

MENTAL HEALTH ACT**Repealed by Act 2016-18 as from 23.4.2018¹****Principal Act**

Act. No. 1968-24	<i>Commencement</i>	1.11.1972
	<i>Assent</i>	31.10.1968

Amending enactments	Relevant current provisions	Commencement date
Order of 16.9.1969	ss.13(2), 60(4) and 73	
1972-06	ss.27(4) and 29(1)	
1976-16	s.27(4)	
1987-34	ss. 2, 13(2)(i), 73 and Sch. Para.1(b)	27.12.1987
1997-25	ss. 2, 13(2)(i), 73 and Sch. Para.1(b)	21.8.1997
2007-17	s. 60(4)	14.6.2007
2011-23	s. 66	23.11.2012
2013-11	ss. 2, 13(2), 18, 25, 34(1), 35, 38, 40(1), 42(b), 62(3), 64(4), 69, 71, 83, 84 & Sch.	4.7.2013

English sources:

Mental Health Act 1959 (7 & 8 Eliz.2, c.72)

¹ For transitional provisions refer to s.135 of the Mental Health Act 2016 (2016-18)

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SCHEDULE.

Mental Health Review Tribunal.

AN ACT TO MAKE PROVISION WITH RESPECT TO THE TREATMENT AND CARE OF MENTALLY DISORDERED PERSONS AND TO THEIR PROPERTY AND AFFAIRS; AND FOR PURPOSES CONNECTED WITH THOSE MATTERS.

PART I.—PRELIMINARY.

Short title.

1. This Act may be cited as the Mental Health Act.

Interpretation.

2.(1) In this Act, unless the context otherwise requires,—

“absent without leave” has the meaning assigned to it by section 17;

“Chief Executive” means the Chief Executive of the Gibraltar Health Authority;

“hospital” means the St. Joseph’s Hospital, the St. Bernard’s Hospital, the King George the Fifth Hospital and any other place declared by the Government, by notice in the Gazette, to be a hospital for the purposes of this Act;

“medical treatment” includes nursing, and also includes care and training under medical supervision;

“mental welfare officer” means a person appointed by the Government to act as a mental welfare officer for the purposes of this Act;

“Minister” means the Minister with responsibility for health;

“nearest relative”, in relation to a patient, has the meaning assigned to it in Part II;

“patient” (except in Part IV) means a person suffering or appearing to be suffering from mental disorder;

“Superintendent” means the person appointed by the Government to be Superintendent of a hospital for the purposes of this Act, and in the case of a hospital where no person is so appointed means the Chief Executive;

“Tribunal” means the Mental Health Review Tribunal constituted by section 60.

(2) For the purposes of this Act a person shall be deemed not to have attained the age of sixteen, eighteen, twenty-one or twenty-five years, as the case may be, until the commencement of the sixteenth, eighteenth, twenty-first or twenty-fifth anniversary of the date of his birth.

Definition and classification of mental disorder.

3.(1) In this Act “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder, and any other disorder or disability of mind; and “mentally disordered” shall be construed accordingly.

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

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

(4) In this Act –

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

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

Informal admission of patients.

4.(1) Nothing in this Act shall be construed as preventing a patient who requires treatment for mental disorder from being admitted to any hospital in pursuance of arrangements made for that purpose and without any application, order or direction rendering him liable to be detained under this

Act, or from remaining in any hospital in pursuance of such arrangements after he has ceased to be so liable to be detained.

(2) In the case of a minor who has attained the age of sixteen years and is capable of expressing his own wishes, any such arrangements as are mentioned in subsection (1) may be made, carried out and determined notwithstanding any right of custody or control vested by law in his parent or guardian.

PART II.—COMPULSORY ADMISSION TO HOSPITAL.

Interpretation of Part II.

4A.(1) In this Part—

“the responsible medical officer” means, in relation to a patient liable to be detained by virtue of an application for admission for observation or an application for admission for treatment, the medical practitioner in charge of the treatment of the patient.

(2) For the purposes of this Part a patient who is liable to be detained by virtue of an application for admission for treatment shall be treated as being so liable as a psychopathic or subnormal patient if the form of disorder specified in the application, or in the application as amended under section 15, is psychopathic disorder or subnormality, or psychopathic disorder and subnormality, and no other form of mental disorder.

Admission for observation.

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

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

- (a) that he is suffering from mental disorder of a nature or degree which warrants the detention of the patient in a hospital under observation (with or without other medical treatment) for at least a limited period; and
- (b) that he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons.

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

(4) Subject to the provisions of section 30 (in a case where an application is made under that section for transferring the functions of the nearest relative of the patient), a patient admitted to hospital in pursuance of an application for admission for observation may be detained for a period not exceeding twenty-eight days beginning with the day on which he is admitted, but shall not be detained thereafter unless, before the expiration of that period, he has become liable to be detained by virtue of a subsequent application, order or direction under any of the following provisions of this Act.

Admission for treatment.

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

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

- (a) that he is suffering from mental disorder, being—
 - (i) in the case of a patient of any age, mental illness or severe subnormality;
 - (ii) in the case of a patient under the age of twenty-one years, psychopathic disorder or subnormality,

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

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

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

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

(4) An application for admission for treatment, and any recommendation given for the purposes of such an application, may describe the patient as suffering from more than one of the forms of mental disorder referred to in subsection (2); but the application shall be of no effect unless the patient is described in each of the recommendations as suffering from the same one of those forms of mental disorder, whether or not he is also described in either of those recommendations as suffering from another of those forms.

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

General provisions as to applications.

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

(2) An application for admission for treatment shall not be made by a medical practitioner or a mental welfare officer except after consultation with the person (if any) appearing to be the nearest relative of the patient unless it appears to that medical practitioner or mental welfare officer that in the circumstances such consultation is not reasonably practicable or would involve unreasonable delay.

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

(4) An application for the admission of a patient shall be sufficient if the recommendations on which it is founded are given either as separate

recommendations, each signed by a medical practitioner, or as a joint recommendation signed by two medical practitioners.

General provisions as to medical recommendations.

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

(2) Of the medical recommendations given for the purposes of any such application, one shall, if practicable, be given by a medical practitioner who has previous acquaintance with the patient.

(3) Of the medical recommendations given for the purposes of any such application, one may be given by the mental welfare officer making such application, if the mental welfare officer is a medical practitioner.

(4) Where the application is for the admission of the patient to a hospital, one (but not more than one) of the medical recommendations may be given by the Superintendent or a medical practitioner on the staff of that hospital.

Admission for observation in case of emergency.

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

(2) An emergency application may be made either by a medical practitioner or a mental welfare officer or by any relative of the patient; and every such application shall include a statement (to be verified by the medical recommendation first referred to in subsection (3)) that it is of urgent necessity for the patient to be admitted and detained under section 5, and that compliance with the provisions of this Part relating to applications for admission for observation would involve undesirable delay.

(3) An emergency application shall be sufficient in the first instance if founded on one of the medical recommendations required by section 5, given if practicable, by a practitioner who has previous acquaintance with the patient and otherwise complying with the requirements of section 8 so far as applicable to a single recommendation, but shall cease to have effect on the expiration of a period of seventy-two hours from the time when the patient is admitted to the hospital unless—

- (a) the second medical recommendation required as aforesaid is given and received by the Superintendent within that period; and
- (b) that recommendation and the recommendation first referred to in this subsection together comply with all the requirements of section 8 (other than the requirements as to the time of signature of the second recommendation).

(4) In relation to an emergency application, section 7 shall have effect as if in subsection (3) of that section for the words “fourteen days” there were substituted the words “three days”.

Applications in respect of patients already in hospital.

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

- (a) in any case, notwithstanding that the patient is already an in-patient in that hospital, not being liable to be detained in pursuance of an application under this Part;
- (b) in the case of an application for admission for treatment, notwithstanding that the patient is for the time being liable to be detained in the hospital in pursuance of an application for his admission for observation,

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

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

Effect of application for admission.

11.(1) An application for the admission of a patient to a hospital under this Part, duly completed in accordance with the foregoing provisions of this Part, shall be sufficient authority for the applicant, any person authorized by the applicant, a medical practitioner, a mental welfare officer, any person on the staff of the hospital, any police officer or any person authorized by the

Superintendent to take the patient and convey him to the hospital at any time within the following period, that is to say—

- (a) in the case of an application other than an emergency application, the period of fourteen days beginning with the date on which the patient was last examined by a medical practitioner before giving a medical recommendation for the purposes of the application;
- (b) in the case of an emergency application, the period of three days beginning with the date on which the patient was examined by the medical practitioner giving the medical recommendation first referred to in section 9(3), or with the date of the application, whichever is the earlier.

(2) Where a patient is admitted within the said period to the hospital specified in such an application as aforesaid, or, being within that hospital, is treated by virtue of section 10 as if he had been so admitted, the application shall be sufficient authority for the Superintendent to detain the patient in the hospital in accordance with the provisions of this Act.

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

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

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

Rectification of application and recommendations.

12.(1) If within the period of fourteen days beginning with the day on which a patient has been admitted to a hospital in pursuance of an application for admission for observation or for treatment the application, or any medical recommendation given for the purposes of the application, is found to be in any respect incorrect or defective, the application or recommendation may, within that period and with the consent of the

Superintendent of the hospital, be amended by the person by whom it was signed; and upon such amendment being made the application or recommendation shall have effect and shall be deemed to have had effect as if it had been originally made as so amended.

(2) Without prejudice to the provisions of subsection (1), if within the period therein mentioned it appears to the Superintendent of the hospital that one of the two medical recommendations on which an application for the admission of a patient is founded is insufficient to warrant the detention of the patient in pursuance of the application, he may, within that period, give notice in writing to that effect to the applicant; and where any such notice is given in respect of a medical recommendation, that recommendation shall be disregarded, but the application shall be, and shall be deemed always to have been, sufficient if—

- (a) a fresh medical recommendation complying with the relevant provisions of this Part (other than the provisions relating to the time of signature and the interval between examinations) is furnished to the Superintendent within that period; and
- (b) that recommendation, and the other recommendation on which the application is founded, together comply with those provisions.

(3) Where the medical recommendations upon which an application for admission is founded are, taken together, insufficient to warrant the detention of the patient in pursuance of the application, a notice under subsection (2) of this section may be given in respect of either of those recommendations; but this subsection shall not apply in a case where the application is of no effect by virtue of section 6(4).

(4) Nothing in this section shall be construed as authorizing the giving of notice in respect of an application made as an emergency application under section 9, or the detention of a patient admitted in pursuance of such an application, after the period of seventy-two hours referred to in section 9(3), unless the conditions set out in paragraphs (a) and (b) of that subsection are complied with or would be complied with apart from any error or defect to which this section applies.

Correspondence of patients.

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

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

- (a) if the addressee has given notice in writing to the Superintendent of the hospital or to the responsible medical officer requesting that communications addressed to him by the patient should be withheld; or
- (b) if it appears to that officer that the packet would be unreasonably offensive to the addressee, or is defamatory of other persons (other than persons on the staff of the hospital) or would be likely to prejudice the interests of the patient:

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

- (i) to the Governor or the Chief Executive;
- (ii) to any member of the Parliament;
- (iii) to the Master or any other officer of the Court of Protection;
- (iv) to the Superintendent of the hospital;
- (v) to any other person having power to discharge the patient under this Part;
- (vi) at any time when the patient is entitled to make application to the Mental Health Review Tribunal, to that tribunal,

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

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

(4) Except as provided by this section, it shall not be lawful to prevent or impede the delivery to a patient detained as aforesaid of any postal packet

addressed to him and delivered by the Post Office, or the delivery to the Post Office of any postal packet addressed by such a patient and delivered by him for dispatch.

(5) In this section “postal packet” has the same meaning as in the Post Office Act (Act. 1961 No. 10); and the provisions of this section shall have effect notwithstanding anything in section 33 of that Act.

Visiting and examination of patients.

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

Re-classification of patients.

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

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

Leave of absence from hospital.

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

(2) Leave of absence may be granted to a patient under this section either indefinitely or on special occasions or for any specified period; and

where leave is so granted for a specified period, that period maybe extended by further leave granted in the absence of the patient.

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

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

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

- (a) he has returned to the hospital, or has been transferred to another hospital under the following provisions of this Act, before the expiration of that period; or
- (b) he is absent without leave at the expiration of that period,

Return and re-admission of patients absent without leave.

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

- (a) absents himself from the hospital without leave granted under section 16; or
- (b) fails to return to the hospital on any occasion on which, or at the expiration of any period for which, leave of absence was granted to him under that section, or upon being recalled thereunder; or

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

he may, subject to the provisions of this section, be taken into custody and returned to the hospital or place by a medical practitioner or a mental welfare officer, by any person on the staff of the hospital, by any police officer, or by any person authorized in writing by the Superintendent of the hospital.

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

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

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

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

Regulations as to transfer of patients.

18.(1) In such circumstances and subject to such conditions as may be prescribed by regulation; made by the Government, a patient who is for the time being liable to be detained in a hospital by virtue of an application under this Part may be transferred to another hospital.

(2) Where the patient, being liable to be detained in a hospital by virtue of an application for admission for observation or for treatment, is transferred to another hospital in pursuance of this section, the provisions of this Part shall apply to him as if the application were an application for admission to that other hospital and as if the patient had been admitted to that other hospital at the time when he was originally admitted in pursuance of the application.

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

Duration of authority.

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

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

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

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

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

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

(5) Where a report under this section is furnished in respect of a patient who has attained the age of sixteen years, the Superintendent shall, unless he discharges the patient, cause him to be informed, and the patient may, within the period for which the authority for his detention is renewed by virtue of the report, apply to the Mental Health Review Tribunal.

Special provisions as to psychopathic and subnormal patients.

20.(1) Notwithstanding anything in section 19, a patient who is liable to be detained by virtue of an application for admission for treatment as a psychopathic or subnormal patient shall cease to be so liable on attaining the

age of twenty-five years unless the authority for his detention is renewed under the following provisions of this section.

(2) Within the period of two months ending on the day on which a patient would cease under this section to be liable to be detained in a hospital in default of the renewal of the authority for his detention, the responsible medical officer shall examine the patient, and if it appears to him that the patient, if released from the hospital upon attaining the age of twenty-five years, would be likely to act in a manner dangerous to other persons or to himself, shall furnish to the Superintendent a report to that effect in the prescribed form; and where a report is duly furnished under this subsection the authority for the detention of the patient shall be thereby renewed, and shall continue in force accordingly after the patient attains the said age, but without prejudice to the application to the patient of the provisions of section 19.

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

Special provisions as to patients absent without leave.

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

- (a) in any case, until the expiration of the period during which he can be taken into custody under section 17, or the day on which he is returned or returns himself to the hospital or place where he ought to be, whichever is the earlier; and
- (b) if he is returned or returns himself as aforesaid within the period first mentioned in paragraph (a), until the expiration of the period of one week beginning with the day on which he is returned or returns as aforesaid.

(2) Where the period for which a patient is liable to be detained is extended by virtue of this section, any examination and report to be made and furnished under section 19(3) or section 20(2), may be made and furnished within that period as so extended.

(3) Where the authority for the detention of a patient is renewed by virtue of this section after the day on which, apart from this section, that

authority would have expired under section 19 or section 20, the renewal shall take effect as from that day.

Special provisions as to patients sentenced to imprisonment, etc.

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

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

- (a) if apart from this subsection the patient would have ceased to be liable to be detained as aforesaid on or before the day on which he is discharged from custody, he shall not cease and shall be deemed not to have ceased to be so liable until the end of that day; and
- (b) in any case sections 17 and 21 shall apply in relation to the patient as if he had absented himself without leave on that day.

Discharge of patients.

23.(1) Subject to the provisions of this section and section 24, a patient who is for the time being liable to be detained under this Part shall cease to be so liable or subject if an order in writing discharging him from detention (in this Act referred to as an order for discharge) is made in accordance with the following provisions of this section.

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

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

Restrictions on discharge by nearest relative.

24.(1) Where a report under section 20(2) has been furnished in respect of a patient, an order for discharge shall not be made by the nearest relative of the patient during the period of six months beginning with the date of the report,

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

- (a) any order for the discharge of the patient made by that relative in pursuance of the notice shall be of no effect; and
- (b) no further order for the discharge of the patient shall be made by that relative during the period of six months beginning with the date of the report.

(3) In any case where a report under subsection (2) is furnished in respect of a patient, the Superintendent shall cause the nearest relative of the patient to be informed, and that relative may, within the period of twenty-eight days beginning with the day on which he is so informed, apply to the Mental Health Review Tribunal in respect of the patient.

Removal of patients.

25. If it appears to the Minister, in the case of any patient who is receiving treatment for mental illness as an in-patient in a hospital in Gibraltar, that proper arrangements have been made for the removal of the patient to a country or territory outside Gibraltar and for his care or treatment there, the Minister may by warrant authorize the removal of the patient from the place where he is receiving treatment as aforesaid, and may give such directions as the Minister thinks fit for the conveyance of the patient to his destination in that country or territory and for his detention in any place or on board any ship or aircraft until his arrival at any specified port or place in any such country or territory.

General provisions as to patients removed from Gibraltar.

26. Where a patient liable to be detained by virtue of an application, order or direction under Part II or Part III is removed from Gibraltar in pursuance of arrangements under section 25, the application, order or direction shall cease to have effect when he is duly received into a hospital or other institution, or placed under guardianship, in pursuance of those arrangements.

Definition of relative and nearest relative.

27.(1) In this Part “relative” means any of the following, that is to say –

- (a) husband or wife;
- (b) son or daughter;
- (c) father;
- (d) mother;
- (e) brother or sister;
- (f) grandparent;
- (g) grandchild;
- (h) uncle or aunt;
- (i) nephew or niece.

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

(3) In this Part, subject to the provisions of this section and to the following provisions of this Part, the “nearest relative” means the person first described in subsection (1) who is for the time being surviving, relatives of the whole blood being preferred to relatives of the same description of the half-blood and the elder or eldest of two or more relatives described in any paragraph of that subsection being preferred to the other or others of those relatives, regardless of sex.

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

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

- (c) not being the husband, wife, father or mother of the patient, is for the time being under eighteen years of age; or
- (d) is a person against whom an order divesting him of authority over the patient has been made under section 114 of the Criminal Offences Act (Act. 1960 No. 17) and has not been rescinded,

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

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

Children and young persons in care of fit persons.

28. In any case where the rights and powers of a parent of a patient, being a child or young person, are vested in a fit person by virtue of the provisions of Part XII of the Criminal Procedure Act¹ that person shall be deemed to be the nearest relative of the patient in preference to any person except the patient’s husband or wife (if any) and any parent of the patient.

Nearest relative of minor under guardianship, etc.

29.(1) Where a patient who has not attained the age of eighteen years—

- (a) is, by virtue of an order made by a court in the exercise of jurisdiction (whether under any enactment or otherwise) in respect of the guardianship of minors (including an order under section 114 of the Criminal Offences Act²) or by virtue of a deed or will executed by his father or mother, under the guardianship of a person not being his nearest relative under the foregoing provisions of this Act, or is under the joint guardianship of two persons of whom one is such a person as aforesaid; or
- (b) is, by virtue of an order made by a court in the exercise of such jurisdiction as aforesaid or in matrimonial proceedings, or by

¹ 1961-24

² 1960-17

virtue of a separation agreement between his father and mother,
in the custody of any such person,

the person or persons having the guardianship or custody of the patient shall,
to the exclusion of any other person, be deemed to be his nearest relative.

(2) Section 27(4) shall apply in relation to a person who is, or who is one of the persons, deemed to be the nearest relative of a patient by virtue of this section as it applies in relation to a person who would be the nearest relative under section 27(3).

Appointment by court of acting nearest relative.

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

- (2) An order under this section may be made on the application of—
- (a) any relative of the patient;
 - (b) any other person with whom the patient is residing (or, if the patient is then an in-patient in a hospital, was last residing before he was admitted); or
 - (c) a mental welfare officer,

but in relation to an application made by a mental welfare officer subsection (1) shall have effect as if for the words “the applicant” there were substituted the words “the Medical Administrator”.

- (3) An application for an order under this section may be made upon any of the following grounds, that is to say—
- (a) that the patient has no nearest relative within the meaning of this Act, or that it is not reasonably practicable to ascertain whether he has such a relative, or who that relative is;
 - (b) that the nearest relative of the patient is incapable of acting as such by reason of mental disorder or other illness;

- (c) that the nearest relative of the patient unreasonably objects to the making of an application for admission for treatment in respect of the patient; or
- (d) that the nearest relative of the patient has exercised without due regard to the welfare of the patient or the interests of the public his power to discharge the patient from hospital under this Part, or is likely to do so.

(4) If immediately before the expiration of the period for which a patient is liable to be detained by virtue of an application for admission for observation, an application under this section, being an application made on the ground specified in paragraph (c) or paragraph (d) of subsection (3), is pending in respect of the patient, that period shall be extended—

- (a) in any case, until the application under this section has been finally disposed of; and
- (b) if an order is made in pursuance of the application under this section, for a further period of seven days.

(5) While an order made under this section is in force, the provisions of this Part (other than this section and section 31 shall apply in relation to the patient as if for any reference to the nearest relative of the patient there were substituted a reference to the person having the functions of that relative and (without prejudice to section 31) shall so apply notwithstanding that the person who was the patient's nearest relative when the order was made is no longer his nearest relative.

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

Discharge and variation of orders under section 30.

31.(1) An order made under section 30 in respect of a patient may be discharged by the Supreme Court upon application made—

- (a) in any case, by the person having the functions of the nearest relative of the patient by virtue of the order;
- (b) where the order was made on the ground specified in paragraph (a) or paragraph (b) of section 30(3), or where the person who was the nearest relative of the patient when the order was made

has ceased to be his nearest relative, on the application of the nearest relative of the patient.

(2) An order made under section 30 in respect of a patient may be varied by the Supreme Court, on the application of the person having the functions of the nearest relative by virtue of the order or on the application of a mental welfare officer, by substituting for the first-mentioned person the Medical Administrator or any other person who in the opinion of the court is a proper person to exercise those functions, being an authority or person who is willing to do so.

(3) If the person having the functions of the nearest relative of a patient by virtue of an order under section 30 dies, the foregoing provisions of this section shall apply as if for any reference to that person there were substituted a reference to any relative of the patient, and until the order is discharged or varied under those provisions the functions of the nearest relative under this Part shall not be exercisable by any person.

(4) An order under section 30 shall, unless previously discharged under subsection (1) of this section, cease to have effect—

- (a) if the patient was on the date of the order liable to be detained in pursuance of an application for admission for treatment under this Part, or becomes so liable within the period of three months beginning with that date, when he ceases to be so liable (otherwise than on being transferred in pursuance of section 18);
- (b) if the patient was not on the date of the order, and has not within the said period become, so liable, at the expiration of that period.

(5) The discharge or variation under this section of an order made under section 30 shall not affect the validity of anything previously done in pursuance of the order.

Duty of mental welfare officer to make application for admission.

32.(1) It shall be the duty of a mental welfare officer to make an application for admission to hospital in respect of a patient in any case where he is satisfied that such an application ought to be made and is of opinion, having regard to any wishes expressed by relatives of the patient or any other relevant circumstances, that it is necessary or proper for the application to be made by him.

(2) Nothing in this section shall be construed as authorizing or requiring an application to be made by a mental welfare officer in contravention of the

provisions of section 7(2) or as restricting the power of a mental welfare officer to make any application under this Act.

Rules of court regarding applications to Supreme Court.

33. Rules relating to applications authorized by this Part to be made to the Supreme Court may be made by the Chief Justice and may provide—

- (a) for the hearing and determination of such applications otherwise than in open court;
- (b) for the admission on the hearing of such applications of evidence of such descriptions as may be specified in the rules notwithstanding anything to the contrary in any law relating to the admissibility of evidence;
- (c) for the visiting and interviewing of patients in private by or under the direction of the court.

Regulations for purposes of Part II.

34.(1) The Government may make regulations for prescribing anything which, under this Part, is required or authorized to be prescribed, and otherwise for carrying this Part into full effect.

- (2) Regulations under this section may in particular make provision—
 - (a) for prescribing the form of any application, recommendation, report, order, notice or other document to be made or given under this Part;
 - (b) for prescribing the manner in which any such application, recommendation, report, order, notice or other document may be proved, and for regulating the service of any such application, report, order or notice;
 - (c) for requiring the Superintendent of a hospital to keep such registers or other records as may be prescribed by the regulations in respect of patients liable to be detained under this Part, and to furnish or make available to those patients, and their relatives, such written statements of their rights and powers under this Act as may be so prescribed;
 - (d) for the determination in accordance with the regulations of the age of any person whose exact age cannot be ascertained by

reference to the registers kept under the Births and Deaths Registration Act³; and

- (e) for enabling the functions under this Part of the nearest relative of a patient to be performed, in such circumstances and subject to such conditions (if any) as may be prescribed by the regulations, by any person authorized in that behalf by that relative,

and for the purposes of this Part any application, report or notice the service of which is regulated under paragraph (b) shall be deemed to have been received by or furnished to the person to whom it is authorized or required to be furnished, addressed or given if it is duly served in accordance with the regulations.

(3) Without prejudice to the foregoing provisions of this section, regulations under this section may determine the manner in which functions under this Part of the Superintendent of a hospital are to be exercised, and such regulations may in particular specify the circumstances in which, and the conditions subject to which, any such functions may be performed by other persons acting on behalf of the Superintendent.

Power of Minister to refer to Tribunal.

35. The Minister may, if he thinks fit, at any time refer to the Mental Health Review Tribunal the case of any patient who is liable to be detained under this Part.

Special provisions as towards of court.

36.(1) An application for the admission to hospital of a minor who is a ward of court may be made under this Part with the leave of the court; and section 7(2) shall not apply in relation to an application so made.

(2) Where a minor being a ward of court is liable to be detained in a hospital by virtue of an application for admission under this Part, any power exercisable under this Part in relation to the patient by his nearest relative shall be exercisable by or with the leave of the court.

37. *Renumbered 4A.*

PART III.— CRIMINAL PERSONS OF UNSOUND MIND.

Application of Part III.

³ 1887-01

38. This Part shall apply to any person admitted or detained in a hospital in pursuance of an order or direction made under Part 28 of the Criminal Procedure and Evidence Act 2011.

Criminal persons of unsound mind.

39. Any person admitted to or detained in a hospital in pursuance of any order specified in section 38 shall be detained therein as a criminal person of unsound mind.

Discharge of criminal person of unsound mind.

40. No criminal person of unsound mind shall be discharged from a hospital save under and in accordance with an order or direction of the court or the Minister with responsibility for justice, as may be appropriate.

No application to Mental Health Review Tribunal.

41. No application shall be made to the Mental Health Review Tribunal by, on behalf of or in connection with any criminal person of unsound mind:

Provided that the Minister with responsibility for justice may at any time refer the case of a criminal patient of unsound mind to the Tribunal for their advice.

Application of Part II to criminal person of unsound mind.

42. The following provisions of Part II (and no other such provisions) shall apply to a criminal person of unsound mind, as if he were a patient, that is to say—

- (a) section 13 (the correspondence of patients);
- (b) section 16 (leave of absence from hospital) save that no such leave of absence shall be granted unless the consent of the Minister with responsibility for justice shall have been first obtained;
- (c) section 17(1) (return and re-admission of patients absent without leave);
- (d) sections 25 and 26.

Application of Parts IV VI and VII.

43. Parts IV, VI and VII shall apply to a criminal person of unsound mind as they apply to a patient.

**PART IV.—MANAGEMENT OF PROPERTY
AND AFFAIRS OF PATIENTS.**

Interpretation of Part IV.

43A.(1) In this Part, unless the context otherwise requires,—

“patient” has the meaning assigned to it by section 45;

“property” includes any thing in action, and any interest in real or personal property.

(2) Any power conferred by this Part to make an order shall be construed as including a power, exercisable in like manner and subject to the like conditions if any, to revoke or vary the order.

Judicial authorities and Court of Protection.

44.(1) There shall be an office of the Supreme Court, called the Court of Protection, for the protection and management, as provided by this Part, of the property of persons under disability; and the Registrar shall be the Master of the Court of Protection.

(2) The Chief Justice may nominate other officers of the Court of Protection to act for the purposes of this Part.

(3) The functions expressed to be conferred by this Part on the Chief Justice shall be exercisable also by the Master of the Court of Protection or by any officer nominated under subsection (2), but—

- (a) in the case of the Master, or any such nominated officer, subject to any express provision to the contrary in this Part or any rules thereunder;
- (b) in the case of any such nominated officer, subject to any directions of the Master; and
- (c) in the case of any nominated officer, so far only as may be provided by the instrument by which he is nominated,

and references in this Part to the Chief Justice shall be construed accordingly.

Persons within the jurisdiction of the Chief Justice.

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

General functions with respect to property and affairs of patient.

46.(1) The Chief Justice may, with respect to the property and affairs of a patient, do or secure the doing of all such things as appear necessary or expedient—

- (a) for the maintenance or other benefit of the patient;
- (b) for the maintenance or other benefit of members of the patient's family;
- (c) for making provision for other persons or purposes for whom or which the patient might be expected to provide if he were not mentally disordered; or
- (d) otherwise for administering the patient's affairs.

(2) In the exercise of the powers conferred by this section regard shall be had first of all to the requirements of the patient, and any law which restricted the enforcement by a creditor of rights against property under the control of a judge in lunacy shall apply to property under the control of the Chief Justice; but subject to the foregoing provisions of this subsection the Chief Justice shall, in administering a patient's affairs, have regard to the interests of creditors and also to the desirability of making provision for obligations of the patient notwithstanding that they may not be legally enforceable,

Powers as to patient's property and affairs.

47.(1) Without prejudice to the generality of section 46 the Chief Justice shall have power to make such orders and give such directions and authorities as he thinks fit for the purposes of that section, and in particular may for those purposes make orders or give directions or authorities for—

- (a) the control (with or without the transfer or vesting of property or the payment into or lodgment in court of money or securities) and management of any property of the patient;

- (b) the sale, exchange, charging or other disposition of or dealing with any property of the patient;
- (c) the acquisition of any property in the name or on behalf of the patient;
- (d) the settlement of any property of the patient, or the gift of any property of the patient to any such persons or for any such purposes as are mentioned in paragraphs (b) and (c) of section 46(1), so however that in such cases as the Chief Justice himself may direct the powers conferred by this paragraph shall not be exercisable except by the Chief Justice.
- (e) the carrying on by a suitable person of any profession, trade or business of the patient;
- (f) the dissolution of a partnership of which the patient is a member;
- (g) the carrying out of any contract entered into by the patient;
- (h) the conduct of legal proceedings in the name of the patient or on his behalf, so however that an order, direction or authority to present a petition in the name or on behalf of the patient for divorce or nullity of marriage, for presumption of death and dissolution of marriage, or for judicial separation shall be made or given only by the Chief Justice himself;
- (i) the reimbursement out of the property of the patient, with or without interest, of money applied by any person either in payment of the patient's debts (whether legally enforceable or not) or for the maintenance or other benefit of the patient or members of his family or in making provision for other persons or purposes for whom or which he might be expected to provide if he were not mentally disordered;
- (j) the exercise of any power (including a power to consent) vested in the patient, whether beneficially, or as guardian or trustee, or otherwise.

(2) If under subsection (1) provision is made for the settlement of any property of a patient, or the exercise of a power vested in a patient of appointing trustees or retiring from a trust, the Chief Justice may also make as respects the property settled or trust property such consequential vesting or other orders as the case may require, including (in the case of the exercise

of such a power as aforesaid any order which could have been made in such a case under Part IV of the Trustees Act⁴.

(3) The power of the Chief Justice to provide for the settlement of the property of a patient shall not be exercisable at any time when the patient is a minor.

(4) Where under this section a settlement has been made of any property of a patient, and the Chief Justice is satisfied, at any time before the death of the patient, that any material fact was not disclosed when the settlement was made, or that there has been any substantial change in circumstances, he may by order vary the settlement in such manner as he thinks fit, and give any consequential directions.

Powers in cases of emergency.

48. Where it is represented to the Chief Justice, and he has reason to believe, that a person may be incapable, by reason (if mental disorder, of managing and administering his property and affairs, and the Chief Justice is of opinion that it is necessary to make immediate provision for any of the matters referred to in section 46, then pending the determination of the question whether the said person is incapable as aforesaid the Chief Justice may exercise in relation to the property and affairs of that person any of the powers conferred on him in relation to the property and affairs of a patient by this Part so far as is requisite for enabling that provision to be made.

Power to appoint receiver.

49.(1) The Chief Justice may by order appoint as receiver for a patient a person specified in the order or the holder for the time being of an office so specified; and the receiver shall do all such things in relation to the property and affairs of the patient as the Chief Justice, in the exercise of the powers conferred on him by sections 46 and 47, orders or directs him to do and may do any such thing in relation thereto as the Chief Justice, in the exercise of those powers, authorizes him to do.

(2) A receiver appointed for any person shall be discharged by order of the Chief Justice on the Chief Justice being satisfied that that person has become capable of managing and administering his property and affairs, and may be discharged by order of the Chief Justice at any time if the Chief Justice considers it expedient to do so; and a receiver shall be discharged (without any order) on the death of the patient.

Vesting of stock in curator appointed outside Gibraltar.

⁴ 1895-18

50.(1) Where the Chief Justice is satisfied—

- (a) that under the law prevailing in a place outside Gibraltar a person has been appointed to exercise powers with respect to the property or affairs of any other person on the ground (however formulated) that that other person is incapable, by reason of mental disorder, of managing and administering his property and affairs; and
- (b) that having regard to the nature of the appointment and to the circumstances of the case it is expedient that the Chief Justice should exercise his powers under this section,

the Chief Justice may direct any stock standing in the name of such other person or the right to receive the dividends thereof to be transferred into the name of the person so appointed or otherwise dealt with as requested by that person, and may give such directions as the Chief Justice thinks fit for dealing with accrued dividends thereof.

(2) In this section “stock” includes shares and also any fund, annuity or security transferable in the books kept by any body corporate or unincorporated company or society, or by an instrument of transfer either alone or accompanied by other formalities, and “dividends” shall be construed accordingly.

Preservation of interests in patient’s property.

51.(1) Where any property of a person has been disposed of under this Part, and under his will or any codicil thereto or his intestacy, or by any gift perfected or nomination taking effect on his death, any other person would have taken an interest in the property but for the disposal, he shall take the like interest, if and so far as circumstances allow, in any property belonging to the estate of the deceased which represents the property disposed of; and if the property disposed of was real property any property representing it shall so long as it remains part of his estate be treated as if it were real property.

(2) The Chief Justice, in ordering, directing or authorizing under this Part any disposal of property which apart from this section would result in the conversion of personal property into real property, may direct that the property representing the property disposed of shall, so long as it remains the property of the patient or forms part of his estate, be treated as if it were personal property.

(3) In subsections (1) and (2) references to the disposal of property are references to the sale, exchange, charging or other dealing with property other than money, the removal of property from one place to another, the

application of money in acquiring property or the transfer of money from one account to another, and references to property representing property disposed of shall be construed accordingly and as including the result of successive disposals.

(4) The Chief Justice may give such directions as appear to him necessary or expedient for the purpose of facilitating the operation of subsection (1), including the carrying of money to a separate account and the transfer of property other than money.

(5) Where the Chief Justice has ordered, directed or authorized the expenditure of money for the carrying out of permanent improvements on, or otherwise for the permanent benefit of, any property of the patient, he may order that the whole or any part of the money expended or to be expended shall be a charge upon the property, whether without interest or with interest at a specified rate, and—

- (a) a charge under this subsection may be made in favour of such person as may be just, and in particular, where the money charged is paid out of the patient's general estate, may be made in favour of a person as trustee for the patient;
- (b) an order under this subsection may provide for excluding or restricting the operation of subsection (1) :

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

Functions of visiting officers.

52.(1) The Chief Justice may authorize any person (in this section referred to as a visiting officer) to visit patients, in accordance with the directions of the Chief Justice, for the purpose of investigating matters relating to the capacity of any patient to manage and administer his property and affairs or otherwise relating to the exercise, in relation to him, of the functions of the Chief Justice under this Part; and a visiting officer shall make such reports on his visits as the Chief Justice may direct.

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

(3) A visiting officer making a visit under this section may, if he is a medical practitioner, carry out in private a medical examination of the patient and may require the production of and inspect any medical records relating to the patient.

(4) The Master of the Court of Protection may visit any patient for the purpose mentioned in subsection (1), and subsection (2) shall have effect accordingly.

(5) A report made by a visiting officer under this section, and information contained in such a report, shall not be disclosed except to the Chief Justice and any person authorized by the Chief Justice to receive the disclosure.

(6) A person who discloses any report or information in contravention of subsection (5) is guilty of an offence and is liable on summary conviction to imprisonment for three months and to a fine of £100.

(7) In this section references to patients include references to persons alleged to be incapable, by reason of mental disorder, of managing and administering their property and affairs.

General powers of the Chief Justice with respect to proceedings.

53.(1) For the purposes of any proceedings before him with respect to persons suffering or alleged to be suffering from mental disorder, the Chief Justice shall have the like powers as are vested in the Supreme Court in respect of securing the attendance of witnesses and the production of documents.

(2) Subject to the provisions of this section, any act or omission in the course of such proceedings as aforesaid which, if occurring in the course of proceedings in the Supreme Court would have been a contempt of the court, shall be punishable by the Chief Justice in any manner in which it could have been punished by the Supreme Court.

(3) subsection (2) shall not authorize the Master, or any other officer, of the Court of Protection to exercise any power of attachment or committal. but the Master or officer may certify any such act or omission to the Chief Justice, and the Chief Justice may thereupon inquire into the alleged act or omission and take any such action in relation thereto as he could have taken if the proceedings had been before him.

Appeals.

54. Subject to and in accordance with rules made under this Part, an appeal shall lie to the Chief Justice from any decision of the Master of the Court of Protection or any officer of the Court of Protection nominated under section 44(3).

Rules of procedure.

55.(1) proceedings before the Chief Justice with respect to persons suffering or alleged to be suffering from mental disorder (in this section referred to as “proceedings”) shall be conducted in accordance with the provisions of rules made under this Part.

(2) Rules under this Part may make provision as to the carrying out of preliminary or incidental inquiries, as to the persons by whom and manner in which proceedings may be instituted and carried on, as to the persons who are to be entitled to be notified of, to attend, or to take part in proceedings, as to the evidence which may be authorized or required to be given in proceedings and the manner (whether on oath or otherwise and whether orally or in writing) in which it is to be given, as to the administration of oaths and taking of affidavits for the purposes of proceedings, and as to the enforcement of orders made and directions given in proceedings.

(3) Without prejudice to the provisions of section 53(1), rules under this Part may make provision for authorizing or requiring the attendance and examination of persons suffering or alleged to be suffering from mental disorder, the furnishing of information and the production of documents.

(4) Rules under this Part may make provision as to the termination of proceedings, whether on the death or recovery of the person to whom the proceedings relate or otherwise and for the exercise, pending the termination of the proceedings of powers exercisable under this Part in relation to the property or affairs of a patient.

(5) Rules under this part may make provision as to the scale of costs, fees and percentages payable in relation to proceedings, and as to the manner in which and funds out of which such costs, fees and percentages are to be paid, may contain provision for charging any percentage upon the estate of the person to whom the proceedings relate and for the payment of costs, fees and percentages within such time after the death of the person to whom the proceedings relate or the termination of the proceedings as may be provided by the rules, and may provide for the remission of fees and percentages.

(6) A charge upon the estate of a person created by virtue of subsection (5) shall not cause any interest of that person in any property to fail or determine or to be prevented from recommencing.

(7) Rules under this Part may authorize the making of orders for the payment of costs to or by persons attending as well as persons taking part in, proceedings.

Security and accounts.

56.(1) Rules under this Part may make provision as to the giving of security by a receiver and as to the enforcement and discharge of the security.

(2) It shall be the duty of a receiver to render accounts in accordance with the requirement; of rules under this Part. as well after his discharge as during his receivership; and rules under this Part may make provision for the rendering of accounts by persons, not being receivers, ordered, directed or authorized under this Part to carry out any transaction.

General provisions as to rules under Part IV.

57.(1) Any power to make rules conferred by this Part shall be exercisable by the Chief Justice.

(2) Rules under this Part may contain such incidental and supplemental provisions as appear requisite for the purposes of the rules.

(3) Until the Chief Justice shall make rules under this Part, the practice and procedure under this Part shall be regulated by the rules for the time being in force in England with respect to the practice and procedure of and in relation to the Court of Protection. in so far as such rules are applicable to the provisions of this Part. In exercising his rule making powers under this Part the Chief Justice may exclude or modify any of the rules in force in England to such an extent as he may deem necessary to adapt such rules to conditions in Gibraltar.

Effect and proof of orders, etc.

58.(1) Section 70 of the Conveyancing and Law of Property Act. 1881 (by which orders of the Supreme Court are made conclusive in favour of purchasers) shall apply in relation to orders made and directions and authorities given by the Chief Justice as it applies in relation to orders of the Supreme Court.

(2) Office copies of orders made, directions or authorities given, or other instruments issued by the Chief Justice and sealed with the official seal of the Court of Protection shall be admissible in all legal proceedings as evidence of the originals without any further proof.

59. *Renumbered 43A.*

PART V.—MENTAL HEALTH REVIEW TRIBUNAL.

Mental Health Review Tribunal.

60.(1) There shall be constituted a Tribunal, to be called the Mental Health Review Tribunal, for the purpose of dealing with applications and references by and in respect of patients under the provisions of this Act.

(2) The provisions of the Schedule shall have effect with respect to the constitution of the Tribunal.

(3) Subject to the provisions of the Schedule, and to rules made by the Chief Justice under this Act, the jurisdiction of the Tribunal may be exercised by any three or more of its members, and references in this Act to the Tribunal shall be construed accordingly.

(4) The Minister responsible for finance may pay to the members of the Tribunal such remuneration and allowances as he may determine, and defray the expenses of such Tribunal to such amount as he may determine.

Applications to tribunal.

61.(1) Where, under any provision of this Act, an application to the Tribunal is authorized to be made by or in respect of a patient, the application shall be made by notice in writing addressed to the Tribunal.

(2) Except in such cases and at such times as are expressly provided by this Act, no application shall be made to the Tribunal by or in respect of a patient; and where, under any provision of this Act, any person is authorized to make an application to the Tribunal within a specified period, not more than one such application shall be made by that person within that period.

Powers of Tribunal.

62.(1) Where application is made to the Tribunal by or in respect of a patient who is liable to be detained under this Act, the Tribunal may direct that the patient be discharged if they are satisfied—

- (a) that he is not then suffering from mental illness, psychopathic disorder, subnormality or severe subnormality; or
- (b) that it is not necessary in the interests of the patient's health or safety or for the protection of other persons that the patient should continue to be liable to be detained; or
- (c) in the case of an application under section 20(3) or section 24(3), that the patient, if released, would not be likely to act in a manner dangerous to other persons or to himself.

(2) Where application is made to the Tribunal under any provision of this Act by or in respect of a patient and the Tribunal do not direct that the

patient be discharged, the Tribunal may, if satisfied that the patient is suffering from a form of mental disorder other than the form specified in the relevant application, order or direction, direct that that application, order or direction be amended by substituting for the form of mental disorder specified therein such other form of mental disorder as appears to the Tribunal to be appropriate.

(3) This section applies in relation to any reference to the Tribunal made by the Minister under section 35 as it applies in relation to an application made to the Tribunal by or in respect of a patient, but does not apply in relation to any reference by the Minister under section 41.

Rules as to procedure.

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

- (2) Rules made under this section may in particular make provision—
- (a) for enabling the Tribunal, or the chairman of the Tribunal, to postpone the consideration of any application by or in respect of a patient, or of any such application of any specified class, until the expiration of such period (not exceeding twelve months) as may be specified in the rules from the date on which an application by or in respect of the same patient was last considered and determined by the Tribunal under this Act;
 - (b) for enabling the Tribunal to dispose of an application without a formal hearing where such a hearing is not requested by the applicant or it appears to the Tribunal that such a hearing would be detrimental to the health of the patient;
 - (c) for enabling the Tribunal to exclude members of the public, or any specified class of members of the public, from any proceedings of the Tribunal, or to prohibit the publication of reports of any such proceedings or the names of any persons concerned in such proceedings;
 - (d) for regulating the circumstances in which, and the persons by whom, applicants and patients in respect of whom applications are made to the Tribunal may, if not desiring to conduct their own case, be represented for the purposes of those applications;
 - (e) for regulating the methods by which information relevant to an application may be obtained by or furnished to the Tribunal, and in particular for authorizing the members of the Tribunal,

or any one or more of them, to visit and interview in private any patient by or in respect of whom an application has been made;

- (f) for making available to any applicant, and to any patient in respect of whom an application is made to the Tribunal, copies of any documents obtained by or furnished to the Tribunal in connection with the application, and a statement of the substance of any oral information so obtained or furnished except where the Tribunal considers it undesirable in the interests of the patient or for other special reasons;
- (g) for requiring the Tribunal, if so requested in accordance with the rules, to furnish such statements of the reasons for any decision given by the Tribunal as may be prescribed by the rules, subject to any provision made by the rules for withholding such a statement from a patient or any other person in cases where the Tribunal considers that furnishing it would be undesirable in the interests of the patient or for other special reasons;
- (h) for conferring on the Tribunal such ancillary powers as the Chief Justice thinks necessary for the purposes of the exercise of their functions under this Act.

(3) The foregoing provisions of this section apply in relation to references to the Tribunal as they apply in relation to applications to the Tribunal by or in respect of patients.

(4) Rules under this section may be so framed as to apply to all applications or references or to applications or references of any specified class and may make different provision in relation to different cases.

(5) *Revoked.*

(6) The Tribunal may, and if so required by the Supreme Court shall, state in the form of a special case for determination by the Supreme Court any question of law which may arise before them.

Forgery, false statements, etc.

64.(1) A person who, with intent to deceive, forges any of the following documents, that is to say.—

- (a) any application under Part II;
- (b) any medical recommendation or report under this Act; or

- (c) any other document required or authorized to be made for any of the purposes of this Act, or who uses, allows another person to use or makes or has in his possession any such document which he knows to have been forged or any document so closely resembling any such document as to be calculated to deceive, is guilty of an offence.

(2) A person who wilfully makes a false entry or statement in any application, recommendation, report, record or other document required or authorized to be made for any of the purposes of this Act or with intent to deceive, makes use of any such entry or statement which he knows to be false, is guilty of an offence.

(3) A person guilty of an offence against this section is liable—

- (a) on summary conviction, to imprisonment for six months and to a fine of £ 100; or
- (b) on conviction on indictment, to imprisonment for two years and to a fine.

(4) In this section “forge” has the same meaning as in Part 17 of the Crimes Act 2011.

Ill-treatment of patients,

65.(1) It is an offence for any person being an officer on the staff of or otherwise employed in a hospital—

- (a) to ill-treat or wilfully neglect a patient for the time being receiving treatment for mental disorder as an in-patient in that hospital; or
- (b) to ill-treat or wilfully neglect, on the premises of which the hospital forms part, a patient for the time being receiving such treatment there as an out-patient.

(2) It is an offence for any individual to ill-treat or wilfully neglect a mentally disordered patient who is in his custody or care (whether by virtue of any legal or moral obligation or otherwise).

(3) A person guilty of an offence against this section is liable—

- (a) on summary conviction, to imprisonment for six months and to a fine of £100; or

- (b) on conviction on indictment, to imprisonment for two years and to a fine.

(4) No proceedings shall be instituted for an offence under this section except by or with the consent of the Attorney-General.

66. Repealed

Assisting patients to absent themselves without leave, etc.

67.(1) A person who induces or knowingly assists any other person –

- (a) being liable to be detained in a hospital within the meaning of Part II to absent himself without leave; or
- (b) being in legal custody by virtue of section 79, to escape from such custody,

is guilty of an offence.

(2) A person who knowingly harbours a patient who is absent without leave or is otherwise at large and liable to be retaken under this Act, or gives him any assistance with intent to prevent, hinder or interfere with his being taken into custody or returned to the hospital or other place where he ought to be, is guilty of an offence.

(3) A person guilty of an offence against this section is liable –

- (a) on summary conviction, to imprisonment for six months and to a fine of £100; or
- (b) on conviction on indictment, to imprisonment for two years and to a fine.

Obstruction.

68.(1) A person who refuses to allow the inspection of any premises, or without reasonable cause refuses to allow the visiting, interviewing or examination of any person by a person authorized in that behalf by or under this Act or to produce for the inspection of any person so authorized any document or record the production of which is duly required by him, or otherwise obstructs any such person in the exercise of his functions, is guilty of an offence.

(2) Without prejudice to the generality of subsection (1), a person who insists on being present when requested to withdraw by a person authorized

as aforesaid to interview or examine a person in private, is guilty of an offence.

(3) A person guilty of an offence against this section is liable on summary conviction to imprisonment for three months and to a fine of £100.

PART VII.—MISCELLANEOUS AND GENERAL PROVISIONS.

Appointment of visitors.

69. The Minister shall appoint two or more fit persons to be Visitors of the hospital, and the Minister may from time to time remove such persons or any of them, and may appoint others in their place.

Visits to be made not less than once every month.

70. Not fewer than two of the Visitors shall once at least in every month inspect every part of the hospital and see and examine every patient therein and the application and recommendations for the admission of every such patient admitted since their last visitation and the books of the hospital and shall enter in a book to be kept for the purpose (to be called the Visitors' Book) any remarks which they may deem proper in regard to the condition and management of the hospital and the patients therein and shall sign such book upon every such visit.

Special reports.

71. The Visitors or any of them shall make such reports upon any matter connected with the hospital as and when they shall see fit or as may be specially directed by the Minister.

Visits may be made at any time.

72. Any such Visitor may visit the hospital upon any day at such time and for such length of time as he may think fit and the Superintendent shall on demand of such Visitor show to him every or any person detained in the hospital as a patient or any part of the hospital or any house, outhouse, place or building connected therewith or in its curtilage.

Provision of pocket money for in-patients in hospital.

73. The Chief Executive may pay to persons who are receiving treatment in a hospital as in-patients (whether liable to be detained or not) for mental disorder, such amounts as he thinks fit in respect of their occasional personal expenses where it appears to him that they would otherwise be without resources to meet those expenses.

Correspondence of patients not subject to detention.

74.(1) Section 13 shall apply in relation to any patient who is receiving treatment for mental disorder in a hospital, having been admitted for that purpose but not being liable to be detained therein, as it applies in relation to a patient detained in a hospital under Part II.

(2) In relation to any patient to whom it applies by virtue of this section, section 13 shall have effect as if for any reference to the responsible medical officer there were substituted a reference to the medical practitioner in charge of the treatment of the patient.

Warrant to search for and remove patients.

75.(1) If it appears to a justice of the peace, on information on oath laid by a medical practitioner or a mental welfare officer, that there is reasonable cause to suspect that a person believed to be suffering from mental disorder—

- (a) has been, or is being, ill-treated, neglected or kept otherwise than under proper control, in any place within Gibraltar; or
- (b) being unable to care for himself, is living alone in any place in Gibraltar,

the justice may issue a warrant authorizing any police officer to enter, if need be by force, any premises specified in the warrant in which that person is believed to be, and, if thought fit, to remove him to a place of safety with a view to the making of an application in respect of him under Part II, or of other arrangements for his treatment or care.

(2) If it appears to a justice of the peace, on information on oath laid by any police officer or other person who is authorized by or under this Act to take a patient to any place, or to take into custody or retake a patient who is liable under this Act to be so taken or retaken,—

- (a) that there is reasonable cause to believe that the patient is to be found on premises within Gibraltar; and
- (b) that admission to the premises has been refused or that a refusal of such admission is apprehended,

the justice may issue a warrant authorizing any police officer to enter the premise;, if need be by force, and remove the patient.

(3) A patient who is removed to a place of safety in the execution of a warrant issued under this section may be detained there for a period not exceeding seventy-two hours.

(4) In the execution of a warrant issued under subsection (1), a police officer shall be accompanied by a mental welfare officer or by a medical practitioner, and in the execution of a warrant issued under subsection (2) a police officer may be accompanied –

- (a) by a mental welfare officer or a medical practitioner; or
- (b) by any person authorized by or under this Act to take or retake the patient.

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

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

Mentally disordered persons found in public places.

76.(1) If a police officer finds in a place to which the public have access a person who appears to him to be suffering from mental disorder and to be in immediate need of care or control, the police officer may, if he thinks it necessary to do so in the interest of that person or for the protection of other persons, remove that person to a place of safety within the meaning of section 75.

(2) A person removed to a place of safety under this section may be detained there for a period not exceeding seventy-two hours for the purpose of enabling him to be examined by a medical practitioner and to be interviewed by a mental welfare officer and of making any necessary arrangements for his treatment or care.

Pay, pensions, etc., of mentally disordered persons.

77.(1) Where a periodic payment falls to be made to any person by way of pay or pension or otherwise in connection with the service or employment of that or any other person, and the payment falls to be made directly out of the Consolidated Fund, or other moneys administered by or under the control or supervision of a Government department, the authority by whom the sum in question is payable, if satisfied after considering medical evidence that the person to whom it is payable (hereinafter referred to as “the patient”) is incapable by reason of mental disorder of managing and administering his

property and affairs, may, instead of paying the sum to the patient, apply it in accordance with subsection (2).

(2) The authority may pay the sum or such part thereof as they think fit to the institution or person having the care of the patient, to be applied for his benefit, and may pay the remainder (if any) or such part thereof as they think fit –

- (a) to or for the benefit of persons who appear to the authority to be members of the patient's family or other persons for whom the patient might be expected to provide if he were not mentally disordered, or
- (b) in reimbursement, with or without interest, of money applied by any person either in payment of the patient's debts (whether legally enforceable or not) or for the maintenance or other benefit of the patient or such persons as are mentioned in paragraph (a).

Powers of entry and inspection of premises.

78. A medical practitioner or a mental welfare officer may, at all reasonable times, enter and inspect any premises (not being a hospital) in Gibraltar in which a mentally disordered patient is living or is present, or in which he has reasonable cause to believe such a patient is living or is present, if he has reasonable cause to believe that the patient is not under proper care.

Provisions as to custody, conveyance and detention.

79.(1) Any person required or authorized by or by virtue of this Act to be conveyed to any place or to be kept in custody or detained in a place of safety or at any other place shall, while being so conveyed, detained or kept, as the case may be, be deemed to be in legal custody.

(2) A police officer or any other person required or authorized by or by virtue of this Act to take any person into custody, or to convey or detain any person shall, for the purposes of taking him into custody or conveying or detaining him, have all the powers, authorities, protection and privileges which a police officer has under any law.

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

Retaking of patients escaping from custody.

80.(1) If any person being in legal custody by virtue of section 79 escapes, he may, subject to the provisions of this section, be re-taken –

- (a) in any case, by the person who had his custody immediately before the escape, or by any police officer or mental welfare officer;
- (b) if at the time of the escape he was liable to be detained in a hospital within the meaning of Part II by any other person who could take him into custody under section 17 if he had absented himself without leave.

(2) A person who escapes when liable to be detained as mentioned in paragraph (b) of subsection (1) (not being a criminal person of unsound mind within the meaning of Part III) shall not be retaken under this section after the expiration of the period within which he could be retaken under section 17 if he had absented himself without leave on the day of the escape; and section 17(3) shall apply with the necessary modifications accordingly.

(3) A person who escapes while being taken to or detained in a place of safety under section 75 or 76 shall not be retaken under this section after the expiration of the period of seventy-two hours beginning with the time when he escapes or the period during which he is liable to be so detained, whichever expires first.

(4) This section, so far as it relates to the escape of a person liable to be detained in a hospital within the meaning of Part II shall apply in relation to a person who escapes while being taken to or from such a hospital in pursuance of section 18 as if he were liable to be detained in that hospital and, if he had not previously been received therein, as if he had been so received.

(5) Section 21 shall, with any necessary modifications, apply in relation to a patient who is at large and liable to be retaken by virtue of this section as it applies in relation to a patient who is absent without leave within the meaning of section 17, and references therein to section 17 shall be construed accordingly.

Protection for acts done in pursuance of this Act.

81.(1) No person shall be liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings to which he would have been liable apart from this section in respect of any act purporting to be done in pursuance of this Act or any regulations or rules thereunder, or in, or in pursuance of anything done in, the discharge of functions conferred by any other enactment on the authority having jurisdiction under Part IV, unless the act was done in bad faith or without reasonable care.

(2) No civil or criminal proceedings shall be brought against any person in any court in respect of any such act without the leave of the Supreme Court, and the Supreme Court shall not give leave under this section unless satisfied that there is substantial ground for the contention that the person to be proceeded against has acted in bad faith or without reasonable care.

(3) This section does not apply to proceedings for an offence against this Act being proceedings which, under any provision of this Act, can be instituted only with the consent of the Attorney-General.

Expenses.

82. There shall be defrayed out of the Consolidated Fund—

- (a) any expenses incurred under this Act;
- (b) any increase attributable to this Act in the sums payable out of the consolidated fund under any other law.

Warrants of Minister.

83. Any warrant of the Minister under this Act shall be given under the hand of the Minister.

Regulations.

84. Without prejudice to any other power conferred by this Act to make regulations, the Government may make regulations for the better carrying out of the purposes and provisions of this Act.

85. *Revoked.*

86. *Revoked.*

87. *Revoked.*

SCHEDULE.

Section 60.

MENTAL HEATH REVIEW TRIBUNAL.

1. The Mental Health Review Tribunal shall consist of—
 - (a) a number of persons (hereinafter referred to as “the legal members”) appointed by the Government and having such legal experience as the Government considers suitable;
 - (b) a number of persons (hereinafter referred to as “the medical members”) being medical practitioners appointed by the Government after consultation with the Chief Executive; and
 - (c) a number of persons appointed by the Government and having such experience in administration, such knowledge of social services or such other qualifications or experience as the Government considers suitable.
2. The members of the Mental Health Review Tribunal shall be appointed by notice in the Gazette and shall hold office for such period as may be specified thereby, but may resign office by notice in writing to the Government; and any such member who ceases to hold office shall be eligible for reappointment.
3. One of the legal members of the Mental Health Review Tribunal shall be appointed by the Government as chairman of the Tribunal.