



Mental Health Act 2007

2007 CHAPTER 12

PART 1

AMENDMENTS TO MENTAL HEALTH ACT 1983

CHAPTER 4

SUPERVISED COMMUNITY TREATMENT

32 Community treatment orders, etc

- (1) The 1983 Act is amended as follows.
- (2) After section 17 insert—

“17A Community treatment orders

- (1) The responsible clinician may by order in writing discharge a detained patient from hospital subject to his being liable to recall in accordance with section 17E below.
- (2) A detained patient is a patient who is liable to be detained in a hospital in pursuance of an application for admission for treatment.
- (3) An order under subsection (1) above is referred to in this Act as a “community treatment order”.
- (4) The responsible clinician may not make a community treatment order unless—
 - (a) in his opinion, the relevant criteria are met; and
 - (b) an approved mental health professional states in writing—
 - (i) that he agrees with that opinion; and
 - (ii) that it is appropriate to make the order.

Status: This is the original version (as it was originally enacted).

- (5) The relevant criteria are—
- (a) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment;
 - (b) it is necessary for 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 that the responsible clinician should be able to exercise the power under section 17E(1) below to recall the patient to hospital; and
 - (e) appropriate medical treatment is available for him.
- (6) In determining whether the criterion in subsection (5)(d) above is met, the responsible clinician shall, in particular, consider, having regard to the patient's history of mental disorder and any other relevant factors, what risk there would be of a deterioration of the patient's condition if he were not detained in a hospital (as a result, for example, of his refusing or neglecting to receive the medical treatment he requires for his mental disorder).
- (7) In this Act—
- “community patient” means a patient in respect of whom a community treatment order is in force;
- “the community treatment order”, in relation to such a patient, means the community treatment order in force in respect of him; and
- “the responsible hospital”, in relation to such a patient, means the hospital in which he was liable to be detained immediately before the community treatment order was made, subject to section 19A below.

17B Conditions

- (1) A community treatment order shall specify conditions to which the patient is to be subject while the order remains in force.
- (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.
- (4) The responsible clinician may from time to time by order in writing vary the conditions specified in a community treatment order.

Status: This is the original version (as it was originally enacted).

- (5) He may also suspend any conditions specified in a community treatment order.
- (6) If a community patient fails to comply with a condition specified in the community treatment order by virtue of subsection (2) above, that fact may be taken into account for the purposes of exercising the power of recall under section 17E(1) below.
- (7) But nothing in this section restricts the exercise of that power to cases where there is such a failure.

17C Duration of community treatment order

A community treatment order shall remain in force until—

- (a) the period mentioned in section 20A(1) below (as extended under any provision of this Act) expires, but this is subject to sections 21 and 22 below;
 - (b) the patient is discharged in pursuance of an order under section 23 below or a direction under section 72 below;
 - (c) the application for admission for treatment in respect of the patient otherwise ceases to have effect; or
 - (d) the order is revoked under section 17F below,
- whichever occurs first.

17D Effect of community treatment order

- (1) The application for admission for treatment in respect of a patient shall not cease to have effect by virtue of his becoming a community patient.
- (2) But while he remains a community patient—
 - (a) the authority of the managers to detain him under section 6(2) above in pursuance of that application shall be suspended; and
 - (b) reference (however expressed) in this or any other Act, or in any subordinate legislation (within the meaning of the Interpretation Act 1978), to patients liable to be detained, or detained, under this Act shall not include him.
- (3) And section 20 below shall not apply to him while he remains a community patient.
- (4) Accordingly, authority for his detention shall not expire during any period in which that authority is suspended by virtue of subsection (2)(a) above.

17E Power to recall to hospital

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

Status: This is the original version (as it was originally enacted).

- (2) The responsible clinician may also recall a community patient to hospital if the patient fails to comply with a condition specified under section 17B(3) above.
- (3) The hospital to which a patient is recalled need not be the responsible hospital.
- (4) Nothing in this section prevents a patient from being recalled to a hospital even though he is already in the hospital at the time when the power of recall is exercised; references to recalling him shall be construed accordingly.
- (5) The power of recall under subsections (1) and (2) above shall be exercisable by notice in writing to the patient.
- (6) A notice under this section recalling a patient to hospital shall be sufficient authority for the managers of that hospital to detain the patient there in accordance with the provisions of this Act.

17F Powers in respect of recalled patients

- (1) This section applies to a community patient who is detained in a hospital by virtue of a notice recalling him there under section 17E above.
- (2) The patient may be transferred to another hospital in such circumstances and subject to such conditions as may be prescribed in regulations made by the Secretary of State (if the hospital in which the patient is detained is in England) or the Welsh Ministers (if that hospital is in Wales).
- (3) If he is so transferred to another hospital, he shall be treated for the purposes of this section (and section 17E above) as if the notice under that section were a notice recalling him to that other hospital and as if he had been detained there from the time when his detention in hospital by virtue of the notice first began.
- (4) The responsible clinician may by order in writing revoke the community treatment order if—
 - (a) in his opinion, the conditions mentioned in section 3(2) above are satisfied in respect of the patient; and
 - (b) an approved mental health professional states in writing—
 - (i) that he agrees with that opinion; and
 - (ii) that it is appropriate to revoke the order.
- (5) The responsible clinician may at any time release the patient under this section, but not after the community treatment order has been revoked.
- (6) If the patient has not been released, nor the community treatment order revoked, by the end of the period of 72 hours, he shall then be released.
- (7) But a patient who is released under this section remains subject to the community treatment order.
- (8) In this section—
 - (a) “the period of 72 hours” means the period of 72 hours beginning with the time when the patient’s detention in hospital by virtue of the notice under section 17E above begins; and
 - (b) references to being released shall be construed as references to being released from that detention (and accordingly from being recalled to hospital).

Status: This is the original version (as it was originally enacted).

17G Effect of revoking community treatment order

- (1) This section applies if a community treatment order is revoked under section 17F above in respect of a patient.
 - (2) Section 6(2) above shall have effect as if the patient had never been discharged from hospital by virtue of the community treatment order.
 - (3) The provisions of this or any other Act relating to patients liable to be detained (or detained) in pursuance of an application for admission for treatment shall apply to the patient as they did before the community treatment order was made, unless otherwise provided.
 - (4) If, when the order is revoked, the patient is being detained in a hospital other than the responsible hospital, the provisions of this Part of this Act shall have effect as if—
 - (a) the application for admission for treatment in respect of him were an application for admission to that other hospital; and
 - (b) he had been admitted to that other hospital at the time when he was originally admitted in pursuance of the application.
 - (5) But, in any case, section 20 below shall have effect as if the patient had been admitted to hospital in pursuance of the application for admission for treatment on the day on which the order is revoked.”
- (3) After section 20 (the cross-heading immediately above which becomes “Duration of authority and discharge”) insert—

“20A Community treatment period

- (1) Subject to the provisions of this Part of this Act, a community treatment order shall cease to be in force on expiry of the period of six months beginning with the day on which it was made.
- (2) That period is referred to in this Act as “the community treatment period”.
- (3) The community treatment period may, unless the order has previously ceased to be in force, be extended—
 - (a) from its expiration for a period of six months;
 - (b) from the expiration of any period of extension under paragraph (a) above for a further period of one year,and so on for periods of one year at a time.
- (4) Within the period of two months ending on the day on which the order would cease to be in force in default of an extension under this section, it shall be the duty of the responsible clinician—
 - (a) to examine the patient; and
 - (b) if it appears to him that the conditions set out in subsection (6) below are satisfied and if a statement under subsection (8) below is made, to furnish to the managers of the responsible hospital a report to that effect in the prescribed form.

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- (5) Where such a report is furnished in respect of the patient, the managers shall, unless they discharge him under section 23 below, cause him to be informed.
- (6) The conditions referred to in subsection (4) above are that—
- (a) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment;
 - (b) it is necessary for 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 that the responsible clinician should continue to be able to exercise the power under section 17E(1) above to recall the patient to hospital; and
 - (e) appropriate medical treatment is available for him.
- (7) In determining whether the criterion in subsection (6)(d) above is met, the responsible clinician shall, in particular, consider, having regard to the patient's history of mental disorder and any other relevant factors, what risk there would be of a deterioration of the patient's condition if he were to continue not to be detained in a hospital (as a result, for example, of his refusing or neglecting to receive the medical treatment he requires for his mental disorder).
- (8) 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 (6) above are satisfied; and
 - (b) that it is appropriate to extend the community treatment period.
- (9) Before furnishing a report under subsection (4) above the responsible clinician shall consult one or more other persons who have been professionally concerned with the patient's medical treatment.
- (10) Where a report is duly furnished under subsection (4) above, the community treatment period shall be thereby extended for the period prescribed in that case by subsection (3) above.

20B Effect of expiry of community treatment order

- (1) A community patient shall be deemed to be discharged absolutely from liability to recall under this Part of this Act, and the application for admission for treatment cease to have effect, on expiry of the community treatment order, if the order has not previously ceased to be in force.
 - (2) For the purposes of subsection (1) above, a community treatment order expires on expiry of the community treatment period as extended under this Part of this Act, but this is subject to sections 21 and 22 below.”
- (4) Schedules 3 and 4 (which contain further amendments) have effect.

33 Relationship with leave of absence

- (1) The 1983 Act is amended as follows.
- (2) In section 17 (leave of absence from hospital), after subsection (2) insert—
 - “(2A) But longer-term leave may not be granted to a patient unless the responsible clinician first considers whether the patient should be dealt with under section 17A instead.
 - (2B) For these purposes, longer-term leave is granted to a patient if—
 - (a) leave of absence is granted to him under this section either indefinitely or for a specified period of more than seven consecutive days; or
 - (b) a specified period is extended under this section such that the total period for which leave of absence will have been granted to him under this section exceeds seven consecutive days.”
- (3) In Part 2 of Schedule 1 (patients subject to special restrictions), in paragraph 3 after paragraph (a) insert—
 - “(aa) subsections (2A) and (2B) shall be omitted;”.

34 Consent to treatment

- (1) Part 4 of the 1983 Act (consent to treatment) is amended as follows.
- (2) For section 56 substitute—

“56 Patients to whom Part 4 applies

- (1) Section 57 and, so far as relevant to that section, sections 59 to 62 below apply to any patient.
- (2) Subject to that and to subsection (5) below, this Part of this Act applies to a patient only if he falls within subsection (3) or (4) below.
- (3) A patient falls within this subsection if he is liable to be detained under this Act but not if—
 - (a) he is so liable by virtue of an emergency application and the second medical recommendation referred to in section 4(4)(a) above has not been given and received;
 - (b) he is so liable by virtue of section 5(2) or (4) or 35 above or section 135 or 136 below or by virtue of a direction for his detention in a place of safety under section 37(4) or 45A(5) above; or
 - (c) he has been conditionally discharged under section 42(2) above or section 73 or 74 below and he is not recalled to hospital.
- (4) A patient falls within this subsection if—
 - (a) he is a community patient; and
 - (b) he is recalled to hospital under section 17E above.
- (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

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- (c) has not attained the age of 18 years.”
- (3) In section 61 (review of treatment), in subsection (1)—
 - (a) before “a report on” insert “, or by virtue of section 62A below in accordance with a Part 4A certificate (within the meaning of that section),” and
 - (b) in paragraph (a) for “or 21B(2) above renewing the authority for the detention” substitute “, 20A(4) or 21B(2) above in respect”.
- (4) After section 62 insert—

“62A Treatment on recall of community patient or revocation of order

- (1) This section applies where—
 - (a) a community patient is recalled to hospital under section 17E above; or
 - (b) a patient is liable to be detained under this Act following the revocation of a community treatment order under section 17F above in respect of him.
- (2) For the purposes of section 58(1)(b) above, the patient is to be treated as if he had remained liable to be detained since the making of the community treatment order.
- (3) But section 58 above does not apply to treatment given to the patient if—
 - (a) the certificate requirement is met for the purposes of section 64C or 64E below; or
 - (b) as a result of section 64B(4) or 64E(4) below, the certificate requirement would not apply (were the patient a community patient not recalled to hospital under section 17E above).
- (4) 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.
- (5) In a case where this section applies, the certificate requirement is met only in so far as—
 - (a) the Part 4A certificate expressly provides that it is appropriate for one or more specified forms of treatment to be given to the patient in that case (subject to such conditions as may be specified); or
 - (b) a notice having been given under subsection (5) of section 64H below, treatment is authorised by virtue of subsection (8) of that section.
- (6) Subsection (5)(a) above shall not preclude the continuation of any treatment, or of treatment under any plan, pending compliance with section 58 or 58A above if the approved clinician in charge of the treatment considers that the discontinuance of the treatment, or of the treatment under the plan, would cause serious suffering to the patient.
- (7) In a case where subsection (1)(b) above applies, subsection (3) above only applies pending compliance with section 58 above.
- (8) In subsection (5) above—
 - “Part 4A certificate” has the meaning given in section 64H below; and

“specified”, in relation to a Part 4A certificate, means specified in the certificate.”

35 Authority to treat

- (1) After Part 4 of the 1983 Act, insert the following Part—

“PART 4A

TREATMENT OF COMMUNITY PATIENTS NOT RECALLED TO HOSPITAL

64A Meaning of “relevant treatment”

In this Part of this Act “relevant treatment”, in relation to a patient, means medical treatment which—

- (a) is for the mental disorder from which the patient is suffering; and
- (b) is not a form of treatment to which section 57 above applies.

64B Adult community patients

- (1) This section applies to the giving of relevant treatment to a community patient who—
 - (a) is not recalled to hospital under section 17E above; and
 - (b) has attained the age of 16 years.
- (2) The treatment may not be given to the patient unless—
 - (a) there is authority to give it to him; and
 - (b) if it is section 58 type treatment or section 58A type treatment, the certificate requirement is met.
- (3) But the certificate requirement does not apply if—
 - (a) giving the treatment to the patient is authorised in accordance with section 64G below; or
 - (b) the treatment is immediately necessary and—
 - (i) the patient has capacity to consent to it and does consent to it; or
 - (ii) a donee or deputy or the Court of Protection consents to the treatment on the patient’s behalf.
- (4) Nor does the certificate requirement apply in so far as the administration of medicine to the patient at any time during the period of one month beginning with the day on which the community treatment order is made is section 58 type treatment.
- (5) The reference in subsection (4) above to the administration of medicine does not include any form of treatment specified under section 58(1)(a) above.

64C Section 64B: supplemental

- (1) This section has effect for the purposes of section 64B above.

Status: This is the original version (as it was originally enacted).

- (2) There is authority to give treatment to a patient if—
 - (a) he has capacity to consent to it and does consent to it;
 - (b) a donee or deputy or the Court of Protection consents to it on his behalf; or
 - (c) giving it to him is authorised in accordance with section 64D or 64G below.
- (3) Relevant treatment is section 58 type treatment or section 58A type treatment if, at the time when it is given to the patient, section 58 or 58A above (respectively) would have applied to it, had the patient remained liable to be detained at that time (rather than being a community patient).
- (4) The certificate requirement is met in respect of treatment to be given to a patient if—
 - (a) a registered medical practitioner appointed for the purposes of Part 4 of this Act (not being the responsible clinician or the person in charge of the treatment) has certified in writing that it is appropriate for the treatment to be given or for the treatment to be given subject to such conditions as may be specified in the certificate; and
 - (b) if conditions are so specified, the conditions are satisfied.
- (5) In a case where the treatment is section 58 type treatment, 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.
- (6) 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.
- (7) 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.
- (8) For the purposes of subsection (7) 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.
- (9) Subsection (3) of section 62 above applies for the purposes of this section as it applies for the purposes of that section.

Status: This is the original version (as it was originally enacted).

64D Adult community patients lacking capacity

- (1) A person is authorised to give relevant treatment to a patient as mentioned in section 64C(2)(c) above if the conditions in subsections (2) to (6) below are met.
- (2) The first condition is that, before giving the treatment, the person takes reasonable steps to establish whether the patient lacks capacity to consent to the treatment.
- (3) The second condition is that, when giving the treatment, he reasonably believes that the patient lacks capacity to consent to it.
- (4) The third condition is that—
 - (a) he has no reason to believe that the patient objects to being given the treatment; or
 - (b) he does have reason to believe that the patient so objects, but it is not necessary to use force against the patient in order to give the treatment.
- (5) The fourth condition is that—
 - (a) he is the person in charge of the treatment and an approved clinician; or
 - (b) the treatment is given under the direction of that clinician.
- (6) The fifth condition is that giving the treatment does not conflict with—
 - (a) an advance decision which he is satisfied is valid and applicable; or
 - (b) a decision made by a donee or deputy or the Court of Protection.
- (7) In this section—
 - (a) reference to an advance decision is to an advance decision (within the meaning of the Mental Capacity Act 2005) made by the patient; and
 - (b) “valid and applicable”, in relation to such a decision, means valid and applicable to the treatment in question in accordance with section 25 of that Act.

64E Child community patients

- (1) This section applies to the giving of relevant treatment to a community patient who—
 - (a) is not recalled to hospital under section 17E above; and
 - (b) has not attained the age of 16 years.
- (2) The treatment may not be given to the patient unless—
 - (a) there is authority to give it to him; and
 - (b) if it is section 58 type treatment or section 58A type treatment, the certificate requirement is met.
- (3) But the certificate requirement does not apply if—
 - (a) giving the treatment to the patient is authorised in accordance with section 64G below; or

Status: This is the original version (as it was originally enacted).

- (b) in a case where the patient is competent to consent to the treatment and does consent to it, the treatment is immediately necessary.
- (4) Nor does the certificate requirement apply in so far as the administration of medicine to the patient at any time during the period of one month beginning with the day on which the community treatment order is made is section 58 type treatment.
- (5) The reference in subsection (4) above to the administration of medicine does not include any form of treatment specified under section 58(1)(a) above.
- (6) For the purposes of subsection (2)(a) above, there is authority to give treatment to a patient if—
 - (a) he is competent to consent to it and he does consent to it; or
 - (b) giving it to him is authorised in accordance with section 64F or 64G below.
- (7) Subsections (3) to (9) of section 64C above have effect for the purposes of this section as they have effect for the purposes of section 64B above.
- (8) Regulations made by virtue of section 32(2)(d) above apply for the purposes of this section as they apply for the purposes of Part 2 of this Act.

64F Child community patients lacking competence

- (1) A person is authorised to give relevant treatment to a patient as mentioned in section 64E(6)(b) above if the conditions in subsections (2) to (5) below are met.
- (2) The first condition is that, before giving the treatment, the person takes reasonable steps to establish whether the patient is competent to consent to the treatment.
- (3) The second condition is that, when giving the treatment, he reasonably believes that the patient is not competent to consent to it.
- (4) The third condition is that—
 - (a) he has no reason to believe that the patient objects to being given the treatment; or
 - (b) he does have reason to believe that the patient so objects, but it is not necessary to use force against the patient in order to give the treatment.
- (5) The fourth condition is that—
 - (a) he is the person in charge of the treatment and an approved clinician; or
 - (b) the treatment is given under the direction of that clinician.

64G Emergency treatment for patients lacking capacity or competence

- (1) A person is also authorised to give relevant treatment to a patient as mentioned in section 64C(2)(c) or 64E(6)(b) above if the conditions in subsections (2) to (4) below are met.

Status: This is the original version (as it was originally enacted).

- (2) The first condition is that, when giving the treatment, the person reasonably believes that the patient lacks capacity to consent to it or, as the case may be, is not competent to consent to it.
- (3) The second condition is that the treatment is immediately necessary.
- (4) The third condition is that if it is necessary to use force against the patient in order to give the treatment—
 - (a) the treatment needs to be given in order to prevent harm to the patient; and
 - (b) the use of such force is a proportionate response to the likelihood of the patient’s suffering harm, and to the seriousness of that harm.
- (5) Subject to subsections (6) to (8) 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.
- (6) 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.
- (7) 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 section 58A above.
- (8) For the purposes of subsection (7) 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.
- (9) Subsection (3) of section 62 above applies for the purposes of this section as it applies for the purposes of that section.

64H Certificates: supplementary provisions

- (1) A certificate under section 64B(2)(b) or 64E(2)(b) above (a “Part 4A certificate”) may relate to a plan of treatment under which the patient is to be given (whether within a specified period or otherwise) one or more forms of section 58 type treatment or section 58A type treatment.
- (2) A Part 4A certificate shall be in such form as may be prescribed by regulations made by the appropriate national authority.

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- (3) Before giving a Part 4A certificate, the registered medical practitioner concerned shall consult two other persons who have been professionally concerned with the patient’s medical treatment but, of those persons—
- (a) at least one shall be a person who is not a registered medical practitioner; and
 - (b) neither shall be the patient’s responsible clinician or the person in charge of the treatment in question.
- (4) 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.
- (5) The appropriate national authority may at any time give notice directing that a Part 4A certificate shall not apply to treatment given to a patient after a date specified in the notice, and the relevant section shall then apply to any such treatment as if that certificate had not been given.
- (6) The relevant section is—
- (a) if the patient is not recalled to hospital in accordance with section 17E above, section 64B or 64E above;
 - (b) if the patient is so recalled or is liable to be detained under this Act following revocation of the community treatment order under section 17F above—
 - (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).
- (7) The notice under subsection (5) above shall be given to the person in charge of the treatment in question.
- (8) Subsection (5) above shall not preclude the continuation of any treatment or of treatment under any plan pending compliance with the relevant section if the person in charge of the treatment considers that the discontinuance of the treatment or of treatment under the plan would cause serious suffering to the patient.
- (9) In this section, “the appropriate national authority” means—
- (a) in relation to community patients in respect of whom the responsible hospital is in England, the Secretary of State;
 - (b) in relation to community patients in respect of whom the responsible hospital is in Wales, the Welsh Ministers.

64I Liability for negligence

Nothing in section 64D, 64F or 64G above excludes a person’s civil liability for loss or damage, or his criminal liability, resulting from his negligence in doing anything authorised to be done by that section.

Status: This is the original version (as it was originally enacted).

64J Factors to be considered in determining whether patient objects to treatment

- (1) In assessing for the purposes of this Part whether he has reason to believe that a patient objects to treatment, a person shall consider all the circumstances so far as they are reasonably ascertainable, including the patient's behaviour, wishes, feelings, views, beliefs and values.
- (2) But circumstances from the past shall be considered only so far as it is still appropriate to consider them.

64K Interpretation of Part 4A

- (1) This Part of this Act is to be construed as follows.
 - (2) References to a patient who lacks capacity are to a patient who lacks capacity within the meaning of the Mental Capacity Act 2005.
 - (3) References to a patient who has capacity are to be read accordingly.
 - (4) References to a donee are to a donee of a lasting power of attorney (within the meaning of section 9 of the Mental Capacity Act 2005) created by the patient, where the donee is acting within the scope of his authority and in accordance with that Act.
 - (5) References to a deputy are to a deputy appointed for the patient by the Court of Protection under section 16 of the Mental Capacity Act 2005, where the deputy is acting within the scope of his authority and in accordance with that Act.
 - (6) Reference to the responsible clinician shall be construed as a reference to the responsible clinician within the meaning of Part 2 of this Act.
 - (7) References to a hospital include a registered establishment.
 - (8) Section 64(3) above applies for the purposes of this Part of this Act as it applies for the purposes of Part 4 of this Act.”
- (2) In section 119 of the 1983 Act (practitioners approved for Part 4 and section 118)—
- (a) in subsection (2)—
 - (i) after “those provisions” insert “or under Part 4A of this Act”,
 - (ii) in paragraph (a), for “in a registered establishment” substitute “in a hospital or registered establishment or any community patient in a hospital or establishment of any description or (if access is granted) other place”, and
 - (iii) in paragraph (b), for “in that home” substitute “there”, and
 - (b) after subsection (2) insert—

“(3) In this section, “establishment of any description” shall be construed in accordance with section 4(8) of the Care Standards Act 2000.”
- (3) In section 121 of the 1983 Act (Mental Health Act Commission), in subsection (2)(b) after “61” insert “, 64H(5)”.
- (4) The Mental Capacity Act 2005 (c. 9) is amended as follows.

Status: This is the original version (as it was originally enacted).

(5) In section 28 (Mental Health Act matters), after subsection (1A) (inserted by section 28 of this Act) insert—

“(1B) Section 5 does not apply to an act to which section 64B of the Mental Health Act applies (treatment of community patients not recalled to hospital).”

(6) In section 37 (independent mental capacity advocates: provision of serious medical treatment by NHS body), in subsection (2) after “Part 4” insert “or 4A”.

36 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”.