

C02/2015



**Command Paper on
a draft Act to make provision with respect to the
reception, care and treatment of mentally disordered
persons; the management of the personal welfare,
property and affairs of persons who lack capacity; and
for connected purposes.**

**Presented to Parliament by
the Minister for Health, the Environment, Energy and Climate
Change.**

**by Command of Her Majesty
19th February 2015**

1. Draft Bill

2. Draft Explanatory Memorandum

Comments on this Command Paper should be sent by email to

commandpapers@gibraltar.gov.gi or delivered to

Command Papers Consultation c/o Kevin Warwick, Ministry of Education,
Justice and International Exchange of Information, Suite 771, Europort,
Gibraltar, no later than the 5th March 2015.

Any comments received later than the 5th March 2015 may not be taken into account for the purposes of the relevant consultation.

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BILL

FOR

AN ACT to make provision with respect to the reception, care and treatment of mentally disordered persons; the management of the personal welfare, property and affairs of persons who lack capacity; and for connected purposes.

ENACTED by the Legislature of Gibraltar.

PART 1 – PRELIMINARY

Short title, commencement and interpretation.

1.(1) This Act may be cited as the Mental Health Act 2015.

(2) This Act comes into operation on the day appointed by the Minister by notice in the Gazette and different days may be appointed for different purposes.

(3) In this Act, unless the context otherwise requires,—

“absent without leave” has the meaning given to it by section 24 and related expressions (including expressions relating to a patient’s liability to be returned to a hospital or other place) shall be construed accordingly;

“application for admission for assessment” has the meaning given in section 2;

“application for admission for treatment” has the meaning given in section 3;

“approved clinician” means a person approved by the Minister to act as an approved clinician for the purposes of this Act;

“approved mental health professional” means a person approved by the Minister to act as an approved mental health professional for the purposes of this Act;

“Authority” means the Gibraltar Health Authority established by section 3 of the Medical (Gibraltar Health Authority) Act, 1987;

“Care Agency” means the Care established under section 3 of the Care Agency Act 2009;

“care home” means Mount Alvernia, the Jewish Home, the Children’s Home and any other place declared by the Government, by notice in the Gazette, to be a care home for the purposes of this Act;

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

“community patient” means a patient in respect of whom a community treatment order is in force;

“community treatment order” in relation to such a patient, means the community treatment order in force in respect of him;

“community treatment period” has the meaning given in section 26;

“hospital” means the Ocean Views Mental Health Unit, St. Bernard’s Hospital and any other place declared by the Government by notice in the Gazette to be a hospital for the purposes of this Act;

“hospital order” has the meaning given in section 657 of the Criminal Procedure and Evidence Act 2011;

“interim hospital order” has the meaning given in section 657 of the Criminal Procedure and Evidence Act 2011;

“medical practitioner” means a person registered as a medical practitioner under the Medical and Health Act, 1997;

“medical treatment” includes nursing, psychological intervention and specialist mental health habilitation, rehabilitation and care;

“mental disorder” means any disorder or disability of the mind; and “mentally disordered” shall be construed accordingly;

“nearest relative”, in relation to a patient, has the meaning given in Part 2;

“patient” means a person suffering or appearing to be suffering from mental disorder;

“prescribed” means prescribed by Regulations made by the Minister under this Act;

“the responsible clinician” means—

- (a) in relation to a patient liable to be detained by virtue of an application for admission for assessment or an application for admission for treatment, or a community patient, the approved clinician with overall responsibility for the patient's case;
- (b) in relation to a patient subject to guardianship, the approved clinician authorised by the Authority to act (either generally or in any particular case or for any particular purpose) as the responsible clinician;

“transfer direction” means a direction given under section 671 or 672 of the Criminal Procedure and Evidence Act 2011;

“Tribunal” means the Mental Health Review Tribunal constituted by section 91.

(4) References in this Act to appropriate medical treatment shall be construed in accordance with section 3(4).

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

(6) A person with learning disability shall not be considered by reason of that disability to be—

- (a) suffering from mental disorder for the purposes of sections 3, 7, 17, 25, 26, 98(1)(b) and (c) and 98(4); or
- (b) requiring treatment in hospital for mental disorder for the purposes of section 21,

unless that disability is associated with abnormally aggressive or seriously irresponsible conduct on his part.

(7) Dependence on alcohol or drugs is not considered to be a disorder or disability of the mind for the purposes of subsection (3).

(8) In subsection (6), “learning disability” means a state of arrested or incomplete development of the mind which includes a significant impairment of intelligence and social functioning.

PART 2 – COMPULSORY ADMISSION TO HOSPITAL AND GUARDIANSHIP

Admission for assessment.

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

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

- (a) he is suffering from mental disorder of a nature or degree which warrants the detention of the patient in a hospital for assessment (or assessment followed by medical treatment) for at least a limited period; and
- (b) he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons.

(3) An application for admission for assessment shall be founded on the written recommendations in the prescribed form of two registered 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 38(5), a patient admitted to hospital in pursuance of an application for admission for assessment may be detained for a period not exceeding 28 days beginning with the day on which he is admitted, but shall not be detained after the expiration of that period unless before it has expired he has become liable to be detained by virtue of a subsequent application under the following provisions of this Act or by virtue of an order or direction under Part 28 of the Criminal Procedure and Evidence Act 2011.

Admission for treatment.

3.(1) A patient may be admitted to a hospital and detained there 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 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 of a nature or degree which makes it appropriate for him to receive medical treatment in a hospital;
- (b) it is necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment and it cannot be provided unless he is detained under this section; and
- (c) appropriate medical treatment is available for him.

(3) An application for admission for treatment shall be founded on the written recommendations in the prescribed form of two registered medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in 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 paragraphs (a) and (c); 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) In this Act, references to appropriate medical treatment, in relation to a person suffering from mental disorder, are references to medical treatment which is appropriate in his case, taking into account the nature and degree of mental disorder and all other circumstances of his case.

Admission for assessment in cases of emergency.

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

(2) An emergency application may be made either by an approved mental health professional or by the nearest relative of the patient; and every such application shall include a statement that it is of urgent necessity for the patient to be admitted and detained under section 2, and that compliance with the provisions of this Part relating to applications for admission for assessment 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 2, given, if practicable, by a practitioner who has previous acquaintance with the patient and otherwise complying with the requirements of section 12 so far as applicable to a single recommendation, and verifying the statement referred to in subsection (2).

(4) An emergency application shall cease to have effect on the expiration of a period of 72 hours from the time when the patient is admitted to the hospital unless—

- (a) the second medical recommendation required by section 2 is given and received by the Authority within that period; and
- (b) that recommendation and the recommendation referred to in subsection (3) together comply with all the requirements of section 12 (other than the requirement as to the time of signature of the second recommendation).

(5) In relation to an emergency application, section 11 shall have effect as if in subsection (6) of that section for the words “the period of 14 days ending with the date of the application” there were substituted the words “the previous 24 hours”.

Applications in respect of patient already in hospital.

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

- (a) the patient is already an in-patient in that hospital; or
- (b) in the case of an application for admission for treatment, the patient is for the time being liable to be detained in the hospital in pursuance of an application for his admission for assessment,

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

(2) If, in the case of a patient who is an in-patient in a hospital, it appears to the registered medical practitioner or approved clinician 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 Authority a report in writing to that effect; and in any such case the patient may be detained in the hospital for a period of 72 hours from the time when the report is so furnished.

(3) The registered medical practitioner or approved clinician in charge of the treatment of a patient in a hospital may nominate one (but not more than one) person to act for him under subsection (2) in his absence.

(4) For the purposes of subsection (3)—

- (a) the registered medical practitioner may nominate another registered medical practitioner, or an approved clinician; and
- (b) the approved clinician may nominate another approved clinician, or a registered medical practitioner.

(5) If, in the case of a patient who is receiving treatment for mental disorder as an in-patient in a hospital, it appears to the nurse in charge of the ward—

- (a) that the patient is suffering from mental disorder to such a degree that it is necessary for his health or safety or for the

protection of others for him to be immediately restrained from leaving the hospital; and

- (b) that it is not practicable to secure the immediate attendance of a practitioner or clinician for the purpose of furnishing a report under subsection (2),

the nurse may record that fact in writing; and in that event the patient may be detained in hospital for a period of six hours from the time when that fact is so recorded or until the earlier arrival at the place where the patient is detained of a practitioner or clinician having power to furnish a report under that subsection.

(6) A record made under subsection (5) shall be delivered by the nurse (or by a person authorised by the nurse in that behalf) to the Authority as soon as possible after it is made; and where a record is made under that subsection the period mentioned in subsection (2) shall begin at the time when it is made.

(7) The reference in subsection (1) to an in-patient does not include an in-patient who is liable to be detained in pursuance of an application under this Part or a community patient and the references in subsections (2) and (5) do not include an in-patient who is liable to be detained in a hospital under this Part or a community patient.

Effect of application for admission.

6.(1) An application for the admission of a patient to a hospital under this Part, duly completed in accordance with the provisions of this Part, shall be sufficient authority for the applicant, or any person authorised by the applicant, to take the patient and convey him to the hospital at any time within the following period, that is to say—

- (a) in the case of an application other than an emergency application, the period of 14 days beginning with the date on which the patient was last examined by a registered medical practitioner before giving a medical recommendation for the purposes of the application;
- (b) in the case of an emergency application, the period of 24 hours beginning with the date on which the patient was examined by the medical practitioner giving the medical recommendation

first referred to in section 4(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 mentioned in subsection (1), or, being within that hospital, is treated by virtue of section 5 as if he had been so admitted, the application shall be sufficient authority for the Authority 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 in it.

(4) 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.

Application for guardianship.

7.(1) A patient who has attained the age of 16 years may be received into guardianship, for the period allowed by the following provisions of this Act, in pursuance of an application (in this Act referred to as “a guardianship application”) made in accordance with this section.

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

- (a) he is suffering from mental disorder of a nature or degree which warrants his reception into guardianship under this section; and
- (b) it is necessary in the interests of the welfare of the patient or for the protection of persons that the patient should be so received.

(3) A guardianship application shall be founded on the written recommendations in the prescribed form of two registered medical practitioners, including in each case a statement that in the opinion of the

practitioner the conditions set out in 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) of that subsection; and
- (b) a statement of the reasons for that opinion so far as it relates to the conditions set out in paragraph (b) of that subsection.

(4) A guardianship application 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 have attained the age of 16 years.

(5) The person named as guardian in a guardianship application may be either the Care Agency or any other person (including the applicant himself); but a guardianship application in which a person other the Care Agency is named as guardian shall be of no effect unless it is accepted on behalf of that person by the Care Agency, and shall be accompanied in writing by that person that he is willing to act as guardian.

Effect of guardianship application, etc.

8.(1) Where a guardianship application, duly made under the provisions of this Part and forwarded to the Care Agency within the period allowed by subsection (2) is accepted by the Care Agency, the application shall, subject to regulations made by the Minister, confer on the Care Agency or person named in the application as guardian, to the exclusion of any other person-

- (a) the power to require the patient to reside at a place specified by the Care Agency or person named as guardian;
- (b) the power to require the patient to attend at places and times so specified for the purpose of medical treatment, occupation, education or training;
- (c) the power to require access to the patient to be given, at any place where the patient is residing, to any registered medical practitioner, approved mental health professional or other person so specified.

(2) The period within which a guardianship application is required for the purposes of this section to be forwarded to the Care Agency is the period of

14 days beginning with the date on which the patient was last examined by a registered medical practitioner before giving a medical recommendation for the purposes of the application.

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

(4) If within the period of 14 days beginning with the day on which a guardianship application has been accepted by the Care Agency 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 Care Agency, be amended by the person by whom it was signed; and upon such amendment being made the application or recommendation shall have effect and shall be deemed to have had effect as if it had been originally made as so amended.

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

Regulations as to guardianship.

9.(1) Subject to the provisions of this Part, the Minister may make regulations—

- (a) for regulating the exercise by the guardians of patients received into guardianship under this Part of their powers as such; and
- (b) for imposing on such guardians, and upon the Care Agency in the case of patients under the guardianship of persons other than the Care Agency, such duties as he considers necessary or expedient in the interests of the patients.

(2) Regulations under this section may in particular make provision for requiring the patients to be visited, on such occasions or at such intervals as may be prescribed by the regulations and shall provide for the appointment, in the case of every patient subject to the guardianship of a person other than

the Care Agency, of a registered medical practitioner to act as the nominated medical attendant of the patient.

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

10.(1) If any person (other than the Care Agency) who is the guardian of a patient received into guardianship under this Part—

- (a) dies; or
- (b) gives notice in writing to the Care Agency that he desires to relinquish the functions of guardian,

the guardianship of the patient shall thereupon vest in the Care Agency.

(2) If any such person, not having given notice under subsection (1)(b), is incapacitated by illness or any other cause from performing the functions of guardian of the patient, those functions may, during his incapacity, be performed on his behalf by the Care Agency or by any other person approved for the purposes by the Care Agency.

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

General provisions as to applications.

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

(2) No application mentioned in subsection (1) shall be made by an approved mental health professional if the circumstances are such that there would be a potential conflict of interest for the purposes of regulations made under section 13.

(3) Every application for admission shall be addressed to the Authority and every guardianship application shall be forwarded to the Care Agency.

(4) Before or within a reasonable time after an application for the admission of a patient for assessment is made by an approved mental health professional, that professional shall take such steps as are practicable to inform the person (if any) appearing to be the nearest relative of the patient that the application is to be or has been made and of the power of the nearest relative under section 32(4)(a).

(5) An approved mental health professional may not make an application for admission for treatment or a guardianship application in respect of a patient in either of the following cases—

- (a) the nearest relative of the patient has notified that professional, or the Care Agency, that he objects to the application being made; or
- (b) that professional has not consulted the person (if any) appearing to be the nearest relative of the patient, but the requirement to consult that person does not apply if it appears to the professional that in the circumstances such consultation is not reasonably practicable or would involve unreasonable delay.

(6) None of the applications mentioned in subsection (1) shall be made by any person in respect of a patient unless that person has personally seen the patient within the period of 14 days ending with the date of the application.

(7) Each of the applications mentioned in subsection (1) shall be sufficient if the recommendations on which it is founded are given either as separate recommendations, each signed by a registered medical practitioner, or as a joint recommendation signed by two such practitioners.

General provisions as to medical recommendations.

12.(1) The recommendations required for the purposes of an application for the admission of a patient under this Part or a guardianship application (in this Act referred to as “medical recommendations”) shall be signed on or before the date of the application, and shall be given by practitioners who have personally examined the patient either together or separately, but where they have examined the patient separately not more than five days must have elapsed between the days on which the separate examinations took place.

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

(3) A registered medical practitioner who is an approved clinician shall be treated as also approved for the purposes of this section under subsection (2) as having special experience as mentioned there.

(4) No medical recommendation shall be given for the purposes of an application mentioned in subsection (1) if the circumstances are such that there would be a potential conflict of interest for the purposes of regulations made under section 13.

Conflicts of interest.

13.(1) The Minister may make regulations as to the circumstances in which there would be a potential conflict of interest such that—

- (a) an approved mental health professional shall not make an application mentioned in section 11(1);
- (b) a registered medical practitioner shall not give a recommendation for the purposes of an application mentioned in section 12(1).

(2) Regulations under subsection (1) may make—

- (a) provision for the prohibitions in paragraphs (a) and (b) of that subsection to be subject to specified exceptions;
- (b) different provision for different cases; and
- (c) transitional, consequential, incidental or supplemental provisions.

Duty of approved mental health professionals to make applications for admission or guardianship.

14.(1) It shall be the duty of an approved mental health professional to make an application for admission to hospital or a guardianship application in respect of a patient if he is—

- (a) satisfied that such an application ought to be made in respect of the patient; and
- (b) of the opinion, having regard to any wishes expressed by relatives of the patient or any other relevant circumstances, that it is necessary or proper for the application to be made by him.

(2) Before making an application for the admission of a patient to hospital an approved mental health professional shall interview the patient in a suitable manner and satisfy himself that detention in a hospital is in all the circumstances of the case the most appropriate way of providing the care and medical treatment of which the patient stands in need.

(3) It shall be the duty of the Authority, if so required by the nearest relative of a patient, to make arrangements under subsection (1) for an approved mental health professional to consider the patient's case with a view to making an application for his admission to hospital; and if in any such case that professional decides not to make an application he shall inform the nearest relative of his reasons in writing.

(4) Nothing in this section shall be construed as authorising or requiring an application to be made by an approved mental health professional in contravention of the provisions of section 11(5) or of regulations made under section 13, or as restricting the power of the Authority to make arrangements with an approved mental health professional to consider a patient's case or of an approved mental health professional to make any application under this Act.

Rectification of applications and recommendations.

15.(1) If within the period of 14 days beginning with the day on which a patient has been admitted to a hospital in pursuance of an application for admission for assessment or for treatment the application, or any medical recommendation given for the purposes of the application, is found to be in

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

(2) Without prejudice to the provisions of subsection (1), if within the period mentioned in that subsection it appears to the Authority 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 Authority 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.

(4) Nothing in this section shall be construed as authorising the giving of notice in respect of an application made as an emergency application, or the detention of a patient admitted in pursuance of such an application, after the period of 72 hours referred to in section 4(4), 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.

Leave of absence from hospital.

16.(1) The responsible clinician 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 clinician

considers necessary in the interests of the patient or for the protection of other persons.

(2) Subject to subsection (3), 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 may be extended by further leave granted in the absence of the patient.

(3) Longer-term leave may not be granted to a patient unless that responsible clinician first considers whether the patient should be dealt with under section 17 instead.

(4) For the purpose of subsection (3), longer-term leave is granted to a patient if—

- (a) leave of absence is granted to him under this section either indefinitely or for a specified period or more than fifteen consecutive days; or
- (b) a specified period is extended under this section such that the total period for which leave of absence will have been granted to him under this section exceeds fifteen consecutive days.

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

(6) 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 clinician 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 clinician may, subject to subsection (7), 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.

(7) A patient to whom leave of absence is granted under this section shall not be recalled under subsection (6) after he has ceased to be liable to be detained under this Part.

Community treatment orders.

17.(1) The responsible clinician may by order in writing discharge a detained patient from hospital subject to his being liable to recall in accordance with section 21.

(2) A detained patient is a patient who is liable to be detained in a hospital in pursuance of an application for admission for treatment.

(3) An order under subsection (1) is referred to in this Act as a "community treatment order".

(4) The responsible clinician may not make a community treatment order unless—

- (a) in his opinion, the relevant criteria are met; and
- (b) an approved mental health professional states in writing—
 - (i) that he agrees with that opinion; and
 - (ii) that it is appropriate to make the order.

(5) The relevant criteria are—

- (a) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment;
- (b) it is necessary for his health or safety or for the protection of other persons that he should receive such treatment;
- (c) subject to his being liable to be recalled as mentioned in paragraph (d), such treatment can be provided without his continuing to be detained in a hospital;
- (d) it is necessary that the responsible clinician should be able to exercise the power under section 21(1) to recall the patient to hospital; and
- (e) appropriate medical treatment is available for him.

(6) In determining whether the criterion in subsection (5)(d) is met, the responsible clinician shall, in particular, consider, having regard to the patient's history of mental disorder and any other relevant factors, what risk there would be of a deterioration of the patient's condition if he were not detained in a hospital (as a result, for example, of his refusing or neglecting to receive the medical treatment he requires for his mental disorder).

Conditions.

18.(1) A community treatment order shall specify conditions to which the patient is to be subject while the order remains in force in accordance with the provisions of this section.

(2) The order shall specify—

- (a) a condition that the patient make himself available for examination under section 26; and
- (b) a condition that, if it is proposed to give a certificate under Part 4 of this Act in his case, he make himself available for examination so as to enable the certificate to be given.

(3) The order may specify conditions, other than those set out in subsection (2), only if the responsible clinician, with the agreement of the approved mental health professional mentioned in section 17(4)(b), thinks them necessary or appropriate for one or more of the following purposes—

- (a) ensuring that the patient receives medical treatment;
- (b) preventing risk of harm to the patient's health or safety;
- (c) protecting other persons.

(4) The responsible clinician may by order in writing vary the conditions specified in a community treatment order and may also suspend any conditions specified in a community treatment order.

(5) If a community patient fails to comply with a condition specified in the community treatment order by virtue of subsection (3), that fact may be taken into account for the purposes of exercising the power of recall under section 21(1).

(6) Nothing in this section restricts the exercise of that power to cases where there is such a failure.

Duration of community treatment order.

19. A community treatment order shall remain in force until–

- (a) subject to sections 28 and 31, the period mentioned in section 26(1) (as extended under any provision of this Act) expires;
- (b) the patient is discharged in pursuance of an order under section 32 or a direction under section 98;
- (c) the application for admission for treatment in respect of the patient otherwise ceases to have effect; or
- (d) the order is revoked under section 22,

whichever occurs first.

Effect of community treatment order.

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

(2) While a patient remains a community patient–

- (a) the authority of the Authority to detain him under section 6(2) in pursuance of that application shall be suspended; and
- (b) reference (however expressed) in this or any other Act, or in any subsidiary legislation, to patients liable to be detained, or detained, under this Act shall not include him.

(3) Section 25 shall not apply to a patient while he remains a community patient.

(4) Accordingly, authority for his detention shall not expire during any period in which that authority is suspended by virtue of subsection (2)(a).

Power to recall to hospital.

21.(1) The responsible clinician may recall a community patient to hospital if in his opinion—

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

(2) The responsible clinician may also recall a community patient to hospital if the patient fails to comply with a condition specified under section 18(2).

(3) Nothing in this section prevents a patient from being recalled to a hospital even though he is already in the hospital at the time when the power of recall is exercised; references to recalling him shall be construed accordingly.

(4) The power of recall under subsections (1) and (2) shall be exercisable by notice in writing to the patient.

(5) A notice under this section recalling a patient to hospital shall be sufficient authority for the detention of the patient there in accordance with the provisions of this Act.

Powers in respect of recalled patients.

22.(1) This section applies to a community patient who is detained in a hospital by virtue of a notice recalling him there under section 21.

(2) The patient may be transferred to another hospital in such circumstances and subject to such conditions as may be prescribed.

(3) If he is so transferred to another hospital, he shall be treated for the purposes of this section (and section 21) as if the notice under that section were a notice recalling him to that other hospital and as if he had been detained there from the time when his detention in hospital by virtue of the notice first began.

(4) The responsible clinician may by order in writing revoke the community treatment order if–

- (a) in his opinion, the conditions mentioned in section 3(2) are satisfied in respect of the patient; and
- (b) an approved mental health professional states in writing–
 - (i) that he agrees with that opinion; and
 - (ii) that it is appropriate to revoke the order.

(5) The responsible clinician may at any time release the patient under this section, but not after the community treatment order has been revoked.

(6) If the patient has not been released, nor the community treatment order revoked, by the end of the period of 72 hours, he shall then be released.

(7) A patient who is released under this section remains subject to the community treatment order.

(8) In this section–

- (a) “the period of 72 hours” means the period of 72 hours beginning with the time when the patient’s detention in hospital by virtue of the notice under section 21 begins; and
- (b) references to being released shall be construed as references to being released from that detention (and accordingly from being recalled to hospital).

Effect of revoking community treatment order.

23.(1) This section applies if a community treatment order is revoked under section 22 in respect of a patient.

(2) Section 6(2) shall have effect as if the patient had never been discharged from hospital by virtue of the community treatment order.

(3) The provisions of this or any other Act relating to patients liable to be detained (or detained) in pursuance of an application for admission for treatment shall apply to the patient as they did before the community treatment order was made, unless otherwise provided.

Return and re-admission of patients absent without leave.

24.(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 under that section; 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 an approved mental health professional, by any person on the staff of the hospital, by any police officer, or by any person authorised in writing by the Authority.

(2) Where a community patient is at any time absent from a hospital to which he is recalled under section 21, he may, subject to the provisions of this section, be taken into custody and returned to the hospital by any approved mental health professional, by any person on the staff of the hospital, by any police officer, or by any person authorised in writing by the responsible clinician or the Authority.

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

(4) A patient shall not be taken into custody under this section after the later of—

- (a) the end of the period of six months beginning with the first day of his absence without leave; and

- (b) the end of the period for which (apart from section 28) he is liable to be detained or subject to guardianship or, in the case of a community patient, the community treatment order is in force;

(5) In determining for the purposes of subsection (4)(b) or any other provision of this Act whether a person who is or has been absent without leave is at any time liable to be detained or subject to guardianship, a report furnished under section 25 or 30 before the first day of his absence without leave shall not be taken to have renewed the authority for his detention or guardianship unless the period of renewal began before that day.

(6) Similarly, in determining for those purposes whether a community treatment order is at any time in force in respect of a person who is or has been absent without leave, a report furnished under section 26 or 30 before the first day of his absence without leave shall not be taken to have extended the community treatment period unless the extension began before that day.

(7) A patient shall not be taken into custody under this section if the period for which he is liable to be detained is that specified in section 2(4), 4(4) or 5(2) or (5) and that period has expired.

(8) 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 related expressions shall be construed accordingly.

(9) In relation to a patient who has yet to comply with a requirement imposed by virtue of this Act to be in a hospital or place, references in this Act to his liability to be returned to the hospital or place shall include his liability to be taken to that hospital or place; and related expressions shall be construed accordingly.

Duration of authority.

25.(1) Subject to the following provisions of this Part, a patient admitted to hospital in pursuance of an application for admission for treatment, and a patient placed under guardianship in pursuance of a guardianship application, may be detained in a hospital or kept under guardianship for a period not exceeding six months beginning with the day on which he was so admitted, or the day on which the guardianship application was accepted, as the case may be, but shall not be so detained or kept for any longer period unless the authority for his detention 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 under section 32, be renewed—

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

(3) Within the period of two months ending on the day on which a patient who is liable to be detained in pursuance of an application for admission for treatment would cease under this section to be so liable in default of the renewal of the authority for his detention, it shall be the duty of the responsible clinician—

- (a) to examine the patient; and
- (b) if it appears to him that the conditions in subsection (4) are satisfied, to furnish to the Authority a report to that effect in prescribed form.

(4) The conditions referred to in subsection (3) are that—

- (a) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment in a hospital;
- (b) it is necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment and that it cannot be provided unless he continues to be detained; and
- (c) appropriate medical treatment is available to him.

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

(6) But the responsible clinician may not furnish a report under subsection (3) unless a person—

- (a) who has been professionally concerned with the patient's medical treatment; and
- (b) who belongs to a profession other than that to which the responsible clinician belongs,

states in writing that he agrees that the conditions set out in subsection (4) are satisfied.

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

- (a) to examine the patient; and
- (b) if it appears to him that the conditions set out in subsection (8) are satisfied, to furnish to the guardian and, where the guardian is a person other than the Care Agency, to the Care Agency a report to that effect in the prescribed form;

and where such a report is furnished in respect of a patient, the Care Agency shall, unless they discharge the patient under section 32, cause him to be informed.

(8) The conditions referred to in subsection (7) are that—

- (a) the patient is suffering from mental disorder of a nature or degree which warrants his reception into guardianship; and
- (b) it is necessary in the interests of the welfare of the patient or for the protection of other persons that the patient should remain under guardianship.

(9) Where a report is duly furnished under subsection (3) or (7), the authority for the detention of the patient shall be thereby renewed for the period prescribed in that case by subsection (2).

Community treatment period.

26.(1) Subject to the provisions of this Part, a community treatment order shall cease to be in force on expiry of the period of six months beginning

with the day on which it was made (referred to in this Act as the “community treatment period”).

(2) The community treatment period may, unless the order has previously ceased to be in force, be extended—

- (a) from its expiration for a period of six months;
- (b) from the expiration of any period of extension under paragraph (a) for a further period of one year,

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

(3) Within the period of two months ending on the day on which the order would cease to be in force in default of an extension under this section, it shall be the duty of the responsible clinician—

- (a) to examine the patient; and
- (b) if it appears to him that the conditions set out in subsection (5) are satisfied and if a statement under subsection (7) is made, to furnish to the Authority a report to that effect in the prescribed form.

(4) Where such a report is furnished in respect of the patient, the Authority shall, unless they discharge him under section 32, cause him to be informed.

(5) The conditions referred to in subsection (3) are that—

- (a) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment;
- (b) it is necessary for his health or safety or for the protection of other persons that he should receive such treatment;
- (c) subject to his continuing to be liable to be recalled as mentioned in paragraph (d), such treatment can be provided without his being detained in a hospital;
- (d) it is necessary that the responsible clinician should continue to be able to exercise the power under section 21(1) to recall the patient to hospital; and

(e) appropriate medical treatment is available for him.

(6) In determining whether the criterion in subsection (5)(d) is met, the responsible clinician shall, in particular, consider, having regard to the patient's history of mental disorder and any other relevant factors, what risk there would be of a deterioration of the patient's condition if he were to continue not to be detained in a hospital (as a result, for example, of his refusing or neglecting to receive the medical treatment he requires for his mental disorder).

(7) The statement referred to in subsection (3) is a statement in writing by an approved mental health professional—

(a) that it appears to him that the conditions set out in subsection (5) are satisfied; and

(b) that it is appropriate to extend the community treatment period.

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

(9) Where a report is duly furnished under subsection (3), the community treatment period shall be thereby extended for the period prescribed in that case by subsection (2).

Effect of expiry of community treatment order.

27.(1) A community patient shall be deemed to be discharged absolutely from liability to recall under this Part, and the application for admission for treatment cease to have effect, on expiry of the community treatment order, if the order has not previously ceased to be in force.

(2) For the purposes of subsection (1), a community treatment order expires on expiry of the community treatment period as extended under this Part of this Act, but this is subject to sections 28 and 31.

Special provisions as to patients absent without leave.

28.(1) Where a patient is absent without leave—

- (a) on the day on which (apart from this section) he would cease to be liable to be detained or subject to guardianship under this Part or, in the case of a community patient, the community treatment order would cease to be in force; or
- (b) within the period of one week ending with that day,

he shall not cease to be so liable or subject, or the order shall not cease to be in force, until the relevant time.

(2) For the purposes of subsection (1) the relevant time—

- (a) where the patient is taken into custody under section 24, is the end of the period of one week beginning with the day on which he is returned to the hospital or place where he ought to be;
- (b) where the patient returns himself to the hospital or place where he ought to be within the period during which he can be taken into custody under section 24, is the end of the period of one week beginning with the day on which he so returns himself; and
- (c) otherwise, is the end of the period during which he can be taken into custody under section 24.

(3) Where a patient is absent without leave on the day on which (apart from this section) the Authority would be required under section 94 to refer the patient's case to the Tribunal, that requirement shall not apply unless and until—

- (a) the patient is taken into custody under section 24 and returned to the hospital where he ought to be; or
- (b) the patient returns himself to the hospital where he ought to be within the period during which he can be taken into custody under section 24.

(4) Where a community patient is absent without leave on the day on which (apart from this section) the 72-hour period mentioned in section 22 would expire, that period shall not expire until the end of the period of 72 hours beginning with the time when -

- (a) the patient is taken into custody under section 24 and returned to the hospital where he ought to be; or
- (b) the patient returns himself to the hospital where he ought to be within the period during which he can be taken into custody under section 24.

(5) Any reference in this section or in sections 29 to 31, to the time when a community treatment order would cease, or would have ceased, to be in force shall be construed as a reference to the time when it would cease, or would have ceased, to be in force by reason only of the passage of time.

Patients who are taken into custody or return within 28 days.

29.(1) This section applies where a patient who is absent without leave is taken into custody under section 24, or returns himself to the hospital or place where he ought to be, not later than the end of the period of 28 days beginning with the first day of his absence without leave.

(2) Where the period for which the patient is liable to be detained or subject to guardianship is extended by section 28, any examination and report to be made and furnished in respect of the patient under section 25(3) or (7) may be made and furnished within the period as so extended.

(3) Where the authority for the detention or guardianship of the patient is renewed by virtue of subsection (2) after the day on which (apart from section 28) that authority would have expired, the renewal shall take effect as from that day.

(4) In the case of a community patient, where the period for which the community treatment order is in force is extended by section 28, any examination and report to be made and furnished in respect of the patient under section 26(3) may be made and furnished within the period as so extended.

(5) Where the community treatment period is extended by virtue of subsection (4) after the day on which (apart from section 28) the order would have ceased to be in force, the extension shall take effect as from that day.

Patients who are taken into custody or return after more than 28 days.

30.(1) This section applies where a patient who is absent without leave is taken into custody under section 24, or returns himself to the hospital or

place where he ought to be, later than the end of the period of 28 days beginning with the first day of his absence without leave.

(2) It shall be the duty of the appropriate practitioner, within the period of one week beginning with the day on which the patient is returned or returns himself to the hospital or place where he ought to be (his "return day") -

- (a) to examine the patient; and
- (b) if it appears to him that the relevant conditions are satisfied, to furnish to the appropriate body a report to that effect in the prescribed form;

and where such a report is furnished in respect of the patient the appropriate body shall cause him to be informed.

(3) Where the patient is liable to be detained or is a community patient (as opposed to subject to guardianship), the appropriate practitioner shall, before furnishing a report under subsection (2), consult-

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

(4) Where-

- (a) the patient would (apart from any renewal of the authority for his detention or guardianship on or after his return day) be liable to be detained or subject to guardianship after the end of the period of one week beginning with that day; or
- (b) in the case of a community patient, the community treatment order would (apart from any extension of the community treatment period on or after that day) be in force after the end of that period,

he shall cease to be so liable or subject, or the community treatment period shall be deemed to expire, at the end of that period unless a report is duly furnished in respect of him under subsection (2).

(5) If, in the case of a community patient, the community treatment order is revoked under section 22 during the period of one week beginning with his return day—

- (a) subsections (2) and (4) shall not apply; and
- (b) any report already furnished in respect of him under subsection (2) shall be of no effect.

(6) Where the patient would (apart from section 28) have ceased to be liable to be detained or subject to guardianship on or before the day on which a report is duly furnished in respect of him under subsection (2), the report shall renew the authority for his detention or guardianship for the period prescribed in that case by section 25(2).

(7) Where the authority for the detention or guardianship of the patient is renewed by virtue of subsection (6)—

- (a) the renewal shall take effect as from the day on which (apart from section 28 and that subsection) the authority would have expired; and
- (b) if (apart from this paragraph) the renewed authority would expire on or before the day on which the report is furnished, the report shall further renew the authority, as from the day on which it would expire, for the period prescribed in that case by section 25(2).

(8) In the case of a community patient, where the community treatment order would (apart from section 28) have ceased to be in force on or before the day on which a report is duly furnished in respect of him under subsection (2), the report shall extend the community treatment period for the period prescribed in that case by section 26(2).

(9) Where the community treatment period is extended by virtue of subsection (8)—

- (a) the extension shall take effect as from the day on which (apart from section 28 and that subsection) the order would have ceased to be in force; and
- (b) if (apart from this paragraph) the period as so extended would expire on or before the day on which the report is furnished,

the report shall further extend that period, as from the day on which it would expire, for the period prescribed in that case by section 26(2).

(10) Where the authority for the detention or guardianship of the patient would expire within the period of two months beginning with the day on which a report is duly furnished in respect of him under subsection (2), the report shall, if it so provides, have effect also as a report duly furnished under section 25(3) or (7); and the reference in this subsection to authority includes any authority renewed under subsection (6) by the report.

(11) In the case of a community patient, where the community treatment order would (taking account of any extension under subsection (8)) cease to be in force within the period of two months beginning with the day on which a report is duly furnished in respect of him under subsection (2), the report shall, if it so provides, have effect also as a report duly furnished under section 26(3).

(12) In this section—

“the appropriate body” means—

- (a) in relation to a patient who is liable to be detained in a hospital or a community patient, the Authority; and
- (b) in relation to a patient who is subject to guardianship, the Care Agency;

“the relevant conditions” means—

- (a) in relation to a patient who is liable to be detained in a hospital, the conditions set out in subsection (4) of section 25 ;
- (b) in relation to a patient who is subject to guardianship, the conditions set out in subsection (8) of that section;
- (c) in relation to a community patient, the conditions set out in section 26(5) .

Special provisions as to patients sentenced to imprisonment, etc.

31.(1) If—

- (a) a qualifying patient 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
- (b) he is so detained for a period exceeding, or for successive periods exceeding in the aggregate, six months,

the relevant application shall cease to have effect on expiry of that period.

(2) A patient is a qualifying patient for the purposes of this section if–

- (a) he is liable to be detained by virtue of an application for admission for treatment;
- (b) he is subject to guardianship by virtue of a guardianship application; or
- (c) he is a community patient.

(3) “The relevant application”, in relation to a qualifying patient, means–

- (a) in the case of a patient who is subject to guardianship, the guardianship application in respect of him;
- (b) in any other case, the application for admission for treatment in respect of him.

(4) The remaining subsections of this section shall apply if a qualifying patient is detained in custody as mentioned in subsection (1)(a) but for a period not exceeding, or for successive periods not exceeding in the aggregate, six months.

(5) If apart from this subsection–

- (a) the patient would have ceased to be liable to be detained or subject to guardianship by virtue of the relevant application on or before the day on which he is discharged from custody; or
- (b) in the case of a community patient, the community treatment order would have ceased to be in force on or before that day,

he shall not cease and shall be deemed not to have ceased to be so liable or subject, or the order shall not cease and shall be deemed not to have ceased to be in force, until the end of that day.

(6) In any case (except as provided in subsection (8)), sections 24, 28 and 29 shall apply in relation to the patient as if he had absented himself without leave on that day.

(7) In its application by virtue of subsection (6) section 24 shall have effect as if—

- (a) in subsection (4) for the words from “later of” to the end there were substituted “end of the period of 28 days beginning with the first day of his absence without leave”; and
- (b) subsections (5) and (6) were omitted.

(8) In relation to a community patient who was not recalled to hospital under section 21 at the time when his detention in custody began—

- (a) section 24 shall not apply; but
- (b) sections 28 and 29 shall apply as if he had absented himself without leave on the day on which he is discharged from custody and had returned himself as provided in those sections on the last day of the period of 28 days beginning with that day.

Discharge of patients.

32.(1) Subject to the provisions of this section and section 34, a patient who is for the time being liable to be detained or subject to guardianship under this Part shall cease to be so liable or subject if an order in writing discharging him absolutely from detention or guardianship is made in accordance with this section.

(2) Subject to the provisions of this section and section 34, a community patient shall cease to be liable to recall under this Part, and the application for admission for treatment cease to have effect, if an order in writing discharging him from such liability is made in accordance with this section.

(3) An order under subsection (1) or (2) shall be referred to in this Act as “an order for discharge”.

(4) 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 assessment or for treatment, by the responsible clinician, the Authority or by the nearest relative of the patient;
- (b) where the patient is subject to guardianship, by the responsible clinician, by the Care Agency or by the nearest relative of the patient;
- (c) where the patient is a community patient, by the responsible clinician, by the Authority or by the nearest relative of the patient.

Visiting and examination of patients.

33.(1) For the purpose of advising as to the exercise by the nearest relative of a patient who is liable to be detained or subject to guardianship under this Part, or who is a community patient, of any power to order his discharge, any registered medical practitioner or approved clinician authorised by or on behalf of the nearest relative of the patient may, at any reasonable time, visit the patient and examine him in private.

(2) Any registered medical practitioner or approved clinician authorised for the purposes of subsection (1) to visit and examine a patient may require the production of and inspect any records relating to the detention or treatment of the patient in any hospital.

Restrictions on discharge by nearest relative.

34.(1) An order for the discharge of a patient who is liable to be detained in a hospital shall not be made under section 32 by his nearest relative except after giving not less than 72 hours' notice in writing to the Authority; and if within 72 hours after such notice has been given, the responsible clinician furnishes to the Authority a report certifying that in the opinion of that clinician 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.

(2) Subsection (1) shall apply to an order for the discharge of a community patient as it applies to an order for the discharge of a patient who is liable to be detained in a hospital.

(3) In any case where a report under subsection (1) is furnished in respect of a patient who is liable to be detained in pursuance of an application for admission for treatment, or in respect of a community patient, the Authority shall cause the nearest relative of the patient to be informed.

Functions of relatives of patients

Definition of “relative” and “nearest relative”.

35.(1) In this Part “relative” means any of the following persons–

- (a) husband or wife or civil partner;
- (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, 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–

- (a) his mother; and

- (b) if his father has parental responsibility for him within the meaning of section 12 of the Children Act 2009, his father.

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

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

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

- (a) is not ordinarily resident within Gibraltar;
- (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 18 years of age,

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

(6) In this section “husband” and “wife” include a person who is living with the patient as the patient’s husband or wife, as the case may be (or, if the patient is for the time being an in-patient in a hospital, was so living until the patient was admitted), and has been or had been so living for a period of

not less than six months; but a person shall not be treated by virtue of this subsection as the nearest relative of a married patient unless the husband or wife of the patient is disregarded by virtue of paragraph (b) of subsection (5).

Children and young persons in care.

36. Where a patient who is a child or young person is in the care of the Care Agency by virtue of a care order within the meaning of the Children Act 2009 the Care Agency shall be deemed to be the nearest relative of the patient in preference to any person except the patient's husband or wife or civil partner (if any).

Nearest relative of minor under guardianship, etc.

37.(1) Where—

- (a) a guardian has been appointed for a person who has not attained the age of 18 years; or
- (b) a residence order (as defined by section 25 of the Children Act 2009) is in force with respect to such a person,

the guardian (or guardians, where there is more than one) or the person named in the residence order shall, to the exclusion of any other person, be deemed to be his nearest relative.

(2) Subsection (5) of section 35 shall apply in relation to a person who is, or who is one of the persons, deemed to be the nearest relative of a patient by virtue of this section as it applies in relation to a person who would be the nearest relative under subsection (3) of that section.

(3) In this section “guardian” includes a special guardian (within the meaning of the Children Act 2009), but does not include a guardian under this Part.

Appointment by court of acting nearest relative.

38.(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 of the nearest relative of the patient under this Part and section 92 shall, during the continuance in force of the order, be exercisable by the person specified in the order.

(2) If the court decides to make an order on an application under subsection (1), the following rules have effect for the purposes of specifying a person in the order—

- (a) if a person is nominated in the application to act as the patient's nearest relative and that person is, in the opinion of the court, a suitable person to act as such and is willing to do so, the court shall specify that person (or, if there are two or more such persons, such one of them as the court thinks fit);
- (b) otherwise, the court shall specify such person as is, in its opinion, a suitable person to act as the patient's nearest relative and is willing to do so.

(3) An order under this section may be made on the application of—

- (a) the patient;
- (b) any relative of the patient;
- (c) 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
- (d) an approved mental health professional,

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

- (a) that the patient has no nearest relative within the meaning of this Act, or that it is not reasonably practicable to ascertain whether he has such a relative, or who that relative is;
- (b) that the nearest relative of the patient is incapable of acting as such by reason of mental disorder or other illness;
- (c) that the nearest relative of the patient unreasonably objects to the making of an application for admission for treatment or a guardianship application in respect of the patient; or
- (d) that the nearest relative of the patient has exercised without due regard to the welfare of the patient or the interests of the

public his power to discharge the patient under this Part, or is likely to do so;

- (e) that the nearest relative of the patient is otherwise not a suitable person to act as such.

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

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

and for the purposes of this subsection an application under this section shall be deemed to have been finally disposed of at the expiration of the time allowed for appealing from the decision of the court or, if notice of appeal has been given within that time, when the appeal has been heard or withdrawn, and “pending” shall be construed accordingly.

(6) An order made on the ground specified in subsection (4)(a), (b) or (e) may specify a period for which it is to continue in force unless previously discharged under section 39.

(7) While an order made under this section is in force, the provisions of this Part (other than this section and section 39) and sections 92, 121(4) and 123 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 39) 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; but this subsection shall not apply to section 92 in the case mentioned in paragraph (1) of subsection (1) of that section.

Discharge and variation of orders under section 38.

39.(1) An order made under section 38 in respect of a patient may be discharged by the Supreme Court upon application made—

- (a) in any case, by the patient or 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) (b) or (e) of section 38(4), 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) But, in the case of an order made on the ground specified in paragraph (e) of section 38(4) , an application may not be made under subsection (1)(b) by the person who was the nearest relative of the patient when the order was made except with leave of the Supreme Court.

(3) An order made under section 38 in respect of a patient may be varied by the Supreme Court, on the application of the patient or of the person having the functions of the nearest relative by virtue of the order or on the application of an approved mental health professional, by substituting another person for the person having those functions.

(4) If the court decides to vary an order on an application under subsection (3), the following rules have effect for the purposes of substituting another person–

- (a) if a person is nominated in the application to act as the patient's nearest relative and that person is, in the opinion of the court, a suitable person to act as such and is willing to do so, the court shall specify that person (or, if there are two or more such persons, such one of them as the court thinks fit);
- (b) otherwise, the court shall specify such person as is, in its opinion, a suitable person to act as the patient's nearest relative and is willing to do so.

(5) If the person having the functions of the nearest relative of a patient by virtue of an order under section 38 dies, subsections (1) and (3) 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 and section 92 shall not be exercisable by any person.

(6) An order made on the ground specified in paragraph (c) or (d) of section 38(4) shall, unless previously discharged under subsection (1), cease to have effect as follows-

- (a) if-
 - (i) on the date of the order the patient was liable to be detained or subject to guardianship by virtue of a relevant application, order or direction; or
 - (ii) he becomes so liable or subject within the period of three months beginning with that date; or
 - (iii) he was a community patient on the date of the order,

it shall cease to have effect when he is discharged under section 32 or 98 or the relevant application, order or direction otherwise ceases to have effect (except as a result of his being transferred in pursuance of regulations under section 41);
- (b) otherwise, it shall cease to have effect at the end of the period of three months beginning with the date of the order.

(7) In subsection (6), reference to a relevant application, order or direction is to any of the following-

- (a) an application for admission for treatment;
- (b) a guardianship application;
- (c) an order or direction under sections 668, 670 and 671 to 676 of the Criminal Procedure and Evidence Act 2011.

(8) An order made on the ground specified in paragraph (a), (b) or (e) of section 38(4) shall-

- (a) if a period was specified under section 38(6) , cease to have effect on expiry of that period, unless previously discharged under subsection (1);
- (b) if no such period was specified, remain in force until it is discharged under subsection (1).

(9) The discharge or variation under this section of an order made under section 38 shall not affect the validity of anything previously done in pursuance of the order.

Rules of court regarding applications to Supreme Court.

40. Rules relating to applications authorised 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 2.

41.(1) The Minister may make regulations for prescribing anything which, under this Part, is required or authorised 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 such bodies or persons as may be prescribed by the regulations to keep such registers or other records as may be so prescribed in respect of patients liable to be detained or subject to guardianship under this Part or community patients, 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 Act; 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 authorised 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 authorised or required to be furnished, addressed or given if it is duly served in accordance with the regulations.

(3) In such circumstances and subject to such conditions as may be prescribed by regulations made by the Minister –

- (a) a patient who is for the time being liable to be detained in a hospital by virtue of an application under this Part may be transferred to another hospital or into the guardianship of the Care Agency or of any person approved by the Care Agency;
- (b) a patient who is for the time being subject to the guardianship of the Care Agency or other person by virtue of an application under this Part may be transferred into the guardianship of another person, or be transferred to a hospital.

(4) Where a patient is transferred in pursuance of regulations under subsection (3), the provisions of this Part (including this subsection) shall apply to him as follows–

- (a) in the case of a patient who is liable to be detained in a hospital by virtue of an application for admission for assessment or for treatment, and is transferred to another hospital, as if the application were an application for admission to that other hospital and as if the patient had been

admitted to that other hospital at the time when he was originally admitted in pursuance of the application;

- (b) in the case of a patient who is liable to be detained in a hospital by virtue of such an application and is transferred into guardianship, as if the application were a guardianship application duly accepted at the said time;
- (c) in the case of a patient who is subject to guardianship by virtue of a guardianship application and is transferred into the guardianship of another person, as if the application were for his reception into the guardianship of that person and had been accepted at the time when it was originally accepted;
- (d) in the case of a patient who is subject to guardianship by virtue of a guardianship application and is transferred to a hospital, as if the guardianship application were an application for admission to that hospital for treatment and as if the patient had been admitted to the hospital at the time when the application was originally accepted.

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

(6) Without prejudice to the foregoing subsections, regulations under this section may determine the manner in which functions under this Part of the the Authority or the Care Agency are to be exercised, and such regulations may in particular specify the circumstances in which, and the conditions subject to which, any such functions may be performed by officers of or other persons acting on behalf of the Authority and the Care Agency.

Special provisions as to wards of court.

42.(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 11(5) 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 or is a community patient, any power exercisable under this Part or under section 92 in relation to the patient by his nearest relative shall be exercisable by or with the leave of the court.

(3) Nothing in this Part shall be construed as authorising the making of a guardianship application in respect of a minor who is a ward of court, or the transfer into guardianship of any such minor.

(4) Where a community treatment order has been made in respect of a minor who is a ward of court, the provisions of this Part relating to community treatment orders and community patients have effect in relation to the minor subject to any order which the court makes in the exercise of its wardship jurisdiction; but this does not apply as regards any period when the minor is recalled to hospital under section 21.

Interpretation of Part 2.

43. In this Part—

“the appropriate practitioner” means—

- (a) in the case of a patient who is subject to the guardianship of a person other than the Care Agency, the nominated medical attendant of the patient; and
- (b) in any other case, the responsible clinician;

“the nominated medical attendant”, in relation to a patient who is subject to the guardianship of a person other than the Care Agency, means the person appointed in pursuance of regulations made under section 9(2) to act as the medical attendant of the patient;

PART 3 - CONSENT TO TREATMENT

Patients to whom Part 3 applies.

44.(1) Section 45 and, so far as relevant to that section, sections 48 to 51 apply to any patient.

(2) Subject to subsection (1) and (5), this Part applies to a patient only if he falls within subsection (3) or (4).

(3) A patient falls within this subsection if he is liable to be detained under this Act but not if—

- (a) he is so liable by virtue of an emergency application and the second medical recommendation referred to in section 4(4)(a) has not been given and received;
- (b) he is so liable by virtue of section 5(2) or (5) or section 125 or 126; or
- (c) he is so liable by virtue of section 664 of the Criminal Procedure and Evidence Act 2011 or by virtue of a direction for his detention in a place of safety under section 668(5) of that Act;

(4) A patient falls within this subsection if–

- (a) he is a community patient; and
- (b) he is recalled to hospital under section 21.

(5) Section 47 and, so far as relevant to that section, sections 48 to 51 also apply to any patient who–

- (a) does not fall within subsection (3) ;
- (b) is not a community patient; and
- (c) has not attained the age of 18 years.

Treatment requiring consent and a second opinion.

45.(1) This section applies to the following forms of medical treatment for mental disorder–

- (a) any surgical operation for destroying brain tissue or for destroying the functioning of brain tissue; and
- (b) such other forms of treatment as may be prescribed for the purposes of this section.

(2) Subject to section 51, a patient shall not be given any form of treatment to which this section applies unless he has consented to it and–

- (a) a registered medical practitioner appointed for the purposes of this Part of this Act by the Minister (not being the responsible

clinician (if there is one) or the person in charge of the treatment in question) and two other persons appointed for the purposes of this paragraph by the Minister (not being registered medical practitioners) have certified in writing that the patient is capable of understanding the nature, purpose and likely effects of the treatment in question and has consented to it; and

- (b) the registered medical practitioner referred to in paragraph (a) has certified in writing that it is appropriate for the treatment to be given.

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

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

(4) Before making any regulations for the purpose of this section the Minister shall consult such bodies as appear to him to be concerned.

Treatment requiring consent or a second opinion.

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

- (a) such forms of treatment as may be specified for the purposes of this section by regulations made by the Minister;
- (b) the administration of medicine to a patient by any means (not being a form of treatment specified under paragraph (a) or section 45 or section 47(1)(b)) at any time during a period for which he is liable to be detained as a patient to whom this Part applies if three months or more have elapsed since the first occasion in that period when medicine was administered to him by any means for his mental disorder.

(2) The Minister may by order vary the length of the period mentioned in subsection (1)(b).

(3) Subject to section 51, a patient shall not be given any form of treatment to which this section applies unless—

- (a) he has consented to that treatment and either the approved clinician in charge of it or a registered medical practitioner appointed for the purposes of this Part by the Minister has certified in writing that the patient is capable of understanding its nature, purpose and likely effects and has consented to it; or
- (b) a registered medical practitioner appointed as aforesaid (not being the responsible clinician or the approved clinician in charge of the treatment in question) has certified in writing that the patient is not capable of understanding the nature, purpose and likely effects of that treatment or being so capable has not consented to it but that it is appropriate for the treatment to be given.

(4) Before giving a certificate under subsection (3)(b) the registered medical practitioner concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment but, of those persons—

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

(5) Before making any regulations for the purposes of this section the Minister shall consult such bodies as appear to him to be concerned.

Electro-convulsive therapy, etc.

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

- (a) electro-convulsive therapy; and
- (b) such other forms of treatment as may be prescribed for the purposes of this section.

(2) Subject to section 51, a patient shall be not be given any form of treatment to which this section applies unless he falls within subsection (3), (4) or (5).

(3) A patient falls within this subsection if–

- (a) he has attained the age of 18 years;
- (b) he has consented to the treatment in question; and
- (c) either the approved clinician in charge of it or a registered medical practitioner appointed as mentioned in section 46(3) has certified in writing that the patient is capable of understanding the nature, purpose and likely effects of the treatment and has consented to it.

(4) A patient falls within this subsection if –

- (a) he has not attained the age of 18 years; but
- (b) he has consented to the treatment in question; and
- (c) a registered medical practitioner appointed as aforesaid (not being the approved clinician in charge of the treatment) has certified in writing–
 - (i) that the patient is capable of understanding the nature, purpose and likely effects of the treatment and has consented to it; and
 - (ii) that it is appropriate for the treatment to be given.

(5) A patient falls within this subsection if a registered medical practitioner appointed as aforesaid (not being the responsible clinician (if there is one) or the approved clinician in charge of the treatment in question) has certified in writing–

- (a) that the patient is not capable of understanding the nature, purpose and likely effects of the treatment; but
- (b) that it is appropriate for the treatment to be given; and

(c) that giving him the treatment would not conflict with a decision made by a deputy or by the Court of Protection.

(6) Before giving a certificate under subsection (5) the registered medical practitioner concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment but, of those persons—

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

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

(7) This section shall not by itself confer sufficient authority for a patient who falls within section 44(5) to be given a form of treatment to which this section applies if he is not capable of understanding the nature, purpose and likely effects of the treatment (and cannot therefore consent to it).

(8) Before making any regulations for the purposes of this section, the Minister shall consult such bodies as appear to it to be concerned.

(9) In this section a reference to a deputy is to a deputy appointed for the patient by the Court of Protection under Part 5, where the deputy is acting within the scope of his authority and in accordance with that Part.

Plans of treatment.

48. Any consent or certificate under section 45, 46 or 47 may relate to a plan of treatment under which the patient is to be given (whether within a specified period or otherwise) one or more of the forms of treatment to which that section applies.

Withdrawal of consent.

49.(1) Where the consent of a patient to any treatment has been given for the purposes of section 45, 46 or 47, the patient may, subject to section 51, at any time before the completion of the treatment withdraw his consent, and those sections shall then apply as if the remainder of the treatment were a separate form of treatment.

(2) Subsection (3) applies where—

- (a) the consent of a patient to any treatment has been given for the purposes of section 45, 46 or 47; but
- (b) before the completion of the treatment, the patient ceases to be capable of understanding its nature, purpose and likely effects.

(3) The patient shall, subject to section 51, be treated as having withdrawn his consent, and those sections shall then apply as if the remainder of the treatment were a separate form of treatment.

(4) Subsection (5) applies where—

- (a) a certificate has been given under section 46 or 47 that a patient is not capable of understanding the nature, purpose and likely effects of the treatment to which the certificate applies; but
- (b) before the completion of the treatment, the patient becomes capable of understanding its nature, purpose and likely effects.

(5) The certificate shall, subject to section 51, cease to apply to the treatment and those sections shall then apply as if the remainder of the treatment were a separate form of treatment.

(6) Without prejudice to the application of subsections (1) to (5) to any treatment given under the plan of treatment to which a patient has consented, a patient who has consented to such a plan may, subject to section 51, at any time withdraw his consent to further treatment, or to further treatment of any description, under the plan.

Review of treatment.

50.(1) Where a patient is given treatment in accordance with section 45(2), 46(3)(b) or 47(4) or (5), or by virtue of section 52 in accordance with a Part 4 certificate (within the meaning of that section), a report on the treatment and the patient's condition shall be given by the approved clinician in charge of the treatment to the Authority—

- (a) on the next occasion on which the responsible clinician furnishes a report under section 25(3), 26(3) or 30(2) in respect of the patient; and
- (b) at any other time if so required by the Minister.

(2) In relation to a patient who is subject to a hospital order or a transfer direction subsection (1) shall have effect as if paragraph (a) required the report to be made—

- (a) in the case of treatment in the period of six months beginning with the date of the order or direction, at the end of that period;
- (b) in the case of treatment at any subsequent time, on the next occasion on which the responsible clinician makes a report in respect of the patient.

(3) The Minister may at any time give notice directing that, subject to section 51, a certificate given in respect of a patient under section 45(2), 46(3)(b) or 47(4) or (5) shall not apply to treatment given to him after a date specified in the notice and sections 45, 46 and 47 shall then apply to any such treatment as if that certificate had not been given.

(4) The notice under subsection (3) shall be given to the approved clinician in charge of the treatment.

Urgent treatment.

51.(1) Sections 45 and 46 shall not apply to any treatment—

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

(2) Section 47, in so far as it relates to electro-convulsive therapy by virtue of subsection (1)(a) of that section, shall not apply to any treatment which falls within paragraph (a) or (b) of subsection (1).

(3) Section 47, in so far as it relates to a form of treatment specified by virtue of subsection (1)(b) of that section, shall not apply to any treatment

which falls within such of paragraphs (a) to (d) of subsection (1) as may be specified in regulations under that section.

(4) For the purposes of subsection (3) , the regulations–

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

(5) Sections 49 and 50(3) shall not preclude the continuation of any treatment or of treatment under any plan pending compliance with section 45, 46 or 47 if the approved clinician in charge of the treatment considers that the discontinuance of the treatment or of treatment under the plan would cause serious suffering to the patient.

(6) For the purposes of this section treatment is irreversible if it has unfavourable irreversible physical or psychological consequences and hazardous if it entails significant physical hazard.

Treatment on recall of community patient or revocation of order.

52.(1) This section applies where–

- (a) a community patient is recalled to hospital under section 21; or
- (b) a patient is liable to be detained under this Act following the revocation of a community treatment order under section 22 in respect of him.

(2) For the purposes of section 46(1)(b) , the patient is to be treated as if he had remained liable to be detained since the making of the community treatment order.

(3) But section 46 does not apply to treatment given to the patient if–

- (a) the certificate requirement is met for the purposes of section 56 or 58; or

- (b) as a result of section 55(4) or 58(4), the certificate requirement would not apply (were the patient a community patient not recalled to hospital under section 21).

(4) Section 47 does not apply to treatment given to the patient if there is authority to give the treatment, and the certificate requirement is met, for the purposes of section 56 or 58.

(5) In a case where this section applies, the certificate requirement is met only in so far as—

- (a) the Part 4 certificate expressly provides that it is appropriate for one or more specified forms of treatment to be given to the patient in that case (subject to such conditions as may be specified); or
- (b) a notice having been given under subsection (5) of section 61, treatment is authorised by virtue of subsection (8) of that section.

(6) Subsection (5) shall not preclude the continuation of any treatment, or of treatment under any plan, pending compliance with section 46 or 47 if the approved clinician in charge of the treatment considers that the discontinuance of the treatment, or of the treatment under the plan, would cause serious suffering to the patient.

(7) In a case where subsection (1)(b) applies, subsection (3) only applies pending compliance with section 46.

(8) In subsection (5)—

“Part 4 certificate” has the meaning given in section 61; and

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

Treatment not requiring consent.

53. The consent of a patient shall not be required for any medical treatment given to him for the mental disorder from which he is suffering, not being a form of treatment to which section 45, 46 or 47 applies, if the treatment is

given by or under the direction of the approved clinician in charge of the treatment.

Supplementary provisions for Part 3.

54.(1) In this Part “the responsible clinician” means the approved clinician with overall responsibility for the case of the patient in question.

(2) References in this Part of this Act to the approved clinician in charge of a patient's treatment shall, where the treatment in question is a form of treatment to which section 45 applies, be construed as references to the person in charge of the treatment.

(3) References in this Part of this Act to the approved clinician in charge of a patient's treatment shall, where the treatment in question is a form of treatment to which section 47 applies and the patient falls within section 44(5), be construed as references to the person in charge of the treatment.

(4) Regulations made by virtue of section 41(2)(d) apply for the purposes of this Part as they apply for the purposes of Part 2.

(5) Any certificate for the purposes of this Part of this Act shall be in such form as may be prescribed by regulations made by the Minister.

(6) For the purposes of this Part, it is appropriate for treatment to be given to a patient if the treatment is appropriate in his case, taking into account the nature and degree of the mental disorder from which he is suffering and all other circumstances of his case.

**PART 4 - TREATMENT OF COMMUNITY PATIENTS NOT
RECALLED TO HOSPITAL**

Adult community patients.

55.(1) This section applies to the giving of relevant treatment to a community patient who—

- (a) is not recalled to hospital under section 21; and
- (b) has attained the age of 16 years.

(2) The treatment may not be given to the patient unless—

- (a) there is authority to give it to him; and
- (b) if it is section 46 type treatment or section 47 type treatment, the certificate requirement is met.

(3) But the certificate requirement does not apply–

- (a) if giving the treatment to the patient is authorised in accordance with section 60; or
- (b) if the treatment is immediately necessary and–
 - (i) the patient has capacity to consent to it and does consent to it; or
 - (ii) a deputy or the Court of Protection consents to the treatment on the patient’s behalf.

(4) Nor does the certificate requirement apply in so far as the administration of medicine to the patient at any time during the period of one month beginning with the day on which the community treatment order is made is section 46 type treatment.

(5) The reference in subsection (4) to the administration of medicine does not include any form of treatment specified under section 46(1)(a).

Section 55: supplemental.

56.(1) This section has effect for the purposes of section 55.

(2) There is authority to give treatment to a patient if–

- (a) he has capacity to consent to it and does consent to it;
- (b) a deputy or the Court of Protection consents to it on his behalf;
or
- (b) giving it to him is authorised in accordance with section 57 or 60.

(3) Relevant treatment is section 46 type treatment or section 47 type treatment if, at the time when it is given to the patient, section 46 or 47

(respectively) would have applied to it, had the patient remained liable to be detained at that time (rather than being a community patient).

(4) The certificate requirement is met in respect of treatment to be given to a patient if–

- (a) a registered medical practitioner appointed for the purposes of Part 3 (not being the responsible clinician or the person in charge of the treatment) has certified in writing that it is appropriate for the treatment to be given or for the treatment to be given subject to such conditions as may be specified in the certificate; and
- (b) if conditions are so specified, the conditions are satisfied.

(5) In a case where the treatment is section 46 type treatment, treatment is immediately necessary if–

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

(6) In a case where the treatment is section 47 type treatment by virtue of subsection (1)(a) of that section, treatment is immediately necessary if it falls within paragraph (a) or (b) of subsection (5) .

(7) In a case where the treatment is section 47 type treatment by virtue of subsection (1)(b) of that section, treatment is immediately necessary if it falls within such of paragraphs (a) to (d) of subsection (5) as may be specified in regulations under that section.

(8) For the purposes of subsection (7), the regulations–

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

(9) Subsection (6) of section 51 applies for the purposes of this section as it applies for the purposes of that section.

Adult community patients lacking capacity.

57.(1) A person is authorised to give relevant treatment to a patient as mentioned in section 56(2)(c) if the conditions in subsections (2) to (5) are met.

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

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

(4) The third condition is that—

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

(5) The fourth condition is that—

- (a) he is the person in charge of the treatment and an approved clinician; or
- (b) the treatment is given under the direction of that clinician.

(6) The fifth condition is that giving the treatment does not conflict with a decision made by a deputy or the Court of Protection.

Child community patients.

58.(1) This section applies to the giving of relevant treatment to a community patient who—

- (a) is not recalled to hospital under section 21; and
- (b) has not attained the age of 16 years.

(2) The treatment may not be given to the patient unless —

- (a) there is authority to give it to him; and
- (b) if it is section 46 type treatment or section 47 type treatment, the certificate requirement is met.

(3) But the certificate requirement does not apply if—

- (a) giving the treatment to the patient is authorised in accordance with section 60; or
- (b) in a case where the patient is competent to consent to the treatment and does consent to it, the treatment is immediately necessary.

(4) Nor does the certificate requirement apply in so far as the administration of medicine to the patient at any time during the period of one month beginning with the day on which the community treatment order is made is section 46 type treatment.

(5) The reference in subsection (4) to the administration of medicine does not include any form of treatment specified under section 46(1)(a).

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

- (a) he is competent to consent to it and he does consent to it; or
- (b) giving it to him is authorised in accordance with section 59 or 60.

(7) Subsections (3) to (9) of section 56 have effect for the purposes of this section as they have effect for the purposes of section 55.

(8) Regulations made by virtue of section 41(2)(d) apply for the purposes of this section as they apply for the purposes of Part 2.

Child community patients lacking competence.

59.(1) A person is authorised to give relevant treatment to a patient as mentioned in section 58(6)(b) if the conditions in subsections (2) to (5) are met.

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

(3) The second condition is that, when giving the treatment, he reasonably believes that the patient is not competent to consent to it.

(4) The third condition is that—

(a) he has no reason to believe that the patient objects to being given the treatment; or

(b) he does have reason to believe that the patient so objects, but it is not necessary to use force against the patient in order to give the treatment.

(5) The fourth condition is that—

(a) he is the person in charge of the treatment and an approved clinician; or

(b) the treatment is given under the direction of that clinician.

Emergency treatment for patients lacking capacity or competence.

60.(1) A person is also authorised to give relevant treatment to a patient as mentioned in section 56(2)(c) or 58(6)(b) if the conditions in subsections (2) to (4) are met.

(2) The first condition is that, when giving the treatment, the person reasonably believes that the patient lacks capacity to consent to it or, as the case may be, is not competent to consent to it.

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

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

- (a) the treatment needs to be given in order to prevent harm to the patient; and
- (b) the use of such force is a proportionate response to the likelihood of the patient's suffering harm, and to the seriousness of that harm.

(5) Subject to subsections (6) to (8), treatment is immediately necessary if—

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

(6) Where the treatment is section 47 type treatment by virtue of subsection (1)(a) of that section, treatment is immediately necessary if it falls within paragraph (a) or (b) of subsection (5).

(7) Where the treatment is section 47 type treatment by virtue of subsection (1)(b) of that section, treatment is immediately necessary if it falls within such of paragraphs (a) to (d) of subsection (5) as may be specified in regulations under section 47.

(8) For the purposes of subsection (7), the regulations—

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

(9) Subsection (6) of section 51 applies for the purposes of this section as it applies for the purposes of that section.

Certificates: supplementary provisions.

61.(1) A certificate under section 55(2)(b) or 58(2)(b) (a “Part 4 certificate”) may relate to a plan of treatment under which the patient is to be given (whether within a specified period or otherwise) one or more forms of section 46 type treatment or section 47 type treatment.

(2) A Part 4 certificate shall be in such form as may be prescribed by regulations made by the Minister.

(3) Before giving a Part 4 certificate, the registered medical practitioner concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment but, of those persons—

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

(4) Where a patient is given treatment in accordance with a Part 4 certificate, a report on the treatment and the patient's condition shall be given by the person in charge of the treatment to the Authority of the hospital if required by him.

(5) The Minister in consultation with the Chief Executive may at any time give notice directing that a Part 4 certificate shall not apply to treatment given to a patient after a date specified in the notice, and the relevant section shall then apply to any such treatment as if that certificate had not been given.

(6) The relevant section is–

- (a) if the patient is not recalled to hospital in accordance with section 21, section 55 or 58;
- (b) subject to section 52(2), if the patient is so recalled or is liable to be detained under this Act following revocation of the community treatment order under section 22–
 - (i) section 46, in the case of section 46 type treatment;
 - (ii) section 47, in the case of section 47 type treatment.

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

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

Factors to be considered in determining whether patient objects to treatment.

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

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

Invasive treatment.

63. Any relevant treatment given to a community patient under this Part which is the form of an injection, or other such invasive treatment, shall only be administered to a community patient at premises approved by the Minister for the purposes of this Part.

Interpretation of Part 4.

64.(1) The provisions of Part 4 is to be construed in accordance with this section.

(2) References to a patient who lacks capacity are to a patient who lacks capacity within the meaning of sections 87 to 90 and references to a patient who has capacity are to be read accordingly.

(3) References to a deputy are to a deputy appointed for the patient by the Court of Protection under Part 5, where the deputy is acting within the scope of his authority and in accordance with that Part.

(4) In relation to a patient “relevant treatment” means medical treatment which—

(a) is for the mental disorder from which the patient is suffering;
and

(b) is not a form of treatment to which section 45 applies.

(4) Section 54(6) applies for the purposes of this Part of this Act as it applies for the purposes of Part 3.

PART 5 – PERSONAL WELFARE AND MANAGEMENT OF PROPERTY AND AFFAIRS OF PATIENTS

The Court of Protection.

65.(1) There shall continue to be an office of the Supreme Court, called the Court of Protection (the “Court”), for the purposes provided for in this Part and the Registrar shall be the Master of the Court of Protection.

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

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

General powers of the Court.

66.(1) This section applies if a person (“P”) lacks capacity in relation to a matter or matters concerning—

(a) P’s personal welfare; or

(b) P’s property and affairs.

(2) The Court may—

(a) by making an order, make the decision or decisions on P’s behalf in relation to the matter or matters; or

(b) appoint a person (a “deputy”) to make decisions on P’s behalf in relation to the matter or matters.

(3) The powers of the Court under this section are subject to the provisions of this Part and in particular to sections 87 and 90.

(4) When deciding whether it is in P’s best interests to appoint a deputy, the Court must have regard (in addition to the matters mentioned in section 90) to the principles that—

(a) a decision by the Court is to be preferred to the appointment of a deputy to make a decision; and

(b) the powers conferred on a deputy should be as limited in scope and duration as is reasonably practicable in the circumstances.

(5) The Court may make such further orders or give such directions, and confer on a deputy such powers or impose on him such duties, as it thinks

necessary or expedient for giving effect to, or otherwise in connection with, an order or appointment made by it under subsection (2).

(6) Without prejudice to section 90, the Court may make the order, give the directions or make the appointment on such terms as it considers are in P's best interests, even though no application is before the Court for an order, direction or an appointment on those terms.

(7) An order by the Court may be varied or discharged by a subsequent order.

(8) The Court may, in particular, revoke the appointment of a deputy or vary the powers conferred on him if it is satisfied that the deputy-

- (a) has behaved, or is behaving, in a way that contravenes the authority conferred on him by the Court or is not in P's best interests; or
- (b) proposes to behave in a way that would contravene that authority or would not be in P's best interests.

Power to make declarations.

67.(1) The Court may make declarations as to-

- (a) whether a person has or lacks capacity to make a decision specified in the declaration;
- (b) whether a person has or lacks capacity to make decisions on such matters as are described in the declaration;
- (c) the lawfulness or otherwise of any act done, or yet to be done, in relation to that person.

(2) "Act" includes an omission and a course of conduct.

Section 66 powers: personal welfare.

68.(1) The powers under section 66 as respects P's personal welfare extend in particular to-

- (a) deciding where P is to live;

- (b) deciding what contact, if any, P is to have with any specified persons;
- (c) making an order prohibiting a named person from having contact with P;
- (d) giving or refusing consent to the carrying out or continuation of a treatment by a person providing health care for P;
- (e) giving a direction that a person responsible for P's health care allow a different person to take over that responsibility.

(2) Subsection (1) is subject to section 71.

Section 66 powers: property and affairs.

69.(1) The powers under section 66 extend in particular to—

- (a) the control and management of P's property;
- (b) the sale, exchange, charging, gift or other disposition of P's property;
- (c) the acquisition of property in P's name or on P's behalf;
- (d) the carrying on, on P's behalf, of any profession, trade or business;
- (e) the taking of a decision which will have the effect of dissolving a partnership of which P is a member;
- (f) the carrying out of any contract entered into by P;
- (g) the discharge of P's debts and of any of P's obligations, whether legally enforceable or not;
- (h) the settlement of any of P's property, whether for P's benefit or for the benefit of others;
- (i) the execution for P of a will;
- (j) the exercise of any power (including a power to consent) vested in P, whether beneficially or as trustee, or otherwise;

(k) the conduct of legal proceedings in P's name or on P's behalf.

(2) No will may be made under subsection (1)(i) at a time when P has not reached 18.

(3) The powers under section 66 as respects any other matter relating to P's property and affairs may be exercised even though P has not reached 16, if the Court considers it likely that P will still lack capacity to make decisions in respect of that matter when he reaches 18.

(4) Subsection (1) is subject to section 71.

Appointment of deputies.

70.(1) A deputy appointed by the Court must be—

- (a) an individual who has reached 18; or
- (b) as respects powers in relation to property and affairs, an individual who has reached 18 or a trust corporation.

(2) The Court may appoint an individual by appointing the holder for the time being of a specified office or position.

(3) A person may not be appointed as deputy without his consent.

(4) The Court may appoint two or more deputies to act—

- (a) jointly;
- (b) jointly and severally; or
- (c) jointly in respect of some matters and jointly and severally in respect of others.

(5) When appointing a deputy or deputies, the Court may at the same time appoint one or more other persons to succeed the existing deputy or those deputies—

- (a) in such circumstances, or on the happening of such events, as may be specified by the Court;

(b) for such period as may be so specified.

(6) A deputy is to be treated as P's agent in relation to anything done or decided by him within the scope of his appointment and in accordance with this Part.

(7) The deputy is entitled—

(a) to be reimbursed out of P's property for his reasonable expenses in discharging his functions; and

(b) if the Court so directs when appointing him, to remuneration out of P's property for discharging them.

(8) The Court may confer on a deputy powers to—

(a) take possession or control of all or any specified part of P's property;

(b) exercise all or any specified powers in respect of it, including such powers of investment as the Court may determine.

(9) The Court may require a deputy—

(a) to give such security as the Court thinks fit for the due discharge of his functions; and

(b) to submit such reports and to render accounts at such times or at such intervals as the Court may direct.

Restrictions on deputies.

71.(1) A deputy does not have power to make a decision on behalf of P in relation to a matter if he knows or has reasonable grounds for believing that P has capacity in relation to the matter.

(2) Nothing in section 66 or 68 permits a deputy to be given power—

(a) to prohibit a named person from having contact with P;

(b) to direct a person responsible for P's health care to allow a different person to take over that responsibility.

- (3) A deputy may not be given powers with respect to—
- (a) the settlement of any of P's property, whether for P's benefit or for the benefit of others;
 - (b) the execution for P of a will; or
 - (c) the exercise of any power (including a power to consent) vested in P whether beneficially or as trustee or otherwise.
- (4) A deputy may not refuse consent to the carrying out or continuation of life-sustaining treatment in relation to P.
- (5) The authority conferred on a deputy is subject to the provisions of this Part and, in particular, sections 87 and 90.
- (6) A deputy may not do an act that is intended to restrain P unless four conditions are satisfied.
- (7) The first condition is that, in doing the act, the deputy is acting within the scope of an authority expressly conferred on him by the Court.
- (8) The second is that P lacks, or the deputy reasonably believes that P lacks, capacity in relation to the matter in question.
- (9) The third is that the deputy reasonably believes that it is necessary to do the act in order to prevent harm to P.
- (10) The fourth is that the act is a proportionate response to—
- (a) the likelihood of P's suffering harm; and
 - (b) the seriousness of that harm.
- (11) For the purposes of this section, a deputy restrains P if he—
- (a) uses, or threatens to use, force to secure the doing of an act which P resists; or
 - (b) restricts P's liberty of movement, whether or not P resists,
- or if he authorises another person to do any of those things.

Vesting orders ancillary to settlement, etc.

72.(1) If provision is made by virtue of section 69 for—

- (a) the settlement of any property; or
- (b) the exercise of any power vested in him of appointing trustees or retiring from a trust,

the Court may also make as respects the property settled or the trust property such consequential vesting or other orders as the case may require.

(2) The power under subsection (1) includes, in the case of the exercise of such a power, any order which could have been made in such a case under Part IV of the Trustees Act.

Variation of settlements.

73.(1) If a settlement has been made by virtue of section 69, the Court may vary or revoke the settlement if the Court is satisfied—

- (a) that a material fact was not disclosed when the settlement was made; or
- (b) that there has been a substantial change of circumstances.

(2) Any such order may give such consequential directions as the Court thinks fit.

Property and affairs: Wills.

74.(1) This section applies in relation to the execution of a will by virtue of section 69(1)(i) on behalf of P.

(2) The will may make any provision (whether by disposing of property or exercising a power or otherwise) which could be made by a will executed by P if he had capacity to make it.

(3) If under section 66 the Court makes an order or gives directions requiring or authorising a person (the “authorised person”) to execute a will on behalf of P, any will executed in pursuance of the order or direction must—

- (a) state that it is signed by P acting by the authorised person;
- (b) be signed by the authorised person with the name of P and his own name, in the presence of two or more witnesses present at the time;
- (c) must be attested and subscribed by those witnesses in the presence of the authorised person; and
- (d) must be sealed with the official seal of the Court.

(4) Where a will is executed in accordance with subsection (3), the Wills Act 2009 has effect in relation to the will as if it were signed by P by his own hand, except that—

- (a) section 9 of that Act does not apply; and
- (b) in the subsequent provisions of that Act any reference to execution in the manner required by the previous provisions is to be read as a reference to execution in accordance with this section.

(5) The will has the same effect for all purposes as if—

- (a) P had had the capacity to make a valid will; and
- (b) the will had been executed by him in the manner required by the Wills Act 2009.

(6) Subsection (5) does not have effect in relation to the will—

- (a) in so far as it disposes of immovable property outside Gibraltar; and
- (b) under the law of P's domicile, any question of his testamentary capacity would fall to be determined in accordance with the law of a place outside Gibraltar.

Interim orders and directions.

75. The Court may, pending the determination of an application to it in relation to P, make an order or give directions in respect of any matter if—

- (a) there is reason to believe that P lacks capacity in relation to the matter;
- (b) the matter is one to which its powers under this Part extends; and
- (c) it is in P's best interests to make the order, or give the directions, without delay.

Vesting of stock in curator appointed outside Gibraltar.

76.(1) Where the Court 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 P on the ground (however formulated) that P lacks capacity to make decisions with respect to the management and administration of 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 Court should exercise its powers under this section,

the Court may direct any stock standing in the name of P or the right to receive the dividends from the stocks 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 Court 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 property disposed of on behalf of person lacking capacity.

77.(1) Where any property of P has been disposed of under this Part, and under P's 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 Court, in ordering, directing or authorising under this Part any disposal of property which apart from this section would result in the conversion of personal property into real property, may direct that the property representing the property disposed of shall, so long as it remains the property of the patient or forms part of his estate, be treated as if it were personal property.

(3) In subsections (1) and (2) references to the disposal of property are references to the sale, exchange, charging or other dealing (otherwise than by will) 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 Court 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 Court has ordered, directed or authorised the expenditure of money for the carrying out of permanent improvements on, or otherwise for the permanent benefit of, any of P's property, 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.

(6) A charge under subsection (5) 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.

(7) An order under this subsection may provide for excluding or restricting the operation of subsection (1).

(8) A charge created under subsection (5) shall not confer any right of sale or foreclosure during P's lifetime.

Power to call for reports.

78.(1) This section applies where, in proceedings brought in respect of a person (“P”) under this Part, the Court is considering a question relating to P.

(2) The Court may require any person to visit P (a “visiting officer”) and to submit such reports on his visits as the Court may direct.

(3) The report must deal with such matters relating to P as the Court may direct.

(4) Any rules made under this Part may specify matters which, unless the Court directs otherwise, must also be dealt with in the report.

(5) The report may be made in writing or orally, as the Court may direct.

(6) In complying with a requirement, the visiting officer may, at all reasonable times, examine and take copies of any health record or any record compiled in connection with a social services function, so far as the record relates to P.

(7) A visiting officer making a visit under this section may interview P in private.

(8) A visiting officer making a visit under this section may, if the Court so directs, carry out in private a medical, psychiatric or psychological examination of a person’s capacity and condition, if he is—

- (a) a registered medical practitioner or appears to the Court to have other suitable qualifications or training; and
- (b) appears to the Court to have special knowledge of and experience in cases of impairment or disturbance in the functioning of the mind or brain.

Excluded decisions: Family relationships.

79.(1) Nothing in this Part permits a decision on any of the following matters to be made on behalf of a person—

- (a) consenting to marriage or a civil partnership;
- (b) consenting to have sexual relations;

- (c) consenting to a decree of divorce being granted on the basis of two years' separation;
- (d) consenting to a dissolution order being made in relation to a civil partnership on the basis of two years' separation;
- (e) consenting to a child being placed for adoption or the making of an adoption order;
- (f) discharging parental responsibilities in matters not relating to a child's property.

(2) "Adoption order" has the meaning given in section 2 of the Adoption Act.

General powers of the Court with respect to proceedings.

80.(1) For the purposes of any proceedings before it with respect to a person who lacks, or is alleged to lack, capacity the Court shall have the like powers as are vested in it in respect of securing the attendance of witnesses and the production of documents in other proceedings.

(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 Court in any manner in which it could have been punished in those other proceedings.

(3) Subsection (2) shall not authorise the Master, or any other officer, of the Court to exercise any power of attachment or committal, but the Master or officer may certify any such act or omission to the Court, and the Court 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.

81. Subject to and in accordance with rules made under this Part, an appeal shall lie to the Court from any decision of the Master of the Court of Protection or any officer of the Court of Protection nominated under section 65.

Rules of procedure.

82.(1) Proceedings before the Court with respect to a person who lacks, or is alleged to lack capacity (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 authorised or required to be given in proceedings and the manner (whether on oath or otherwise and whether orally or in writing) in which it is to be given, as to the administration of oaths and taking of affidavits for the purposes of proceedings, and as to the enforcement of orders made and directions given in proceedings.

(3) Without prejudice to the provisions of section 80(1), rules under this Part may make provision for authorising or requiring the attendance and examination of a person who lacks, or is alleged to lack capacity, 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 authorise 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.

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

(2) It shall be the duty of a deputy to render accounts in accordance with the requirement of this Part and of any rules made under it; and rules under this Part may make provision for the rendering of accounts by persons, not being deputies, ordered, directed or authorised under this Part to carry out any transaction.

General provisions as to rules under Part 5.

84.(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.

(4) 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.

85.(1) Section 70 of the Conveyancing 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 under this Part 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 Court 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.

Interpretation of Part 5.

86.(1) In this Part–

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

“trust corporation” means the public trustee or a corporation either appointed by the court in any particular case to be a trustee, or entitled by rules made under section 8(3) of the Public Trustee Act, to act as custodian trustee.

(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.

The principles.

87.(1) The following principles apply for the purposes of this Part.

(2) A person must be assumed to have capacity unless it is established that he lacks capacity.

(3) A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.

(4) A person is not to be treated as unable to make a decision merely because he makes an unwise decision.

(5) An act done, or decision made, under this Part for or on behalf of a person who lacks capacity must be done, or made, in his best interests.

(6) Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

People who lack capacity.

88.(1) For the purposes of this Part, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.

(2) It does not matter whether the impairment or disturbance is permanent or temporary.

(3) A lack of capacity cannot be established merely by reference to—

(a) a person's age or appearance; or

(b) a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about his capacity.

(4) In proceedings under this Part, any question whether a person lacks capacity within the meaning of this Part must be decided on the balance of probabilities.

(5) No power which a person (“D”) may exercise under this Part—

(a) in relation to a person who lacks capacity; or

(b) where D reasonably thinks that a person lacks capacity,

is exercisable in relation to a person under 16.

(6) Subsection (5) is subject to section 69(3).

Inability to make decisions

89.(1) For the purposes of section 88, a person is unable to make a decision for himself if he is unable—

(a) to understand the information relevant to the decision;

(b) to retain that information;

(c) to use or weigh that information as part of the process of making the decision; or

(d) to communicate his decision (whether by talking, using sign language or any other means).

(2) A person is not to be regarded as unable to understand the information relevant to a decision if he is able to understand an explanation of it given to

him in a way that is appropriate to his circumstances (using simple language, visual aids or any other means).

(3) The fact that a person is able to retain the information relevant to a decision for a short period only does not prevent him from being regarded as able to make the decision.

(4) The information relevant to a decision includes information about the reasonably foreseeable consequences of—

- (a) deciding one way or another; or
- (b) failing to make the decision.

Best interests.

90.(1) In determining for the purposes of this Part, what is in a person's best interests, the person making the determination must not make it merely on the basis of—

- (a) the person's age or appearance; or
- (b) a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about what might be in his best interests.

(2) The person making the determination must consider all the relevant circumstances and, in particular, take the following steps.

(3) He must consider—

- (a) whether it is likely that the person will at some time have capacity in relation to the matter in question; and
- (b) if it appears likely that he will, when that is likely to be.

(4) He must, so far as reasonably practicable, permit and encourage the person to participate, or to improve his ability to participate, as fully as possible in any act done for him and any decision affecting him.

(5) Where the determination relates to life-sustaining treatment he must not, in considering whether the treatment is in the best interests of the person concerned, be motivated by a desire to bring about his death.

(6) He must consider, so far as is reasonably ascertainable—

- (a) the person's past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity);
- (b) the beliefs and values that would be likely to influence his decision if he had capacity; and
- (c) the other factors that he would be likely to consider if he were able to do so.

(7) He must take into account, if it is practicable and appropriate to consult them, the views of—

- (a) anyone named by the person as someone to be consulted on the matter in question or on matters of that kind; and
- (b) anyone engaged in caring for the person or interested in his welfare,

as to what would be in the person's best interests and, in particular, as to the matters mentioned in subsection (6).

(8) The duties imposed by subsections (1) to (7) also apply in relation to the exercise of any powers which are exercisable by a person under this Part where he reasonably believes that another person lacks capacity.

(9) In the case of an act done, or a decision made, by a person other than the court, there is sufficient compliance with this section if (having complied with the requirements of subsections (1) to (7)) he reasonably believes that what he does or decides is in the best interests of the person concerned.

(10) “Life-sustaining treatment” means treatment which in the view of a person providing health care for the person concerned is necessary to sustain life.

(11) “Relevant circumstances” are those—

- (a) of which the person making the determination is aware; and
- (b) which it would be reasonable to regard as relevant.

PART 6 – MENTAL HEALTH REVIEW TRIBUNAL

Mental Health Review Tribunal.

91.(1) There shall continue to be 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 Part, the jurisdiction of the Tribunal may be exercised by any three or more of its members (one of which must be a registered medical practitioner), 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 the Tribunal.

92.(1) Where –

- (a) a patient is admitted to a hospital in pursuance of an application for admission for assessment;
- (b) a patient is admitted to a hospital in pursuance of an application for admission for treatment;
- (c) a patient is received into guardianship in pursuance of a guardianship application;
- (d) a community treatment order is made in respect of a patient;
- (e) a community treatment order is revoked under section 22 in respect of a patient;
- (f) a patient is transferred from guardianship to a hospital in pursuance of regulations made under section 41;

- (g) a report is furnished under section 25 in respect of a patient and the patient is not discharged under section 32;
- (h) a report is furnished under section 26 in respect of a patient and the patient is not discharged under section 32;
- (i) a report is furnished under subsection (2) of section 30 in respect of a patient and subsection (6) of that section applies (or subsections (6) and (7)(b) of that section apply) in the case of the report;
- (j) a report is furnished under subsection (2) of section 30 in respect of a community patient and subsection (8) of that section applies (or subsections (8) and (9)(b) of that section apply) in the case of the report;
- (k) a report is furnished under section 34 in respect of a patient who is detained in pursuance of an application for admission for treatment or a community patient; or
- (l) an order is made under section 38 on the ground specified in paragraph (c) or (d) of subsection (4) of that section in respect of a patient who is or subsequently becomes liable to be detained or subject to guardianship under Part 2 or who is a community patient,

an application may be made to the Tribunal within the relevant period by the patient (except in the cases mentioned in paragraphs (k) and (l)), and in the cases mentioned in paragraphs (k) and (l), by his nearest relative.

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

- (a) in the case mentioned in paragraph (a) of that subsection, 14 days beginning with the day on which the patient is admitted as so mentioned;
- (b) in the case mentioned in paragraph (b) of that subsection, six months beginning with the day on which the patient is admitted as so mentioned;
- (c) in the case mentioned in paragraph (c) of that subsection, six months beginning with the day on which the application is accepted;

- (d) in the case mentioned in paragraph (d) of that subsection, six months beginning with the day on which the community treatment order is made;
- (e) in the case mentioned in paragraph (e) of that subsection, six months beginning with the day on which the community treatment order is revoked;
- (f) in the case mentioned in paragraph (f) of that subsection, six months beginning with the day on which the patient is transferred;
- (g) in the case mentioned in paragraph (g) or (i) of that subsection, the period or periods for which authority for the patient's detention or guardianship is renewed by virtue of the report;
- (h) in the cases mentioned in paragraphs (h) and (j) of that subsection, the period or periods for which the community treatment period is extended by virtue of the report;
- (i) in the case mentioned in paragraph (k) of that subsection, 28 days beginning with the day on which the applicant is informed that the report has been furnished;
- (j) in the case mentioned in paragraph (l) of that subsection, 12 months beginning with the date of the order, and in any subsequent period of 12 months during which the order continues in force.

(3) Nothing in subsection (1)(b) entitles a community patient to make an application by virtue of that provision even if he is admitted to a hospital on being recalled there under section 21.

(4) Section 41 shall apply for the purposes of this section as it applies for the purposes of Part 2 of this Act.

References to the Tribunal by the Minister concerning Part 2 patients.

93.(1) The Minister may, if he thinks fit, at any time refer to the Tribunal the case of any patient who is liable to be detained or subject to guardianship under Part 2 or of any community patient.

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

(3) Section 41 shall apply for the purposes of this section as it applies for the purposes of Part 2.

Duty of Authority to refer cases to the Tribunal.

94.(1) This section applies in respect of the following patients–

- (a) a patient who is admitted to a hospital in pursuance of an application for admission for assessment;
- (b) a patient who is admitted to a hospital in pursuance of an application for admission for treatment;
- (c) a community patient;
- (d) a patient whose community treatment order is revoked under section 22;
- (e) a patient who is transferred from guardianship to a hospital in pursuance of regulations made under section 41.

(2) Subject to subsection (3), on expiry of the period of six months beginning with the applicable day, the Authority shall refer the patients case to the Tribunal.

(3) The Authority shall not refer the patient's case to the Tribunal under subsection (2) if during that period–

- (a) any right has been exercised by or in respect of the patient by virtue of any of paragraphs (b), (d), (e), (f), (k) and (l) of section 92(1);
- (b) a reference has been made in respect of the patient under section 93(1), not being a reference made while the patient is or was liable to be detained in pursuance of an application for admission for assessment; or

- (c) a reference has been made in respect of the patient under subsection (7).

(4) A person who applies to the Tribunal but subsequently withdraws his application shall be treated for these purposes as not having exercised his right to apply, and if he withdraws his application on a date after expiry of the period mentioned in subsection (2), the Authority shall refer the patient's case as soon as possible after that date.

(5) In subsection (2), “the applicable day” means—

- (a) in the case of a patient who is admitted to a hospital in pursuance of an application for admission for assessment, the day on which the patient was so admitted;
- (b) in the case of a patient who is admitted to a hospital in pursuance of an application for admission for treatment—
 - (i) the day on which the patient was so admitted; or
 - (ii) if, when he was so admitted, he was already liable to be detained in pursuance of an application for admission for assessment, the day on which he was originally admitted in pursuance of the application for admission for assessment;
- (c) in the case of a community patient or a patient whose community treatment order is revoked under section 22, the day mentioned in sub-paragraph (i) or (ii), as the case may be, of paragraph (b);
- (d) in the case of a patient who is transferred from guardianship to a hospital, the day on which he was so transferred.

(6) The Authority shall also refer the patient's case to the Tribunal if a period of more than three years (or, if the patient has not attained the age of 18 years, one year) has elapsed since his case was last considered by the Tribunal, whether on his own application or otherwise.

(7) If, in the case of a community patient, the community treatment order is revoked under section 22, the Authority shall also refer the patient's case to the Tribunal as soon as possible after the order is revoked.

(8) For the purposes of furnishing information for the purposes of a reference under this section, a registered medical practitioner or approved clinician authorised by or on behalf of the patient may at any reasonable time—

- (a) visit and examine the patient in private; and
- (b) require the production of and inspect any records relating to the detention or treatment of the patient in any hospital.

Power to reduce periods under section 94.

95.(1) The Minister may from time to time by order amend subsection (2) or (6) of section 94 so as to substitute for a period mentioned there such shorter period as is specified in the order.

(2) The order may include such transitional, consequential, incidental or supplemental provision as the Minister thinks fit.

Applications to the Tribunal concerning patients subject to hospital orders or transfer directions.

96. A patient who is subject to a hospital order or transfer direction and is detained in a hospital may apply to the Tribunal—

- (a) in the period between the expiration of six months and the expiration of 12 months beginning with the date of the relevant hospital order or transfer direction; and
- (b) in any subsequent period of 12 months.

References by the Minister concerning patients subject to hospital orders or transfer directions.

97. The Minister may at any time refer the case of a patient subject to a hospital order or transfer direction to the Tribunal.

Powers of the Tribunal.

98.(1) Where application is made to the Tribunal by or in respect of a patient who is liable to be detained under this Act or is a community patient, the Tribunal may in any case direct that the patient be discharged, and—

- (a) the Tribunal shall direct the discharge of a patient liable to be detained under section 2 if it is not satisfied—
 - (i) that he is then suffering from mental disorder or from mental disorder of a nature or degree which warrants his detention in a hospital for assessment (or for assessment followed by medical treatment) for at least a limited period; or
 - (ii) that his detention as aforesaid is justified in the interests of his own health or safety or with a view to the protection of other persons;
- (b) the Tribunal shall direct the discharge of a patient liable to be detained otherwise than under section 2 if it is not satisfied—
 - (i) that he is then suffering from mental disorder or from mental disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment;
 - (ii) that it is necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment;
 - (iii) that appropriate medical treatment is available for him; or
 - (iv) in the case of an application by virtue of paragraph (k) of section 92(1), that the patient, if released, would be likely to act in a manner dangerous to other persons or to himself;
- (c) the Tribunal shall direct the discharge of a community patient if it is not satisfied—
 - (i) that he is then suffering from mental disorder or mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment;

- (ii) that it is necessary for his health or safety or for the protection of other persons that he should receive such treatment;
- (iii) that it is necessary that the responsible clinician should be able to exercise the power under section 21(1) to recall the patient to hospital;
- (iv) that appropriate medical treatment is available for him; or
- (v) in the case of an application by virtue of paragraph (k) of section 92(1), that the patient, if discharged, would be likely to act in a manner dangerous to other persons or to himself.

(2) In determining whether the criterion in subsection (1)(c)(iii) is met, the Tribunal shall, in particular, consider, having regard to the patient's history of mental disorder and any other relevant factors, what risk there would be of a deterioration of the patient's condition if he were to continue not to be detained in a hospital (as a result, for example, of his refusing or neglecting to receive the medical treatment he requires for his mental disorder).

(3) The Tribunal may under subsection (1) direct the discharge of a patient on a future date specified in the direction; and where the Tribunal does not direct the discharge of a patient under that subsection the Tribunal may—

- (a) with a view to facilitating his discharge on a future date, recommend that he be granted leave of absence or transferred to another hospital or into guardianship; and
- (b) further consider his case in the event of any such recommendation not being complied with.

(4) Subsection (1) does not require the Tribunal to direct the discharge of a patient just because it thinks it might be appropriate for the patient to be discharged (subject to the possibility of recall) under a community treatment order; and the Tribunal—

- (a) may recommend that the responsible clinician consider whether to make a community treatment order; and

- (b) may (but need not) further consider the patient's case if the responsible clinician does not make an order.

(5) Where application is made to the Tribunal by or in respect of a patient who is subject to guardianship under this Act, the Tribunal may in any case direct that the patient be discharged, and shall so direct if it is satisfied—

- (a) that he is not then suffering from mental disorder; or
- (b) that it is not necessary in the interests of the welfare of the patient, or for the protection of other persons, that the patient should remain under such guardianship.

(6) Subsections (1) to (5) apply in relation to references to the Tribunal as they apply in relation to applications made to the Tribunal by or in respect of a patient.

(7) Subsection (1) shall not apply in the case of a patient subject to a hospital order or transfer direction except as provided in sections 99 and 100.

Power to discharge patients subject to hospital orders.

99.(1) Where an application to the Tribunal is made by a patient subject to a hospital order, or where the case of such a patient is referred to the Tribunal, the Tribunal shall direct the absolute discharge of the patient if—

- (a) the Tribunal is not satisfied as to the matters mentioned in paragraph (b)(i),(ii) or (iii) of section 98(1); and
- (b) the Tribunal is satisfied that it is not appropriate for the patient to remain liable to be recalled to hospital for further treatment.

(2) Where a patient is absolutely discharged under this section he shall thereupon cease to be liable to be detained by virtue of the relevant hospital order.

Power to discharge patients subject to transfer directions.

100.(1) Where an application to the Tribunal is made by a patient who is subject to a transfer direction, or where the case of such a person is referred to the Tribunal, the Tribunal shall notify the Minister whether, in its opinion, the patient would, if subject to a hospital order, be entitled to be absolutely discharged under section 99.

(2) If in the case of a patient not falling within subsection (4) below–

- (a) the Tribunal notifies the Minister that the patient would be entitled to be absolutely discharged; and
- (b) within the period of 90 days beginning with the date of that notification the Minister gives notice to the Tribunal that the patient may be so discharged,

the Tribunal shall direct the absolute discharge of the patient.

(3) Where the patient continues to be liable to be detained in a hospital at the end of the period referred to in subsection (2)(b) because the Minister has not given the notice therein mentioned, the Authority shall transfer the patient to a prison or other institution in which he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed.

(4) If, in the case of a patient who is subject to a transfer direction under section 672 of the Criminal Procedure and Evidence Act 2011, the Tribunal notifies the Minister that the patient would be entitled to be absolutely discharged, the Minister shall by warrant direct that the patient be remitted to a prison or other institution in which he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed.

(5) Where a patient is transferred or remitted under subsection (3) or (4) above the relevant transfer direction shall cease to have effect on his arrival in the prison or other institution.

(6) Where a patient is absolutely discharged under this section he shall thereupon cease to be liable to be detained by virtue of the relevant transfer direction.

(7) This section is without prejudice to sections 673 to 676 of the Criminal Procedure and Evidence Act 2011 in their application to patients who are not discharged under this section.

Visiting and examination of patients.

101.(1) 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 or subject to guardianship under Part 2 or a community patient, any medical practitioner or approved clinician authorised by or on behalf of the patient or other person who is entitled to make or has made the application—

- (a) may, at any reasonable time, visit the patient and examine him in private;
- (b) may require the production of and inspect any records relating to the detention or treatment of the patient in any hospital.

(2) Section 41 shall apply for the purposes of this section as it applies for the purposes of Part 2 of this Act.

General provisions concerning Tribunal applications and representations.

102.(1) No application shall be made to the Tribunal by or in respect of a patient under this Act except in such cases and at such times as are expressly provided by this Act.

(2) Where under this Act any person is authorised 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 but for that purpose there shall be disregarded any application which is withdrawn in accordance with rules made under section 103.

(3) An application to the Tribunal authorised to be made by or in respect of a patient under this Act shall be made by notice in writing addressed to the Tribunal.

(4) A patient has the right to legal representation at any hearing before the Tribunal.

Rules as to procedure.

103.(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 restricting the persons qualified to serve as members of the Tribunal for the consideration of any application, or of an application of any specified class;
- (c) for enabling the Tribunal to dispose of an application without a formal hearing where such a hearing is not requested by the applicant or it appears to the Tribunal that such a hearing would be detrimental to the health of the patient;
- (d) for enabling the Tribunal to exclude members of the public, or any specified class of members of the public, from any proceedings of the Tribunal, or to prohibit the publication of reports of any such proceedings or the names of any persons concerned in such proceedings;
- (e) for regulating the circumstances in which, and the persons by whom, applicants and patients in respect of whom applications are made to the Tribunal may, if not desiring to conduct their own case, be represented for the purposes of those applications;
- (f) for regulating the methods by which information relevant to an application may be obtained by or furnished to the Tribunal, and in particular for authorising the members of the Tribunal, or any one or more of them, to visit and interview in private any patient by or in respect of whom an application has been made;
- (g) for making available to any applicant, and to any patient in respect of whom an application is made to the Tribunal, copies of any documents obtained by or furnished to the Tribunal in connection with the application, and a statement of the substance of any oral information so obtained or furnished except where the Tribunal considers it undesirable in the interests of the patient or for other special reasons;

- (h) for requiring the Tribunal, if so requested in accordance with the rules, to furnish such statements of the reasons for any 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;
- (i) for conferring on the Tribunal such ancillary powers as the Chief Justice thinks necessary for the purposes of the exercise of their functions under this Act;
- (j) for enabling any functions of the Tribunal which relate to matters preliminary or incidental to an application to be performed by the chairman of the Tribunal.

(3) Subsections (1) and (2) 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) 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.

(6) Any functions conferred on the chairman of the Tribunal by rules under this section may be exercised by another member of the Tribunal appointed by him for that purpose.

(7) The Tribunal may pay allowances in respect of traveling expenses, subsistence and loss of earnings to any person attending the Tribunal as an applicant or witness, to the patient who is the subject of the proceedings if he attends otherwise than as the applicant or a witness and to any person (other than counsel) who attends as the representative of an applicant.

PART 7 - MISCELLANEOUS FUNCTIONS

Powers of entry and inspection of premises.

104.(1) An approved mental health professional 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.

(2) The power under subsection (1) shall be exercisable only after the professional has produced, if asked to do so, some duly authenticated document showing that he is an approved mental health professional.

Welfare of certain hospital patients.

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

(2) This section applies to—

- (a) a child or young person who is in the care of the Care Agency by virtue of a care order within the meaning of the Children Act 2009;
- (b) a person who is subject to the guardianship of the Care Agency under the provisions of this Act ; or
- (c) a person the functions of whose nearest relative under this Act are for the time being transferred to the Care Agency.

Code of practice.

106.(1) The Minister may prepare, and from time to time revise, a code of practice—

- (a) for the guidance of registered medical practitioners, approved clinicians, managers and staff of hospitals and care homes and approved mental health professionals in relation to the admission of patients to hospitals under this Act and to guardianship and community patients under this Act; and

- (b) for the guidance of registered medical practitioners and members of other professions in relation to the medical treatment of patients suffering from mental disorder.

(2) The code may, in particular, specify forms of medical treatment in addition to any specified by regulations made for the purposes of section 45 which in the opinion of the Minister give rise to special concern and which should accordingly not be given by a registered medical practitioner unless the patient has consented to the treatment (or to a plan of treatment including that treatment) and a certificate in writing as to the matters mentioned in subsection (2)(a) and (b) of that section has been given by another registered medical practitioner, being a practitioner appointed for the purposes of this section by the Minister.

(3) The code may include a statement of the principles which the Minister thinks should in form decisions under this Act.

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

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

(5) The Minister shall also have regard to the desirability of ensuring—

- (a) the efficient use of resources, and
- (b) the equitable distribution of services.

(6) In performing functions under this Act persons mentioned in subsection (1)(a) or (b) shall have regard to the code (if any).

(7) Before preparing the code or making any alteration in it the Minister shall consult such bodies as appear to him to be concerned.

(8) The Minister shall lay a copy of the code before Parliament.

(9) Where the Minister has issued a code of practice under this section he may, by notice in the Gazette, revoke, replace or amend it (whether by adding to it, deleting from it, or otherwise).

(10) Where the Minister exercises his power to replace or amend a code of practice, pursuant to subsection (9), the replacing or duly amended code of practice, as the case may be, shall be laid before the Parliament.

(11) The Minister shall publish the code as for the time being in force.

Practitioners approved for Part 3, etc.

107. A registered medical practitioner or other person appointed for the purposes of the Part 3, section 106 or 45(2)(a) may, for the purpose of exercising his functions under those provisions or under Part 4 of this Act, at any reasonable time—

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

PART 8 - OFFENCES

Forgery, false statements, etc.

108.(1) Any person who without lawful authority or excuse has in his custody or under his control any document to which this subsection applies, which is, and which he knows or believes to be, false within the meaning of Part 17 of the Crimes Act 2011, shall be guilty of an offence.

(2) Any person who without lawful authority or excuse makes, or has in his custody or under his control, any document so closely resembling a document to which subsection (1) applies as to be calculated to deceive shall be guilty of an offence.

(3) The documents to which subsection (1) applies are any documents purporting to be—

- (a) an application under Part 2 of this Act;
- (b) a medical or other recommendation or report under this Act; and
- (c) any other document required or authorised to be made for any of the purposes of this Act.

(4) Any person who—

- (a) wilfully makes a false entry or statement in any application, recommendation, report, record or other document required or authorised to be made for any of the purposes of this Act; or
- (b) with intent to deceive, makes use of any such entry or statement which he knows to be false,

shall be guilty of an offence.

(5) Any person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine of any amount, or to both.

Ill-treatment of patients.

109.(1) It is an offence for any person who is an officer on the staff of or otherwise employed in, or is a manager of, a hospital or care home—

- (a) to ill-treat or wilfully neglect a patient for the time being receiving treatment for mental disorder as an in-patient in that hospital or home; or
- (b) to ill-treat or wilfully neglect, on the premises of which the hospital 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 for the time being subject to his guardianship under this Act or otherwise in his custody or care (whether by virtue of any legal or moral obligation or otherwise).

(3) Any person guilty of an offence against this section shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months and to a fine not exceeding level 5 on the standard scale, or both ; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine of any amount, or to both.

Assisting patients to absent themselves without leave, etc.

110.(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 2 or is subject to guardianship under this Act or is a community patient to absent himself without leave; or
- (b) being in legal custody by virtue of section 127, to escape from such custody,

shall be 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, shall be guilty of an offence.

- (3) A person guilty of an offence against this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both; or
 - (b) on conviction on indictment, to imprisonment for two years or to a fine of any amount, or to both.

Obstruction.

111.(1) Any person who without reasonable cause—

- (a) refuses to allow the inspection of any premises;
- (b) refuses to allow the visiting, interviewing or examination of any person by a person authorised in that behalf by or under this Act or to give access to any person to a person so authorised;
- (c) refuses to produce for the inspection of any person so authorised any document or record the production of which is duly required by him; or
- (d) otherwise obstructs any such person in the exercise of his functions,

shall be 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 authorised by or under this Act to interview or examine a person in private, shall be guilty of an offence.

(3) A person guilty of an offence against this section is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 4 on the standard scale or to both.

PART 9 – MENTAL HEALTH BOARD

Establishment of Board.

112.(1) There shall be established a Mental Health Board.

(2) The Board shall exercise–

- (a) the functions conferred on it by this Act; and
- (b) such other functions relating to or connected with mental health as the Minister may prescribe.

(3) The Board shall consist of at least five members appointed by the Minister, and one of such members shall be so appointed as chairman.

(4) Subject to subsection (7), the chairman and every member of the Board shall be appointed for a renewable term of three years.

(5) The Board may appoint one member to be vice-chairman of the Board and subject to subsection (3) such vice-chairman shall hold office for the remainder of the period for which the chairman was appointed.

(6) The Board shall include among its members–

- (a) a solicitor or barrister; and
- (b) a registered medical practitioner.

(7) The Minister may terminate the appointment of a member if he is satisfied that–

- (a) he has failed satisfactorily to perform his duties;
- (b) he is by reason of physical or mental illness, or for any other reason, incapable of carrying out his duties;
- (c) he has been convicted of a criminal offence, or his conduct is such, that it is not in the Minister's opinion fitting that he should remain a member; or

- (d) there is, or appears to be or could appear to be, any conflict of interest between the member performing his duties as a member and any interest of that member, whether personal, financial or otherwise.

Proceedings of Board.

113.(1) The Board shall meet at least once a month or, if they resolve for reasons specified in a resolution of the Board that less frequent meetings are sufficient, not fewer than eight times in twelve months.

(2) The Board may fix a quorum of not fewer than three members for proceedings.

(3) The Board shall keep minutes of their proceedings.

(4) The proceedings of the Board shall not be invalidated by any vacancy in the membership or any defect in the appointment of a member.

Functions of the Board.

114.(1) The Board shall—

- (a) satisfy themselves as to the state of the hospital, the administration of the hospital, and the treatment of patients;
- (b) make inquiry into any case where it appears to the Board that there may be ill-treatment, deficiency in care and treatment, or improper detention in hospital or reception into guardianship of any patient;
- (c) as often as the Board thinks appropriate to visit and interview in private patients who are liable to be detained in hospital under this Act;
- (d) bring to the attention of the Minister any matter concerning the welfare of patients which the Board considers ought to be brought to his attention;
- (e) inquire and report upon any matter which the Minister asks them to inquire;

(f) exercise such other powers and functions as may be prescribed.

(2) In the exercise of its functions under subsection (1), the Board may–

- (a) where it thinks fit, refer to the Tribunal the case of any patient liable to be detained in hospital or subject to guardianship under this Act;
- (b) at any reasonable time visit, interview and medically examine in private any patient in the hospital or any person subject to guardianship under this Act;
- (c) require the production of and inspect any records relating to the detention or treatment of any person who is or has been a patient in a hospital or relating to any person who is or has been subject to guardianship under this Act.

(3) It shall be the duty of the Authority to afford the Board all facilities necessary to enable it to carry out its functions in respect of any patient.

(4) The power to medically examine a patient under subsection (2) shall be exercisable only by–

- (a) a member of the Board who is a medical practitioner; or
- (b) a medical practitioner appointed by the Board for that purpose.

Annual report.

115.(1) The Board shall make an annual report to the Minister at the end of each year concerning its activities and every such report shall be laid before the Parliament.

PART 10 – MISCELLANEOUS AND SUPPLEMENTARY

Application of certain provisions to patients subject to hospital orders or transfer directions.

116.(1) This section applies to a patient who is admitted to hospital in pursuance of a hospital order or transfer direction.

(2) None of the provisions of Part 2 of this Act relating to the duration, renewal and expiration of authority for the detention of patients shall apply, and the patient shall continue to be liable by virtue of the relevant hospital order or transfer direction until he is duly discharged under the said Part 2 or absolutely discharged under section 99 or 100.

(3) None of the provisions of Part 3 of this Act relating to community treatment orders and community patients shall apply.

(4) No application shall be made to the Tribunal under section 92.

(5) The following powers shall be exercisable only with the consent of the Minister, namely—

(a) power to grant leave of absence to the patient under section 16;

(b) power to transfer the patient in pursuance of regulations under section 41;

(c) power to order the discharge of the patient under section 32,

and if leave of absence is granted under section 16 power to recall the patient under that section shall vest with the Minister as well as the responsible clinician.

(6) The power of the Minister to recall the patient under section 16 and power to take the patient into custody and return him under section 24 may be exercised at any time.

(7) The patient shall be treated for the purposes of the provisions of this Act mentioned in Schedule 1 to this Act as if he had been so admitted or placed on the date of the order or direction in pursuance of an application for admission for treatment duly made under Part 2 of this Act but subject to any modifications of those provisions specified in Schedule 1.

(8) While a person is subject to a hospital order or transfer direction the responsible clinician shall at such intervals (not exceeding one year) as the Minister may direct examine and report to the Minister on that person; and every report shall contain such particulars as the Minister may require.

Removal of patients.

117.(1) If it appears to the Minister, in the case of any patient who is receiving treatment for mental disorder as an in-patient in a hospital in Gibraltar that it is in the interests of the patient to remove him to a country or territory outside Gibraltar, and that arrangements have been made for admitting him to a hospital to that country or territory, the Minister may by warrant authorise the removal of the patient from the place where he is receiving treatment as aforesaid, and may give such directions as the 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.

(2) The Minister shall not exercise his powers under subsection (1) in the case of any patient except with the approval of the Tribunal.

General provisions as to patients removed from Gibraltar.

118. Where a patient liable to be detained by virtue of an application, order or direction under Part 2 of this Act or Part 28 of the Criminal Procedure and Evidence Act 2011 is removed from Gibraltar in pursuance of arrangements under section 117, 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.

Informal admission of patients.

119.(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) Subsections (3) and (4) apply in the case of a patient aged 16 or 17 years who has capacity to consent to the making of such arrangements as are mentioned in subsection (1).

(3) If the patient consents to the making of the arrangements, they may be made, carried out and determined on the basis of that consent even though there are one or more persons who have parental responsibility for him.

(4) If the patient does not consent to the making of the arrangements, they may not be made, carried out or determined on the basis of the consent of a person who has parental responsibility for him.

Accommodation, etc for children.

120.(1) This section applies in respect of any patient who has not attained the age of 18 years and who—

- (a) is liable to be detained in a hospital under this Act; or
- (b) is admitted to, or remains in, a hospital in pursuance of such arrangements as are mentioned in section 119(1) .

(2) The Authority shall ensure that the patient's environment in the hospital is suitable having regard to his age (subject to his needs).

(3) For the purpose of deciding how to fulfil the duty under subsection (2), the Authority shall consult a person who appears to them to have knowledge or experience of cases involving patients who have not attained the age of 18 years which makes him suitable to be consulted.

Duty of Authority to give information to detained patients.

121.(1) The Authority shall take such steps as are practicable to ensure that the patient understands—

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

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

(2) The Authority shall also take such steps as are practicable to ensure that the patient understands the effect, so far as relevant in his case, of sections 32, 34, 44 to 54, 92(1)(k), 106 and section 124; and those steps shall be taken as soon as practicable after the commencement of the patient's detention in the hospital.

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

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

Duty of Authority to give information to community patients.

122.(1) The Authority shall take such steps as are practicable to ensure that a community patient understands—

- (a) the effect of the provisions of this Act applying to community patients; and
- (b) what rights of applying to the Tribunal are available to him in that capacity;

and those steps shall be taken as soon as practicable after the patient becomes a community patient.

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

(3) The Authority shall, except where the community patient otherwise requests, take such steps as are practicable to furnish the person (if any) appearing to them to be his nearest relative with a copy of any information given to him in writing under subsection (1); and those steps shall be taken when the information is given to the patient or within a reasonable time thereafter.

Duty of Authority to inform nearest relatives of discharge.

123.(1) Where a patient liable to be detained under this Act in a hospital is to be discharged otherwise than by virtue of an order for discharge made by his nearest relative, the Authority shall, subject to subsection (2), take such steps as are practicable to inform the person (if any) appearing to them to be the nearest relative of the patient; and that information shall, if practicable, be given at least seven days before the date of discharge.

(2) The reference in subsection (1) to a patient who is to be discharged includes a patient who is to be discharged from hospital under section 17.

(3) Subsection (1) shall also apply in a case where a community patient is discharged under section 32 or 98 (otherwise than by virtue of an order for discharge made by his nearest relative).

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

Correspondence of patients.

124.(1) A postal packet addressed to any person by a patient detained in a hospital under this Act and delivered by the patient for dispatch may be withheld from the Post Office—

- (a) if that person has requested that communications addressed to him by the patient should be withheld; or
- (b) subject to subsection (3), if the Authority considers that the postal packet is likely—
 - (i) to cause distress to the person to whom it is addressed or to any other person (not being a person on the staff of the hospital); or
 - (ii) to cause danger to any person;

and any request for the purposes of paragraph (a) shall be made by a notice in writing given to the Authority, the approved clinician with overall responsibility for the patient's case or the Minister.

(2) Any postal packet addressed to a patient detained under this Act in a hospital may be withheld from the patient if, in the opinion of the Authority it is necessary to do so in the interests of the safety of the patient or for the protection of other persons.

(3) Subsections (1)(b) and (2) do not apply to any postal packet addressed by a patient to, or sent to a patient by or on behalf of—

- (a) any Minister or Member of Parliament;

- (b) to the Master or any other officer of the Court of Protection;
- (c) the Tribunal;
- (d) the Authority;
- (e) any other person having the power to discharge the patient under this Part;
- (f) any legally qualified person instructed by the patient to act as his legal adviser,

and for the purposes of paragraph (c) the reference to the Tribunal is a reference to that tribunal so far as it is acting for the purposes of any proceedings under this Act.

(4) The Authority may inspect and open any postal packet for the purposes of determining—

- (a) whether it is one to which subsection (1) or (2) applies, and
- (b) in the case of a postal packet to which subsection (1) or (2) applies, whether or not it should be withheld under that subsection;

and the power to withhold a postal packet under either of those subsections includes power to withhold anything contained in it.

(5) Where a postal packet or anything contained in it is withheld under subsection (1) or (2) the Authority shall record that fact in writing.

(6) Where a postal packet or anything contained in it is withheld under subsection (1)(b) or (2) the Authority shall within seven days give notice of that fact to the patient and, in the case of a packet withheld under subsection (2), to the person (if known) by whom the postal packet was sent; and any such notice shall be given in writing.

(7) The Minister may make regulations with respect to the exercise of the powers conferred by this section.

(8) In this section and section “postal packet” and “post office” have the same meaning as in the Post Office Act, and the provisions of this section shall have effect notwithstanding anything in section 33 of that Act.

Warrant to search for and remove patients.

125.(1) If it appears to a justice of the peace, on information on oath laid by an approved mental health professional, 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 authorising any police officer to enter, if need be by force, any premises specified in the warrant in which that person is believed to be, and, if thought fit, to remove him to a place of safety with a view to the making of an application in respect of him under Part 2, 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 authorised by or under this Act to take a patient to any place, or to take into custody or retake a patient who is liable under this Act to be so taken or retaken,—

- (a) that there is reasonable cause to believe that the patient is to be found on premises within 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 authorising any police officer to enter the premises, if need be by force, and remove the patient.

(3) A patient who is removed to a place of safety in the execution of a warrant issued under this section may be detained there for a period not exceeding 72 hours.

(4) A police officer, an approved mental health professional or a person authorised by either of them for the purposes of this subsection may, before the end of the period of 72 hours mentioned in subsection (3), take a person detained in a place of safety under that subsection to one or more other places of safety.

(5) A person taken to a place of safety under subsection (4) may be detained there for a period ending no later than the end of the period of 72 hours mentioned in subsection (3) .

(6) In the execution of a warrant issued under subsection (1), a police officer shall be accompanied by an approved mental health professional and by a registered medical practitioner, and in the execution of a warrant issued under subsection (2) a police officer may be accompanied–

- (a) by a registered medical practitioner; or
- (b) by any person authorised by or under this Act to take or retake the patient.

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

(8) 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.

126.(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 125.

(2) A person removed to a place of safety under this section may be detained there for a period not exceeding 72 hours for the purpose of enabling him to be examined by a registered medical practitioner and to be interviewed by an approved mental health professional and of making any necessary arrangements for his treatment or care.

(3) A constable, an approved mental health professional or a person authorised by either of them for the purposes of this subsection may, before the end of the period of 72 hours mentioned in subsection (2), take a person detained in a place of safety under that subsection to one or more other places of safety.

(4) A person taken to a place of a safety under subsection (3) may be detained there for a purpose mentioned in subsection (2) for a period ending no later than the end of the period of 72 hours mentioned in that subsection.

Provisions as to custody, conveyance and detention.

127.(1) Any person required or authorised by or by virtue of this Act to be conveyed to any place or to be kept in custody or detained in a place of safety or at any 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 authorised by or by virtue of this Act to take any person into custody, or to convey or detain any person shall, for the purposes of taking him into custody or conveying or detaining him, have all the powers, authorities, protection and privileges which a 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.

128.(1) If any person being in legal custody by virtue of section 127 escapes, he may, subject to the provisions of this section, be retaken—

- (a) in any case, by the person who had his custody immediately before the escape, or by any police officer or an approved mental health professional;
- (b) if at the time of the escape he was liable to be detained in a hospital or subject to guardianship under this Act, or a community patient who is recalled to hospital under section 21, by any other person who could take him into custody under section 24 if he had absented himself without leave.

(2) A person to whom paragraph (b) of subsection (1) applies shall not be retaken under this section after the expiration of the period within which he could be retaken under section 24 if he had absented himself without leave on the day of the escape unless he is subject to a hospital order or a transfer direction; and subsection (4) of section 24 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 125 or 126 shall not be retaken under this section after the expiration of the period of 72 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 shall apply in relation to a person who escapes–

- (a) while being taken to or from such a hospital in pursuance of regulations made under section 41 or of any order, direction or authorisation under–
 - (i) sections 668 and 670 to 675 of the Criminal Procedure and Evidence Act 2011; or
 - (ii) section 117 of this Act; or
- (b) while being taken to or detained in a place of safety in pursuance of a hospital order or transfer direction pending his admission to such a hospital.

as if he were liable to be detained in that hospital and, if he had not previously been received in that hospital, as if he had been so received.

(5) In computing for the purposes of sections 668(4) and 670(1) of the Criminal Procedure and Evidence Act 2011 the period of 28 days mentioned in those sections, no account shall be taken of any time during which the patient is at large and liable to be retaken by virtue of this section.

(6) Section 28 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 24, and references therein to section 24 shall be construed accordingly.

Protection for acts done in pursuance of this Act.

129.(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

made under this Act, unless the act was done in bad faith or without reasonable care.

(2) No civil proceedings shall be brought against any person in any court in respect of any such act without the leave of the Supreme Court; and no criminal proceedings shall be brought against any person in any court in respect of any such act except by or with the consent of the Attorney General.

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

130.(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).

Delegation of functions of Authority.

131. The functions and duties of the Authority conferred by this Act shall be discharged on its behalf by a person on the staff of the hospital appointed by

the Authority for that purpose and different persons may be appointed to discharge different functions and duties.

Expenses.

132. 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.

Regulations.

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

Repeals, consequential and transitional provisions.

134.(1) The Mental Health Act (the “repealed Act”) and any subsidiary legislation made under it is repealed.

(2) Any person who immediately before the commencement date was liable to be detained by virtue of the repealed Act shall continue to be so liable as if the authority for the detention derived from this Act but for the period for which that authority was given or renewed under the repealed Act.

(3) A mental welfare officer whose appointment under the repealed Act was in force immediately before the commencement date shall be deemed to be an approved mental health professional for the purposes of this Act.

(4) The medical practitioners who immediately before the commencement date were exercising the functions of a responsible medical officer under the repealed Act shall be deemed to be approved clinicians for the purposes of this Act.

(5) Where immediately before the commencement date there is a receiver for a person appointed under section 49 of the repealed Act, this Act applies as if the receiver were a deputy appointed for that person, but with the functions that the receiver had before the commencement date.

(6) Any person who by virtue of section 44(2) of the repealed Act were officers of the Court of Protection nominated by the Chief Justice for the purpose of Part IV of the repealed Act immediately before the commencement date shall continue in office and to be treated as nominated under this Act

(7) Subsection (1) of section 94 shall not apply to any patient admitted to hospital more than six months before the coming into force of that section; and subsection (2) of that section applies only in relation to a renewal of authority for detention after that date.

(8) The persons who before the commencement date were appointed as members of the Mental Health Review Tribunal under the repealed Act shall be deemed to have been appointed to the Tribunal under this Act for the remainder of their period of appointment.

(9) This Act shall not affect the arrangements made under and in accordance with section 77 of the repealed Act which were in force immediately before the commencement date.

(10) Subject to the provisions of this section, nothing in this Act shall affect any order, direction or authority given under the repealed Act before the commencement date.

(11) Subject to the provisions of this section, where anything done under or for the purposes of the repealed Act would cease to have effect by virtue of the repeal it shall have effect as if it had been done under or for the purposes of the corresponding provisions of this Act.

(12) The consequential provisions at Schedule 3 shall have effect.

(13) The Minister may by order make any supplementary, incidental, consequential, transitional or saving provisions for the purposes of, in consequence of, or for giving full effect to a provision of this Act.

(14) For the purposes of this section, “commencement date” means the date of the coming into force of this Act and where different dates are appointed for different provisions, it shall be construed as a reference to the date on which that provision comes into operation.

SCHEDULE 1

Section 116

APPLICATION OF CERTAIN PROVISIONS TO PATIENTS SUBJECT TO HOSPITAL ORDERS OR TRANSFER DIRECTIONS

1. Sections 41(1) and (2) and 101 shall apply in relation to the patient without modification.
2. Sections 16, 24, 31 and 32 shall apply in relation to the patient with the modifications specified in paragraphs 3 to 6.
3. In section 16—
 - (a) in subsection (1) after the word “may” there shall be inserted the words “with the consent of the Minister”;
 - (b) subsections (3) and (4) shall be omitted;
 - (c) in subsection (6) after the words “the responsible clinician” and after the words “that clinician” there shall be inserted the words “or the Minister”; and
 - (d) in subsection (7) after the word “recalled” there shall be inserted the words “by the responsible clinician”, and for the words from “he has ceased” to the end of the subsection there shall be substituted the words “the expiration of the period of twelve months beginning with the first day of his absence on leave”.
4. In section 24 there shall be omitted—
 - (a) in subsection (1) the words “subject to the provisions of this section”; and
 - (b) subsections (3), (4) and (7).
5. In section 31, subsections (1) and (5) shall not apply.
6. In section 32—

- (a) in subsection (1) references to guardianship shall be omitted and after the word “made” there shall be inserted the words “with the consent of the Minister and”; and
- (b) in subsection (4)–
 - (i) in paragraph (a) the words “for assessment or” and “or by the nearest relative of the patient” shall be omitted; and
 - (ii) paragraph (b) shall be omitted.

SCHEDULE 2

Section 91

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

SCHEDULE 3

Section 134

CONSEQUENTIAL AMENDMENTS

1. Subject to paragraphs 2 and 3, in every Act or subsidiary legislation for the words “Mental Health Act” substitute “Mental Health Act 2015” wherever it appears.
2. The enactments specified in the first column of the table are amended to the extent specified in the second column.

Enactment	Extent of amendment
Children Act 2009	In section 73(1) for “registered medical practitioner approved for the purposes of section 8” substitute “approved clinician as defined in section 1(3)”.
Crimes Act 2011	<ol style="list-style-type: none">1. In section 212(1) in the definition of “mental disorder” for “section 3(1)” substitute “section 1(3)”.2. In section 305(1) in the definition of “hospital” for “section 2(1)” substitute “section 1(3)”.3. In section 475(1)(b) –<ol style="list-style-type: none">(a) for “Part IV” substitute “Part 5”; and(b) delete “(Management of the property and affairs of the patients)”.4. In Schedule 4 paragraph 51 for “section 64” substitute “section 108”.
Criminal Procedure and Evidence Act 2011	<ol style="list-style-type: none">1. In section 2(1) in the definition of “mental disorder” for “section 3(1)” substitute “section 1(3)”.

	<p>2. In section 90(10)(a) for “Part III of the Mental Health Act” substitute “Part 28 in pursuance of –</p> <ul style="list-style-type: none"> (i) a hospital order or interim hospital order made following his conviction for the recordable offence in question; or (ii) a transfer direction given at a time when he was detained in pursuance of any sentence or order imposed following that conviction”. <p>3. In section 493(5) delete “the responsible medical officer or a mental welfare officer as defined in” and substitute “responsible clinician or approved mental health professional as defined in”.</p> <p>4. In section 530(2)(a) delete “section 4” and substitute “section 119”.</p> <p>5. In section 657(1) –</p> <ul style="list-style-type: none"> (a) before the definition of “hospital” insert ““approved clinician” has the same meaning as in the Mental Health Act 2015;”; (b) for the definition of “responsible medical officer” substitute the following definition- <ul style="list-style-type: none"> ““responsible clinician” in relation to a person liable to be detained in a hospital pursuant to an order or direction under this Part, means the approved clinician with overall responsibility for the patient’s case;”; and
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	<p>(c) after the definition of “transfer direction” insert the following definition-</p> <p>“Tribunal” has the same meaning as in the Mental Health Act 2015;”.</p> <p>6. After subsection (2) of section 657 insert–</p> <p>“(2A) A person with learning disability shall not be considered by reason of that disability to be–</p> <p>(a) suffering from mental disorder for the purposes of sections 664 to 669, 671, 672 and 674; or</p> <p>(b) requiring treatment in hospital for mental disorder for the purposes of sections 673 to 676,</p> <p>unless that disability is associated with abnormally aggressive or seriously irresponsible conduct on his part.</p> <p>(2B) Dependence on alcohol or drugs is not considered to be a disorder or disability of the mind for the purposes of the meaning of mental disorder under subsection (1).</p> <p>(2C) In subsection (2A), “learning disability” means a state of arrested or incomplete development of the mind which includes a significant impairment of intelligence and social functioning.”.</p> <p>7. Delete subsection (3) of section 657.</p>
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	<p>8. In section 662 for “responsible medical officer” substitute “responsible clinician”.</p> <p>9. In section 664(4) for “medical practitioner” substitute “approved clinician”.</p> <p>10. Section 666-</p> <ul style="list-style-type: none"> (a) in subsection (1) for “medical practitioner” substitute “approved clinician”; and (b) in subsection (4)(a) after “medical practitioner” insert “or approved clinician”. <p>11. In section 668-</p> <ul style="list-style-type: none"> (a) in subsection (2)(a) after “for medical treatment” insert “and appropriate medical treatment is available for him”; (b) in subsection (4)(b) for “registered medical practitioner who would be in charge of the person’s treatment” substitute “approved clinician who would have overall responsibility for his case”; and (c) delete subsections (6), (7) and (9). <p>12. In section 669-</p> <ul style="list-style-type: none"> (a) in subsection (3) for “medical practitioner who would be in charge of his treatment” substitute “approved clinician who would have overall responsibility for his case”; (b) in subsection (5)(b) for “responsible medical officer” substitute “responsible clinician”;
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	<p>(c) in subsection (6) for “responsible medical officer” substitute “responsible clinician”; and</p> <p>(d) delete subsection (8).</p> <p>13. In section 670–</p> <p>(a) in subsection (1) for paragraph (b) substitute–</p> <p style="padding-left: 40px;">“(b) the person in charge of the hospital must admit him within that period and thereafter detain him–</p> <p style="padding-left: 80px;">(i) in accordance with the provisions of the Mental Health Act 2015, if a hospital order is made;</p> <p style="padding-left: 80px;">(ii) in accordance with the provisions of section 669, if an interim hospital order is made.”;</p> <p>(b) delete subsection (3); and</p> <p>(c) insert the following subsection after subsection (7)–</p> <p style="padding-left: 40px;">“(8) Without prejudice to the powers of the court under subsection (7), if a person subject to a hospital order is absolutely discharged in accordance with the provisions of the Mental Health Act 2015 the</p>
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	<p>hospital order shall be treated as terminated.”.</p> <p>14. Section 671–</p> <p>(a) in subsection (1) delete “and” at the end of paragraph (a); for the comma at the end of paragraph (b) substitute “;and”; and insert the following paragraph–</p> <p style="padding-left: 40px;">“(c) that appropriate medical treatment is available for him,”;</p> <p>(b) in subsection (3) delete “and section 668(7) applies to such a person”; and</p> <p>(c) delete subsections (4) and (5).</p> <p>15. In section 672–</p> <p>(a) in subsection (1) delete “and” at the end of paragraph (a); for the comma at the end of paragraph (b) substitute “;and”; and insert the following paragraph–</p> <p style="padding-left: 40px;">“(c) that appropriate medical treatment is available for him,”; and</p> <p>(b) delete subsection (3).</p> <p>16. In section 673 for “responsible medical officer or any other medical practitioner” substitute “responsible clinician, any other approved clinician or the Tribunal”.</p> <p>17. In section 674–</p> <p>(a) in subsection (3) for “responsible</p>
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	<p>medical officer or any other medical practitioner” substitute “responsible clinician, any other approved clinician or the Tribunal”;</p> <p>(b) in subsection (4) for “responsible medical officer” substitute “responsible clinician”; and</p> <p>(c) in subsection (6)(a) after “medical treatment” insert “and appropriate medical treatment is available for him”.</p> <p>18. In section 675(5) for “responsible medical officer” substitute “responsible clinician”.</p> <p>19. In section 676(2) for “responsible medical officer or any other medical practitioner” substitute “responsible clinician, any other approved clinician or the Tribunal”.</p> <p>20. In Schedule 2 for “Sections 75, 76, 79 and 80” substitute “Sections 125,126, 127 and 128”.</p>
<p>Data Protection Act 2004</p>	<p>In section 5(1)(b) for “a patient within the meaning of section 45” substitute “a person who lacks capacity within the meaning of Part 5”.</p>
<p>Equal Opportunities Act 2006</p>	<p>In section 68 in the definition of “under a disability” for “is a patient as defined in section 45” substitute “is a person who lacks capacity within the meaning of Part 5”.</p>

Limited Partnerships Act	In section 5 for “unless the Chief Justice, exercising his powers under Part IV of that Act, shall so order” substitute “unless the Court of Protection so orders in exercise of its powers under Part 5 of that Act”.
Matrimonial Causes Act	1. In section 25A(d) for “section 3” substitute “section 1(3)”. 2. In section 25B(4)(a) for “section 3” substitute “section 1(3)”.
Partnership Act	In section 37(a) delete “Part IV” substitute “Part 5”.
Pensions (Widows and Orphans) Act	In section 26 for “section 77” substitute “section 130”.
Supreme Court Act	In paragraph 3 of Schedule 2 for “Part IV” substitute “Part 5”.
Transport Act	1. In section 12(3)- (a) in paragraph (a)(iii) for “a patient within the meaning of Part IV” substitute “a person who lacks capacity within the meaning of Part 5”; and (b) in paragraph (c)(ii) and (iii) for “a patient within the meaning of Part IV” substitute “a person who lacks capacity within the meaning of Part 5” in the two places where it occurs. 2. In section 30(3) for “a patient within the meaning of Part IV” substitute “a person who

	lacks capacity within the meaning of Part 5”.
<p>Notice of Publication under Section 690(3)(a) of the Codes of Practice</p>	<p>1. In Annex A for “Sections 75, 76, 79 and 80” substitute “Sections 125,126, 127, 128”.</p> <p>2. In Code C—</p> <p>(a) in C1.10 delete “sections 75 and 76” and substitute “sections 125 and 126”;</p> <p>(b) in Notes for Guidance at 1G for “‘Mental disorder’ is defined in section 1(3) of the Mental Health Act as ‘mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of the mind’” substitute “‘Mental disorder’ is defined in section 1(3) of the Mental Health Act 2015 as ‘any disorder or disability of the mind’.”;</p> <p>(c) in C3.16 delete “section 76” and substitute “section 126” in the three places where it occurs;</p> <p>(d) in C4.1(e) for “section 75 or 76” substitute “sections 125 or 126”;</p> <p>(e) in C9.6 for “section 76” substitute “section 126”;</p> <p>(f) in Notes for Guidance 9D for “section 76” substitute “section 126”;</p> <p>3. In Annex E of Code C—</p> <p>(a) in paragraph 5 for “section 76” substitute “section 126” and for “section 75” substitute “section 125”.</p>

	(b) in paragraph 6 for “section 76” substitute “section 126” in the two places where it occurs.
Port Operations (Registration and Licensing) Regulations 2005	1. In regulation 15(3)- (a) in paragraph (a)(iii) for “a patient within the meaning of Part IV” substitute “a person who lacks capacity within the meaning of Part 5”; and (b) in paragraph (c)(ii) and (iii) for “a patient, within the meaning of Part IV” substitute “a person who lacks capacity within the meaning of Part 5”.
Supreme Court Fund Rules	In rule 9(2)(d) for “section 47(1)(a)” substitute “Part 5”.

3. Paragraph 1 shall not apply to–

- (a) section 602 of the Crimes Act 2011;
- (b) the Gibraltar Laws (General Amendment) (No.1) Act 2007;
- (c) the Schedule to the Medical (Gibraltar Health Authority) Act, 1987;
- (d) the Gibraltar Health Authority (Transfer of Functions) Regulations, 1988; and
- (e) the Medical and Health Act, 1997.

EXPLANATORY MEMORANDUM

This Act repeals the Mental Health Act and introduces a new Mental Health Act 2015. The Act is concerned with the circumstances in which a person with a mental disorder can be detained for treatment for that disorder without his consent. It sets out the processes which must be followed and the safeguards for patients to ensure that they are not inappropriately detained or treated without their consent. The main purpose is to ensure that people with serious mental disorders which threaten their health or safety or the safety of the public can be treated irrespective of their consent where it is necessary to prevent them from harming themselves or others.

Part 1 contains the interpretation provisions. Part 2 sets out the compulsory admission of persons to hospital and also includes new provision for making a guardianship application. Part 3 introduces new consent to treatment provisions which sets out what treatment may be provided and what safeguards must be put in place in order to administer such treatment. Part 4 introduces a new regime of treating patients in the community. Part 5 contains the powers of the Court of Protection to deal with the management of the personal welfare and property and affairs of a person who lack capacity. Part 6 continues the establishment of the Mental Health Review Tribunal which now has new extended powers regarding applications to the Tribunal and the power of the Tribunal to discharge patients. Part 7 deals with some of the functions of the Minister as well as mental health professionals. Part 8 sets out the offences. Part 9 sets up a Mental Health Board whose main function is that of an independent body to review the treatment of patients, inquire into any matter of deficiency in care and report back to the Minister. Part 10 contains miscellaneous and supplementary provisions.

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