

# Mental Health Bill [HL]

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## COMMONS AMENDMENTS

*[The page and line references are to Bill 76, the bill as first printed for the Commons]*

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### Clause 3

- 1 Page 2, leave out lines 22 to 30 and insert –  
“(3) Dependence on alcohol or drugs is not considered to be a disorder or disability of the mind for the purposes of subsection (2) above.”

### Clause 4

- 2 Leave out Clause 4

### Clause 5

- 3 Page 3, line 13, leave out from “is” to end of line 14 and insert “appropriate in his case, taking into account the nature and degree of the mental disorder and all other circumstances of his case.”

### Clause 6

- 4 Leave out Clause 6

### Clause 8

- 5 Page 4, line 28, at end insert –  
“( ) In the following provisions, for the words from “, having regard to” to the end substitute “it is appropriate for the treatment to be given.” –  
(a) section 57(2)(b) (certification of second opinion where treatment requires consent and a second opinion), and  
(b) section 58(3)(b) (certification of second opinion where treatment requires consent or a second opinion).”
- 6 Page 4, line 31, leave out from “is” to end of line 32 and insert “appropriate in his case, taking into account the nature and degree of the mental disorder and all other circumstances of his case.”

**Clause 9**

7 Page 4, line 34, leave out “In section 145(1) of the 1983 Act (interpretation)” and insert—

“(1) Section 145 of the 1983 Act is amended as follows.

(2) In subsection (1)”

8 Page 4, line 36, after “care” insert “(but see also subsection (4) below)”

9 Page 4, line 36, at end insert—

“(3) After subsection (3) insert—

“(4) Any reference in this Act to medical treatment, in relation to mental disorder, shall be construed as a reference to medical treatment the purpose of which is to alleviate, or prevent a worsening of, the disorder or one or more of its symptoms or manifestations.””

**Clause 14**

10 Page 9, line 13, leave out “approved clinician” and insert “responsible clinician (if there is one) or the person”

11 Page 9, line 14, leave out “at the end insert “nor the responsible clinician” and insert “for the words from “, and of those persons” to the end substitute “but, of those persons—

(a) one shall be a nurse and the other shall be neither a nurse nor a registered medical practitioner; and

(b) neither shall be the responsible clinician (if there is one) or the person in charge of the treatment in question.””

12 Page 9, line 21, at beginning insert ““responsible clinician or the”

13 Page 9, line 22, leave out “at the end insert “nor the responsible clinician” and insert “for the words from “, and of those persons” to the end substitute “but, of those persons—

(a) one shall be a nurse and the other shall be neither a nurse nor a registered medical practitioner; and

(b) neither shall be the responsible clinician or the approved clinician in charge of the treatment in question.””

14 Page 10, leave out lines 2 to 7 and insert—

“(1A) References in this Part of this Act to the approved clinician in charge of a patient’s treatment shall, where the treatment in question is a form of treatment to which section 57 above applies, be construed as references to the person in charge of the treatment.”

**Clause 24**

15 Leave out Clause 24

**Clause 30**

16 Page 18, line 23, after “(3)” insert “, (3A)”

- 17 Page 18, line 24, at end insert –  
“( ) he has attained the age of 18 years;”
- 18 Page 18, line 30, at end insert –  
“(3A) A patient falls within this subsection if –  
(a) he has not attained the age of 18 years; but  
(b) he has consented to the treatment in question; and  
(c) a registered medical practitioner appointed as aforesaid  
(not being the approved clinician in charge of the treatment)  
has certified in writing –  
(i) that the patient is capable of understanding the  
nature, purpose and likely effects of the treatment  
and has consented to it; and  
(ii) that it is appropriate for the treatment to be given.”
- 19 Page 18, line 32, after “being” insert “the responsible clinician (if there is one) or”
- 20 Page 18, line 43, leave out sub-paragraph (iii)
- 21 Page 19, line 4, leave out from “treatment” to end of line 6 and insert “but, of those  
persons –  
(a) one shall be a nurse and the other shall be neither a nurse  
nor a registered medical practitioner; and  
(b) neither shall be the responsible clinician (if there is one) or  
the approved clinician in charge of the treatment in  
question.”
- 22 Page 19, line 6, at end insert –  
“(5A) This section shall not by itself confer sufficient authority for a  
patient who falls within section 56(5) above to be given a form of  
treatment to which this section applies if he is not capable of  
understanding the nature, purpose and likely effects of the  
treatment (and cannot therefore consent to it).”

### Clause 31

- 23 Page 19, line 40, leave out “58A(4)” and insert “58A(3A) or (4)”
- 24 Page 19, line 42, leave out “58A(4)” and insert “58A(3A) or (4)”
- 25 Page 19, line 44, leave out from “treatment)” to “in” in line 1 on page 20 and insert  
“, after subsection (1) insert –  
“(1A) Section 58A above, in so far as it relates to electro-convulsive  
therapy by virtue of subsection (1)(a) of that section, shall not apply  
to any treatment which falls within paragraph (a) or (b) of  
subsection (1) above.  
(1B) Section 58A above, in so far as it relates to a form of treatment  
specified by virtue of subsection (1)(b) of that section, shall not  
apply to any treatment which falls within such of paragraphs (a) to  
(d) of subsection (1) above as may be specified in regulations under  
that section.  
(1C) For the purposes of subsection (1B) above, the regulations –

- (a) may make different provision for different cases (and may, in particular, make different provision for different forms of treatment);
- (b) may make provision which applies subject to specified exceptions; and
- (c) may include transitional, consequential, incidental or supplemental provision.”

( ) In that section,”

26 Page 20, line 4, at end insert –

“( ) In section 64 (supplementary provisions), after subsection (1A) (inserted by section 14 of this Act) insert –

“(1B) References in this Part of this Act to the approved clinician in charge of a patient’s treatment shall, where the treatment in question is a form of treatment to which section 58A above applies and the patient falls within section 56(5) above, be construed as references to the person in charge of the treatment.

(1C) Regulations made by virtue of section 32(2)(d) above apply for the purposes of this Part as they apply for the purposes of Part 2 of this Act.””

27 Page 20, line 4, at end insert –

“( ) In section 28 of the Mental Capacity Act 2005 (c. 9) (Mental Health Act matters), after subsection (1) insert –

“(1A) Subsection (1) does not apply in relation to any form of treatment to which section 58A of that Act (electro-convulsive therapy, etc.) applies if the patient comes within subsection (5A) of that section (informal patient under 18 who cannot give consent).””

#### After Clause 31

28 Insert the following new Clause –

#### “Withdrawal of consent

(1) Section 60 of the 1983 Act (withdrawal of consent) is amended as follows.

(2) After subsection (1) insert –

“(1A) Subsection (1B) below applies where –

- (a) the consent of a patient to any treatment has been given for the purposes of section 57, 58 or 58A above; but
- (b) before the completion of the treatment, the patient ceases to be capable of understanding its nature, purpose and likely effects.

(1B) The patient shall, subject to section 62 below, be treated as having withdrawn his consent, and those sections shall then apply as if the remainder of the treatment were a separate form of treatment.

(1C) Subsection (1D) below applies where –

- (a) a certificate has been given under section 58 or 58A above that a patient is not capable of understanding the nature,

purpose and likely effects of the treatment to which the certificate applies; but

- (b) before the completion of the treatment, the patient becomes capable of understanding its nature, purpose and likely effects.

(1D) The certificate shall, subject to section 62 below, cease to apply to the treatment and those sections shall then apply as if the remainder of the treatment were a separate form of treatment.”

- (3) In subsection (2), for “subsection (1)” substitute “subsections (1) to (1D)”.

29

Insert the following new Clause –

**“Independent mental health advocates**

- (1) Part 10 of the 1983 Act (miscellaneous and supplementary) is amended as follows.

- (2) Before section 131 insert –

**“130A Independent mental health advocates**

- (1) The appropriate national authority shall make such arrangements as it considers reasonable to enable persons (“independent mental health advocates”) to be available to help qualifying patients.
- (2) The appropriate national authority may by regulations make provision as to the appointment of persons as independent mental health advocates.
- (3) The regulations may, in particular, provide –
  - (a) that a person may act as an independent mental health advocate only in such circumstances, or only subject to such conditions, as may be specified in the regulations;
  - (b) for the appointment of a person as an independent mental health advocate to be subject to approval in accordance with the regulations.
- (4) In making arrangements under this section, the appropriate national authority shall have regard to the principle that any help available to a patient under the arrangements should, so far as practicable, be provided by a person who is independent of any person who is professionally concerned with the patient’s medical treatment.
- (5) For the purposes of subsection (4) above, a person is not to be regarded as professionally concerned with a patient’s medical treatment merely because he is representing him in accordance with arrangements –
  - (a) under section 35 of the Mental Capacity Act 2005; or
  - (b) of a description specified in regulations under this section.
- (6) Arrangements under this section may include provision for payments to be made to, or in relation to, persons carrying out functions in accordance with the arrangements.
- (7) Regulations under this section –
  - (a) may make different provision for different cases;

- (b) may make provision which applies subject to specified exceptions;
- (c) may include transitional, consequential, incidental or supplemental provision.

**130B Arrangements under section 130A**

- (1) The help available to a qualifying patient under arrangements under section 130A above shall include help in obtaining information about and understanding—
  - (a) the provisions of this Act by virtue of which he is a qualifying patient;
  - (b) any conditions or restrictions to which he is subject by virtue of this Act;
  - (c) what (if any) medical treatment is given to him or is proposed or discussed in his case;
  - (d) why it is given, proposed or discussed;
  - (e) the authority under which it is, or would be, given; and
  - (f) the requirements of this Act which apply, or would apply, in connection with the giving of the treatment to him.
- (2) The help available under the arrangements to a qualifying patient shall also include—
  - (a) help in obtaining information about and understanding any rights which may be exercised under this Act by or in relation to him; and
  - (b) help (by way of representation or otherwise) in exercising those rights.
- (3) For the purpose of providing help to a patient in accordance with the arrangements, an independent mental health advocate may—
  - (a) visit and interview the patient in private;
  - (b) visit and interview any person who is professionally concerned with his medical treatment;
  - (c) require the production of and inspect any records relating to his detention or treatment in any hospital or registered establishment or to any after-care services provided for him under section 117 above;
  - (d) require the production of and inspect any records of, or held by, a local social services authority which relate to him.
- (4) But an independent mental health advocate is not entitled to the production of, or to inspect, records in reliance on subsection (3)(c) or (d) above unless—
  - (a) in a case where the patient has capacity or is competent to consent, he does consent; or
  - (b) in any other case, the production or inspection would not conflict with a decision made by a donee or deputy or the Court of Protection and the person holding the records, having regard to such matters as may be prescribed in regulations under section 130A above, considers that—
    - (i) the records may be relevant to the help to be provided by the advocate; and
    - (ii) the production or inspection is appropriate.

- (5) For the purpose of providing help to a patient in accordance with the arrangements, an independent mental health advocate shall comply with any reasonable request made to him by any of the following for him to visit and interview the patient—
  - (a) the person (if any) appearing to the advocate to be the patient's nearest relative;
  - (b) the responsible clinician for the purposes of this Act;
  - (c) an approved mental health professional.
- (6) But nothing in this Act prevents the patient from declining to be provided with help under the arrangements.
- (7) In subsection (4) above—
  - (a) the reference to a patient who has capacity is to be read in accordance with the Mental Capacity Act 2005;
  - (b) the reference to a donee is to a donee of a lasting power of attorney (within the meaning of section 9 of that Act) created by the patient, where the donee is acting within the scope of his authority and in accordance with that Act;
  - (c) the reference to a deputy is to a deputy appointed for the patient by the Court of Protection under section 16 of that Act, where the deputy is acting within the scope of his authority and in accordance with that Act.

**130C Section 130A: supplemental**

- (1) This section applies for the purposes of section 130A above.
- (2) A patient is a qualifying patient if he is—
  - (a) liable to be detained under this Act (otherwise than by virtue of section 4 or 5(2) or (4) above or section 135 or 136 below);
  - (b) subject to guardianship under this Act; or
  - (c) a community patient.
- (3) A patient is also a qualifying patient if—
  - (a) not being a qualifying patient falling within subsection (2) above, he discusses with a registered medical practitioner or approved clinician the possibility of being given a form of treatment to which section 57 above applies; or
  - (b) not having attained the age of 18 years and not being a qualifying patient falling within subsection (2) above, he discusses with a registered medical practitioner or approved clinician the possibility of being given a form of treatment to which section 58A above applies.
- (4) Where a patient who is a qualifying patient falling within subsection (3) above is informed that the treatment concerned is proposed in his case, he remains a qualifying patient falling within that subsection until—
  - (a) the proposal is withdrawn; or
  - (b) the treatment is completed or discontinued.
- (5) References to the appropriate national authority are—
  - (a) in relation to a qualifying patient in England, to the Secretary of State;

- (b) in relation to a qualifying patient in Wales, to the Welsh Ministers.
- (6) For the purposes of subsection (5) above—
- (a) a qualifying patient falling within subsection (2)(a) above is to be regarded as being in the territory in which the hospital or registered establishment in which he is liable to be detained is situated;
  - (b) a qualifying patient falling within subsection (2)(b) above is to be regarded as being in the territory in which the area of the responsible local social services authority within the meaning of section 34(3) above is situated;
  - (c) a qualifying patient falling within subsection (2)(c) above is to be regarded as being in the territory in which the responsible hospital is situated;
  - (d) a qualifying patient falling within subsection (3) above is to be regarded as being in the territory determined in accordance with arrangements made for the purposes of this paragraph, and published, by the Secretary of State and the Welsh Ministers.

**130D Duty to give information about independent mental health advocates**

- (1) The responsible person in relation to a qualifying patient (within the meaning given by section 130C above) shall take such steps as are practicable to ensure that the patient understands—
- (a) that help is available to him from an independent mental health advocate; and
  - (b) how he can obtain that help.
- (2) In subsection (1) above, “the responsible person” means—
- (a) in relation to a qualifying patient falling within section 130C(2)(a) above (other than one also falling within paragraph (b) below), the managers of the hospital or registered establishment in which he is liable to be detained;
  - (b) in relation to a qualifying patient falling within section 130C(2)(a) above and conditionally discharged by virtue of section 42(2), 73 or 74 above, the responsible clinician;
  - (c) in relation to a qualifying patient falling within section 130C(2)(b) above, the responsible local social services authority within the meaning of section 34(3) above;
  - (d) in relation to a qualifying patient falling within section 130C(2)(c) above, the managers of the responsible hospital;
  - (e) in relation to a qualifying patient falling within section 130C(3) above, the registered medical practitioner or approved clinician with whom the patient first discusses the possibility of being given the treatment concerned.
- (3) The steps to be taken under subsection (1) above shall be taken—
- (a) where the responsible person falls within subsection (2)(a) above, as soon as practicable after the patient becomes liable to be detained;
  - (b) where the responsible person falls within subsection (2)(b) above, as soon as practicable after the conditional discharge;



- (c) where the responsible person falls within subsection (2)(c) above, as soon as practicable after the patient becomes subject to guardianship;
  - (d) where the responsible person falls within subsection (2)(d) above, as soon as practicable after the patient becomes a community patient;
  - (e) where the responsible person falls within subsection (2)(e) above, while the discussion with the patient is taking place or as soon as practicable thereafter.
- (4) The steps to be taken under subsection (1) above shall include giving the requisite information both orally and in writing.
- (5) The responsible person in relation to a qualifying patient falling within section 130C(2) above (other than a patient liable to be detained by virtue of Part 3 of this Act) shall, except where the patient otherwise requests, take such steps as are practicable to furnish the person (if any) appearing to the responsible person to be the patient's nearest relative with a copy of any information given to the patient in writing under subsection (1) above.
- (6) The steps to be taken under subsection (5) above shall be taken when the information concerned is given to the patient or within a reasonable time thereafter.”
- (3) In section 134 (patients' correspondence), in subsection (3A), for paragraph (b) substitute –
- “(b) “independent advocacy services” means services provided under –
    - (i) arrangements under section 130A above;
    - (ii) arrangements under section 248 of the National Health Service Act 2006 or section 187 of the National Health Service (Wales) Act 2006; or
    - (iii) arrangements of a description prescribed as mentioned in paragraph (a) above.””

30 Insert the following new Clause –

**“Accommodation, etc.**

- (1) The 1983 Act is amended as follows.
- (2) In section 39 (power of court to request information about hospitals), after subsection (1) insert –
  - “(1A) In relation to a person who has not attained the age of 18 years, subsection (1) above shall have effect as if the reference to the making of a hospital order included a reference to a remand under section 35 or 36 above or the making of an order under section 44 below.
  - (1B) Where the person concerned has not attained the age of 18 years, the information which may be requested under subsection (1) above includes, in particular, information about the availability of accommodation or facilities designed so as to be specially suitable for patients who have not attained the age of 18 years.”
- (3) After section 131 insert –

**“131A Accommodation, etc. for children**

- (1) This section applies in respect of any patient who has not attained the age of 18 years and who –
    - (a) is liable to be detained in a hospital under this Act; or
    - (b) is admitted to, or remains in, a hospital in pursuance of such arrangements as are mentioned in section 131(1) above.
  - (2) The managers of the hospital shall ensure that the patient’s environment in the hospital is suitable having regard to his age (subject to his needs).
  - (3) For the purpose of deciding how to fulfil the duty under subsection (2) above, the managers shall consult a person who appears to them to have knowledge or experience of cases involving patients who have not attained the age of 18 years which makes him suitable to be consulted.
  - (4) In this section, “hospital” includes a registered establishment.”
- (4) In section 140 (the title to which becomes “Notification of hospitals having arrangements for special cases”), for the words from “for the reception” to the end substitute “–
- (a) for the reception of patients in cases of special urgency;
  - (b) for the provision of accommodation or facilities designed so as to be specially suitable for patients who have not attained the age of 18 years.””

**Clause 32**

- 31** Page 20, line 21, leave out from beginning to “and” in line 32
- 32** Page 20, line 40, leave out from beginning to end of line 17 on page 21 and insert –
- “(b) it is necessary for his health or safety or for the protection of other persons that he should receive such treatment;
  - (c) subject to his being liable to be recalled as mentioned in paragraph (d) below, such treatment can be provided without his continuing to be detained in a hospital;
  - (d) it is necessary for his health or safety or for the protection of other persons that he should be liable to be recalled to hospital for medical treatment;”
- 33** Page 21, line 33, leave out subsections (2) and (3) and insert –
- “(2) But, subject to subsection (3) below, the order may specify conditions only if the responsible clinician, with the agreement of the approved mental health professional mentioned in section 17A(4)(b) above, thinks them necessary or appropriate for one or more of the following purposes –
    - (a) ensuring that the patient receives medical treatment;
    - (b) preventing risk of harm to the patient’s health or safety;
    - (c) protecting other persons.
  - (3) The order shall specify –
    - (a) a condition that the patient make himself available for examination under section 20A below; and

- (b) a condition that, if it is proposed to give a certificate under Part 4A of this Act in his case, he make himself available for examination so as to enable the certificate to be given.”

- 34 Page 22, line 4, after “order” insert “by virtue of subsection (2) above”
- 35 Page 22, line 43, leave out “imposed under section 17B(3)(d)” and insert “specified under section 17B(3)”
- 36 Page 23, line 28, leave out from beginning to “the” and insert “in his opinion,”
- 37 Page 23, line 34, leave out subsection (5)
- 38 Page 25, line 3, after “satisfied” insert “and if a statement under subsection (7A) below is made”
- 39 Page 25, line 4, leave out from “report” to end of line 5 and insert “to that effect in the prescribed form”
- 40 Page 25, line 6, leave out subsection (5)
- 41 Page 25, leave out lines 24 to 43 and insert –
  - “(b) it is necessary for his health or safety or for the protection of other persons that he should receive such treatment;
  - (c) subject to his continuing to be liable to be recalled as mentioned in paragraph (d) below, such treatment can be provided without his being detained in a hospital;
  - (d) it is necessary for his health or safety or for the protection of other persons that he should continue to be liable to be recalled to hospital for medical treatment;”
- 42 Page 25, line 45, at end insert –
  - “(7A) The statement referred to in subsection (4) above is a statement in writing by an approved mental health professional –
    - (a) that it appears to him that the conditions set out in subsection (7) above are satisfied; and
    - (b) that it is appropriate to extend the community treatment period.”

#### Clause 34

- 43 Page 26, line 37, after “that” insert “and to subsection (5) below”
- 44 Page 27, line 5, leave out “under section 37(4)” and insert “for his detention in a place of safety under section 37(4) or 45A(5)”
- 45 Page 27, line 11, at end insert –
  - “(5) Section 58A and, so far as relevant to that section, sections 59 to 62 below also apply to any patient who –
    - (a) does not fall within subsection (3) above;
    - (b) is not a community patient; and
    - (c) has not attained the age of 18 years.””
- 46 Page 27, line 31, leave out “(within the meaning of section 64C below)” and insert “for the purposes of section 64C or 64E below”
- 47 Page 27, line 35, at end insert –

“( ) Section 58A above does not apply to treatment given to the patient if there is authority to give the treatment, and the certificate requirement is met, for the purposes of section 64C or 64E below.”

48 Page 27, line 47, after “58” insert “or 58A”

**Clause 35**

49 Page 28, line 19, leave out “or 58A”

50 Page 28, line 28, after “treatment” insert “or section 58A type treatment”

51 Page 29, line 12, after second “treatment” insert “or section 58A type treatment”

52 Page 29, line 13, leave out “above” and insert “or 58A above (respectively)”

53 Page 29, line 19, leave out “approved clinician” and insert “responsible clinician or the person”

54 Page 29, line 24, at beginning insert “In a case where the treatment is section 58 type treatment,”

55 Page 29, line 33, at end insert –

“(5A) In a case where the treatment is section 58A type treatment by virtue of subsection (1)(a) of that section, treatment is immediately necessary if it falls within paragraph (a) or (b) of subsection (5) above.

(5B) In a case where the treatment is section 58A type treatment by virtue of subsection (1)(b) of that section, treatment is immediately necessary if it falls within such of paragraphs (a) to (d) of subsection (5) above as may be specified in regulations under that section.

(5C) For the purposes of subsection (5B) above, the regulations –

(a) may make different provision for different cases (and may, in particular, make different provision for different forms of treatment);

(b) may make provision which applies subject to specified exceptions; and

(c) may include transitional, consequential, incidental or supplemental provision.”

56 Page 30, line 7, leave out “approved clinician in charge of the treatment” and insert “person in charge of the treatment and an approved clinician”

57 Page 30, line 28, after “treatment” insert “or section 58A type treatment”

58 Page 31, line 24, leave out “approved clinician in charge of the treatment” and insert “person in charge of the treatment and an approved clinician”

59 Page 31, line 33, leave out from “treatment” to end of line 42 and insert “is immediately necessary”

60 Page 32, line 5, at end insert –

“(4A) Subject to subsections (4B) to (4D) below, treatment is immediately necessary if –

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

- (b) it is immediately necessary to prevent a serious deterioration of the patient's condition and is not irreversible; or
- (c) it is immediately necessary to alleviate serious suffering by the patient and is not irreversible or hazardous; or
- (d) it is immediately necessary, represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or others and is not irreversible or hazardous.

(4B) Where the treatment is section 58A type treatment by virtue of subsection (1)(a) of that section, treatment is immediately necessary if it falls within paragraph (a) or (b) of subsection (4A) above.

(4C) Where the treatment is section 58A type treatment by virtue of subsection (1)(b) of that section, treatment is immediately necessary if it falls within such of paragraphs (a) to (d) of subsection (4A) above as may be specified in regulations under section 58A above.

(4D) For the purposes of subsection (4C) above, the regulations –  
(a) may make different provision for different cases (and may, in particular, make different provision for different forms of treatment);  
(b) may make provision which applies subject to specified exceptions; and  
(c) may include transitional, consequential, incidental or supplemental provision.”

61 Page 32, line 12, at end insert “or section 58A type treatment”

62 Page 32, line 21, after “clinician” insert “or the person in charge of the treatment in question”

63 Page 32, line 21, at end insert –

“(3A) Where a patient is given treatment in accordance with a Part 4A certificate, a report on the treatment and the patient's condition shall be given by the person in charge of the treatment to the appropriate national authority if required by that authority.”

64 Page 32, line 32, leave out from first “above” to end of line 33 and insert –

- “(i) section 58 above, in the case of section 58 type treatment;
  - (ii) section 58A above, in the case of section 58A type treatment;
- (subject to section 62A(2) above).”

65 Page 32, line 34, leave out “approved clinician” and insert “person”

66 Page 32, line 38, leave out “approved clinician” and insert “person”

67 Page 34, line 4, leave out from “subsection” to “Section” in line 5 and insert “(1A) (inserted by section 28 of this Act) insert –

“(1B) ”

#### After Clause 35

68 Insert the following new Clause –

**“Repeal of provisions for after-care under supervision**

- (1) The 1983 Act is amended as follows.
- (2) Sections 25A to 25J (after-care under supervision) are omitted.
- (3) In section 66 (applications to tribunals), in subsection (2)(c), for “cases mentioned in paragraphs (c) and (ga)” substitute “case mentioned in paragraph (c)”.
- (4) In Part 1 of Schedule 1 (application of certain provisions to patients subject to hospital and guardianship orders: patients not subject to special restrictions), in paragraph 1, for “25C” substitute “26”.

**Clause 36**

69 Page 35, line 35, leave out “16” and insert “18”

**Before Clause 47**

70 Insert the following new Clause –

**“Victims’ rights**

Schedule (*Victims’ rights*) (which makes amendments to Chapter 2 of Part 3 of the Domestic Violence, Crime and Victims Act 2004 (c. 28)) has effect.”

71 Insert the following new Clause –

**“Independent mental capacity advocacy service: exceptions**

For section 40 of the Mental Capacity Act 2005 (c. 9) (independent mental capacity advocacy service: exceptions) substitute –

**“40 Exceptions**

The duty imposed by section 37(3), 38(3) or (4) or 39(4) or (5) does not apply where there is –

- (a) a person nominated by P (in whatever manner) as a person to be consulted on matters to which that duty relates,
- (b) a donee of a lasting power of attorney created by P who is authorised to make decisions in relation to those matters, or
- (c) a deputy appointed by the court for P with power to make decisions in relation to those matters.”

**Clause 47**

72 Page 44, line 19, after “paragraph” insert “42(2)(b),”

**Clause 53**

73 Page 45, line 38, leave out “54 and” and insert “(Commencement of section (*Repeal of provisions for after-care under supervision*)) to”

74 Page 46, line 4, leave out “or different areas” and insert “(including different provision for different areas and different provision for different descriptions of patient)”

- 75 Page 46, line 10, after “(4)(b)” insert “(including provision within section *(Commencement of section (Repeal of provisions for after-care under supervision))*)”

**After Clause 53**

- 76 Insert the following new Clause –

**“Commencement of section (*Repeal of provisions for after-care under supervision*)**

- (1) An order under section 53 providing for the commencement of section (*Repeal of provisions for after-care under supervision*) may, in particular, provide –
  - (a) for that section not to apply to or affect a patient who is subject to after-care under supervision immediately before that commencement, and
  - (b) for the patient to cease to be subject to after-care under supervision, and for his case to be dealt with, in accordance with provision made by the order.
- (2) The order may require –
  - (a) a Primary Care Trust or Local Health Board to secure that the patient is examined by a registered medical practitioner of a description specified in the order;
  - (b) the registered medical practitioner to examine the patient with a view to making a decision about his case by reference to criteria specified in the order.
- (3) The order may require the registered medical practitioner, having complied with provision made by virtue of subsection (2)(b) –
  - (a) to discharge the patient,
  - (b) to recommend that he be detained in hospital,
  - (c) to recommend that he be received into guardianship, or
  - (d) to make a community treatment order in respect of him.
- (4) The order may, in respect of a recommendation made by virtue of subsection (3)(b) or (c) –
  - (a) provide that the recommendation is to be made to a local social services authority determined in accordance with the order;
  - (b) provide that the recommendation is to be made in accordance with any other requirements specified in the order;
  - (c) require the local social services authority determined in accordance with paragraph (a), in response to the recommendation, to make arrangements for an approved mental health professional to consider the patient’s case on their behalf.
- (5) The order may provide that a registered medical practitioner shall not make a community treatment order in respect of a patient unless an approved mental health professional states in writing –
  - (a) that he agrees with the decision made by the practitioner about the patient’s case, and
  - (b) that it is appropriate to make the order.
- (6) An order requiring a registered medical practitioner to make a community treatment order in respect of a patient shall include provision about –

- (a) the effect of the community treatment order (in particular, replacing after-care under supervision with a contingent requirement to attend, and be detained at, a hospital), and
  - (b) the effect of its revocation (including, in particular, provision for detention under section 3 of the 1983 Act).
- (7) The order may modify a provision of the 1983 Act in its application in relation to a patient who is subject to after-care under supervision immediately before the commencement of section (*Repeal of provisions for after-care under supervision*).
- (8) Provision made by virtue of subsection (7) may, in particular –
- (a) modify any of sections 25A to 25J of the 1983 Act in their application in relation to a patient for so long as he is, by virtue of subsection (1)(a), subject to after-care under supervision after the commencement of section (*Repeal of provisions for after-care under supervision*);
  - (b) modify any of sections 17A to 17G, 20A and 20B of that Act (inserted by section 32 of this Act) in their application in relation to a patient in respect of whom a community treatment order is made by virtue of subsection (3)(d).
- (9) A reference in this section to section (*Repeal of provisions for after-care under supervision*) includes the amendments and repeals in Schedules 3 and 10 consequential on that section.
- (10) An expression used in this section and in the 1983 Act has the same meaning in this section as it has in that Act.”

#### Clause 55

77 Page 46, line 22, leave out subsection (2)

#### After Schedule 5

78 Insert the following new Schedule –

#### “VICTIMS’ RIGHTS

##### *Introduction*

- 1 Chapter 2 of Part 3 of the Domestic Violence, Crime and Victims Act 2004 (provision of information to victims of restricted patients under the 1983 Act, etc.) is amended as set out in this Schedule.

##### *Hospital orders (with or without restriction orders)*

- 2 (1) Section 36 (victims’ rights: preliminary) is amended as follows.
- (2) In subsection (3), for “with a restriction order” substitute “, whether with or without a restriction order,”.
- (3) In subsection (5) –
- (a) in paragraph (a), after “discharge from hospital” insert “while a restriction order is in force in respect of him”, and
  - (b) after paragraph (b) insert “;



- (c) what conditions he should be subject to in the event of his discharge from hospital under a community treatment order”.

3 After section 36 insert –

**“36A Supplemental provision for case where no restriction order made**

- (1) This section applies if, in a case where section 36 applies, the hospital order in respect of the patient was made without a restriction order.
- (2) Subsection (3) applies if a person who appears to the local probation board mentioned in section 36(4) to be the victim of the offence or to act for the victim of the offence, when his wishes are ascertained under section 36(4), expresses a wish –
  - (a) to make representations about a matter specified in section 36(5), or
  - (b) to receive the information specified in section 36(6).
- (3) The local probation board must –
  - (a) notify the managers of the hospital in which the patient is detained of that person’s wish and of that person’s name and address, and
  - (b) notify that person of the name and address of the hospital.
- (4) Subsection (5) applies if a person who appears to the local probation board mentioned in section 36(4) to be the victim of the offence or to act for the victim of the offence, subsequently to his wishes being ascertained under section 36(4), expresses a wish to do something specified in subsection (2)(a) or (b).
- (5) The local probation board mentioned in section 36(4) must take all reasonable steps –
  - (a) to ascertain whether the hospital order made in respect of the patient continues in force and whether a community treatment order is in force in respect of him, and
  - (b) if the board ascertains that the hospital order does continue in force –
    - (i) to notify the managers of the relevant hospital of that person’s wish, and
    - (ii) to notify that person of the name and address of the hospital.
- (6) The relevant hospital is –
  - (a) the hospital in which the patient is detained, or
  - (b) if a community treatment order is in force in respect of the patient, the responsible hospital.”

4 In section 37 (the title to which becomes “Representations where restriction order made”), in subsection (1), for “if section 36 applies” substitute “if, in a case where section 36 applies, the hospital order in respect of the patient was made with a restriction order”.

5 After section 37 insert –

**“37A Representations where restriction order not made**

- (1) This section applies if, in a case where section 36 applies, the hospital order in respect of the patient was made without a restriction order.
- (2) Subsection (3) applies if—
  - (a) a person makes representations about a matter specified in section 36(5) to the managers of the relevant hospital, and
  - (b) it appears to the managers that the person is the victim of the offence or acts for the victim of the offence.
- (3) The managers must forward the representations to the persons responsible for determining the matter.
- (4) The responsible clinician must inform the managers of the relevant hospital if he is considering making—
  - (a) an order for discharge in respect of the patient under section 23(2) of the Mental Health Act 1983,
  - (b) a community treatment order in respect of the patient, or
  - (c) an order under section 17B(4) of the Mental Health Act 1983 to vary the conditions specified in a community treatment order in force in respect of the patient.
- (5) Any person who has the power to make an order for discharge in respect of the patient under section 23(3) of the Mental Health Act 1983 must inform the managers of the relevant hospital if he is considering making that order.
- (6) A Mental Health Review Tribunal must inform the managers of the relevant hospital if—
  - (a) an application is made to the tribunal under section 66 or 69 of the Mental Health Act 1983, or
  - (b) the patient’s case is referred to the tribunal under section 67 of that Act.
- (7) Subsection (8) applies if—
  - (a) the managers of the relevant hospital receive information under subsection (4), (5) or (6), and
  - (b) a person who appears to the managers to be the victim of the offence or to act for the victim of the offence—
    - (i) when his wishes were ascertained under section 36(4), expressed a wish to make representations about a matter specified in section 36(5), or
    - (ii) has made representations about such a matter to the managers of the hospital in which the patient was, at the time in question, detained.
- (8) The managers of the relevant hospital must provide the information to the person.
- (9) The relevant hospital has the meaning given in section 36A(6).”

6 In section 38 (the title to which becomes “Information where restriction order made”), in subsection (1) for “if section 36 applies” substitute “if, in a case where section 36 applies, the hospital order in respect of the patient was made with a restriction order”.

7 After section 38 insert –

**“38A Information where restriction order not made**

- (1) This section applies if, in a case where section 36 applies, the hospital order in respect of the patient was made without a restriction order.
- (2) The responsible clinician must inform the managers of the relevant hospital –
  - (a) whether he is to make an order for discharge in respect of the patient under section 23(2) of the Mental Health Act 1983;
  - (b) whether he is to make a community treatment order in respect of the patient;
  - (c) if a community treatment order is to be made in respect of the patient, what conditions are to be specified in the order;
  - (d) if a community treatment order is in force in respect of the patient, of any variation to be made under section 17B(4) of the Mental Health Act 1983 of the conditions specified in the order;
  - (e) if a community treatment order in respect of the patient is to cease to be in force, of the date on which it is to cease to be in force;
  - (f) if, following the examination of the patient under section 20 of the Mental Health Act 1983, it does not appear to the responsible clinician that the conditions set out in subsection (4) of that section are satisfied, of the date on which the authority for the patient’s detention is to expire.
- (3) Any person who has the power to make an order for discharge in respect of the patient under section 23(3) of the Mental Health Act 1983 must inform the managers of the relevant hospital if he is to make that order.
- (4) Subsection (5) applies if –
  - (a) an application is made to a Mental Health Review Tribunal under section 66 or 69 of the Mental Health Act 1983,
  - (b) the patient’s case is referred to a Mental Health Review Tribunal under section 67 of that Act, or
  - (c) the managers of the relevant hospital refer the patient’s case to a Mental Health Review Tribunal under section 68 of that Act.
- (5) The tribunal must inform the managers of the relevant hospital if it directs that the patient is to be discharged.
- (6) Subsection (7) applies if a person who appears to the managers of the relevant hospital to be the victim of the offence or to act for the victim of the offence –
  - (a) when his wishes were ascertained under section 36(4), expressed a wish to receive the information specified in section 36(6), or

- (b) has subsequently informed the managers of the relevant hospital that he wishes to receive that information.
- (7) The managers of the relevant hospital order must take all reasonable steps—
- (a) to inform that person whether the patient is to be discharged under section 23 or 72 of the Mental Health Act 1983;
  - (b) to inform that person whether a community treatment order is to be made in respect of the patient;
  - (c) if a community treatment order is to be made in respect of the patient and is to specify conditions which relate to contact with the victim or his family, to provide that person with details of those conditions;
  - (d) if a community treatment order is in force in respect of the patient and the conditions specified in the order are to be varied under section 17B(4) of the Mental Health Act 1983, to provide that person with details of any variation which relates to contact with the victim or his family;
  - (e) if a community treatment order in respect of the patient is to cease to be in force, to inform that person of the date on which it is to cease to be in force;
  - (f) if, following the examination of the patient under section 20 of the Mental Health Act 1983, the authority for the patient's detention is not to be renewed, to inform that person of the date on which the authority is to expire;
  - (g) to provide that person with such other information as the managers of the relevant hospital consider appropriate in all the circumstances of the case.
- (8) The relevant hospital has the meaning given by section 36A(6).

### **38B Removal of restriction**

- (1) This section applies if, in a case where section 36 applies—
- (a) the hospital order in respect of the patient was made with a restriction order, and
  - (b) the restriction order ceases to have effect while the hospital order continues in force.
- (2) Subsection (3) applies if a person who appears to the relevant local probation board to be the victim of the offence or to act for the victim of the offence—
- (a) when his wishes were ascertained under section 36(4), expressed a wish to make representations about a matter specified in section 36(5) or to receive the information specified in section 36(6), or
  - (b) has subsequently informed the relevant local probation board that he wishes to make representations about such a matter or to receive that information.
- (3) The relevant local probation board must take all reasonable steps—
- (a) to notify the managers of the relevant hospital of an address at which that person may be contacted;

- (b) to notify that person of the name and address of the hospital.
- (4) While the hospital order continues in force, the patient is to be regarded as a patient in respect of whom a hospital order was made without a restriction order; and sections 37A and 38A are to apply in relation to him accordingly.
- (5) The relevant hospital has the meaning given in section 36A(6).
- (6) The relevant local probation board has the meaning given in section 37(8).”

*Hospital directions and limitation directions*

- 8 In section 39 (victims’ rights: preliminary), in subsection (3) –
- (a) in paragraph (a), after “discharge from hospital” insert “while he is subject to a limitation direction”, and
  - (b) after that paragraph insert –
    - “(aa) what conditions he should be subject to in the event of his discharge from hospital under a community treatment order;”.

- 9 After section 41 insert –

**“41A Removal of restriction**

- (1) This section applies if, in a case where section 39 applies –
  - (a) the limitation direction in respect of the offender ceases to be in force, and
  - (b) he is treated for the purposes of the Mental Health Act 1983 as a patient in respect of whom a hospital order has effect.
- (2) Subsection (3) applies if a person who appears to the relevant local probation board to be the victim of the offence or to act for the victim of the offence –
  - (a) when his wishes were ascertained under section 39(2), expressed a wish to make representations about a matter specified in section 39(3) or to receive the information specified in section 39(4), or
  - (b) has subsequently informed the relevant local probation board that he wishes to make representations about such a matter or to receive that information.
- (3) The relevant local probation board must take all reasonable steps –
  - (a) to notify the managers of the relevant hospital of an address at which that person may be contacted;
  - (b) to notify that person of the address of the hospital.
- (4) The offender is to be regarded as a patient in respect of whom a hospital order was made without a restriction order; and sections 37A and 38A are to apply in relation to him accordingly.
- (5) The relevant hospital has the meaning given in section 36A(6).

- (6) The relevant local probation board has the meaning given in section 40(8).”

*Transfer directions (with or without restriction directions)*

- 10 (1) Section 42 (victims’ rights: preliminary) is amended as follows.
- (2) In subsection (1)(c), for “and a restriction order in respect of him” substitute “in respect of the offender (whether or not he also gives a restriction direction in respect of the offender)”.
- (3) In subsection (3)–
- (a) in paragraph (a), after “discharge from hospital” insert “at a time when a restriction direction is in force in respect of him”, and
  - (b) after paragraph (b) insert “;
  - (c) what conditions he should be subject to in the event of his discharge from hospital under a community treatment order”.

- 11 After section 42 insert–

**“42A Supplemental provision for case where no restriction direction given**

- (1) This section applies if, in a case where section 42 applies, the transfer direction in respect of the patient was given without a restriction direction.
- (2) Subsection (3) applies if a person who appears to the local probation board mentioned in section 42(2) to be the victim of the offence or to act for the victim of the offence, when his wishes are ascertained under section 42(2), expresses a wish–
  - (a) to make representations about a matter specified in section 42(3), or
  - (b) to receive the information specified in section 42(4).
- (3) The local probation board must–
  - (a) notify the managers of the hospital in which the patient is detained of that person’s wish and of that person’s name and address, and
  - (b) notify that person of the name and address of the hospital.
- (4) Subsection (5) applies if a person who appears to the local probation board mentioned in section 42(2) to be the victim of the offence or to act for the victim of the offence, subsequently to his wishes being ascertained under section 42(2), expressed a wish to do something specified in subsection (2)(a) or (b).
- (5) The local probation board mentioned in section 42(2) must take all reasonable steps–
  - (a) to ascertain whether the transfer direction given in respect of the patient continues in force and whether a community treatment order is in force in respect of him, and
  - (b) if the board ascertains that the transfer direction does continue in force–

- (i) to notify the managers of the relevant hospital of that person's wish, and
- (ii) to notify that person of the name and address of the hospital.

(6) The relevant hospital has the meaning given in section 36A(6).”

12 In section 43 (the title to which becomes “Representations where restriction direction made”), in subsection (1), for “if section 42 applies” substitute “if, in a case where section 42 applies, the transfer direction in respect of the patient was given with a restriction direction”.

13 After section 43 insert –

**“43A Representations where restriction direction not given**

- (1) This section applies if, in a case where section 42 applies, the transfer direction in respect of the patient was given without a restriction direction.
- (2) Subsection (3) applies if –
  - (a) a person makes representations about a matter specified in section 42(3) to the managers of the relevant hospital, and
  - (b) it appears to the managers that the person is the victim of the offence or acts for the victim of the offence.
- (3) The managers must forward the representations to the persons responsible for determining the matter.
- (4) The responsible clinician must inform the managers of the relevant hospital if he is considering making –
  - (a) an order for discharge in respect of the patient under section 23(2) of the Mental Health Act 1983,
  - (b) a community treatment order in respect of him, or
  - (c) an order under section 17B(4) of the Mental Health Act 1983 to vary the conditions specified in a community treatment order in force in respect of the patient.
- (5) Any person who has power to make an order for discharge in respect of the patient under section 23(3) of the Mental Health Act 1983 must inform the managers of the relevant hospital if he is considering making that order.
- (6) A Mental Health Review Tribunal must inform the managers of the relevant hospital if –
  - (a) an application is made to the tribunal under section 66 or 69 of the Mental Health Act 1983, or
  - (b) the patient's case is referred to the tribunal under section 67 of that Act.
- (7) Subsection (8) applies if –
  - (a) the managers of the relevant hospital receive information under subsection (4), (5) or (6), and
  - (b) a person who appears to the managers to be the victim of the offence or to act for the victim of the offence –

- (i) when his wishes were ascertained under section 42(2), expressed a wish to make representations about a matter specified in section 42(3), or
- (ii) has made representations about such a matter to the managers of the hospital in which the patient was, at the time in question, detained.

(8) The managers of the relevant hospital must provide the information to the person.

(9) The relevant hospital has the meaning given in section 36A(6).”

14 In section 44 (the title to which becomes “Information where restriction direction made”), in subsection (1), for “if section 42 applies” substitute “if, in a case where section 42 applies, the transfer direction in respect of the patient was given with a restriction direction”.

15 After section 44 insert –

**“44A Information where restriction direction not given**

(1) This section applies if, in a case where section 42 applies, the transfer direction in respect of the patient was given without a restriction direction.

(2) The responsible clinician must inform the managers of the relevant hospital –

- (a) whether he is to make an order for discharge in respect of the patient under section 23(2) of the Mental Health Act 1983;
- (b) whether he is to make a community treatment order in respect of the patient;
- (c) if a community treatment order is to be made in respect of the patient, what conditions are to be specified in the order;
- (d) if a community treatment order is in force in respect of the patient, of any variation to be made under section 17B(4) of the Mental Health Act 1983 of the conditions specified in the order;
- (e) if a community treatment order in respect of the patient is to cease to be in force, of the date on which it is to cease to be in force;
- (f) if, following the examination of the patient under section 20 of the Mental Health Act 1983, it does not appear to the responsible clinician that the conditions set out in subsection (4) of that section are satisfied, of the date on which the authority for the patient’s detention is to expire.

(3) Any person who has power to make an order for discharge in respect of the patient under section 23(3) of the Mental Health Act 1983 must inform the managers of the relevant hospital if he is to make that order.

(4) Subsection (5) applies if –

- (a) an application is made to a Mental Health Review Tribunal under section 66 or 69 of the Mental Health Act 1983,



- (b) the patient's case is referred to a Mental Health Review Tribunal under section 67 of that Act, or
  - (c) the managers of the relevant hospital refer the patient's case to a Mental Health Review Tribunal under section 68 of that Act.
- (5) The tribunal must inform the managers of the relevant hospital if it directs that the patient be discharged.
- (6) Subsection (7) applies if a person who appears to the managers of the relevant hospital to be the victim of the offence or to act for the victim of the offence—
- (a) when his wishes were ascertained under section 42(2), expressed a wish to receive the information specified in section 42(4), or
  - (b) has subsequently informed the managers of the relevant hospital that he wishes to receive that information.
- (7) The managers of the relevant hospital order must take all reasonable steps—
- (a) to inform that person whether the patient is to be discharged under section 23 or 72 of the Mental Health Act 1983;
  - (b) to inform that person whether a community treatment order is to be made in respect of the patient;
  - (c) if a community treatment order is to be made in respect of the patient and is to specify conditions which relate to contact with the victim or his family, to provide that person with details of those conditions;
  - (d) if a community treatment order is in force in respect of the patient and the conditions specified in the order are to be varied under section 17B(4) of the Mental Health Act 1983, to provide that person with details of any variation which relates to contact with the victim or his family;
  - (e) if a community treatment order in respect of the patient is to cease to be in force, to inform that person of the date on which it is to cease to be in force;
  - (f) if, following the examination of the patient under section 20 of the Mental Health Act 1983, the authority for the patient's detention is not to be renewed, to inform that person of the date on which the authority is to expire;
  - (g) to provide that person with such other information as the managers of the relevant hospital consider appropriate in all the circumstances of the case.
- (8) The relevant hospital has the meaning given by section 36A(6).

#### **44B Removal of restriction**

- (1) This section applies if, in a case where section 42 applies—
- (a) the transfer direction in respect of the patient was given with a restriction direction, and
  - (b) the restriction direction ceases to be in force while the transfer direction continues in force.

- (2) Subsection (3) applies if a person who appears to the relevant local probation board to be the victim of the offence or to act for the victim of the offence—
  - (a) when his wishes were ascertained under section 42(2), expressed a wish to make representations about a matter specified in section 42(3) or to receive the information specified in section 42(4), or
  - (b) has subsequently informed the relevant local probation board that he wishes to make representations about such a matter or to receive that information.
- (3) The relevant local probation board must take all reasonable steps—
  - (a) to notify the managers of the relevant hospital of an address at which that person may be contacted;
  - (b) to notify that person of the name and address of the hospital.
- (4) While the transfer direction continues in force, the patient is to be regarded as a patient in respect of whom a transfer direction was given without a restriction direction; and sections 43A and 44A are to apply in relation to him accordingly.
- (5) The relevant hospital has the meaning given in section 36A(6).
- (6) The relevant local probation board has the meaning given in section 43(8).”

*Interpretation*

- 16 (1) Section 45 (the title to which becomes “Interpretation: sections 35 to 44B”) is amended as follows.
- (2) In subsection (1)—
  - (a) for “44” substitute “44B”, and
  - (b) at the appropriate places insert—
    - ““community treatment order” has the meaning given in section 17A of the Mental Health Act 1983;”,
    - ““the managers” has the meaning given in section 145 of the Mental Health Act 1983;”,
    - ““responsible clinician” means the responsible clinician for the purposes of Part 3 of the Mental Health Act 1983;”, and
    - ““responsible hospital” has the meaning given in section 17A of the Mental Health Act 1983;”.
- (3) In subsection (2), for “44” substitute “44B”.
- (4) After subsection (2) insert—
  - “(3) A reference in sections 35 to 44B to a place in which a person is detained includes a reference to a place in which he is liable to be detained under the Mental Health Act 1983.
  - (4) For the purposes of section 32(3) of that Act (regulations as to delegation of managers’ functions, etc.) as applied by Parts 1 and

2 of Schedule 1 to that Act, a function conferred on the managers of a hospital under sections 35 to 44B of this Act is to be treated as a function of theirs under Part 3 of that Act.””

### Schedule 6

- 79 Page 88, line 1, leave out sub-paragraphs (2) and (3) and insert—
- “(2) The maximum authorisation period is the shorter of these periods—
    - (a) the period which, in the assessor’s opinion, would be the appropriate maximum period for the relevant person to be a detained resident under the standard authorisation that has been requested;
    - (b) 1 year, or such shorter period as may be prescribed in regulations.
  - (3) Regulations under sub-paragraph (2)(b)—
    - (a) need not provide for a shorter period to apply in relation to all standard authorisations;
    - (b) may provide for different periods to apply in relation to different kinds of standard authorisations.
  - (4) Before making regulations under sub-paragraph (2)(b) the Secretary of State must consult all of the following—
    - (a) each body required by regulations under paragraph 161 to monitor and report on the operation of this Schedule in relation to England;
    - (b) such other persons as the Secretary of State considers it appropriate to consult.
  - (5) Before making regulations under sub-paragraph (2)(b) the National Assembly for Wales must consult all of the following—
    - (a) each person or body directed under paragraph 162(2) to carry out any function of the Assembly of monitoring and reporting on the operation of this Schedule in relation to Wales;
    - (b) such other persons as the Assembly considers it appropriate to consult.”
- 80 Page 89, line 23, at end insert “, or  
(c) any section 39D IMCA.”
- 81 Page 91, line 31, leave out from “right” to end of line 32 and insert “to make an application to the court to exercise its jurisdiction under section 21A;”
- 82 Page 91, line 33, at end insert—  
“(d) the right to have a section 39D IMCA appointed;  
(e) how to have a section 39D IMCA appointed.”
- 83 Page 91, line 42, at end insert—  
“(7) Sub-paragraph (8) applies if the managing authority is notified that a section 39D IMCA has been appointed.  
(8) As soon as is practicable after being notified, the managing authority must give the section 39D IMCA a copy of the written information given in accordance with sub-paragraph (4).”
- 84 Page 94, line 32, at end insert—

“(aa) the person to whom the request relates;”

85 Page 97, line 34, leave out from “right” to end of line 35 and insert “to make an application to the court to exercise its jurisdiction under section 21A.”

86 Page 100, line 41, at end insert –  
“(ba) any section 39D IMCA;”

87 Page 107, line 37, at end insert –  
“(d) any section 39D IMCA;”

88 Page 110, line 45, at end insert –  
“(d) any section 39D IMCA;”

89 Page 115, line 24, at end insert –  
“156A A section 39D IMCA is an independent mental capacity advocate appointed under section 39D.”

90 Page 115, line 25, at end insert “or a section 39D IMCA.”

91 Page 116, line 33, after “court” insert “to exercise its jurisdiction”

92 Page 122, line 31, at end insert –

“187 The following table contains an index of provisions defining or otherwise explaining expressions used in this Schedule –

age assessment	paragraph 34
age requirement	paragraph 13
age review assessment	paragraph 112(3)
appointment regulations	paragraph 138
assessment under this Schedule	paragraph 127
assessor (except in Part 8)	paragraph 33
assessor (in Part 8)	paragraphs 33 and 128
authorisation under this Schedule	paragraph 10
best interests (determination of)	section 4
best interests assessment	paragraph 38
best interests requirement	paragraph 16
best interests review assessment	paragraph 112(6)
care home	paragraph 177
change of reason ground	paragraph 106

complete (in relation to a review of a standard authorisation)	paragraph 118
deprivation of a person's liberty	section 64(5) and (6)
deputy	section 16(2)(b)
detained resident	paragraph 6
disposed of (in relation to a request for a standard authorisation)	paragraph 66
eligibility assessment	paragraph 46
eligibility requirement	paragraph 17
eligibility review assessment	paragraph 112(7)
eligible person (in relation to paragraphs 68 to 73)	paragraph 68
eligible person (in relation to Part 8)	paragraph 102(3)
expiry (in relation to an existing authorisation)	paragraph 125(b)
existing authorisation (in Part 8)	paragraph 125(a)
hospital	paragraph 174
IMCA	paragraph 157
in force (in relation to a standard authorisation)	paragraphs 63 and 64
in force (in relation to an urgent authorisation)	paragraphs 88 and 89
ineligible (in relation to the eligibility requirement)	Schedule 1A
interested person	paragraph 184
interested person consulted by the best interests assessor	paragraph 185
lack of capacity	section 2
lasting power of attorney	section 9
managing authority (in relation to a care home)	paragraph 178
managing authority (in relation to a hospital)	paragraph 175 or 176

maximum authorisation period	paragraph 42
mental capacity assessment	paragraph 37
mental capacity requirement	paragraph 15
mental capacity review assessment	paragraph 112(5)
mental health assessment	paragraph 35
mental health requirement	paragraph 14
mental health review assessment	paragraph 112(4)
negative conclusion	paragraph 112(2)(a)
new supervisory body	paragraph 99(b)
no refusals assessment	paragraph 48
no refusals requirement	paragraph 18
no refusals review assessment	paragraph 112(8)
non-qualification ground	paragraph 105
old supervisory body	paragraph 99(a)
positive conclusion	paragraph 112(2)(b)
purpose of a standard authorisation	paragraph 11(1)
purpose of an urgent authorisation	paragraph 11(2)
qualifying requirements	paragraph 12
refusal (for the purposes of the no refusals requirement)	paragraphs 19 and 20
relevant care or treatment	paragraph 7
relevant hospital or care home	paragraph 7
relevant managing authority	paragraph 26(4)
relevant person	paragraph 7
relevant person's representative	paragraph 137
relevant procedure	paragraph 128
review assessment	paragraph 112(1)
reviewable	paragraph 104
section 39A IMCA	paragraph 155

section 39C IMCA	paragraph 156
section 39D IMCA	paragraph 156A
standard authorisation	paragraph 8
supervisory body (except in Part 8)	paragraph 179, 180 or 181
supervisory body (in Part 8)	paragraph 128 and paragraph 179, 180 or 181
unauthorised deprivation of liberty (in relation to paragraphs 68 to 73)	paragraph 67
urgent authorisation	paragraph 9
variation of conditions ground	paragraph 107”

### Schedule 8

**93** Page 129, line 13, leave out from “subsection (1)” to end and insert “after “relate” insert “or persons who fall within section 39A, 39C or 39D””

**94** Page 131, line 30, at end insert –

#### **“39D Person subject to Schedule A1 without paid representative**

- (1) This section applies if –
  - (a) an authorisation under Schedule A1 is in force in relation to a person (“P”),
  - (b) P has a representative (“R”) appointed under Part 10 of Schedule A1, and
  - (c) R is not being paid under regulations under Part 10 of Schedule A1 for acting as P’s representative.
- (2) The supervisory body must instruct an independent mental capacity advocate to represent P in any of the following cases.
- (3) The first case is where P makes a request to the supervisory body to instruct an advocate.
- (4) The second case is where R makes a request to the supervisory body to instruct an advocate.
- (5) The third case is where the supervisory body have reason to believe one or more of the following –
  - (a) that, without the help of an advocate, P and R would be unable to exercise one or both of the relevant rights;
  - (b) that P and R have each failed to exercise a relevant right when it would have been reasonable to exercise it;
  - (c) that P and R are each unlikely to exercise a relevant right when it would be reasonable to exercise it.
- (6) The duty in subsection (2) is subject to section 39E.

- (7) If an advocate is appointed under this section, the advocate is, in particular, to take such steps as are practicable to help P and R to understand the following matters –
- (a) the effect of the authorisation;
  - (b) the purpose of the authorisation;
  - (c) the duration of the authorisation;
  - (d) any conditions to which the authorisation is subject;
  - (e) the reasons why each assessor who carried out an assessment in connection with the request for the authorisation, or in connection with a review of the authorisation, decided that P met the qualifying requirement in question;
  - (f) the relevant rights;
  - (g) how to exercise the relevant rights.
- (8) The advocate is, in particular, to take such steps as are practicable to help P or R –
- (a) to exercise the right to apply to court, if it appears to the advocate that P or R wishes to exercise that right, or
  - (b) to exercise the right of review, if it appears to the advocate that P or R wishes to exercise that right.
- (9) If the advocate helps P or R to exercise the right of review –
- (a) the advocate may make submissions to the supervisory body on the question of whether a qualifying requirement is reviewable;
  - (b) the advocate may give information, or make submissions, to any assessor carrying out a review assessment.
- (10) In this section –
- “relevant rights” means –
    - (a) the right to apply to court, and
    - (b) the right of review;
  - “right to apply to court” means the right to make an application to the court to exercise its jurisdiction under section 21A;
  - “right of review” means the right under Part 8 of Schedule A1 to request a review.

**39E Limitation on duty to instruct advocate under section 39D**

- (1) This section applies if an advocate is already representing P in accordance with an instruction under section 39D.
- (2) Section 39D(2) does not require another advocate to be instructed, unless the following conditions are met.
- (3) The first condition is that the existing advocate was instructed –
- (a) because of a request by R, or
  - (b) because the supervisory body had reason to believe one or more of the things in section 39D(5).
- (4) The second condition is that the other advocate would be instructed because of a request by P.””



*capacity advocacy service: exceptions*) of this Act)”

- 96 Page 131, line 34, leave out from “for” to end of line 35 and insert ““or 39(4) or (5)” substitute “, 39(4) or (5), 39A(3), 39C(3) or 39D(2)”.”
- 97 Page 131, line 39, leave out from “matters” to end of line 40 and insert “to which a duty mentioned in subsection (1) relates.””
- 98 Page 132, line 31, after “paragraph” insert “42(2)(b),”
- 99 Page 133, line 33, at end insert –

“Section 39D

Instructing independent mental capacity advocate when representative for relevant person under Part 10 of Schedule A1 to the Act is not being paid.”

### Schedule 9

- 100 Page 136, line 12, at end insert –

*“Independent mental health advocates*

- (1) Section (*Independent mental health advocates*) –
- (a) applies to a patient who is liable to be detained under the 1983 Act immediately before the commencement date as it applies to a patient who becomes so liable on or after that date;
  - (b) applies to a patient who is subject to guardianship under that Act immediately before the commencement date as it applies to a patient who becomes so subject on or after that date;
  - (c) applies to a patient who is a community patient under that Act immediately before the commencement date as it applies to a patient who becomes a community patient on or after that date.
- (2) For the purposes of the provisions inserted by that section, a patient is to be treated as a qualifying patient within section 130C(3) of the 1983 Act if –
- (a) not being a formal patient, he discussed before the commencement date with a registered medical practitioner or approved clinician the possibility of being given a form of treatment to which section 57 of that Act applies, and
  - (b) sub-paragraph (4) or (5) applies in relation to him.
- (3) A patient is also to be treated for those purposes as a qualifying patient within section 130C(3) of the 1983 Act if –
- (a) not having attained the age of 18 years and not being a formal patient, he discussed before the commencement date with a registered medical practitioner or approved clinician the possibility of being given a form of treatment to which section 58A of that Act applies, and
  - (b) sub-paragraph (4) or (5) applies in relation to him.
- (4) This sub-paragraph applies in relation to the patient if, immediately before the commencement date, he has yet to be informed whether or not the treatment is proposed in his case.

- (5) This sub-paragraph applies in relation to the patient if, immediately before the commencement date –
- (a) he has been informed that the treatment is proposed in his case,
  - (b) the proposal has not been withdrawn, and
  - (c) the treatment has not been completed or discontinued.
- (6) A qualifying patient in relation to whom sub-paragraph (4) applies and who is informed on or after the commencement date that the treatment is proposed in his case, or in relation to whom sub-paragraph (5) applies, remains a qualifying patient until –
- (a) the proposal is withdrawn, or
  - (b) the treatment is completed or discontinued.
- (7) In relation to a patient who is a qualifying patient within section 130C(3) of the 1983 Act by virtue of this paragraph, the responsible person under section 130D of that Act is to be the person with overall responsibility for the patient’s case (and subsection (2)(e) of that section is to be read accordingly).
- (8) Sub-paragraph (9) applies in relation to a patient –
- (a) who is a qualifying patient within section 130C(2) of the 1983 Act by virtue of being a formal patient immediately before the commencement date, or
  - (b) who is a qualifying patient within section 130C(3) of that Act by virtue of this paragraph.
- (9) The steps to be taken under subsection (1) of section 130D of that Act are to be taken on, or as soon as practicable after, the commencement date (and subsection (3) of that section is to be read accordingly).
- (10) In this paragraph –
- “approved clinician” has the same meaning as in the 1983 Act,
  - “the commencement date” means the date on which section (*Independent mental health advocates*) comes into force, and
  - “formal patient” means a patient who is –
- (a) liable to be detained under the 1983 Act (otherwise than by virtue of section 4, 5(2) or (4), 135 or 136 of that Act),
  - (b) subject to guardianship under that Act, or
  - (c) a community patient under that Act.”

**Schedule 10**

102 Page 138, line 31, column 2, at end insert –

“In section 32(2)(c), the words “or to after-care under supervision”.

In section 34 –

- (a) in subsection (1), the definitions of “the community responsible medical officer” and “the supervisor”, and
- (b) subsection (1A).

In section 66(1) –

- (a) paragraphs (ga), (gb) and (gc) (and the word “or” at the end of each of those paragraphs), and
- (b) in sub-paragraph (i), the words from “or, in the cases” to the end.

In section 66(2) –

- (a) in paragraph (d), the words “and (gb)”, and
- (b) paragraph (fa).

In section 67(1), the words “or to after-care under supervision”.”

103 Page 138, line 32, column 2, at end insert –

“Section 72(4A).

In section 76(1), the words from “or to after-care” to “leaves hospital”.

Section 117(2A).

Section 127(2A).

In section 145 –

- (a) in subsection (1), the definitions of “the responsible after-care bodies” and “supervision application”, and
- (b) subsection (1A).”

104 Page 138, line 34, column 2, at end insert –

“In Part 1 of Schedule 1 –

- (a) in paragraph 2, the words “, 25A, 25B”, and
- (b) paragraph 8A.”

105 Page 138, line 34, column 2, at end insert –

“Mental Health (Patients in the Community) Act 1995 (c. 52) | Section 1(1).

In Schedule 1 –

- (a) in paragraph 2, paragraph (c) (and the word “and” immediately preceding it),
- (b) in paragraph 11, paragraph (a) (and the word “and” at the end of that paragraph), and
- (c) paragraphs 3, 4, 6, 7, 8(2), 10(1) to (3), 12, 13, 18 and 20.”

**106** Page 138, line 36, column 2, at end insert –

“National Health Service  
Reform and Health Care  
Professions Act 2002 (c. 17)

In Schedule 2, paragraphs 43 to 45.

Civil Partnership Act 2004  
(c. 33)

In Schedule 27, in paragraph 86, paragraph (b)  
(and the word “and” immediately preceding  
it).”

**In the Title**

**107** Line 1, after “1983” insert “, the Domestic Violence, Crime and Victims Act 2004”

**108** Line 2, after “persons;” insert “to amend section 40 of the Mental Capacity Act 2005;”