three hundred and four, in subsection (1), in the definition of "nursing home", for paragraphs (ii) and (iii) there shall be substituted the following paragraph:-

"(ii) except so far as Part XI of this Act is applied thereto by Part III of the Mental Health Act, 1959, any mental nursing home within the meaning of that Act."

The Limitation Act, 1939, 2 & 3 Geo. 6.c.21.

In section thirty-one, in subsection (3) (except so far as it relates to any period before the commencement of this Act), for paragraphs (a) and (b) there shall be substituted the following paragraphs:-

"(a) while he is liable to be detained or subject to guardianship under the Mental Health Act, 1959; and

(b) while he is receiving treatment as an inpatient in any hospital or mental nursing home within the meaning of that Act without being liable to be detained thereunder, being treatment which follows without any interval a period during which he was liable to be detained or subject to guardianship under that Act or by virtue of any enactment repealed or excluded by that Act".

The London Government Act, 1939, 2 & 3 Geo.

In section ninety-four, subsection (1) shall cease to have effect; the following subsection shall be substituted for subsection (2) -

6.c.40.

"(2) Subject to the provisions of this section, where any sum to which this section applies is payable to a person by a local authority and the authority is satisfied after considering medical evidence that the said person (hereinafter referred to as 'the patient') is incapable, by reason of mental disorder with the meaning of the Mental Health Act, 1959, of managing and administering his property and affairs, the authority may pay the said sum or such part thereof as the authority thinks fit to the institution or person having the care of the patient, to be applied for his benefit, and may pay the remainder (if any) or such part thereof as the authority thinks fit -

(a) to or for the benefit of person who appear to the authority to be members of the patient's family or other persons for whom the patient might be expected to provide if he were not mentally disordered, or

(b) in reimbursement, with or without interest, of money applied by any person either in payment of the patient's debts (whether legally enforceable or not) or for the maintenance or other benefit of the patient or such persons as are mentioned in the foregoing paragraph";

and in subsection (4) and (5), for the references to the Master in Lunacy there shall be substituted references to the authority having jurisdiction under Part VIII of this Act.

The Education Act, 1944,
7 & 8 Geo.6.c.31.

In section one hundred and sixteen, for the words from "person who is the subject of an order or inquisition" to "education at school" there shall be substituted the words "child who is for the time being the subject of a decision recorded under section fifty-seven of this Act".

The Teachers'
Superannuation Act,
1945, 8 & 9 Geo.6.c.14.

In section one, in subsection (1), after paragraph (d) there shall be inserted the following paragraph -

"(dd) as a teacher of such kind as may be prescribed of mentally disordered patients who is employed -

(i) in a hospital vested in the Minister of Health under the National Health Service Act, 1946;

(ii) by a local health authority in the exercise of their functions under section twenty-eight of the said Act of 1946;

(iii) by a voluntary organisation to which a local health authority is making contributions under that section";

and after paragraph (e) there shall be inserted the following paragraph -

"(ee) as a teacher employed in a mental nursing home or residential home for mentally disordered persons within the meaning of Part III of the Mental Health Act, 1959, being a teacher who at any time before the coming into operation of the said Part III was employed in recognised or contributory service in any such certified institution as aforesaid".

The National Health Service Act, 1946, 9 & 10 Geo.6.c.81.

In section sixty-three, for the words "the Mental Deficiency Acts, 1913 to 1938" there shall be substituted the words "section twenty-eight of this Act as extended by Part II of the Mental Health Act, 1959".

In Section seventy-nine, in subsection (1), in the definition of "illness", for the words "mental illness" there shall be substituted the words "mental disorder within the meaning of the Mental Health Act, 1959".

The National Assistance Act, 1948, 11 & 12 Geo. 6.c.29.

In section forty-nine, for the words from "section one" to "that section" there shall be substituted the words "Part VIII of the Mental Health Act, 1959, as receiver for a patient or as a person otherwise having functions in relation to the property and affairs of a patient", and for the words "the said powers" there shall be substituted the words "such function".

The Children Act 1948, 11 & 12 Geo. 6.c.43.

In section two, in the proviso to subsection (3), for the words "unsoundness of mind or mental deficiency" there shall be substituted the words "mental disorder within the meaning of the Mental Health Act, 1959".

The Criminal Justice Act, 1948, 11 & 12 Geo. 6.c.58.

In section four, in subsection (1), for the words from "appearing" to "1913" there shall be substituted the words "approved for the purposes of section twenty-eight of the Mental Health Act, 1959, that the mental condition of an offender is such as requires and may be susceptible to treatment but is not such as to warrant his detention in pursuance of a hospital order under Part V of that Act".

In subsection (2) of that section, the following paragraph shall be substituted for paragraphs (a) and (b):-

"(a) treatment as a resident patient in a hospital or mental

nursing home within the meaning of the Mental Health Act, 1959, not being a special hospital within the meaning of that Act."

In subsection (3) of that section, the words "or can be" and the words "as a voluntary patient or" shall be omitted.

In subsection (4) of that section, the words "as a voluntary patient or" shall be omitted. For subsections (7) and (8) of that section there shall be substituted the following subsection:-

"(7) Subsections (2) and (3) of section sixty-two of the Mental Health Act, 1959, shall apply for the purposes of this section as if for the reference in the said subsection (2) to paragraph (a) of subsection (1) of section sixty of that Act there were substituted a reference to subsection (1) of this section."

The National Service Act, 1948, 11 & 12 Geo. 6. c. 64.

In the First Schedule, for paragraph 3 there shall be substituted the following paragraph:-

"3. A person who -

(a) is receiving treatment for mental disorder as an in-patient in a hospital within the meaning of the Mental Health Act, 1959, or is receiving such treatment as an in-patient in any other place at the expense of a Regional Hospital Board; or

(b) is suffering from severe subnormality within the meaning of that Act and is either resident in accommodation provided by, or by arrangement with, a local health authority under section twenty-eight of the National Health Service Act, 1946, or is otherwise receiving care from a local health authority under that section."

The Recall of Army and Air Force Pensioners Act, 1948, 12, 13 & 14 Geo. 6. c. 8.

In the Schedule, for paragraph 2 there shall be substituted the following paragraph:-

"2. A person who is receiving treatment for mental disorder as an in-patient in a hospital within the meaning of the Mental Health Act, 1959, or is receiving such treatment as an in-patient in any other place at the expense of a Regional Hospital Board".

The National Health Service (Amendment) Act, 1949, 12, 13 & 14 Geo. 6. c. 93.

For section twenty-five there shall be substituted the following section:-

"25.-(1) Where a medical practitioner carries out a

medical examination of any person with a view to an application for his admission to hospital for observation or treatment being made under Part IV of the Mental Health Act, 1959, the local health authority for the area where the person examined resides shall, subject to the following provisions of this section, pay to that medical practitioner reasonable remuneration in respect of the said examination and in respect of any recommendation or report made by him with regard to the person examined and the amount of any expenses reasonably incurred by him in connection with the examination or the making of any such recommendation or report.

(2) No payment shall be made under this section to a medical practitioner in respect of an examination carried out as part of his duty to provide general medical services for the person examined or in respect of an examination carried out or any recommendation or report made as part of his duty as an officer of a Regional Hospital Board or a Board of Governors of a teaching hospital.

(3) This section shall only apply in a case where it is intended, when the medical examination of the person in question is carried out, that if he is admitted to hospital in pursuance of any such application as is mentioned in subsection (1) of this section, the whole cost of his maintenance and treatment will be defrayed out of moneys provided by Parliament under the National Health Service Act, 1946, or the Mental Health Act, 1959."

The Matrimonial Causes Act, 1950, 14 Geo. 6. c. 25.

In section one, in subsection (2) (except so far as it relates to any time before the commencement of this Act) for paragraph (a) there shall be substituted the following paragraph:-

"(a) while he is liable to be detained in a hospital, mental nursing home or place of safety under the Mental Health Act, 1959",

and in paragraph (d), the words "the Mental Treatment Act, 1930, or under" shall be omitted.

In section eight, in subsection (1) (except so far as it relates to a marriage celebrated before the commencement of this Act) in paragraph (b), for the words from "a mental defective" to "1938" there shall be substituted the words "was then suffering from mental disorder within the meaning of the Mental Health Act, 1959, of such a kind or to such an extent as to be unfitted for marriage and the procreation of children", and for the word "fits" there shall be substituted the word "attacks".

In section twenty-seven, in subsection (2), in paragraph (b), after

the word "deficiency" there shall be inserted the words "or disorder".

The Costs in Criminal Cases Act, 1952, 15 & 16 Geo. 6. and 1 Eliz. 2. c. 48

In section fourteen, in subsection (1), after the words "that Act" there shall be inserted the words "or with a view to the making of a hospital order with an order restricting his discharge under Part V of the Mental Health Act, 1959".

The Magistrates' Courts Act, 1952, 15 & 16 Geo. 6 and 1 Eliz. 2. c. 55.

In section twenty-six, in subsection (1), for the words "the offence has been committed by the accused" there shall be substituted the words "the accused did the act or made the omission charged"; in subsection (3), for the words from "shall undergo" to the words "may be so specified" there shall be substituted the words "shall -

(a) undergo medical examination by a duly qualified medical practitioner or, where the inquiry is into his mental condition and the recognizance so specifies, two such practitioners; and

(b) for the purpose attend at an institution or place, or on any such practitioner, specified in the recognizance and, where the inquiry is into his mental condition, comply with any directions which may be given to him for the said purpose by any person so specified or by a person of any class so specified",

and for the words "for such period as may be specified in the recognizance" there shall be substituted the words "until the expiration of such period as may be specified in the recognizance or he is discharged therefrom, whichever occurs first"; in subsection (4), for the words from "it may" to the end of the subsection there shall be substituted the words "the conditions of the recognizance taken for the purpose of his committal may, in addition to the condition for his appearance, include the like conditions as could be included in the conditions of a recognizance with respect to the like inquiry by virtue of the last preceding subsection"; and subsection (6) shall cease to have effect.

The Local Government Superannuation Act, 1953, 1 & 2 Eliz. 2. c. 25.

In section fifteen, in subsection (1), in paragraph (a) for the words "the Mental Deficiency Acts, 1913 to 1938" there shall be substituted the words "the Mental Health Act, 1959".

The Sexual Offences Act, 1956, 4 & 5 Eliz. 2. c. 69.

In the Second Schedule, in paragraph 1, in the fourth column, for the words "an idiot or imbecile" there shall be substituted the words "a defective"; in paragraph 11, in the first column, for the words "idiot or imbecile" there shall be substituted the word "defective"; and in paragraph 14, in the fourth column, for the words "an idiot or imbecile" there shall be substituted the words

"a defective".

The Nurses Act, 1957, 5
& 6 Eliz. 2. c. 15.

In section two, in subsection (1), for the word "diseases" there shall be substituted the word "disorder".

In section eight, in subsection (2), for the word "diseases" there shall be substituted the word "disorder".

In section eighteen, in subsection (3), for the word "diseases" there shall be substituted the word "disorder".

In section thirty-one, for the word "diseases" there shall be substituted the word "disorder".

In section thirty-three, in subsection (1), for the definition of "mental hospital" there shall be substituted the following definition, that is to say, "'mental hospital' means any hospital or mental nursing home within the meaning of the Mental Health Act, 1959, wholly or mainly used for the treatment of persons suffering from mental disorder", and in the definition of "registered mental nurse" for the word "diseases" there shall be substituted the word "disorder".

In the First Schedule, in sub-paragraph (1) of paragraph 2, for the word "diseases" there shall be substituted the word "disorder".

In the Third Schedule, in paragraph 1, in sub-paragraph (3), for the word "diseases" there shall be substituted the word "disorder".

The Solicitors Act, 1957,
5 & 6 Eliz. 2. c. 27.

In section twelve, in subsection (1), the following shall be substituted for paragraph (e) -

"(e) whilst he is a patient as defined by section one hundred and one of the Mental Health Act, 1959, or a person as to whom powers are exercisable and have been exercised under section one hundred and four of that Act;"

The Variation of Trusts
Act, 1958, 6 & 7 Eliz. 2.
c. 53.

In section one, in subsection (3), for the words from "the Judge" to the end of the subsection there shall be substituted the words "the authority having jurisdiction under Part VIII of the Mental Health Act, 1959, if that person is a patient within the meaning of the said Part VIII", and in subsection (6), for the words from "section one hundred and seventy-one" to the end of the subsection there shall be substituted the words "the powers of the authority having jurisdiction under Part VIII of the Mental Health Act, 1959".

The Local Government Act, 1958, 6 & 7 Eliz. 2. c. 55.

In section forty-six, in subsection (1) references to Part III of the National Health Service Act, 1946, and to section twenty-eight of that Act, and references to sections twenty-nine and thirty of the National Assistance Act, 1948, shall include references to those enactments as amended by this Act; and for paragraphs (d) and (e) there shall be substituted the following paragraph -

"(d) the Mental Health Act, 1959, except so far as it amends Part III of the National Health Service Act, 1946";

In Part III of the First Schedule, in paragraph 4, in sub-paragraph (1), for the words "occupation centres provided for the purposes of paragraph (cc) of section thirteen of the Mental Deficiency Act, 1913" there shall be substituted the words "centres provided under section twenty-eight of the National Health Service Act, 1946, for the occupation or training of persons who are or have been suffering from mental disorder" and, in sub-paragraph (2), after "occupation" there shall be inserted "or training".

This Schedule is divided into two parts, Part I dealing with amendments extending to England and Wales only and Part II dealing with other amendments (see s.149 (1)).

The majority of the amendments merely give effect to change of nomenclature and terminology introduced by the Act or are otherwise generally consequential and self explanatory. In particular the term "mental disorder"(see s. 4) is substituted for previous references to unsoundness of mind, mental deficiency, or mental disability, etc.; references to the Judge or Master in Lunacy are replaced by references to the "Judge" or "Authority" having jurisdiction under Part VIII of the Act (see s. 118).

In view of the obsolescence of procedure by inquisition and the conversion of committees of estate into receivers (see Sched. VI, Pt. IV, para. 26), references to receivers are substituted for references to committees (see also s. 121 and Sched. V). The following points on Part I should be noted;

The Trustee Act, 1925, s. 54

This defines the cases and circumstances in which the authority having jurisdiction under Part VIII of the Act (shortly the Court of Protection-see s.118) shall have concurrent jurisdiction with the Chancery Division of the High Court to make orders in respect of a patient who is a trustee. The new section in effect combines the provisions of the old section and the essential parts of the present Rule 59 of the Management of Patients' Estates Rules, 1934.

The Children and Young Persons Act, 1933, s. 92

This amendment has the effect of excluding from the registration as a voluntary home a mental nursing home (see s. 14(2)) and a residential home for mentally disordered persons (see s. 19(2)), so as to avoid duplication of registration both under this Act and the Act of 1933, *supra*, and the Children Act, 1948. See also s. 19(3).

Ibid., Sched. IV, para. 4

The words here repealed enabled an order under the Mental Deficiency Act, 1913, s. 9, to be made in respect of a person detained in an approved school notwithstanding that he was in hospital. Under this

Act such a provision is not required because a transfer direction can be given under s. 72 in respect of a person serving a sentence of imprisonment which, by virtue of the definition in s. 72(6), includes a person detained in pursuance of an approved school order, irrespective of whether he is actually in an approved school or already in hospital.

The Education Act, 1944, s.116
See s. 11 and Sched. II.

The Recall of Army and Air Force Pensioners Act, 1948, Sched., para. 2.

Cf. amendment to the National Service Act, 1948, Sched. I, para. 3, which precedes it. The reason that in the Pensioners Act severely subnormal patients are not expressly exempted from service as in the National Service Act is that persons who have seen service are unlikely ever to be suffering from severe subnormality.

The Matrimonial Causes Act, 1950

As regards the amendment to s. 8(1) (b), however, it should be noted that whereas this provided that a marriage shall be voidable where either party to the marriage was at the time of the marriage a mental defective, this ground of voidability will in future extend to any form of mental disorder within s. 4 of this Act. The words "of such a kind and to such an extent as to be unfitted for marriage and the procreation of children" are a development of a recommendation, as regards mental defectives, of the Royal Commission on Marriage and Divorce (Cmd. 9678, para. 279).

As regards the substitution of the word "attacks" for "fits," see *ibid.*, parts. 280 and 281.

The Magistrates' Courts Act, 1952, s.26

These amendments make this section complementary to s.60 (2) of this Act and so enable the court, where it thinks fit, to proceed to make a hospital order or guardianship order under s. 60.

The Sexual Offences Act, 1956, Sched. II, para. 1

These amendments are consequential on the amendment of s. 7 of the Act of 1956 by s. 127 (1) of this Act.

PART II OTHER AMENDMENTS

<i>Enactment</i>	<i>Amendment</i>
The Naval Enlistment Act, 1884, 47 & 48 Vict.c.46.	In section three, after the word "1955" there shall be inserted the words "as amended by the Mental Health Act, 1959".
The Pharmacy and Poisons Act, 1933, 23 & 24 Geo.5.c.25.	In section ten, in subsection (6), for the words from "trustee" to "powers of a committee" there shall be substituted the words "or trustee, or a receiver appointed under Part VIII of the Mental Health Act, 1959". In section thirty, in paragraph (f), for the words from "references" to "of a committee" there shall be substituted the words "reference to a receiver".
The Polish Resettlement Act,	In section four, in subsection (1), for the words "the Lunacy and Mental Treatment Acts, 1890 to 1930, or the Mental Deficiency

- 1947, 10 & 11 Geo. 6. c. 19. Acts, 1913 to 1938" there shall be substituted the words "the Mental Health Act, 1959".
- In section eleven, in subsection (3), in paragraph (b), for the words "the Lunacy and Mental Treatment Acts, 1890 to 1930, and the Mental Deficiency Acts, 1913 to 1938" there shall be substituted the words "the Mental Health Act, 1959".
- The National Assistance Act, 1948, 11 & 12 Geo. c. 29. In section thirty-seven, in subsection (9), at the end of paragraph (d) of the proviso there shall be added the words "including any mental nursing home within the meaning of Part III of the Mental Health Act, 1959", and after paragraph (g) there shall be inserted the words "or
- (h) except as provided by Part III of the Mental Health Act, 1959, any residential home for mentally disordered persons within the meaning of the said Part III".
- The Children Act, 1948, 11 & 12 Geo. 6. c. 43. In section thirty-nine, in subsection (1), after paragraph (e) there shall be inserted the following paragraph:-
- "(f) section nine of the Mental Health Act, 1959, and the provisions of section ten of that Act relating to children and young persons in respect of whom the rights and powers of a parent are vested in a local authority as mentioned in paragraph (a) of subsection (1) of that section."
- The U.S.A. Veterans' Pensions (Administration) Act, 1949, 12, 13 & 14 Geo. 6. c. 45. Subsection (4) of section one shall apply as respects a person for whom a receiver has been appointed under section one hundred and five of this Act as it applies as respects such a person as is mentioned in that subsection.
- The Representation of the People Act, 1949, 12, 13 & 14 Geo. 6. c. 68. Section four shall have effect, in its application to England and Wales, as if for the words "or mental defectiveness" there were substituted the words "or other form of mental disorder" and, in its application to Northern Ireland, as if for the words "or mental defectiveness" there were substituted the words "or arrested or incomplete development of mind".
- The Administration of Justice (Pensions) Act, 1950, 14 & 15 Geo. 6. c. 11. In the First Schedule, for the words "Master in Lunacy" and "Legal Visitor in Lunacy" there shall be substituted respectively the words "Master of the Court of Protection" and "Lord chancellor's Legal Visitor".
- The Army Act, 1955, 3 & 4 Eliz. 2. c. 18. No order shall be made under section sixteen directing that a soldier be received into a hospital in England and Wales; and accordingly, in subsection (2), for the words "Great Britain" there shall be substituted the word "Scotland".

The Air Force Act,
1955, 3 & 4 Eliz. 2.
c.19.

No order shall be made under section sixteen directing that an airman be received into a hospital in England and Wales; and accordingly, in subsection (2), for the words "Great Britain" there shall be substituted the words "Scotland".

The Revision of the
Army and Air Force
Acts (Transitional
Provisions) Act, 1955,
3 & 4 Eliz. 2. c.20.

In the Second Schedule, in paragraph 2, after the word "1955" there shall be inserted the words "as amended by the Mental Health Act, 1959".

The Children Act,
1958, 6 & 7 Eliz. 2.
c.65.

In section two, at the end of subsection (4), there shall be added the words "or while he is liable to be detained or subject to guardianship under the Mental Health Act, 1959, or is resident in a residential home for mentally disordered persons within the meaning of Part III of that Act".

The Adoption Act,
1958, 7 & 8 Eliz. 2.
c.5.

In section thirty-seven, in subsection (3), at the end there shall be added the words "nor while he is liable to be detained, subject to guardianship or resident as mentioned in subsection (4) of that section".

The following points on Part II should be noted:

The Naval Enlistment Act, 1884, s. 3

This amendment is necessary as a result of the amendment to the Army Act, 1955, s. 16 (see Sched. VIII, Pt. II), which section (by virtue of the Naval Establishment Act, 1884, s. 3, as substituted by paragraph 2 of the Second Schedule to the Revision of the Army and Air Force Acts (Transitional Provisions) Act, 1955) applies to naval personnel as it applies to soldiers. Naval personnel with homes in England or Wales who are discharged by the Admiralty owing to unsoundness of mind when the Act comes into force will, if compulsory admission to hospital is necessary, be dealt with under Part IV of the Act instead of under the special procedure provided by the Army Act, 1955, s. 16.

The National Assistance Act, 1948, s. 37 (9), proviso (d).

This amendment excludes mental nursing homes (see s. 14 (2)) from the requirements as to registration, etc., under the 1948 Act, s. 14 of this Act providing for their registration, etc., under Part VI of the Public Health Act, 1936.

Ibid.-new para. (h)

This excludes residential homes for mentally disordered persons (see s. 19(2)), except as provided in Part III of this Act (see ss. 19 *et seq.*).

See also repeals in Sched. VIII, Pt. II.

The Army Act, 1955, s.16

The Army Act, 1955, s. 16, enables the Army Council or an officer deputed by them to direct by order in certain circumstances that a soldier of unsound mind shall, on discharge from the Forces, be received into a hospital designated by the Regional Hospital Board. *Ibid.*, s. 16 (4), provided that such an order should have the same effect as a summary reception order made under the Lunacy Act, 1890, s.16.

The effect of this amendment is to remove from the operation of the Army Act, 1955, s.16 (which

applies to Great Britain), soldiers who have homes in England or Wales. The section will continue to apply to soldiers whose homes are in Scotland or Northern Ireland.

The majority of the amendments merely give effect to change of nomenclature and terminology introduced by the Act or are otherwise generally consequential and self explanatory. In particular the term "mental disorder" (see s.4) is substituted for previous references to unsoundness of mind, mental deficiency, or mental disability, etc.; references to the Judge or Master in Lunacy are replaced by references to the "Judge" or "Authority" having jurisdiction under Part VIII of the Act (see s.118).

In view of the obsolescence of procedure by inquisition and the conversion of committees of estate into receivers (see Sched. VI., Pt. IV, para. 26), references to receivers are substituted for references to committees (see also s.121 and Sched. V).

The following points on Part I should be noted:

The Trustee Act, 1925, s.54.

This defines the cases and circumstances in which the authority having jurisdiction under Part VIII of the Act (shortly the Court of Protection - see s.118) shall have concurrent jurisdiction with the Chancery Division of the High Court to make orders in respect of a patient who is a trustee. The new section in effect combines the provisions of the old section and the essential parts of the present Rule 59 of the Management of Patients' Estates Rules, 1934.

The Children and Young Persons Act, 1933, s.92

This amendment has the effect of excluding from the registration as a voluntary home a mental nursing home (see s.14(2)) and a residential home for mentally disordered persons (see s.19 (2)), so as to avoid duplication of registration both under this Act and the Act of 1933, *supra*, and the Children Act, 1948. See also s.19 (3).

Ibid., Sched. IV, para. 4.

The words here repealed enable an order under the Mental Deficiency Act, 1913, s.9, to be made in respect of a person detained in an approved school notwithstanding that he was in hospital. Under this Act such a provision is not required because a transfer direction can be given under s.72 in respect of a person serving a sentence of imprisonment which, by virtue of the definition in s.72 (6), includes a person detained in pursuance of an approved school order, irrespective of whether he is actually in an approved school or already in hospital.

The Education Act, 1944, s.116.

See s.11 and Sched. II.

The Recall of Army and Air Force Pensioners Act, 1948, Sched., para.2.

Cf. amendment to the National Service Act, 1948, Sched. I, para. 3, which precedes it. The reason that in the Pensioners Act severely subnormal patients are not expressly exempted from service as in the National Service Act is that persons who have seen service are unlikely ever to be suffering from severe subnormality.

The Matrimonial Causes Act, 1950.

As regards the amendment to s.8 (1) (b), however, it should be noted that whereas this provided that a marriage shall be voidable where either party to the marriage was at the time of the marriage a mental defective, this ground of voidability will in future extend to any form of mental disorder within s.4 of this Act. The words "of such a kind and to such an extent as to be unfitted for marriage and the procreation of children" are a development of a recommendation, as regards mental defectives, of the Royal Commission on Marriage and Divorce (Cmd. 9678, para. 279).

As regards the substitution of the word "attacks" for "fits," see *ibid.*, paras. 280 and 281.

The Magistrates' Courts Act, 1952, s.26

These amendments make this section complementary to s.60 (2) of this Act and so enable the court, where it thinks fit, to proceed to make a hospital order or guardianship order under s. 60.

The Sexual Offences Act, 1956, Sched. II, para. 1.

These amendments are consequential on the amendment of s.7 of the Act of 1956 by s.127 (1) of this Act.

In future if compulsory admission to hospitals in England or Wales is necessary for a soldier in such circumstances, he will be dealt with by an application under Part IV of the Act.

The Air Force Act, 1955, s.16.

This amendment has the same effect as that to the Army Act, 1955, s.16, *supra*.

The Revision of the Army and Air Force Acts (Transitional Provisions) Act, 1955, Sched. II, para. 2.

This amendment has the same effect as that to the Naval Enlistment Act, 1884, s.3, noted above.

The Children Act, 1958, s. 2 (5)

See s.19 (3) of this Act.

The Adoption Act, 1958, s.37 (3)

See s.19 (3) of this Act.

Section 149, 150, 152

EIGHT SCHEDULE

ENACTMENTS REPEALED

PART I REPEALS EXTENDING TO ENGLAND AND WALES ONLY

Session and Chapter	Short Title	Extent of Repeal
-	The Statute Prerogativa Regis.	Chapters xi and xii.
51 Geo.3.c.37.	The Marriage of Lunatics Act, 1811.	The whole Act.
1 & 2 Vict. c.106.	The Pluralities Act, 1838.	Section seventy-nine.
1 & 2 Vict. c.110.	The Judgments Act, 1838.	In section eighteen, the words "and all orders of the Lord Chancellor in matters of lunacy" and the words "and by the Lord Chancellor in matters of lunacy".

12 & 13 Vict. c.45.	The Quarter Sessions Act, 1849.	In section two, the words "or against an order under any statute relating to pauper lunatics".
15 & 16 Vict.c.87.	The Court of Chancery Act, 1852.	The whole Act.
23 & 24 Vict. c.75.	The Criminal Lunatic Asylums Act, 1860.	The whole Act.
33 & 34 Vict. c.77.	The Juries Act, 1870.	In the Schedule, the words "Keepers in public lunatic asylums".
34 & 35 Vict. c.44.	The Incumbents Resignation Act, 1871.	Section eighteen.
36 & 37 Vict. c.57.	The Consolidated Fund (Permanent Charges Redemption) Act, 1873.	In section seven, in the definition of "limited owner", the words "a committee of a lunatic or idiot".
46 & 47 Vict. c.38.	The Trial of Lunatics Act, 1883.	In section two, in subsection (2), the words "as a criminal lunatic".
47 & 48 Vict. c.64.	The Criminal Lunatics Act 1884.	The whole Act.
53 & 54 Vict. c.5.	The Lunacy Act, 1890.	The whole Act.
53 & 54 Vict. c.39.	The Partnership Act, 1890.	In section thirty-five, paragraph (a)
54 & 55 Vict. c.65.	The Lunacy Act, 1891.	The whole Act.
61 & 62 Vict. c.57.	The Elementary School Teachers (Superannuation) Act, 1898.	In section six, paragraph (b) of subsection (1) so far as it applies in relation to persons of unsound mind.
7 Edw. 7 c.23.	The Criminal Appeal Act, 1907.	In section five, in subsection (4), the words "as a criminal lunatic".
8 Edw. 7. c.47.	The Lunacy Act, 1908.	The whole Act.
3 & 4 Geo. 5.c.28.	The Mental Deficiency Act, 1913.	The whole Act.
1 & 2 Geo. 6.c.43.	The Mental Deficiency Act, 1938.	The whole Act.
2 & 3 Geo. 6.c.31.	The Civil Defence Act, 1939.	In section sixty-six, in subsection (2), the word "committee" in each place where it occurs.

2 & 3 Geo. 6.c.40.	The London Government Act, 1939.	In section ninety-four, subsection (1).
7 & 8 Geo. 6.c.31.	The Education Act, 1944.	Section fifty-seven. In the Eighth Schedule, the amendment of section two of the Mental Deficiency Act, 1913.
9 & 10 Geo. 6.c.81.	The National Health Service Act, 1946.	<p>In section sixteen, in subsection (1), the words "or mental defectiveness".</p> <p>In section twenty-seven, in subsection (1), the words "or mental defectiveness".</p> <p>In section twenty-eight, in subsection (1), the words "or mental defectiveness".</p> <p>In section twenty-nine, in subsection (1), the words "mentally defective".</p> <p>Section forty-nine to fifty-one.</p> <p>In section fifty-two, in subsection (1), the words "the Lunacy and Mental Treatment Acts, 1890 to 1930, or the Mental Deficiency Acts, 1913 to 1938".</p> <p>In section seventy-nine, in subsection (1), in the definition of "hospital", the words "or mental defectiveness" and in the definition of "local authority", paragraph (b).</p>
11 & 12 Geo. 6.c.29.	The National Assistance Act, 1948.	<p>The Eighth and Ninth Schedules</p> <p>In the Tenth Schedule, amendments of the Children and Young Persons Act, 1933, and the Education Act, 1944.</p> <p>In the Sixth Schedule, in paragraph 7, sub-paragraphs (2) and (3).</p>

11 & 12 Geo.
6.c.40.

The Education (Miscellaneous
Provisions) Act, 1948.

Section eight.
In the First Schedule, in Part I, the amendment of subsection (6) of section fifty-seven of the Education Act, 1944, and, in the amendments of section one hundred and sixteen of that Act, the paragraph beginning with "For the words"; and in Part II, the amendments of the Mental Deficiency Act, 1913.

11 & 12 Geo.
6.c.58.

The Criminal Justice Act, 1948.

In section four, in subsection (3), the words "or can be" and the words "as a voluntary patient or," and in subsection (4), the words "as a voluntary patients or".

In section forty-seven, in subsection (1), the words "or voluntary".

Sections sixty-two to sixty-four.

In section seventy-seven, in subsection (2), the words from the beginning to "Treasury, and".

In section eighty, in subsection (1), the definition of "mental hospital".

In the Fifth Schedule, in paragraph 3, in paragraph (d) of subparagraph (1), the words "voluntary or".

In the Ninth Schedule, the amendments of the Criminal Lunatic Asylums Act, 1860, the Criminal Lunatics Act, 1884, the Mental Deficiency Act, 1913, and the Mental Deficiency Act, 1927.

6 & 7 Geo. 5.c.31.

The Police, Factories, & c.
(Miscellaneous Provisions) Act,
1916.

Section eleven.

8 & 9 Geo. 5. c.55.

The School Teachers

Section nine.

	(Superannuation) Act, 1918.	
12 & 13 Geo. 5.c.16.	The Law of Property Act, 1922.	In section one hundred and eighty-eight, paragraph (19).
12 & 13 Geo. 5.c.60.	The Lunacy Act, 1922.	The whole Act.
15 & 16 Geo. 5.c.18.	The Settled Land Act, 1925.	Section twenty-eight. In section one hundred and seventeen, in subsection (1), paragraph (xiii).
15 & 16 Geo. 5.c.19.	The Trustee Act, 1925.	In section sixty-eight, in paragraph (15), the words " 'lunatic', 'defective' ".
15 & 16 Geo. 5.c.20.	The Law of Property Act, 1925.	In section sixty-eight, in paragraph (F) of subsection (1), the words "or as committee of a lunatic or as receiver of a defective," and in subsection (4), the words "or as committee of a lunatic, or as receiver of a defective". In section seventy-seven, in subsection (4), the words "or as committee of a lunatic, or as receiver of a defective". Section one hundred and seventy-one. In the Second Schedule, in the cross-heading to Part VI, the words "or as committee of a lunatic or as a receiver of a defective".
15 & 16 Geo. 5.c.21.	The Land Registration Act, 1925.	In section three, in paragraph (xxvi), the words " 'committee' ", " 'lunatic' " and " 'defective' ".
15 & 16 Geo. 5.c.23.	The Administration of Estates Act, 1925.	In section fifty-one, in subsection (2), the words "committee or". In section fifty-five, in paragraph (viii) of subsection (1), the definition of "committee".

15 & 16 Geo. 5.c.49.	The Supreme Court of Judicature (Consolidation) Act, 1925.	In section twenty-six, in subsection (2), in paragraph (c), the words from "or from any order" to the end of the paragraph. Section one hundred and twenty- four.
15 & 16 Geo. 5.c.53.	The Mental Deficiency (Amendment) Act, 1925.	The whole Act.
15 & 16 Geo. 5.c.59.	The Teachers (Superannuation) Act, 1925.	In the First Schedule, paragraph 9.
16 & 16 Geo. 5.c.86.	The Criminal Justice Act, 1925.	In section thirty-four, the words "or the Board of Control: and the words "or a Commissioner or the Secretary of the Board of Control".
17 & 18 Geo. 5.c.33.	The Mental Deficiency Act, 1927.	The whole Act.
20 & 21 Geo. 5.c.23.	The Mental Treatment Act, 1930.	The whole Act.
23 & 24 Geo. 5.c.12.	The Children and Young Persons Act, 1933.	In the Fourth Schedule, in paragraph 4, the words from "and shall" to the end of the paragraph.
23 & 24 Geo. 5.c.36.	The Administration of Justice (Miscellaneous Provisions) Act, 1933.	Section eight.
1 Edw. 8 & 1 Geo. 6.c.47.	The Teachers (Superannuation) Act, 1937.	In section one, in subsection (6), the references to section nine of the School Teachers (Superannuation) Act, 1918, and paragraph 9 of the First Schedule to the Teachers (Superannuation) Act, 1925.
11 & 12 Geo. 6.c.63.	The Agricultural Holdings Act, 1948.	Section eighty-four.
12, 13 & 14 Geo. 6.c.93.	The National Health Service (Amendment) Act, 1949.	Section twenty-six.
12, 13 & 14 Geo. 6.c.100.	The Law Reform (Miscellaneous Provisions) Act, 1949.	Section eight.
14 Geo. 6.c.25.	The Matrimonial Causes Act, 1950.	In section one, in subsection (2), in paragraph (d) the words "the

15 & 16 Geo. And 1 Eliz. 2.c.52.	The Prison Act, 1952.	Mental Treatment Act, 1930, or under". In the Third Schedule, the amendments of the Mental Deficiency Act, 1913.
15 & 16 Geo. 6 and 1 Eliz. 2.c.55.	The Magistrates' Courts Act, 1952.	In section twenty-six, subsection (6). Section thirty.
4 & 5 Eliz. 2.c.34.	The Criminal Justice Administration Act, 1956.	In section two, subsection (8).
4 & 5 Eliz. 2.c.46.	The Administration of Justice Act, 1956.	In section ten, in subsection (1), paragraph (b).
4 & 5 Eliz. 2.c.69.	The Sexual Offences Act, 1956.	Section eight. In the Second Schedule, in paragraph 1, sub-paragraph (vii), and paragraph 12.
6 & 7 Eliz. 2.c.3.	The Yarmouth Naval Hospital Transfer Act, 1957.	The whole Act.
6 & 7 Eliz. 2.c.40.	The Matrimonial Proceedings (Children) Act, 1958.	In section five, subsection (6).
6 & 7 Eliz. 2.c.55.	The Local Government Act, 1958.	In section fifty, in subsection (1), the words "or of that section as applied by section fifty-one of that Act" and the words "(or that subsection as applied by the said section fifty-one)". In the Eighth Schedule, paragraph 19.

**PART II
OTHER REPEALS**

Session and Chapter	Short Title	Extent of Repeal
2 & 3 Vict.c.51.	The Pensions Act, 1839.	Section six.
47 & 48 Vict.c.64.	The Criminal Lunatics Act, 1884.	In section eight, subsection (3) to (5).
49 & 50 Vict.c.16.	The Lunacy (Vacating of Seats) Act, 1886.	The whole Act.

50 & 51 Vict.c.67.	The Superannuation Act, 1887.	Section seven, except so far as applied by the Superannuation Act (Northern Ireland), 1921.
53 & 54 Vict.c.5.	The Lunacy Act, 1890.	<p>Section eighty-six.</p> <p>In section eighty-seven, in subsection (1), the words "England or", and in subsection (2), the words "England and", the words "England or" in each place where they occur, and the words "as the case may be".</p> <p>In section eighty-eight, in subsection (1), the words "England or", and in subsection (2), the words "England and" the words "for any justice in England, and", the words "England or" and the words "as the case may be".</p> <p>In section one hundred and thirty-one, subsections (1) and (4), and in subsection (2) and (3), the words "England or" in each place where they occur.</p>
9 & 10 Geo. 6.c.72.	The Education (Scotland) Act, 1946.	Section one hundred and four.
9 & 10 Geo.6.c.81.	The National Health Service Act, 1946.	In section eighty, in subsection (2), the words from "and the amendment" to "1884".
11 & 12 Geo. 6.c.29.	The National Assistance Act, 1948.	In the Ninth Schedule, in Part I, the amendment of subsection (3) of section eight of the Criminal Lunatics Act, 1884.
11 & 12 Geo. 6.c.29.	The National Assistance Act, 1948.	In section thirty-seven, in the proviso to subsection (9), the words "any institution for person of unsound mind within the meaning of the Lunacy and Mental Treatment Acts, 1890 to 1930 or", the words "the Mental Deficiency Acts, 1913 to 1927 or" and the word "or" at the end of paragraph (f).

11 & 12 Geo.6.c.43.	The Children Act, 1948.	Section eight.
11 & 12 Geo. 6.c.58.	The Criminal Justice Act, 1948.	Section sixty-three.
12, 13 & 14 Geo.6.c.44.	The Superannuation Act, 1949.	In section forty-eight, in subsection (5), the words from "and section three hundred and thirty-five" to "unsound mind)".
12, 13 & 14 Geo.6.c.94.	The Criminal Justice (Scotland) Act, 1949.	In section sixty-four, in subsection (2), the words from "and any patient" to the end of the subsection, and subsection (3).
3 & 4 Eliz. 2.c.18.	The Army Act, 1955.	In section sixteen, in subsection (4), the words "an order under section sixteen of the Lunacy Act, 1890, or in Scotland".
3 & 4 Eliz. 2.c.19.	The Air Force Act, 1955.	In section sixteen, in subsection (4), the words "an order made under section sixteen of the Lunacy Act, 1890, or in Scotland".
6 & 7 Eliz. 2.c.65.	The Children Act, 1958.	In section two, in subsection (5), the words "the Mental Deficiency Acts, 1913 to 1938, or", the words "the Board of Control or of", and the words "the Board of Control in accordance with subsection (2) of section fifty-one of the Mental Deficiency Act, 1913, or to".

This Schedule, like the Seventh Schedule, is divided into two parts, Part I dealing with repeals extending to England and Wales only, and Part II dealing with other repeals (see s.149 (2) and ss.150 and 152).

The enactments repealed include the old Lunacy and Mental Treatment Acts and Mental Deficiency Acts (see s.1) and certain obsolete or redundant provisions.

Short Title	Session and Chapter
Criminal Lunatics Act, 1800	39 & 40 Geo. 3.c.94.
Lunacy (Ireland) Act, 1821	1 & 2 Geo.4.c.33.
Vagrancy Act, 1824	5 Geo. 4.c.83.
Fines and Recoveries Act, 1833	3 & 4 Will.4.c.74.
Court of Chancery of Lancaster Act, 1850	13 & 14 Vict.c.43.

Lunacy (Scotland) Act, 1857	20 & 21 Vict.c.71.
Lunacy (Scotland) Act, 1862	25 & 26 Vict.c.54.
Improvement of Land Act, 1864	27 & 28 Vict.c.114.
Lunacy (Scotland) Act, 1866	29 & 30 Vict.c.51.
Promissory Oaths Act, 1868	31 & 32 Vict.c.72.
Lunacy Regulation (Ireland) Act, 1871	34 & 35 Vict.c.22.
Criminal and Dangerous Lunatics (Scotland) Amendment Act, 1871	34 & 35 Vict.c.55.
Trial of Lunatics Act, 1883	46 & 47 Vict.c.38.
Colonial Prisoners Removal Act, 1884	47 & 48 Vict.c.31.
Naval Enlistment Act, 1884	47 & 48 Vict.c.46.
Criminal Lunatics Act, 1884	47 & 48 Vict.c.64.
Lunacy (Vacating of Seats) Act, 1886	49 & 50 Vict.c.16.
Interpretation Act, 1889	52 & 53 Vict.c.63.
Lunacy Act, 1890	53 & 54 Vict.c.5.
Lunacy (Ireland) Act, 1901	1 Edw.7.c.17.
Criminal Appeal Act, 1907	7 Edw.7.c.23.
Forgery Act, 1913	3 & 4 Geo.5.c.27.
Mental Deficiency Act, 1913	3 & 4 Geo.5.c.28.
Mental Deficiency and Lunacy (Scotland) Act, 1913	3 & 4 Geo.5.c.38.
Government of Ireland Act, 1920	10 & 11 Geo.5.c.67.
Settled Land Act, 1925	15 & 16 Geo.5.c.18.
Trustee Act, 1925	15 & 16 Geo.5.c.19.
Law of Property Act, 1925	15 & 16 Geo.5.c.20.
Land Registration Act, 1925	15 & 16 Geo.5.c.21.
Administration of Estates Act, 1925	15 & 16 Geo.5.c.23.
Supreme Court of Judicature (Consolidation) Act, 1925	15 & 16 Geo.5.c.49.
Mental Treatment Act, 1930	20 & 21 Geo.5.c.23.
Poor Prisoners Defence Act, 1930	20 & 21 Geo.5.c.32.
Children and Young Persons Act, 1933	23 & 24 Geo.5.c.12.
Pharmacy and Poisons Act, 1933	23 & 24 Geo.5.c.25.
Administration of Justice (Miscellaneous Provisions) Act, 1933	23 & 24 Geo.5.c.36.
Summary Jurisdiction (Appeals) Acts, 1933	23 & 24 Geo.5.c.38.
Local Government Act, 1933	23 & 24 Geo.5.c.51.
Criminal Lunatics (Scotland) Act, 1935	25 & 26 Geo.5.c.32.
Public Health Act, 1936	26 Geo.5 & 1 Edw.8.c.49.
Public Health (London) Act, 1936	26 Geo.5 & 1 Edw.8.c.50.
Children and Young Persons (Scotland) Act, 1937	1 Edw.8 & 1 Geo.6.c.37.
Limitation Act, 1939	2 & 3 Geo.6.c.21.
Education Act, 1944	7 & 8 Geo.6.c.31.
Teachers Superannuation Act, 1945	8 & 9 Geo.6.c.14.
National Health Service Act, 1946	9 & 10 Geo.6.c.81.
Polish Re-settlement Act, 1947	10 & 11 Geo.6.c.19.
National Health Service (Scotland) Act, 1947	10 & 11 Geo.6.c.27.
National Assistance Act, 1948	11 & 12 Geo.6.c.29.
Education (Miscellaneous Provisions) Act, 1948	11 & 12 Geo.6.c.40.
Children Act, 1948	11 & 12 Geo.6.c.43.
Criminal Justice Act, 1948	11 & 12 Geo.6.c.58.
National Service Act, 1948	12 & 13 Geo.6.c.64.

Recall of Army and Air Force Pensioners Act, 1948	12, 13 & 14 Geo.6.c.8.
Legal Aid and Advice Act, 1949	12, 13 & 14 Geo.6.c.51.
Representation of the People Act, 1949	12, 13 & 14 Geo.6.c.68.
National Health Service (Amendment) Act, 1949	12, 13 & 14 Geo.6.c.93.
Criminal Justice (Scotland) Act, 1949	12, 13 & 14 Geo.6.c.94.
Matrimonial Causes Act, 1950	14 Geo.6.c.25.
Arbitration Act, 1950	14 Geo.6.c.27.
Administration of Justice (Pensions) Act, 1950	14 & 15 Geo.6.c.11.
Courts-Martial (Appeals) Act, 1951	14 & 15 Geo.6.c.46.
Costs in Criminal Cases Act, 1952	15 & 16 Geo.6 & 1 Eliz.2.c.48.
Prison Act, 1952	15 & 16 Geo.6 & 1 Eliz.2.c.52.
Magistrates' Courts Act, 1952	15 & 16 Geo.6 & 1 Eliz.2.c.55.
Births and Deaths Registration Act, 1953	1 & 2 Eliz.2.c.20.
Local Government Superannuation Act, 1953	1 & 2 Eliz.2.c.25.
Post Office Act, 1953	1 & 2 Eliz.2.c.36.
Army Act, 1955	3 & 4 Eliz.2.c.18.
Air Force Act, 1955	3 & 4 Eliz.2.c.19.
Revision of the Army and Air Force Acts (Transitional Provisions) Act, 1955	3 & 4 Eliz.2.c.20.
Sexual Offences Act, 1956	4 & 5 Eliz.2.c.69.
Medical Act, 1956	4 & 5 Eliz.2.c.76.
Nurses Act, 1957	5 & 6 Eliz.2.c.15.
House of Commons Disqualification Act, 1957	5 & 6 Eliz.2.c.20.
Solicitors Act, 1957	5 & 6 Eliz.2.c.27.
Naval Discipline Act, 1957	5 & 6 Eliz.2.c.53.
Matrimonial Proceedings (Children) Act, 1958	6 & 7 Eliz.2.c.40.
Variation of Trusts Act, 1958	6 & 7 Eliz.2.c.53.
Local Government Act, 1958	6 & 7 Eliz.2.c.55.
Children Act, 1958	6 & 7 Eliz.2.c.65.
Adoption Act, 1958	7 Eliz.2.c.5.
