

PROJET DE LOI

ENTITLED

The Mental Health (Bailiwick of Guernsey) Law, 2010 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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* No. XV of 2011; as amended by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016); the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2017 (No. 1 of 2017). See also the Criminal Justice (Special Verdicts) (Guernsey) Law, 1961 (Ordres en Conseil Vol. XVIII, p. 355); the Police Force (Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207); the Mental Health (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2013 (No. XVI of 2013); the Mental Health (Miscellaneous Provisions) (Sark) Ordinance, 2013 (Sark Ordinance No. 226); the Regulation of Health Professions (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015 (No. XXII of 2015). This Law is modified, in part, by the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 4) Regulations, 2021 (G.S.I. No. ** of 2021).

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The Mental Health (Bailiwick of Guernsey) Law, 2010 ¹

THE STATES, in pursuance of their Resolution of 27th November, 2002^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

PART I

PRELIMINARY

Application of Law and meaning of "mental disorder".

1. (1) The provisions of this Law have effect with respect to the reception, care and treatment of mentally disordered patients, the management of their property and other related matters.

(2) In this Law "**mental disorder**" means any disorder or disability of the mind; and "**mentally disordered**" shall be construed accordingly.

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

- (a) suffering from a mental disorder for the purposes of sections 20, 21, 23, 24, 26, 28, 52, 64, 65, 66, 68, 72 and 74 and paragraph 5 of Part A of the Second Schedule, or

^a Article XVIII on Billet d'État No. XXIII of 2002.

- (b) requiring treatment in an approved establishment for mental disorder for the purposes of section 30,

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

(4) Dependence on alcohol or drugs is not considered to be a disorder or disability of the mind for the purposes of subsection (2).

(5) In subsection (3), **"learning disability"** means a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning.

NOTES

In accordance with the provisions of the Criminal Justice (Special Verdicts) (Guernsey) Law, 1961, section 8, with effect from 8th April, 2013, the provisions of this Law, or any enactment, instrument or code of practice made or issued hereunder, relating to the powers and duties of the Committee for Health & Social Care, the Committee, a medical practitioner, an approved medical practitioner, an approved mental health practitioner, an approved social worker, an authorised nurse, an authorised occupational therapist or a police officer (all as defined in section 99 of this Law), concerning patients liable to be detained in approved establishments under this Law, shall have effect as if any reference herein to a patient includes a reference to a person detained in an approved establishment in pursuance of the provisions, other than section 2, of the 1961 Law.

*In accordance with the provisions of the Mental Health (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2013, section 12, with effect from 8th April, 2013, for the purposes of this Law and any subordinate legislation made by or under this Law, and subject to subsection (2) of section 12 of the 2013 Ordinance, a patient who is **"liable to be detained"** means a patient who may be detained in an approved establishment by virtue of (a) an admission order, (b) a treatment order, (c) a hospital order, (d) a restriction order (except where the person has been conditionally discharged), (e) a notice of recall under section 30 of this Law (recall of community patients), (f) being given leave of absence under section 36 of this Law, or (g) being absent without leave for the purposes of section 37 of this*

Law.

*In accordance with the provisions of the Mental Health (Miscellaneous Provisions) (Sark) Ordinance, 2013, section 12, with effect from 10th April, 2013, for the purposes of this Law and any subordinate legislation made by or under this Law, and subject to subsection (2) of section 12 of the 2013 (Sark) Ordinance, a patient who is "**liable to be detained**" means a patient who may be detained in an approved establishment by virtue of (a) an admission order, (b) a treatment order, (c) a hospital order, (d) a restriction order (except where the person has been conditionally discharged), (e) a notice of recall under section 30 of this Law (recall of community patients), (f) being given leave of absence under section 36 of this Law, or (g) being absent without leave for the purposes of section 37 of this Law.*

Basic definitions for purposes of Law.

2. (1) The following provisions of this section have effect for the interpretation of this Law and any Ordinance or subordinate legislation made under this Law (subject to any adaptation contained in such an Ordinance or any subordinate legislation).

(2) "**Patient**" means a person suffering or appearing to be suffering from mental disorder.

(3) References to "**medical treatment**" are references to treatment for mental disorder provided under the supervision of an approved medical practitioner; and for this purpose "**treatment**" shall be given its widest possible meaning and, for the avoidance of doubt, includes –

- (a) nursing,
- (b) care,
- (c) medication,
- (d) cognitive therapy, behaviour therapy, counselling or

other psychological intervention,

- (e) habilitation (including education and training in work, social and independent living skills), and
- (f) rehabilitation (read in accordance with paragraph (e)).

PART II

FUNCTIONS ETC. OF [THE COMMITTEE FOR HEALTH & SOCIAL CARE]

Functions of [the Committee for Health & Social Care].

3. [The Committee for Health & Social Care] shall be responsible for –

- (a) the management and general supervision of any approved establishment in Guernsey or Alderney,
- (b) the admission, treatment, care and detention in any approved establishment in Guernsey or Alderney of any patient,
- (c) the treatment and care of any patient –
 - (i) to whom a community treatment order relates, and
 - (ii) who is not detained in any approved establishment in Guernsey or Alderney,
- (d) advising the States on matters relating to –
 - (i) the mental health of individuals within

Guernsey and Alderney, or any part of
Guernsey and Alderney, and

- (ii) the best practices and methods which may be adopted in order to –
 - (A) prevent the occurrence of mental disorder, and
 - (B) treat, or care for, any individual who is suffering from mental disorder, and
- (e) such other matters, or carrying out such other functions, relating to the mental health of individuals within Guernsey and Alderney, or any part of Guernsey and Alderney, as may be assigned to it –
 - (i) under this Law, or
 - (ii) by way of resolution of the States.

NOTE

In section 3, and the Heading to Part II, the words "T/the Committee for Health & Social Care" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

Powers of [the Committee for Health & Social Care].

4. (1) [The Committee for Health & Social Care] may do anything that appears to it to be necessary, conducive or expedient to, or for, the carrying out

of its functions under this Law or incidental to their proper discharge.

(2) Without limiting the generality of the power under subsection (1) and any other power, [the Committee for Health & Social Care] may –

- (a) within any limits placed upon its expenditure by the States, purchase all equipment, stores, medicines, supplies and services as are necessary for the efficient maintenance and administration of any approved establishment and of the mental health services provided by [the Committee for Health & Social Care],
- (b) issue codes of practice for such purposes as may be described under this Law,
- (c) appoint any person –
 - (i) to inspect any approved establishment in Guernsey or Alderney,
 - (ii) to assess the standard of care provided for patients at any such approved establishment, or elsewhere in Guernsey and Alderney, and
 - (iii) to report to [the Committee for Health & Social Care] upon any such inspection or assessment in such manner as [the Committee for Health & Social Care] may determine,

upon such terms and conditions as it thinks fit, and

(d) delegate the exercise of any of its functions under this Law –

(i) to such person,

(ii) for such period, and

(iii) subject to such terms and conditions,

as it sees fit.

(3) For the avoidance of doubt any delegation of the carrying out of any of [the Committee for Health & Social Care]'s functions under this section –

(a) may be revoked or suspended, and the terms and conditions of any such delegation varied, at any time by [the Committee for Health & Social Care], but without prejudice to anything done pursuant to the delegation, and

(b) does not prevent the carrying out of the function by [the Committee for Health & Social Care] while the delegation subsists.

(4) [The Committee for Health & Social Care], and any person prescribed for the purpose under this subsection, must provide any person appointed under subsection (2)(c) with such information as that person may reasonably require for, or in connection with, the carrying out of his functions under subsection (2)(c).

NOTE

In section 4, the words "T/the Committee for Health & Social Care" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

PART III

APPROVED MEDICAL PRACTITIONERS, SECOND OPINION APPROVED DOCTORS, APPROVED ESTABLISHMENTS AND APPROVED SOCIAL WORKERS

Approved medical practitioners and second opinion approved doctors

Approved medical practitioners and second opinion approved doctors.

5. (1) The appropriate Bailiwick authority may by resolution approve, upon such terms and subject to such conditions as it thinks fit, a medical practitioner to be an approved medical practitioner, or a second opinion approved doctor, for the purposes of this Law.

(2) For the avoidance of doubt, the appropriate Bailiwick authority may, by further resolution, revoke or suspend any approval or vary the terms and conditions of any approval given under subsection (1).

Approved establishments

Approved establishments.

6. (1) Subject to subsection (2), the appropriate Bailiwick authority may by resolution approve any establishment or premises for the purposes of the provision of medical treatment for a patient upon such terms and subject to such conditions as it thinks fit.

(2) An appropriate Bailiwick authority shall not exercise its powers under subsection (1) unless it is satisfied that, having taken into account the

qualifications and quality of the management, personnel and facilities of the establishment or premises in question, the standard of medical treatment provided there is appropriate and adequate, having regard to the best available treatments.

(3) For the avoidance of doubt, an appropriate Bailiwick authority may, by further resolution, revoke or suspend any approval or vary the terms and conditions of any approval given under subsection (1).

Approved social workers

Approved social workers.

7. (1) The appropriate Bailiwick authority may by resolution approve a social worker for the purposes of carrying out –

- (a) the functions specified under section 8, and
- (b) such other functions as are conferred upon approved social workers under this Law,

upon such terms and subject to such conditions as it thinks fit.

(2) For the avoidance of doubt, the appropriate Bailiwick authority may, by further resolution, revoke or suspend any approval or vary the terms and conditions of any approval made under subsection (1).

Functions of approved social workers.

8. (1) [The Committee for Health & Social Care] shall prepare a code of practice for the guidance of approved social workers.

(2) An approved social worker shall carry out –

- (a) in respect of a patient, such functions as may be specified for the purpose in any code of practice, and
- (b) such additional or alternative functions as [the Committee for Health & Social Care] may from time to time by resolution determine.

(3) An approved social worker shall carry out his functions with fairness, impartiality and independence and in a manner that is in the best interests of any patient with whose treatment he is involved.

NOTE

In section 8, the words "T/the Committee for Health & Social Care" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

PART IV

NOMINATED REPRESENTATIVE AND NEAREST RELATIVE

Nominated representative

Appointment of nominated representative.

9. (1) An individual who has attained the age of eighteen years may, by written notice in the prescribed form, appoint a person to act as his representative under this Law.

(2) In the case of an individual who –

- (a) has not attained the age of eighteen years, or

- (b) does not have the necessary capacity to make such an appointment,

[the Committee for Health & Social Care] may, subject to subsection (3), by written notice in the prescribed form, appoint a person to act as that individual's nominated representative for the purposes referred to in subsection (1).

(3) Where [the Committee for Health & Social Care] is contemplating an appointment under subsection (2) it shall take into account, when considering the appointment, such matters as may be specified for the purpose in any code of practice.

(4) No person shall act as a nominated representative under this Law unless that person has first given his written consent in the prescribed form.

(5) An individual may appoint more than one person under subsection (1), but where he does so, he must also indicate, in the prescribed form, the priority, as between the appointees, in which he wishes them to act under this Law.

NOTES

In section 9, the words "the Committee for Health & Social Care" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

The following Regulations have been made under section 9:

Mental Health (Treatment and Forms) Regulations, 2013.

Nominated representative deemed to be nearest relative.

10. A nominated representative –

- (a) shall, in relation to a patient by, or in respect of, whom he is appointed, be deemed to be that patient's nearest relative for the purposes of this Law and shall have the rights and may carry out the functions that, but for this section and any order under section 16, the nearest relative of that patient would have, and could carry out, under this Law, and
- (b) shall carry out those functions with fairness, impartiality and independence and in a manner that is in the best interests of the patient.

Revocation, variation, cessation etc. of appointment.

11. (1) For the avoidance of doubt –

- (a) an individual who has made an appointment under section 9(1), and
- (b) [the Committee for Health & Social Care], where it has made an appointment under section 9(2),

may by further written notice in the prescribed form revoke, or vary, the terms and conditions of any such appointment.

(2) An appointment under section 9 shall cease upon the occurrence of any of the following circumstances –

- (a) the revocation of the appointment under subsection (1),
- (b) the death of the individual concerned,

- (c) the death of the nominated representative,
- (d) where, by written notice in the prescribed form, the representative withdraws his consent to act,
- (e) in the case of a child, where the circumstances described in section 14(a) or (b) apply in respect of the child, or
- (f) the making of an order under section 16.

NOTES

In section 11, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

The following Regulations have been made under section 11:

Mental Health (Treatment and Forms) Regulations, 2013.

Meaning of "[the Committee for Health & Social Care]" for purposes of sections 9 to 11.

12. For the purposes of sections 9 to 11, the "[the Committee for Health & Social Care]" means –

- (a) where the individual concerned resides in Guernsey or Alderney, the States [Committee for Health & Social Care], or
- (b) where the individual concerned resides in Sark, the Committee.

NOTE

In section 11, the words, first, "the Committee for Health & Social Care" and, second, "Committee for Health & Social Care" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(3), Schedule 3, paragraph 6 and section 2, Schedule 1, paragraph 5, with effect from 1st May, 2016.

Nearest relative

Definition of "relative" and "nearest" relative.

13. (1) In this Law "**relative**" means any of the following persons –

- (a) husband or wife,
- (b) son or daughter,
- (c) father or mother,
- (d) brother or sister,
- (e) grandparent,
- (f) grandchild,
- (g) uncle or aunt,
- (h) 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 Part II of the Children (Guernsey and Alderney) Law, 2008^b, his father.

For the purposes of subsection (2)(b), in respect of an illegitimate child born upon, or after, the commencement of section 7 of the Children (Guernsey and Alderney) Law, 2008, the father of that child shall also be treated as having parental responsibility for the child within the meaning of Part II of that Law, upon registration as that child's father under any enactment relating to the registration of births occurring within Sark.

- (3) In this Law, subject to –
 - (a) section 10,
 - (b) the provisions of this section, and
 - (c) 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.

^b Order in Council No. XIV of 2008 as amended by Ordinance Nos. XI and XLVIII of 2009.

(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 relatives 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) in the case of a patient ordinarily resident in the British Islands, is not so resident,
- (b) is the husband or wife of the patient, but 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) is a person other than the husband, wife, father or mother of the patient, and 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) a person 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 subsection (5)(b), and
- (b) a person who is the patient's civil partner.

(7) A person, other than a relative, with whom the patient ordinarily resides (or, if the patient is for the time being an in-patient in a hospital, last ordinarily resided before he was admitted), and with whom he has or had been ordinarily residing for a period of not less than five years, shall be treated for the purposes of this Part as if he were a relative but –

- (a) shall be treated for the purposes of subsection (3) as if mentioned last in subsection (1), and
- (b) 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 subsection (5)(b).

Children subject to care requirement or community parenting order.

14. Where a patient who is a child –

- (a) is under the supervisory care of the States under a care requirement within the meaning of section 43 of the Children (Guernsey and Alderney) Law, 2008, or
- (b) is subject to a community parenting order within the meaning of section 48 of the Children (Guernsey and Alderney) Law 2008,

[the Committee for Health & Social Care] shall be deemed to be the nearest relative of the patient in preference to any person except the patient's husband or wife (if any).

NOTE

In section 14, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

Nearest relative of child under guardianship, etc.

15. (1) Where –

- (a) a guardian has been appointed for a child, or
- (b) a residence order (as defined by section 17(1)(a) of the Children (Guernsey and Alderney) Law, 2008) is in force with respect to a child,

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 the child's nearest relative.

(2) Section 13(5) 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.

Appointment by court of acting nearest relative.

16. (1) A 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 Law shall, during the continuance in force of the order, be exercisable by the applicant, or by any other person specified in the application, being a person who, in the opinion of the court, is a proper person to act as the patient's nearest relative and is willing to do so.

(2) When making an order under this section the court shall revoke the appointment of any nominated representative who has been appointed by the patient.

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

- (a) any relative of the patient,
- (b) any other person with whom the patient is residing (or, if the patient is then an in-patient in a hospital, was last residing before he was admitted), or
- (c) an approved social worker,

but in relation to an application made by a social worker, subsection (1) shall have effect as if for the words "the applicant" there were substituted the words –

- (i) where the patient is ordinarily resident in Sark,
"the [Medical & Emergency Services

Committee] of the Chief Pleas of Sark", or

- (ii) where the patient is ordinarily resident in Guernsey or Alderney, "the States [Committee for Health & Social Care]".

(4) An application for an order under this section may be made –

- (a) where a nominated representative is not appointed, upon any of the following grounds –

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

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

- (iii) that the nearest relative of the patient is otherwise not a suitable person to act as such, or

- (b) where a nominated representative is appointed, upon either of the following grounds –

- (i) that the nominated representative of the patient is incapable of acting as such by reason of mental disorder or other illness, or

- (ii) that the nominated representative of the patient

is otherwise not a suitable person to act as such.

(5) An order under this section may specify a period for which it is to continue in force unless previously discharged under section 17.

(6) While an order made under this section is in force the provisions of this Law (other than this section and section 17) 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 17) 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.

NOTES

In section 16,

the words in the first pair of square brackets were substituted by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2017, section 2, Schedule, paragraph 3, with effect from 18th January, 2017;

the words in the second pair of square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 5, with effect from 1st May, 2016.

Discharge and variation of orders under section 16.

17. (1) An order made under section 16 in respect of a patient may be discharged by the court upon application made –

- (a) in any case, by the person having the functions of the nearest relative of the patient by virtue of the order, or
- (b) where the person who was the nearest relative of the patient when the order was made has ceased to be his

nearest relative, by the nearest relative of the patient.

(2) An order made under section 16 in respect of a patient may be varied by the court, on the application of the person having the functions of the nearest relative by virtue of the order, or on the application of an approved social worker, by substituting for the person having the functions of the nearest relative –

- (a) where the patient is residing –
 - (i) in Sark, "the [Medical & Emergency Services Committee] of the Chief Pleas of Sark", or
 - (ii) in Guernsey or Alderney, "the States [Committee for Health & Social Care]", or
- (b) any other person who in the opinion of the court is a proper person to exercise those functions, being a person who is willing to do so.

(3) If the person having the functions of the nearest relative of a patient by virtue of an order under section 16 dies –

- (a) subsections (1) and (2) shall apply as if for any reference to that person there were substituted a reference to any relative of the patient, and
- (b) until the order is discharged or varied under those provisions the functions of the nearest relative under this Law shall not be exercisable by any person.

(4) An order under section 16 shall, unless previously discharged

under subsection (1) cease to have effect at the expiration of the period, if any, specified under section 16(5) or, where no such period is specified –

- (a) if the patient was on the date of the order liable to be detained under an order or direction under Part V or IX of this Law (otherwise than under section 63, 64, 65 or 68), or becomes so liable within the period of three months beginning with that date, when he ceases to be so liable, or
- (b) if the patient was not on the date of the order, and has not within the three month period referred to in paragraph (a) become, so liable, at the expiration of that three month period.

(5) The discharge or variation under this section of an order made under section 16 shall not affect the validity of anything previously done in pursuance of the order.

NOTES

In section 17,

the words in the first pair of square brackets were substituted by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2017, section 2, Schedule, paragraph 3, with effect from 18th January, 2017;

the words in the second pair of square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 5, with effect from 1st May, 2016.

Functions of nearest relative.

18. The nearest relative of a patient –

- (a) in relation to that patient –
 - (i) shall have the rights, and may carry out the functions mentioned in sections 35, 36, 38, 87, 88 and 89 and the First Schedule, paragraph 9(3) of Part A of the Second Schedule and paragraph 5(3) of Part B of the Second Schedule, and
 - (ii) shall have such other rights, and may carry out such other functions, as may be created under this Law or any other enactment, and
- (b) shall carry out those functions with fairness, impartiality and independence and in a manner that is in the best interests of that patient.

Meaning of "court" for purposes of this Part.

19. Unless the context requires otherwise, for the purposes of this Part, "court" means –

- (a) where the patient is residing in Alderney, the Court of Alderney,
- (b) where the patient is residing in Sark, the Court of the Seneschal, and
- (c) in any other case, the Royal Court.

PART V

ASSESSMENT, ADMISSION AND TREATMENT OF PATIENTS

Assessment orders

Application for an assessment order.

20. (1) Subject to section 39, an application for the grant of an assessment order may be made by an approved social worker to a Law Officer in respect of a patient on the grounds that –

- (a) the patient is suffering from mental disorder of a nature or degree which warrants his admission to and detention in an approved establishment for assessment and, if appropriate, any treatment, for at least a limited period, and
- (b) he ought to be so admitted and detained –
 - (i) in the interests of his own health or safety, or
 - (ii) with a view to the protection of other persons from harm.

(2) An application under this section shall be made by delivering to a Law Officer an application in the prescribed form, containing the prescribed information and accompanied by any prescribed document signed or certified by a prescribed person.

NOTE

The following Regulations have been made under section 20:

Mental Health (Treatment and Forms) Regulations, 2013.

Grant of and duration of an assessment order.

21. (1) Upon receipt of an application, duly delivered in accordance with section 20(2), the Law Officer dealing with the application shall consider the information contained within it and the accompanying documents and shall –

- (a) if he is satisfied on a balance of probabilities, taking into account the medical evidence and opinion accompanying the application, that the grounds specified in section 20(1) are made out (and subject to subsection (3)) –
 - (i) grant the application by making an assessment order in the prescribed form, and
 - (ii) deliver the order to the applicant, or
- (b) if he is not so satisfied –
 - (i) decline to grant the application, and
 - (ii) deliver a written statement of his reason for declining to grant the application to the applicant.

(2) Subject to the discharge of the patient under section 35, an assessment order shall remain in force for a period of 28 days.

(3) A Law Officer may not grant an application under subsection (1) where it appears from the application, or information supplied with the

application, that –

- (a) an assessment order has been granted in respect of the patient within the period of 3 months immediately preceding the date of the application, and
- (b) there has been no material change in the circumstances of the patient since –
 - (i) the grant of that earlier order, or
 - (ii) where more than one such order has been granted in respect of the patient, the most recently granted order.

NOTE

The following Regulations have been made under section 21:

Mental Health (Treatment and Forms) Regulations, 2013.

Effect of assessment order.

22. Upon the grant of an assessment order, and for so long as it remains in force, the managers of the approved establishment referred to in the order shall (if they have not already done so) admit the patient to whom the order relates to that establishment, and detain him there in accordance with the provisions of this Law for the duration of the order for the purpose of –

- (a) assessing the nature and degree of the mental disorder of the patient, and
- (b) providing him with any medical treatment which –

- (i) may be appropriate in his circumstances, and
- (ii) may be provided lawfully under this Law.

Treatment orders

Application for a treatment order.

23. (1) Subject to section 39, an application for the grant of a treatment order may be made by an approved social worker to a Law Officer in respect of a patient on the grounds that –

- (a) the patient is suffering from mental disorder of a nature or degree that warrants his admission to and detention in an approved establishment in order that he may receive treatment there,
- (b) he ought to be so admitted and detained –
 - (i) in the interests of his own health or safety, or
 - (ii) with a view to the protection of other people from harm, and
- (c) the treatment he ought to receive cannot be provided unless he is so admitted and detained.

(2) An application under this section shall be made by delivering to a Law Officer an application in the prescribed form, containing the prescribed information and accompanied by any prescribed document signed or certified by a prescribed person.

NOTE

The following Regulations have been made under section 23:

Mental Health (Treatment and Forms) Regulations, 2013.

Grant, duration and renewal of a treatment order.

24. (1) Upon receipt of an application, duly delivered in accordance with section 23(2), the Law Officer dealing with the application shall consider the information contained within it and the accompanying documents and shall –

- (a) if he is satisfied on a balance of probabilities, taking into account the medical evidence and opinion accompanying the application, that the grounds specified in section 23(1) are made out –
 - (i) grant the application by making a treatment order in the prescribed form, and
 - (ii) deliver the order to the applicant, or
- (b) if he is not so satisfied –
 - (i) decline to grant the application, and
 - (ii) deliver a written statement of his reason for declining to grant the application to the applicant.

(2) Subject to –

- (a) the discharge of the patient under section 35, or
- (b) extension of the period under subsection (4),

a treatment order shall remain in force for a period of 6 months from the date upon which it is first granted and may thereafter be renewed in accordance with subsection (3) for a period of 6 months and thereafter for successive periods of 12 months.

(3) An application for renewal of a treatment order –

- (a) shall be made, by –
 - (i) the approved social worker of the patient to whom the order relates,
 - (ii) [the Committee for Health & Social Care], or
 - (iii) the Committee,

to a Law Officer on the grounds set out in, and in the same manner as if it were an application made under, section 23, and

- (b) shall be dealt with by the Law Officer in the same manner as if it were an application made under subsection (1).

(4) Where a community treatment order is in force, the relevant treatment order shall remain in force until the community treatment order ceases to have effect under section 28(1).

NOTES

In section 24, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

The following Regulations have been made under section 24:

Mental Health (Treatment and Forms) Regulations, 2013.

Effect of treatment order.

25. (1) Subject to subsection (2), upon the grant of a treatment order, and for so long as it remains in force, the managers of the approved establishment referred to in the order shall (if they have not already done so) admit the patient to whom the order relates to that establishment and detain him there, in accordance with the provisions of this Law for the duration of the order, for the purpose of providing him with any medical treatment which –

- (a) may be appropriate in his circumstances, and
- (b) may be provided lawfully under this Law.

(2) For the avoidance of doubt, where a community treatment order is in force, the managers of the approved establishment referred to in the relevant treatment order shall have no obligation to detain the patient under that treatment order.

Community treatment orders

Community treatment order.

26. (1) The responsible medical officer of a patient to whom a treatment order relates may, at any time during which the order is in force, by order in writing discharge that patient from the approved establishment referred to in the

treatment order, subject to his being liable to recall under section 30.

(2) An order under subsection (1) –

- (a) shall specify the supervisor for the purposes of the order, and
- (b) is referred to in this Law as a "**community treatment order**".

(3) The responsible medical officer may not make a community treatment order unless, in his opinion, the relevant criteria are met.

(4) 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 at an approved establishment,
- (d) it is necessary that the responsible medical officer should be able to exercise the power under section 30 to recall the patient to the approved establishment, and

- (e) appropriate medical treatment is available to him.

(5) In determining whether the criterion in subsection (4)(d) is met, the responsible medical officer 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 an approved establishment (as a result, for example, of his refusing or neglecting to receive the medical treatment he requires for his mental disorder).

Conditions.

27. (1) A community treatment order shall specify conditions to which the patient is to be subject while the order remains in force.

(2) But, subject to subsection (3), the order may specify conditions only if the responsible medical officer thinks them necessary or appropriate for one or more of the following purposes –

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

(3) The order shall specify –

- (a) a condition that the patient make himself available for examination under section 28,
- (b) a condition that, if it is proposed to give a certificate under Part VIII in his case, he make himself available

for examination to enable the certificate to be given,
and

- (c) a condition that, should the supervisor named in the order so specify, the patient resides at such place as the supervisor may specify in writing.

(4) The responsible medical officer may from time to time by order in writing –

- (a) vary, or suspend, any or all of the conditions specified in a community treatment order, or
- (b) vary the supervisor specified under section 26(2)(a).

(5) If a community patient fails to comply with a condition specified in the community treatment order under subsection (2), that fact may be taken into account for the purposes of exercising the power of recall under section 30.

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

Duration of community treatment order.

28. (1) A community treatment order shall remain in force until –

- (a) the period mentioned in subsection (2) (as extended under any provision of this Law), expires,
- (b) the discharge of the patient under section 35, or
- (c) the power to recall has been exercised under section 30

and the period referred to in section 31(2) has expired,

whichever first occurs.

(2) 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 and that period is referred to in this Law as "**the community treatment period**".

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

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

and so on for periods of twelve months at a time.

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

- (a) to examine the patient, and
- (b) if it appears to him that the conditions set out in subsection (6) are satisfied, to furnish to the managers of the approved establishment a report to that effect in the prescribed form.

(5) Where such a report is furnished in respect of the patient, the

managers shall cause him to be informed.

- (6) The conditions referred to in subsection (4) 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 an approved establishment,
 - (d) it is necessary that the responsible medical officer should continue to be able to exercise the power under section 30(1) to recall the patient to an approved establishment, and
 - (e) appropriate medical treatment is available for him.

(7) In determining whether the criterion in subsection (6)(d) is met, the responsible medical officer 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 an approved establishment (as a result, for example, of his refusing or neglecting to receive the medical treatment he requires for his mental disorder).

(8) Before furnishing a report under subsection (4) the responsible medical officer 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 (4), the community treatment period shall be thereby extended for the period prescribed in that case by subsection (3).

NOTE

The following Regulations have been made under section 28:

Mental Health (Treatment and Forms) Regulations, 2013.

Effect of community treatment order.

29. (1) A treatment order in respect of a patient shall not cease to have effect by virtue of his becoming a community patient.

(2) But, while he remains a community patient –

(a) the authority of the managers of the approved establishment, referred to in the treatment order, to detain him under section 25 shall be suspended, and

(b) reference (however expressed) in this Law or any other enactment to patients liable to be detained, or detained under this Law, shall not include him.

(3) 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 approved establishment.

30. (1) The responsible medical officer may recall a community patient to an approved establishment if, in his opinion –

- (a) the patient requires medical treatment in an establishment 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 an establishment for that purpose.

(2) The responsible medical officer may also recall a community patient to an approved establishment if the patient fails to comply with a condition specified under section 27.

(3) The approved establishment to which a patient is recalled need not be the establishment referred to in the treatment order pursuant to which the patient was first detained.

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

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

(6) A notice under this section recalling a patient to an approved establishment shall be sufficient authority for the managers of that establishment to detain the patient there in accordance with this Law.

Powers in respect of recalled patients.

31. (1) Where the power to recall has been exercised under section 30 a community patient may be taken into custody by –

- (a) the supervisor named in the order, or
- (b) any person authorised for the purpose by the supervisor,
and

conveyed to an approved establishment.

(2) A patient who is taken into custody and conveyed to an approved establishment under subsection (1) or who, when the power of recall is exercised under section 30, is already in an approved establishment, shall be admitted to that establishment and detained there by the managers of the establishment in accordance with the provisions of this Law for a period not exceeding 28 days for the purpose of providing him with any medical treatment which –

- (a) may be appropriate in his circumstances, and
- (b) may be provided lawfully under this Law.

(3) The patient may be transferred to another approved establishment in such circumstances, and subject to such conditions, as the responsible medical officer thinks fit; provided that the power to detain the patient at that establishment (or any other establishment to which he is subsequently transferred) shall not exceed the period that would have applied under subsection (2) had the transfer (or transfers) not taken place.

(4) Upon the expiration of the period referred to in subsection (2), both the relevant treatment order and the community treatment order shall cease to have effect and the patient to whom the orders related shall be treated as though

discharged under section 35, unless –

- (a) his admission to the establishment is continued on an informal basis under section 48 or 49,
- (b) a further order is granted or made under this Part or Part IX rendering him liable to be detained under this Law, or
- (c) a holding power is exercised in respect of him under section 51 or 52.

(5) For the avoidance of doubt, the responsible medical officer may at any time release the patient under this section before expiry of the period referred to in subsection (2).

Transfer of supervision in case of death, incapacity, etc., of supervisor.

32. (1) The functions of any person, who is the supervisor of a patient to whom a community treatment order relates, shall vest in [the Committee for Health & Social Care] in any of the circumstances described in subsection (2).

(2) The circumstances for the purposes of subsection (1) are, where the supervisor in question –

- (a) dies,
- (b) gives notice in writing to [the Committee for Health & Social Care] that he desires to relinquish the functions of supervisor,
- (c) being unable or incapable of giving notice in writing to

[the Committee for Health & Social Care], is incapacitated by illness or any other cause from performing the functions of supervisor of the patient, or

- (d) fails, in the reasonable opinion of [the Committee for Health & Social Care], adequately to carry out his functions as supervisor.

(3) For the avoidance of doubt, functions vested in [the Committee for Health & Social Care] under subsection (1) may be carried out by such person as [the Committee for Health & Social Care] may appoint.

NOTE

In section 32, the words "the Committee for Health & Social Care" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

Variation of orders and discharge of patients

Application for variation of an assessment order or treatment order.

33. (1) An application to vary –
- (a) an assessment order, or
 - (b) a treatment order, further to which a community treatment order has not been made,

may be made by the approved social worker of the patient to whom the order relates.

- (2) An application under subsection (1) shall be made by

delivering to a Law Officer an application in the prescribed form, containing the prescribed information and accompanied by any prescribed document signed or certified by any prescribed person.

NOTE

The following Regulations have been made under section 33:

Mental Health (Treatment and Forms) Regulations, 2013.

Variation of order.

34. Upon receipt of an application, duly delivered in accordance with section 33(2), the Law Officer dealing with the application shall consider the information contained within it and the accompanying documents and shall –

- (a) where he believes that it is in the best interests of the patient concerned –
 - (i) grant the application by varying the prescribed particulars of the order in the manner requested in the application, and
 - (ii) deliver written notice of the variation to the applicant, or
- (b) where he does not believe that it is in the best interests of the patient –
 - (i) decline to grant the application, and
 - (ii) deliver a written statement of his reason for declining to grant the application to the

applicant.

NOTE

The following Regulations have been made under section 34:

Mental Health (Treatment and Forms) Regulations, 2013.

Discharge of and request to discharge patient.

35. (1) The responsible medical officer of a patient to whom an assessment order, treatment order or community treatment order relates may, by notice in writing, discharge that patient.

(2) Where the nearest relative of a patient to whom an assessment order, treatment order or community treatment order relates, gives written notice to the patient's responsible medical officer requesting him to exercise his power of discharge in respect of the patient under subsection (1) or section 26(1), subject to subsection (3), the officer shall –

- (a) consider the request, and
- (b) where he decides not to exercise the power of discharge, give written notice to the relative of the reason for his decision.

(3) A responsible medical officer shall have no obligation to consider or determine a request made under subsection (2) where he has, within the period of 30 days immediately preceding receipt of that request, received a similar request made by the relative in respect of the patient concerned.

(4) A notice under subsection (1) shall have the effect of revoking an assessment order, treatment order or community treatment order.

(5) Copies of any notice under subsection (1) shall be served by the responsible medical officer upon –

- (a) the patient,
- (b) the patient's nearest relative (if any),
- (c) the patient's approved social worker, and
- (d) a Law Officer.

Miscellaneous matters relating to orders under this Part

Leave of absence.

36. (1) Where the responsible medical officer of a patient, to whom an assessment or treatment order relates, is satisfied that the conditions set out in subsection (2) are met in respect of that patient, he may give him leave to be absent from the approved establishment in which he is detained, in accordance with subsection (3).

(2) The conditions for the purposes of subsection (1) are –

- (a) that it is not necessary for the patient to be detained permanently in an approved establishment for the purposes of effective assessment or treatment under section 22 or 25, as the case may be,
- (b) that there are no reasonable grounds for believing that the patient is likely to cause physical harm to himself or any other person,

- (c) where overnight leave of absence is contemplated, that there is suitable accommodation available for the patient outside the approved establishment, and
- (d) where –
 - (i) the patient has a nearest relative, and
 - (ii) the responsible medical officer believes that it is appropriate to consult the patient's nearest relative,

that the relative has been consulted.

(3) Leave to be absent under subsection (1) shall be given by way of written notice served upon the patient and may be given for such period, and subject to such conditions, as the responsible medical officer thinks fit.

(4) For the avoidance of doubt, the responsible medical officer may, by further written notice, revoke any leave to be absent or vary the terms and conditions of any leave given under this section.

Return of patients absent without leave under this Part.

37. (1) Where a patient who is for the time being liable to be detained under this Part in an approved establishment –

- (a) absents himself from the establishment without leave given under section 36,
- (b) fails to return to the approved establishment –

(i) upon the expiration of any period for which leave to be absent was given to him, or

(ii) following revocation of leave to be absent,

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 to be absent under that section,

he may, subject to the provisions of this section, be taken into custody and returned to the approved establishment or place by any of the persons specified in subsection (3).

(2) Where a patient to whom a community treatment order relates absents himself, without permission given to him by the supervisor named in the order, from the place at which he is required by the supervisor to reside, he may, subject to the provisions of this section, be taken into custody and returned –

(a) to that place, or

(b) to such other place as the supervisor may determine,

by any of the persons specified in subsection (3).

(3) The persons specified for the purposes of subsections (1) and (2) are –

(a) the responsible medical officer of the patient to whom

any order under this Part relates,

- (b) any person appointed for the purpose by the responsible medical officer of the patient to whom any order under this Part relates,
- (c) an approved social worker,
- (d) a police officer.

(4) A patient shall not be taken into custody under this section after the end of the period of six months beginning with the first day of his leave of absence.

(5) A patient shall not be taken into custody under this section if the period for which he is liable to be detained is one specified in section 21(2), 24(2) or 28(2) and that period has expired.

(6) In this Law, "**absent without leave**" means absent from any approved establishment or other place and liable to be taken into custody and returned under this section and related expressions shall be construed accordingly.

Transfer of patients between approved establishments.

38. (1) A patient who is for the time being liable to be detained in an approved establishment under this Part may, subject to subsection (2), at any time be transferred by the managers of the establishment to any other approved establishment.

(2) A patient shall not be transferred pursuant to subsection (1) except with the consent of that patient's responsible medical officer and a Law Officer.

(3) The managers of an approved establishment shall, as soon as practicable after exercising their powers under this section in respect of a patient, inform the patient's nearest relative (if any) of the exercise of those powers.

(4) The provisions of this Part (including this section) apply to a patient transferred to another approved establishment in pursuance of this section as if

—

- (a) the assessment or treatment order made in respect of the patient were an order for his admission to that other establishment, and
- (b) the patient had been admitted to that other establishment at the time when he was originally admitted in pursuance of the relevant order.

Special provision for applications for patients in Alderney and Sark.

39. If an approved social worker is not available, or is unable, to make an application under section 20 or 23 in respect of a patient who is resident in Alderney or Sark —

- (a) the Chairman or a Jurat of the Court of Alderney, in the case of a patient who is resident in Alderney, and
- (b) the Seneschal, in the case of a patient who is resident in Sark,

may make an application under the section in question.

PART VI

THE MENTAL HEALTH REVIEW PANEL AND TRIBUNAL

Establishment of the Mental Health Review Panel and Tribunal.

40. (1) The Royal Court shall draw up and maintain a panel to be called the Mental Health Review Tribunal Panel (referred to in this Law as "**the Panel**").

(2) The Panel shall consist of such number of persons as in the opinion of the Royal Court is necessary for the purpose of carrying out the functions of the Tribunal established under this Part.

(3) The members of the Panel shall be persons who, in the opinion of the Royal Court, have sufficient experience and knowledge to enable them fairly to determine matters likely to fall for determination by the Tribunal referred to in subsection (5).

(4) The following may not be members of the Panel –

- (a) a member of the States of Deliberation within the meaning of the Reform (Guernsey) Law 1948^c,
- (b) a member of the Chief Pleas of Sark,
- (c) any person who holds appointment to any judicial office in the Bailiwick,

^c Ordres en Conseil Vol. XIII, p. 288; Vol. XIV, p. 407; Vol. XV, p. 279; Vol. XVI, p. 178; Vol. XVIII, p. 275; Vol. XIX, p. 84; Vol. XIX, p. 140; Vol. XXII, p. 122; Vol. XXIII, p. 476; Vol. XXV, p. 326; Vol. XXVI, p. 255; Vol. XXIX, p. 56; Vol. XXX, p. 16; Vol. XXXI, p. 164; Vol. XXXII, p. 41; Vol. XXXIV, p. 397; Vol. XXXVI, p. 478; Vol. XXXVIII, pp. 150 and 295; Order in Council No. XIII of 2003; No. III of 2004; Nos. II and XX of 2007; also amended by Ordinance No. XXXIII of 2003; No. III of 2004 and No. LI of 2006.

- (d) an employee of the States, or the Chief Pleas, who is employed by the States, or the Chief Pleas, within [the Committee for Health & Social Care] or the Committee,
- (e) a member of [the Committee for Health & Social Care], or the Committee, or
- (f) a person who carries out work for or provides services to [the Committee for Health & Social Care], or the Committee, in relation to any functions of [the Committee for Health & Social Care], or the Committee, under this Law.

(5) A tribunal to be called the Mental Health Review Tribunal (referred to in this Law as "**the Tribunal**") shall be appointed from the membership of the Panel to carry out the functions conferred under this Part and by any other enactment.

(6) The Royal Court may by rules make such provision as it thinks fit in relation to the appointment, constitution, proceedings and powers of the Tribunal including, without limitation, provision as to –

- (a) the manner in, the method by, and the period within which proceedings may be instituted, adjourned, withdrawn or discontinued,
- (b) procedure (including the practice to be followed, the means by which particular facts may be proved and the method by which evidence may be given),

- (c) the appointment of single members of the Panel to constitute the Tribunal for such purposes as may be specified in the rules,
- (d) the determination of such matters before the Tribunal, in such circumstances, as may be specified in the rules without a hearing and on the basis of written representations,
- (e) representation before the Tribunal (including, for the avoidance of doubt, representation by individuals who do not have any legal qualification and representation by individuals having such qualifications as may be specified in the rules),
- (f) costs, fees, expenses and allowances (including the expenses and allowances of members of the Tribunal),
- (g) the powers exercisable by the Tribunal –
 - (i) to review its own decisions, and
 - (ii) to correct omissions and clerical errors, and
- (h) the fair and just disposal of proceedings.

(7) A member of the Panel shall not disclose any document or information which relates to the business or affairs of any person and which is acquired by him in the course of the carrying out of his functions as a member of that Panel, except –

- (a) with the consent of (or consent lawfully given on behalf of) the person to whom the document or information relates and (if different) the person from whom it was acquired, or
- (b) to the extent that the disclosure is necessary –
 - (i) to enable him to carry out his functions as a member of that Panel,
 - (ii) in the interests of the investigation, detection, prevention or prosecution of crime, or
 - (iii) to comply with an order of a court.

(8) A person who discloses any document or information or who causes or permits the disclosure of any document or information in contravention of subsection (7) is guilty of an offence and liable –

- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both.

NOTES

In section 40, the words "the Committee for Health & Social Care" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

The following Rules have been made by Order of the Royal Court under

section 40:

Mental Health Review Tribunal Procedure Rules, 2012;
Mental Health Review Tribunal Procedure (Amendment) Rules,
 2018;
Mental Health Review Tribunal Procedure (Amendment) Rules (No.
 2), 2018.

Applications to Tribunal.

41. (1) An application may be made to the Tribunal in the circumstances described in the second column, by a person described in the third column, within the period described in the fourth column of the following Table –

	<i>Circumstances</i>	<i>Applicant</i>	<i>Period</i>
(a)	The grant of an assessment order under section 21.	The patient to whom the order relates.	The period between the expiration of 5 days and the expiration of 14 days beginning with the day upon which the order is granted.
(b)	The grant of a treatment order under section 24.	The patient to whom the order relates.	6 months beginning with the day upon which the order is granted.
(c)	The renewal of a treatment order under section 24.	The patient to whom the order relates.	6 months beginning with the day upon which the order is first renewed and 12 months beginning with the day upon which the order is renewed thereafter.
(d)	The making of a community treatment order under section 26.	The patient to whom the order relates.	6 months beginning with the day upon which the order is made.

(e)	Where a report is furnished under section 28 in respect of a patient and the patient is not discharged under section 35.	The patient to whom the report relates.	6 months beginning with the day upon which the community treatment period is extended under sections 28(9) and 28(3)(a) and 12 months beginning with the day upon which the community treatment period is extended under sections 28(9) and 28(3)(b).
(f)	Where the power to recall has been exercised under section 30.	The patient in respect of whom the power is exercised.	14 days beginning with the day upon which the power is exercised.
(g)	Where a patient is taken into custody under section 37 and the patient is not discharged under section 35.	The patient who is taken into custody.	28 days beginning with the day upon which the patient is detained.
(h)	Where a hospital treatment order is made under section 66.	The patient to whom the order relates.	6 months beginning with the day upon which the order is made.
(i)	Where a hospital treatment order is renewed under paragraph 2 of Part A of the Second Schedule.	The patient to whom the order relates.	12 months beginning with the day upon which the order is renewed.

(j)	Where a restriction order is made under section 70.	The patient to whom the order relates.	The period between the expiration of 6 months and the expiration of 12 months beginning with the date of the relevant hospital order and in any subsequent period of 12 months.
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(2) Nothing in paragraph (b) of the Table in subsection (1) entitles a community patient to make an application by virtue of that paragraph even if he is admitted to an approved establishment on being recalled there under section 30.

References to Tribunal by [the Committee for Health & Social Care].

42. (1) Subject to subsection (2), [the Committee for Health & Social Care] –

- (a) may, if it thinks fit, at any time refer to the Tribunal the case of any patient who is subject to an order under Part V, and
- (b) shall, where required in accordance with rules of court, refer to the Tribunal the case of any patient who is –
 - (i) subject to an order under Part IX, or
 - (ii) detained by virtue of the exercise of any power under any other Part of this Law.

(2) [The Committee for Health & Social Care] may not make a reference under subsection (1) where an application under section 41 has been made

to the Tribunal concerning the patient and –

- (a) it has not been withdrawn, and
- (b) no determination has been reached by the Tribunal in relation to the application.

NOTE

In section 42, the words "T/the Committee for Health & Social Care" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

Powers of the Tribunal in relation to applications and referrals.

43. (1) Where application is made to the Tribunal under section 41(1) or a case is referred to the Tribunal under section 42(1)(a), by or on behalf of a patient who is –

- (a) liable to be detained under this Law, or
- (b) a community patient,

the Tribunal may subject to subsection (2), or in the case of a restricted patient subject to subsection (6), direct that the patient be discharged.

(2) Where application is made to the Tribunal under section 41(1) or a case is referred to the Tribunal under section 42(1)(a), by or on behalf of a patient, the Tribunal shall direct the discharge –

- (a) of a patient liable to be detained under section 22 if it is not satisfied –

- (i) that the patient is then suffering from mental disorder, or from mental disorder of a nature or degree, which warrants his detention in an approved establishment for assessment (or for assessment followed by medical treatment) for at least a limited period, or
- (ii) that his detention as aforesaid is justified –
 - (A) in the interests of his own health and safety, or
 - (B) with a view to the protection of other persons from harm,
- (b) of a patient liable to be detained otherwise than under section 22 if it is not satisfied –
 - (i) that the patient is 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 an approved establishment for medical treatment,
 - (ii) that his detention as aforesaid is justified –
 - (A) in the interests of his own health and safety, or
 - (B) with a view to the protection of other

persons from harm, or

- (iii) that appropriate treatment is available for him,
or

(c) of a community patient if it is not satisfied –

- (i) that the patient is suffering from mental disorder, or from mental disorder of a nature or degree, which makes it appropriate for him to receive medical treatment,

- (ii) that it is necessary –

- (A) in the interests of his own health and safety, or

- (B) with a view to the protection of other persons from harm,

that he should receive such treatment,

- (iii) that it is necessary that the responsible medical officer should be able to exercise the power under section 30(1) to recall the patient to an approved establishment, or

- (iv) that appropriate medical treatment is available to him.

(3) In determining whether the criterion in subsection (2)(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 an approved establishment (as a result, for example, of his refusing or neglecting to receive the medical treatment he requires for his mental disorder).

(4) The Tribunal may under subsection (1) or (2) direct the discharge of a patient on a future date specified in the direction; and where it does not direct the discharge of a patient under either of those subsections, the Tribunal may –

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

(5) Subsection (2) 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 medical officer consider whether to make a community treatment order, and
- (b) may (but need not) further consider the patient's case if the responsible medical officer does not make an order.

(6) Subsection (1) does not apply in the case of a restricted patient except as provided in section 44.

Power to discharge restricted patient.

44. (1) Where an application to the Tribunal is made by or on behalf of a restricted patient, 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 section 43(2)(b)(i), (ii) or (iii), 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 in the case of any such patient as is mentioned in subsection (1) –

- (a) paragraph (a) of that subsection applies, but
- (b) paragraph (b) of that subsection does not apply,

the Tribunal shall direct the conditional discharge of the patient.

(3) 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, and the restriction order shall cease to have effect accordingly.

(4) Where a patient is conditionally discharged under this section –

- (a) he may be recalled by an order made by [the Committee for Health & Social Care] to such approved establishment as is specified in the order, and

- (b) the patient shall comply with such conditions (if any) as may be imposed at the time of discharge by the Tribunal or at any subsequent time by [the Committee for Health & Social Care].

(5) [The Committee for Health & Social Care] may from time to time vary any condition imposed (whether by the Tribunal or [the Committee for Health & Social Care]) under subsection (4).

(6) Where a restriction order in respect of a patient ceases to have effect after he has been conditionally discharged under this section the patient shall, unless previously recalled, be deemed to be absolutely discharged on the date when the order ceases to have effect and shall cease to be liable to be detained by virtue of the relevant hospital order.

(7) The Tribunal may defer a direction for the conditional discharge of a patient until such arrangements as appear to the Tribunal to be necessary for that purpose have been made to its satisfaction; and where by virtue of any such deferment no direction has been given on an application or reference before the time when the patient's case comes before the Tribunal on a subsequent application or reference, the previous application or reference shall be treated as one on which no direction under this section can be given.

NOTE

In section 45, the words "T/the Committee for Health & Social Care" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

Visiting and examination of patients.

45. (1) For the purpose –

(a) of advising whether –

(i) an application to the Tribunal should be made under section 41, or

(ii) any form of appeal under this Part should be made,

by or in respect of a patient to whom an order under Part V, or section 66 or 70, relates, or

(b) of furnishing information as to the condition of such a patient for the purposes of such an application or appeal,

any medical practitioner, authorised by or on behalf of the patient, has the rights specified in subsection (2).

(2) The rights for the purposes of subsection (1) are –

(a) the right, at any reasonable time, to visit the patient and to examine him in private,

(b) the right to production of, and to inspect, any records (including medical records) relating to the detention or treatment of the patient in any approved establishment or other place.

(3) Any medically qualified member of a Tribunal and any

medical practitioner authorised for the purpose by the Tribunal –

- (a) may at any reasonable time visit a patient to whom an order under Part V, or Part IX, relates and examine him in private, and
- (b) shall have produced to him upon request, and may inspect, any records (including medical records) relating to the detention or treatment of the patient in any approved establishment or other place.

Appeals from Tribunal to Royal Court.

46. (1) A person aggrieved by a decision of the Tribunal on a question of law may, subject to the provisions of subsection (2), appeal therefrom to the Royal Court in such manner and within such period as may be prescribed by order of the Royal Court.

(2) No decision of the Tribunal shall be invalidated solely by reason of a procedural irregularity unless the irregularity was such as to prevent any party to the appeal from presenting his case fairly before the Tribunal.

NOTE

The following Rules have been made by Order of the Royal Court under section 46:

*Mental Health Review Tribunal Procedure Rules, 2012;
Mental Health Review Tribunal Procedure (Amendment) Rules,
2018.*

Appeals from Royal Court to Court of Appeal.

47. (1) An appeal from a decision of the Royal Court made under section 46 shall, with leave of the Royal Court or the Court of Appeal, lie to the Court

of Appeal.

(2) An application made to the Court of Appeal for leave to appeal under subsection (1) shall be treated, for the purposes of section 21 of the Court of Appeal (Guernsey) Law, 1961^d, in respect of –

- (a) the powers that may be exercised by a single judge of the Court under section 21(1) of that Law, and
- (b) the entitlement of an applicant under section 21(2) of that Law,

as if it were an application made under Part II of that Law.

PART VII

INFORMAL ADMISSION OF PATIENTS AND SPECIAL POWERS CONCERNING PATIENTS WHO ARE NOT THE SUBJECT OF AN ORDER UNDER PART V or IX

Informal admission of patients aged 16 years and over.

48. (1) Nothing in this Law shall be construed as preventing a patient who –

- (a) has attained the age of sixteen years,
- (b) has the necessary capacity to make such arrangements,
and
- (c) requires treatment for mental disorder,

^d Ordres en Conseil Vol. XVIII, p. 315.

from being admitted to any hospital or approved establishment for treatment, in pursuance of arrangements made in that behalf between himself and an approved medical practitioner and without any order made under Part V or IX rendering him liable to be detained under this Law, or from remaining in any hospital or approved establishment in pursuance of such arrangements after he has ceased to be so liable to be detained.

(2) In the case of a child who has attained the age of 16 years and is capable of expressing his own wishes, any such arrangements as are mentioned in subsection (1) may be made, carried out and determined even though there are one or more persons who have parental responsibility for him within the meaning of the Children (Guernsey and Alderney) Law, 2008.

Informal admission of children under sixteen.

49. (1) It shall not be lawful for any patient who is a child under the age of sixteen years to be admitted to an approved establishment for treatment other than under or pursuant to –

- (a) an order made under Part V or IX rendering him liable to be detained under this Law,
- (b) a recommendation made by an approved medical practitioner in circumstances where –
 - (i) the parent or guardian of the child, or
 - (ii) other person having parental responsibility for the child,

wishes the child to be admitted for treatment, or

- (c) an order of a court.
- (2) A recommendation made under subsection (1)(b) –
 - (a) shall not be effective for the purposes of this section unless made in writing by the approved medical practitioner, and
 - (b) shall cease to be effective on the expiration of 14 days from the last date on which the person to whom the recommendation relates was examined by the approved medical practitioner for the purposes of making the recommendation.

Right of patient admitted voluntarily to leave hospital or approved establishment.

50. Subject to sections 51 and 52, a patient –

- (a) who has been admitted to or remains in a hospital or an approved establishment under or in accordance with section 48 or 49, and
- (b) in respect of whom no order under Part V or IX rendering him liable to be detained under this Law is in force,

may leave that hospital or establishment whenever he or, where the patient is a child, that child's parent or guardian, or other person having parental responsibility for that child, gives notice of his, or their, desire for that child, to leave.

Holding powers exercisable by medical practitioners in respect of patients.

51. (1) If it appears to a medical practitioner who is treating a relevant patient that –

- (a) an application ought to be made for an order under Part V for the admission of the patient to an approved establishment, and
- (b) until the making and determination of the application, the patient ought to be detained –
 - (i) in the interests of his own health or safety, or
 - (ii) with a view to the protection of other persons from harm,

he may issue a medical practitioner's holding certificate in the prescribed form.

(2) Upon the issue of a certificate under subsection (1), the patient to whom the certificate relates may be detained in such place as is specified in the certificate for a period of up to 72 hours from the time of its issue.

NOTES

The following Regulations have been made under section 51:

Mental Health (Treatment and Forms) Regulations, 2013.

In accordance with the provisions of the Mental Health (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2013, section 16, with effect from 8th April, 2013, where (a) a holding certificate is issued by a medical practitioner under this section and (b) immediately beforehand, an authorised nurse's holding certificate had been issued under section 52 of this Law, the period specified in subsection (2) of this section shall be calculated from the time that the authorised nurse's holding certificate was

issued.

In accordance with the provisions of the Mental Health (Miscellaneous Provisions) (Sark) Ordinance, 2013, section 16, with effect from 10th April, 2013, where (a) a holding certificate is issued by a medical practitioner under this section and (b) immediately beforehand, an authorised nurse's holding certificate had been issued under section 52 of this Law, the period specified in subsection (2) of this section shall be calculated from the time that the authorised nurse's holding certificate was issued.

Holding powers exercisable by authorised nurses in respect of in-patients.

52. (1) If it appears to an authorised nurse who is in charge of, or responsible for, the treatment of a relevant patient that –

- (a) the patient is suffering from mental disorder to such a degree that he ought to be detained –
 - (i) in the interests of his own health or safety, or
 - (ii) with a view to the protection of other persons from harm, and
- (b) it is not practicable to secure the immediate attendance of a responsible medical practitioner for the purpose of issuing a certificate under section 51,

the nurse may issue an authorised nurse's holding certificate in the prescribed form.

(2) Upon the issue of a certificate under subsection (1), the patient to whom the certificate relates may be detained at the place at which he is receiving treatment for a period not exceeding 8 hours from the time of its issue.

NOTE

The following Regulations have been made under section 52:

Mental Health (Treatment and Forms) Regulations, 2013.

Meaning of "relevant patient" for purposes of sections 51 and 52.

53. For the purposes of sections 51 and 52, "**relevant patient**" means a patient –

- (a) who has been admitted to or remains in a hospital or an approved establishment under or in accordance with section 48 or 49, and
- (b) in respect of whom no order under Part V or IX rendering him liable to be detained under this Law is in force.

PART VIII

CONSENT TO TREATMENT

Patients to whom this Part applies.

54. (1) This Part applies to any patient liable to be detained under this Law, except a patient who is liable to be detained by virtue of sections 51 or 52.

(2) Section 55 and, so far as relevant to that section, sections 57, 58 and 60, apply also to any patient who is not liable to be detained under this Law.

Treatment requiring consent and a second opinion.

55. (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,

- (b) the surgical implantation of hormones for the purposes of reducing male sex drive, and
- (c) such other forms of treatment as may be prescribed.

(2) Subject to section 60, a patient shall not be given any form of treatment to which this section applies unless he has consented to it and a second opinion approved doctor has certified in writing that –

- (a) the patient is capable of understanding the nature, purpose and likely effects of the treatment in question and has consented to it, and
- (b) it is appropriate for the treatment to be given.

(3) Before giving a certificate under subsection (2)(b), the second opinion approved doctor concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment, and of those persons one shall be the responsible medical officer of the patient and the other shall be an authorised nurse, an approved social worker or an authorised occupational therapist.

NOTE

The following Regulations have been made under section 55:

Mental Health (Treatment and Forms) Regulations, 2013.

Treatment requiring consent or a second opinion.

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

- (a) such forms of treatment as may be prescribed, and
- (b) the administration of medicine to a patient by any means (not being a form of treatment prescribed under paragraph (a) or set out in, or prescribed under, section 55) 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 Committee for Health & Social Care] may by order vary the length of the period mentioned in subsection (1)(b).

(3) Subject to section 60, a patient shall not be given any form of treatment to which this section applies unless –

- (a) he has consented to that treatment and –
 - (i) the responsible medical officer of the patient, or
 - (ii) an approved medical practitioner,

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 second opinion approved doctor has certified in writing that the patient is not capable of understanding

the nature, purpose and likely effects of that treatment or has not consented to it, but that, having regard to the likelihood of its alleviating or preventing a deterioration of his condition, the treatment should be given.

(4) Before giving a certificate under subsection (3)(b), the second opinion approved doctor concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment, and of those persons one shall be the responsible medical officer of the patient and the other shall be an authorised nurse, an approved social worker or an authorised occupational therapist.

NOTE

In section 56, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

Plans of treatment.

57. Any consent or certificate under section 55 or 56 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.

NOTES

In accordance with the provisions of the Mental Health (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2013, section 2, with effect from 8th April, 2013, this section shall have effect in respect of section 1 of the 2013 Ordinance as it has effect in relation to sections 55 and 56 of this Law.

In accordance with the provisions of the Mental Health (Miscellaneous Provisions) (Sark) Ordinance, 2013, section 2, with effect from 10th April, 2013, this section shall have effect in respect of section 1 of the 2013 (Sark) Ordinance as it has effect in relation to sections 55 and 56 of this Law.

Withdrawal of consent.

58. (1) Where the consent of a patient to any treatment has been given for the purposes of section 55 or 56, the patient may, subject to section 60, 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) Without prejudice to the application of subsection (1) to any treatment given under a plan of treatment to which a patient has consented, a patient who has consented to such a plan may, subject to section 60, at any time withdraw his consent to further treatment, or to further treatment of any description, under the plan.

NOTES

In accordance with the provisions of the Mental Health (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2013, section 2, with effect from 8th April, 2013, this section shall have effect in respect of section 1 of the 2013 Ordinance as it has effect in relation to sections 55 and 56 of this Law.

In accordance with the provisions of the Mental Health (Miscellaneous Provisions) (Sark) Ordinance, 2013, section 2, with effect from 10th April, 2013, this section shall have effect in respect of section 1 of the 2013 (Sark) Ordinance as it has effect in relation to sections 55 and 56 of this Law.

Review of treatment.

59. (1) Where a patient is given treatment in accordance with section 55(2) or 56(3)(a), a report on the treatment and the patient's condition shall be given by the responsible medical officer to [the Committee for Health & Social Care] –

- (a) within 30 days of the commencement of the treatment,
and
- (b) following submission of a report under paragraph (a),

as frequently thereafter as [the Committee for Health & Social Care] may determine in the particular circumstances of the patient.

(2) [The Committee for Health & Social Care] may at any time give notice to the responsible medical officer directing that, subject to section 60, a certificate given in respect of a patient under section 55(2) or 56(3)(a) shall not apply to treatment given to him after a date specified in the notice; and sections 55 and 56 shall then apply to any such treatment as if that certificate had not been given.

NOTES

In section 59, the words "T/the Committee for Health & Social Care" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

In accordance with the provisions of the Mental Health (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2013, section 2, with effect from 8th April, 2013, this section shall have effect in respect of section 1 of the 2013 Ordinance as it has effect in relation to sections 55 and 56 of this Law.

In accordance with the provisions of the Mental Health (Miscellaneous Provisions) (Sark) Ordinance, 2013, section 2, with effect from 10th April, 2013, this section shall have effect in respect of section 1 of the 2013 (Sark) Ordinance as it has effect in relation to sections 55 and 56 of this Law.

Urgent treatment.

- 60.** (1) Sections 55 and 56 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) Sections 58 and 59(2) shall not preclude the continuation of any treatment or of treatment under any plan pending compliance with section 55 or 56 if the responsible medical officer considers that the discontinuance of the treatment or of treatment under the plan would cause serious suffering to the patient.

(3) 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.

NOTES

In accordance with the provisions of the Mental Health (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2013, section 2, with effect from 8th April, 2013, this section shall have effect in respect of section 1 of the 2013 Ordinance as it has effect in relation to sections 55 and 56 of this Law.

In accordance with the provisions of the Mental Health (Miscellaneous Provisions) (Sark) Ordinance, 2013, section 2, with effect from 10th April, 2013, this section shall have effect in respect of section 1 of the 2013 (Sark) Ordinance as it has effect in relation to sections 55 and 56 of this Law.

Treatment not requiring consent.

61. The consent of a patient to whom an order under Part V or IX relates, shall not be required for any medical treatment given to him for the mental disorder from which he is suffering, not being treatment falling within section 55 or 56, if the treatment is given by or under the direction of the responsible medical officer.

Supplementary provisions for this Part.

62. (1) An approved medical practitioner, for the purpose of exercising his functions under this Part, may at any reasonable time –

- (a) visit, interview or examine any patient in private, and
- (b) require the production of and inspect any records relating to the treatment of that patient.

(2) Any certificate for the purposes of this Part shall be in such form as may be prescribed.

NOTE

The following Regulations have been made under section 62:

Mental Health (Treatment and Forms) Regulations, 2013.

PART IX

**PERSONS CONCERNED IN CRIMINAL PROCEEDINGS OR UNDER
SENTENCE**

Remands for reports or treatment

Remand on bail for report on accused's mental condition.

63. (1) A court may remand an accused person on bail for the purpose of obtaining a report on his mental condition and may order that he attend at an

approved establishment for the purpose of the preparation of such a report –

- (a) at such times, and
- (b) upon such conditions,

as may be specified by the court.

(2) If an accused person fails to comply with an order made under subsection (1) he may be arrested without warrant by any police officer and shall, after being arrested, be brought as soon as practicable before the court which remanded him; and that court may thereupon terminate the remand and deal with him in any way in which it could have dealt with him if he had not been remanded under this section.

(3) For the purposes of this section and section 64 an "**accused person**" means any person who –

- (a) is not subject to any order made by any court requiring him to be detained in custody, and is awaiting, or is in the course of any, trial before a court for, or
- (b) has been convicted by a court of,

any offence punishable by that court with imprisonment.

Remand to approved establishment for report on accused's mental condition.

64. (1) Subject to the provisions of this section, a court may remand an accused person to an approved establishment specified by the court for the purpose of obtaining a report on his mental condition.

(2) Subject to subsection (3), the powers conferred by this section may be exercised if –

- (a) the court is satisfied, on the written or oral evidence of an approved medical practitioner, that there is reason to suspect that the accused person is suffering from mental disorder, and
- (b) the court is of opinion that it would be impracticable for a report on his mental condition to be made if he were remanded on bail,

but those powers shall not be exercised by the court, in respect of a person who has been convicted before the court, if the sentence for the offence of which he has been convicted is fixed by law.

(3) A court shall not remand an accused person to an approved establishment under this section unless satisfied, on the written or oral evidence of –

- (a) the approved medical practitioner who would be responsible for making the report, or
- (b) some other person representing the managers of the establishment,

that arrangements have been made for his admission to that establishment, and for his admission to it within the period of 7 days beginning with the date of the remand; and if the court is so satisfied it may, pending his admission, give directions for his conveyance to and detention in a place of safety.

(4) Where a court has remanded an accused person under this

section it may further remand him if it appears to the court, on the written or oral evidence of the approved medical practitioner responsible for making the report that a further remand is necessary for completing the assessment of the accused person's mental condition.

(5) The power of further remanding an accused person under this section may be exercised by the court without his being brought before the court if –

- (a) he is represented by an Advocate, and
- (b) his Advocate is given an opportunity of being heard.

(6) An accused person shall not be remanded or further remanded under this section for more than 28 days at a time or for more than 26 weeks in all; and the court may at any time terminate the remand if it appears to the court that it is appropriate to do so.

(7) An accused person remanded to an approved establishment under this section shall be entitled to obtain at his own expense an independent report on his mental condition from a medical practitioner chosen by him and to apply to the court on the basis of it for his remand to be terminated under subsection (6).

(8) Where an accused person is remanded under this section –

- (a) a person directed to do so by the court shall convey the accused person to the approved establishment specified by the court within the period mentioned in subsection (3), and
- (b) the managers of the establishment shall admit him within that period and thereafter detain him in

accordance with the provisions of this section.

(9) If an accused person absconds from an approved establishment to which he has been remanded under this section, or while being conveyed to or from that establishment, he may be arrested without warrant by any police officer and shall, after being arrested, be brought as soon as practicable before the court that remanded him; and the court may thereupon terminate the remand and deal with him in any way in which it could have dealt with him if he had not been remanded under this section.

Remand of accused person to approved establishment for treatment.

65. (1) Subject to the provisions of this section, a court may, instead of remanding an accused person in custody, remand him to an approved establishment specified by the court if satisfied, on the written or oral evidence of two medical practitioners (one of whom must be an approved medical practitioner), that he is suffering from mental disorder of a nature or degree which makes it appropriate for him to be detained in an approved establishment for medical treatment.

(2) For the purposes of this section an "**accused person**" means any person who –

- (a) is in custody awaiting trial, or
- (b) at any time before sentence, is in custody in the course of a trial,

before a court for an offence punishable with imprisonment, other than an offence for which the sentence is fixed by law.

(3) A court shall not remand an accused person under this section to an approved establishment unless it is satisfied, on the written or oral evidence of

—

- (a) the medical practitioner who would be in charge of his treatment, or
- (b) some other person representing the managers of the establishment,

that arrangements have been made for his admission to that establishment and for his admission to it within the period of 7 days beginning with the date of the remand; and if the court is so satisfied it may, pending his admission, give directions for his conveyance to and detention in a place of safety.

(4) Where a court has remanded an accused person under this section it may further remand him if it appears to the court, on the written or oral evidence of the responsible medical officer, that a further remand is warranted.

(5) The power of further remanding an accused person under this section may be exercised by the court without his being brought before the court if –

- (a) he is represented by an Advocate, and
- (b) his Advocate is given an opportunity of being heard.

(6) An accused person shall not be remanded or further remanded under this section for more than 28 days at a time or for more than 26 weeks in all; and the court may at any time terminate the remand if it appears to the court that it is appropriate to do so.

(7) An accused person remanded to an approved establishment under this section shall be entitled to obtain at his own expense an independent report

on his mental condition from a medical practitioner chosen by him and to apply to the court on the basis of it for his remand to be terminated under subsection (6).

(8) Section 64(8) and (9) shall have effect in relation to a remand under this section as they have effect in relation to a remand under that section.

Hospital treatment orders

Powers of Royal Court to make hospital treatment orders.

66. (1) Where a person is convicted by the Royal Court of an offence punishable with imprisonment, other than an offence the sentence for which is fixed by law, and the conditions mentioned in subsection (2) are satisfied, the Court may by order (in this Law referred to as a "**hospital treatment order**") authorise his admission to and detention in such approved establishment as may be specified in the order.

(2) The conditions referred to in subsection (1) are that –

(a) the Royal Court is satisfied, on the written or oral evidence of two medical practitioners (at least one of whom is an approved medical practitioner), that –

(i) the offender is suffering from mental disorder of a nature or degree that warrants his admission to and detention in an approved establishment in order that he may receive treatment there, and

(ii) the treatment he ought to receive cannot be provided unless he is so admitted and detained, and

- (b) the Court is of the opinion, having regard to all the circumstances, including the nature of the offence and the character and antecedents of the offender, and to the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of an order under this section.

(3) Where a person is charged before the Royal Court with any act or omission as an offence, and the Court would have power, on convicting him of that offence, to make a hospital treatment order, then, if the Court is satisfied that the accused did the act or made the omission charged, the court may, if it thinks fit make such an order without convicting him.

(4) A hospital treatment order shall not be made in respect of a person under this section unless the Royal Court is satisfied, on the written or oral evidence of –

- (a) the medical practitioner who would be in charge of his treatment, or
- (b) some other person representing the managers of the approved establishment,

that arrangements have been made for his admission to that establishment in the event of such an order being made by the Court, and for his admission to it within a period of 7 days beginning with the date of the making of such an order; and the court may, pending his admission within that period, give such directions as it thinks fit for his conveyance to and detention in a place of safety.

(5) A hospital treatment order shall specify the form or forms of mental disorder from which, upon the evidence taken into account under subsection

(2)(a), the offender is found by the Royal Court to be suffering; and no such order shall be made unless the offender is described by each of the medical practitioners whose evidence is taken into account under that subsection as suffering from the same form or forms of mental disorder, whether or not he is also described by either of them as suffering from another form or forms of mental disorder.

(6) Where an order is made under this section, the Royal Court shall not pass sentence of imprisonment, impose a fine or make a probation order in respect of the offence, but may make any other order which the court has power to make apart from this section; and for the purposes of this subsection "**sentence of imprisonment**" includes any sentence or order for detention.

Effect of hospital treatment orders.

67. (1) Where a hospital treatment order is made in respect of an offender he shall be regarded as a patient for the purposes of this Law, and –

- (a) a person directed to do so by the Royal Court shall convey the patient to the approved establishment specified in the order within a period of 7 days, and
- (b) the managers of the establishment shall admit the patient within that period and thereafter detain him in accordance with the provisions of this Law.

(2) A hospital treatment order (other than a hospital treatment order taking effect as a hospital treatment order with special restrictions under section 70) shall have effect in relation to the person named in the order in accordance with, and subject to, the provisions of this section and Part A of the Second Schedule.

(3) Where a patient is admitted to an approved establishment in pursuance of a hospital treatment order any previous assessment order, treatment

order, community treatment order, hospital treatment order or interim hospital treatment order by virtue of which he was liable to be detained in an approved establishment shall cease to have effect.

Power of Royal Court to make interim hospital treatment orders.

68. (1) Where a person is convicted by or before the Royal Court of an offence punishable with imprisonment, other than an offence the sentence for which is fixed by law, and the Court is satisfied, on the written or oral evidence of two medical practitioners (at least one of whom is an approved medical practitioner) –

- (a) that the offender is suffering from mental disorder, and
- (b) that there is reason to suppose that the mental disorder from which the offender is suffering is such that it may be appropriate for a hospital treatment order to be made in his case,

the Court may, before making a hospital treatment order or dealing with him in some other way, make an order (in this Law referred to as an "**interim hospital treatment order**") authorising his admission to such approved establishment as may be specified in the order and his detention there in accordance with this Part.

(2) In the case of an offender who is subject to an interim hospital treatment order, the Royal Court may make a hospital treatment order without his being brought before the Court if –

- (a) he is represented by an Advocate, and
- (b) his Advocate is given an opportunity of being heard.

(3) An interim hospital treatment order shall not be made for the

admission of an offender to an approved establishment unless the Royal Court is satisfied, on the written or oral evidence of –

- (a) the medical practitioner who would be in charge of his treatment, or
- (b) some other person representing the managers of the establishment,

that arrangements have been made for his admission to that establishment and for his admission to it within the period of 7 days beginning with the date of the order; and if the Court is so satisfied, the court may, pending his admission, give directions for his conveyance to and detention in a place of safety.

(4) An interim hospital treatment order –

- (a) shall be in force for such period, not exceeding 12 weeks, as the Royal Court may specify when making the order, but
- (b) may be renewed for further periods of not more than 28 days at a time if it appears to the Court, on the written or oral evidence of the responsible medical officer, that the continuation of the order is warranted,

but no such order shall continue in force for more than six months in all, and the court shall terminate the order if it makes a hospital treatment order in respect of the offender or decides, after considering the written or oral evidence of the responsible medical officer, to deal with the offender in some other way.

(5) The power of renewing an interim hospital treatment order may

be exercised without the offender being brought before the Royal Court if –

- (a) he is represented by an Advocate, and
- (b) his Advocate is given an opportunity of being heard.

Effect of interim hospital treatment orders.

69. (1) Where an interim hospital treatment order is made in respect of an offender –

- (a) a person directed to do so by the Royal Court shall convey the offender to the approved establishment specified in the order within a period of 7 days, and
- (b) the managers of the establishment shall admit the offender within that period and thereafter detain him there in accordance with the provisions of this Law for the duration of the order for the purposes of –
 - (i) assessing –
 - (A) the nature and degree of any mental disorder of the offender, and
 - (B) the suitability, in the circumstances of the offender, of the making of a hospital treatment order relating to him, and
 - (ii) providing him with any medical treatment which –

(A) may be appropriate in his circumstances,
and

(B) may be provided lawfully under this
Law.

(2) If an offender absconds from an approved establishment in which he is detained in pursuance of an interim hospital treatment order, or while being conveyed to or from such an establishment, he may be arrested without warrant by a police officer and shall, after being arrested, be brought as soon as practicable before the Royal Court which may thereupon terminate the order and deal with him in any way in which it could have dealt with him if no such order had been made.

(3) Where a patient is admitted to an approved establishment in pursuance of an interim hospital treatment order any previous assessment order, treatment order, community treatment order, hospital treatment order or interim hospital order by virtue of which he was liable to be detained in an approved establishment shall cease to have effect.

Power of Royal Court to make restriction orders.

70. (1) Where a hospital treatment order is made in respect of an offender by the Royal Court, and it appears to the Court, having regard to –

- (a) the nature of the offence,
- (b) the antecedents of the offender, and
- (c) the risk of his committing further offences if set at large,

that it is necessary for the protection of the public from serious harm so to do, the

Court may, subject to the provisions of this section, further order that the hospital treatment order shall take effect as a hospital treatment order with special restrictions, either without limit of time or during such period as may be specified by the court; and an order under this section shall be known as **"a restriction order"**.

(2) A restriction order shall not be made in the case of any person unless at least one of the medical practitioners whose evidence is taken into account by the Royal Court under section 66(2)(a) has given evidence orally before the Court.

(3) While a person is subject to a restriction order, the responsible medical officer shall, at such intervals (not exceeding one year) as the Royal Court may direct, examine and report to the Court on that person; and every report shall contain such particulars as the Court may require.

Effect of restriction orders.

71. (1) Where a restriction order is made in respect of an offender he shall be regarded as a patient for the purposes of this Law, and –

- (a) a person directed to do so by the Royal Court shall convey the patient to the approved establishment specified in the order within a period of 7 days, and
- (b) the managers of the establishment shall admit the patient within that period and thereafter detain him in accordance with the provisions of this Law.

(2) A restriction order shall have effect in relation to the person named in the order in accordance with, and subject to, the provisions of this section and Part B of the Second Schedule.

(3) Where a patient is admitted to an approved establishment in

pursuance of a restriction order any previous assessment order, treatment order, community treatment order, hospital treatment order or interim hospital order by virtue of which he was liable to be detained in an approved establishment shall cease to have effect.

Committal to Royal Court

Powers of courts to commit to Royal Court for making of orders.

72. (1) If, in the case of a person of or over the age of 14 years who is convicted by a court, other than the Royal Court, of an offence punishable on summary conviction with imprisonment –

- (a) the conditions, which under section 66 are required to be satisfied for the making of a hospital treatment order, are satisfied in respect of the offender, and
- (b) it appears to the court, having regard to the provisions of section 70, that if a hospital treatment order were made it should take effect as a restriction order,

the court shall, subject to section 73, commit the offender in custody to be dealt with by the Royal Court in respect of the offence.

(2) Where an offender is committed to be dealt with by the Royal Court under this section, the Royal Court shall inquire into the circumstances of the case and may –

- (a) if it would have had power so to do under the foregoing provisions of this Part of this Law upon the conviction of the offender before it of such an offence as is described in section 66(1) –

- (i) make a hospital treatment order, and
 - (ii) if it thinks fit, having regard to the provisions of section 70, make a further order that the hospital treatment order shall take effect as a hospital treatment order with special restrictions, or
- (b) where it does not make a hospital treatment order, deal with the offender in any other manner in which the court which so committed the offender might have dealt with him.

(3) The Royal Court shall have the like power to make orders under sections 63, 64, 65 and 68 in the case a person committed to be dealt with by it under this section, as it has under those sections in the case of an accused person within the meaning of section 63, 64 or 65, or of a person convicted before it as mentioned in section 68.

Committal to approved establishment under section 72.

73. (1) Where an offender is committed under section 72(1), the court by which he is committed may, instead of committing him in custody, by order direct him to be admitted to an approved establishment, and to be detained there until the case is disposed of by the Royal Court, and may give such directions as it thinks fit for the production of the offender from the establishment to attend the Royal Court.

(2) An order under subsection (1) shall not be made for the admission of an offender to an approved establishment unless the court is satisfied, on the written or oral evidence of –

- (a) the medical practitioner who would be in charge of his

treatment, or

- (b) some other person representing the managers of the establishment,

that arrangements have been made for his admission to that establishment and for his admission to it within the period of 7 days beginning with the date of the order; and if the court is so satisfied, the court may, pending his admission, give directions for his conveyance to and detention in a place of safety.

(3) Where an order is made in respect of an offender under subsection (1) –

- (a) a person directed to do so by the court shall convey the offender to the approved establishment specified in the order within a period of 7 days, and
- (b) the managers of the establishment shall admit the offender within that period and thereafter detain him there in accordance with the provisions of this Law for the duration of the order.

(4) Subject to subsections (1) to (3), an order under this section shall, until the offender's case is disposed of by the Royal Court, have the like effect as a restriction order made without limitation of time.

Hospital transfer order in respect of prisoner

Application for a hospital transfer order.

74. (1) An application for the grant of a hospital transfer order may be made by a Law Officer to the court in respect of any person (in this Law referred to as

a "**prisoner**") who –

- (a) is serving a sentence of imprisonment imposed by that court, and
- (b) is not the subject of any other order under this Law,

on the grounds specified in subsection (2).

(2) The grounds are that –

- (a) the prisoner is suffering from mental disorder of a nature or degree that warrants his admission to and detention in an approved establishment in order that he may receive treatment there,
- (b) his admission is the best course of action in the circumstances, and
- (c) he ought to be so admitted and detained in the public interest.

(3) Subject to subsection (4), an application under this section must be accompanied by the written evidence of two medical practitioners (at least one of whom is an approved medical practitioner) in support of the grounds set out in subsection (2).

(4) In an urgent matter the court may waive the requirement for written evidence set out in subsection (3) and the evidence of a medical practitioner in support of an application under this section may be given orally before the court.

Power of court to make hospital transfer order.

75. (1) When it has considered an application under section 74, the court may if it is satisfied that the grounds specified in section 74(2) are made out, grant the application by making a hospital transfer order.

(2) Pending determination of an application under section 74, the court may make such directions as it thinks fit for the final disposal of the application including, without limitation, directions concerning the provision to it of such evidence (in addition to that provided by any medical practitioner under section 74) and such other matters as it thinks fit.

(3) A hospital transfer order shall not be made in respect of a prisoner under this section unless the court is satisfied, on the written or oral evidence of –

- (a) the medical practitioner who would be in charge of his treatment, or
- (b) some other person representing the managers of the approved establishment,

that arrangements have been made for the prisoner's admission to that establishment in the event of such an order being made by the court, and for his admission to it within a period of 7 days beginning with the date of the making of such an order.

(4) A hospital transfer order shall specify the form or forms of mental disorder which, upon the basis of the evidence provided by any medical practitioner under section 74, the prisoner is found by the court to have; and no such order shall be made unless the prisoner is described by each of the medical practitioners whose evidence is provided under that section as having the same form or forms of mental disorder, whether or not he is also described by either of them as

having another form or forms of mental disorder.

Duration and renewal of hospital transfer order.

76. (1) Subject to the discharge of the patient under section 78, a hospital transfer order shall remain in force for a period of 6 months from the date upon which it is first granted and may thereafter be renewed in accordance with subsection (2) for a period of 6 months and thereafter for successive periods of 12 months; provided always that an order shall come to an end when the sentence of imprisonment of the patient to whom the order relates expires.

(2) An application for renewal of a hospital transfer order –

- (a) shall be made, by a Law Officer to the court on the grounds set out in, and in the same manner as if it were an application made under, section 74, and
- (b) shall be dealt with by the court in the same manner as if it were an application made under that section.

Effect of hospital transfer order.

77. Where a hospital transfer order is made in respect of a prisoner he shall be regarded as a patient for the purposes of this Law, and –

- (a) a person directed to do so by the court shall convey the patient to the approved establishment specified in the order within a period of 7 days, and
- (b) the managers of the establishment shall admit the patient within that period and thereafter detain him for the duration of the order in accordance with the provisions of this Law for the purpose of providing him

with any medical treatment which –

- (i) may be appropriate in his circumstances, and
- (ii) may be provided lawfully under this Law.

Discharge of hospital transfer order.

78. (1) A patient to whom a hospital transfer order relates may be discharged –

- (a) by order of the court, or
- (b) with the consent of the court, by notice in writing given by the patient's responsible medical officer.

(2) Upon his discharge under this section a person directed to do so by the court shall –

- (a) convey the prisoner to the place in which he was serving his sentence of imprisonment at the time the hospital transfer order was first made, and
- (b) hand the prisoner into the custody of the governor or managers of that place.

(3) When a prisoner has been handed into the custody of a governor or the managers of a place in accordance with subsection (2), he may be dealt with by the governor or managers as if he had never been transferred from that place under a hospital transfer order.

Information as to approved establishments.

79. Where a court is minded to make an order under this Part in respect of any person it may request [the Committee for Health & Social Care] to furnish the court with such information as it has, or can reasonably obtain, with respect to the approved establishments in the Bailiwick at which arrangements could be made for the admission and detention of that person; and [the Committee for Health & Social Care] shall comply with any such request.

NOTE

In section 79, the words "T/the Committee for Health & Social Care" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

Requirements as to medical evidence.

80. (1) For the purposes of any provision of this Part under which a court may act on the written evidence of –

- (a) a medical practitioner, or
- (b) a person representing the managers of an approved establishment,

a report in writing purporting to be signed by a medical practitioner or by a person representing the managers may, subject to the provisions of this section, be received in evidence without proof of the signature of the practitioner or that person and without proof that he has the requisite qualifications or authority or is of the requisite description; but the court may require the signatory of any such report to be called to give oral evidence.

(2) Where, in pursuance of a direction of the court, any such report is tendered in evidence otherwise than by or on behalf of the person who is the subject of the report, then –

- (a) if that person is represented by an Advocate, a copy of the report shall be given to his Advocate,
- (b) if that person is not so represented, the substance of the report shall be disclosed to him or, where he is a child, to his parent, guardian or other person approved for the purposes by the court, if present in court, and
- (c) except where the report relates only to arrangements for his admission to an approved establishment, that person may require the signatory of the report to be called to give oral evidence, and evidence to rebut the evidence contained in the report may be called by or on behalf of that person.

Interpretation of Part IX.

81. (1) Unless the context requires otherwise, in this Part –

"court" means, in relation to any accused or other person, the court having jurisdiction to try or otherwise deal with that person,

"place of safety" –

- (a) in relation to a person who is not a child, means any police station or prison, or any hospital at which [the Committee for Health & Social Care], or the Committee, is able to make arrangements for his

temporary detention, and

(b) in relation to a child –

(i) in Guernsey or Alderney, means any secure accommodation as defined under section 68 of the Children (Guernsey and Alderney) Law, 2008, and

(ii) in Sark, means such place as the Committee may designate.

(2) Any reference in this Part to an offence punishable with imprisonment shall be construed without regard to any prohibition or restriction imposed by or under any enactment on the imprisonment of any person aged under 21 years.

NOTE

In section 81, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

PART X

**TRANSFER OF PATIENTS TO AND FROM OTHER COUNTRIES AND
TERRITORIES**

Transfer of patients to another country or territory.

82. (1) An application for the grant of an overseas transfer order authorising the removal of a patient to a country or territory outside the Bailiwick may be made by a responsible medical officer to a Law Officer in respect of a patient who is subject to –

- (a) a treatment order,
- (b) a community treatment order,
- (c) a hospital treatment order, or
- (d) a remand order under section 63, 64 or 65.

(2) An application under this section shall be made by delivering to a Law Officer an application in the prescribed form, containing the prescribed information and accompanied by any prescribed document signed or certified by any prescribed person.

(3) Upon receipt of an application, duly delivered in accordance with subsection (2), the Law Officer dealing with the application shall consider the information contained within it and the accompanying documents and may, if he is satisfied that –

- (a) it is in the interests of the patient to remove him to the country or territory referred to in the application,
- (b) arrangements have been made for admitting him to a hospital there, and
- (c) in respect of a patient who is subject to –
 - (i) a hospital treatment order, or
 - (ii) a remand order under section 63, 64 or 65,

the court which made the order consents,

make an overseas transfer order authorising his removal to the country or territory in question and give any necessary directions for his conveyance to his destination.

(4) An overseas transfer order shall be sufficient authority for any person authorised in, or under, such order to take the patient to whom the order refers and convey him to the country or territory in question.

(5) In this section, where the hospital to which the patient is to be admitted is in England or Wales, references to such a hospital shall be construed as references to a hospital (including, for the avoidance of doubt, a registered establishment) within the meaning of Part II of the Mental Health Act 1983^e.

NOTE

The following Regulations have been made under section 82:

Mental Health (Treatment and Forms) Regulations, 2013.

Patients transferred from another country or territory.

83. (1) This section applies to any patient –

- (a) who is transferred to the Bailiwick from another country or territory under a provision of any law corresponding to section 82(3), and
- (b) who immediately before his transfer was liable to be detained in that country or territory under a provision corresponding to any provision of this Law.

^e An Act of Parliament (1983 c. 20).

(2) A person to whom this section applies shall be received and detained in an approved establishment in accordance with subsection (3).

(3) Where a patient to whom this section applies is admitted to an approved establishment he shall be treated as if, on the date of his admission, he had been so admitted in pursuance of an order made on that date under the provision of this Law corresponding to the provision of the law, of the country or territory, under which an equivalent order has been, or could be, made in respect of that patient.

PART XI OFFENCES

Forgery, false statements, etc.

84. (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 I of the Forgery and Counterfeiting (Bailiwick of Guernsey) Law, 2006^f, is 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 V or X of this Law,

^f Order in Council No. II of 2010.

- (b) a medical or other recommendation or report under this Law, or
 - (c) any other document required or authorised to be made for any of the purposes of this law.
- (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 law, or
 - (b) with intent to deceive, makes use of any such entry or statement which he knows to be false,

is guilty of an offence.

- (5) A person who is guilty of an offence under this section is liable –
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

Ill-treatment of patients.

- 85.** (1) It is an offence for any person who is an officer on the staff or

otherwise employed in a hospital or approved establishment –

- (a) to ill-treat or wilfully to neglect a patient for the time being receiving treatment for mental disorder as an in-patient in that hospital or approved establishment, or
- (b) to ill-treat or wilfully to neglect, on the premises of which the hospital or approved establishment 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 to neglect a patient –

- (a) who is subject to an order under this Law, and
- (b) who is in the custody or care (whether by virtue of any legal or moral obligation or otherwise) of that individual.

(3) A person who is guilty of an offence under this section is liable

–

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both.

Obstruction.

86. (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 under this Law, or refuses to give access to any 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 carrying out of his functions,

is guilty of an offence.

(2) Without prejudice to the generality of subsection (1), any person who insists on being present when required to withdraw by a person authorised by or under this Law to interview or examine a person in private is guilty of an offence.

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

PART XII
MISCELLANEOUS AND GENERAL

Duty of managers of approved establishments to give information to detained patients.

87. (1) The managers of an approved establishment in which a patient is detained under this Law shall take such steps as are practicable to ensure that the patient understands –

- (a) under which of the provisions of this Law he is for the time being detained and the effect of that provision,
- (b) what rights of making a request to a 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 steps to be taken under subsection (1) include giving the requisite information both orally and in writing.

(3) The managers of an approved establishment in which a patient is detained 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 the patient 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 [the Committee for Health & Social Care] to give information to community patients.

88. (1) [The Committee for Health & Social Care] shall take such steps as are practicable to ensure that a community patient understands –

- (a) the effect of the provisions of this Law applying to community patients, and
- (b) what rights of making a request to a 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 Committee for Health & Social Care] shall, except where the community patient otherwise requests, take such steps as are practicable to furnish the person (if any) appearing to it 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.

(4) For the purposes of this section and section 89, the "[**the Committee for Health & Social Care**]" means –

- (a) where an individual resides in Guernsey or Alderney, the States [Committee for Health & Social Care], and
- (b) where an individual resides in Sark, the Committee.

NOTE

In section 88, the words, first, "T/the Committee for Health & Social Care" and, second, "Committee for Health & Social Care" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(3), Schedule 3, paragraph 6 and section 2, Schedule 1, paragraph 5, with effect from 1st May, 2016.

Duty of [the Committee for Health & Social Care] to inform nearest relative of discharge.

89. (1) Where a patient liable to be detained under this Law in an approved establishment is to be discharged, [the Committee for Health & Social Care] shall, subject to subsection (2), take such steps as are practicable to inform the person (if any) appearing to it to be the nearest relative of the patient; and that information shall, if practicable, be given at least 7 days before the date of discharge.

(2) For the avoidance of doubt –

- (a) the reference in subsection (1) to a patient who is to be discharged includes a patient who is to be discharged under section 26, and
- (b) subsection (1) shall also apply in a case where a community patient is discharged under any other provision of this Law.

(3) 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.

NOTE

In section 89, the words "the Committee for Health & Social Care" in square

brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

Correspondence of patients.

90. (1) A postal packet addressed to any person by a patient detained in an approved establishment under this Law and delivered by the patient for dispatch may be withheld from the postal operator concerned –

- (a) if the person has requested that communications addressed to him by the patient should be withheld, or
- (b) subject to subsection (3), if the managers of the establishment consider 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 establishment), 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 managers of the establishment or the patient's responsible medical officer.

(2) Subject to subsection (3), a postal packet addressed to a patient detained in an approved establishment under this Law may be withheld from the patient if, in the opinion of the managers of the hospital, it is necessary to do so in the interest 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 to a patient, or sent to a patient by or on behalf of –

- (a) a Law Officer,
- (b) any elected member of the States of Deliberation of Guernsey, the States of Alderney or the Chief Pleas of Sark,
- (c) any judicial, or other officer, of –
 - (i) any Bailiwick court, or
 - (ii) any court outside the Bailiwick which is seised of a matter involving the patient as a party,
- (d) an Advocate,
- (e) the managers of the approved establishment in which the patient is detained,
- (f) the European Court of Human Rights, or
- (g) any other person or body prescribed by regulations made by [the Committee for Health & Social Care].

(4) The managers of an approved establishment 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 in it.

(5) Where a postal packet or anything contained in it is withheld under subsection (1) or (2), the managers of the approved establishment 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 managers of the approved establishment shall within 7 days give notice in writing 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.

(7) The functions of the managers of an approved establishment under this section shall be discharged on their behalf by a person on the staff of the approved establishment appointed by them for that purpose and different persons may be appointed to discharge different functions.

(8) [The Committee for Health & Social Care] may make regulations under this subsection in respect of approved establishments in Guernsey and Alderney, and the Committee may make regulations in respect of approved establishments in Sark, with respect to the exercise of the powers conferred by this section.

NOTE

In section 90, the words "T/the Committee for Health & Social Care" in

square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

Warrant to search for and remove persons and patients.

91. (1) If it appears to the Bailiff (as defined in subsection (6)), on information on oath laid by an approved social worker or, in the case of Sark, a medical practitioner, 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, or
- (b) being unable to care for himself, is living alone in any such place,

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

(2) If it appears to the Bailiff (as defined in subsection (6)), on information on oath laid by an approved social worker or, in the case of Sark, a medical practitioner –

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

the Bailiff may issue a warrant authorising any police officer to enter the premises, if necessary by force, and remove the patient to a place of safety.

(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) In the execution of a warrant under this section a police officer shall be accompanied by –

- (a) an approved social worker and a medical practitioner,
or
- (b) in the case of a warrant executed in Sark, a medical practitioner.

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

(6) In this section –

"Bailiff" means –

- (a) where the warrant is to be executed in Alderney, the Chairman or a Jurat of the Court of Alderney,
- (b) where the warrant is to be executed in Sark, the Seneschal, and
- (c) in any other case, the Bailiff, Deputy Bailiff, Lieutenant

Bailiff, Juge Délégué or a Judge of the Royal Court,

"designated place of detention" has the same meaning as it has under the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003^g,

"place of safety" means a hospital, an approved establishment, a police station, a designated place of detention or any other suitable place the occupier of which is willing temporarily to receive the patient, and

"premises" includes any vessel, vehicle, aircraft or hovercraft, and references to the occupier of any premises include references to the person in charge of any vessel, vehicle, aircraft or hovercraft.

Mentally disordered persons found in public places.

92. (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 interests of that person or for the protection of other persons, remove that person to a place of safety within the meaning of section 91.

(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 medical practitioner and to be interviewed by an approved social worker and of making any necessary arrangements for his treatment or care.

(3) A police officer, a medical practitioner, an approved social worker or a person approved by any 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

^g Order in Council No. XXIII of 2003 and No. XVI of 2009.

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 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.

93. (1) Any person required or authorised by or under this Law to be conveyed to any place or to be kept in custody or detained in a place of safety within the meaning of section 91 or at any place to which he is taken or where he is being treated 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 under this Law 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, protections and privileges which a police officer has within the jurisdiction in respect of which he acts as such a police officer.

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

NOTES

In accordance with the provisions of the Mental Health (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2013, section 20, with effect from 8th April, 2013 and for the avoidance of doubt, in the exercise of the powers or authorities referred to under subsection (2) of this section, a police officer or any other person required or authorised by or under this Law may use reasonable force where a police officer may use reasonable force in accordance with section 87 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003.

In accordance with the provisions of the Mental Health (Miscellaneous

Provisions) (Sark) Ordinance, 2013, section 20, with effect from 10th April, 2013 and for the avoidance of doubt, in the exercise of the powers or authorities referred to under subsection (2) of this section, a police officer or any other person required or authorised by or under this Law may use reasonable force where a police officer may use reasonable force in accordance with section 87 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003.

Retaking of patients escaping from custody.

94. (1) If any person who is in legal custody under section 93 escapes, he may, subject to the provisions of this section, be retaken –

- (a) in any case, by the person who had custody immediately before the escape, or by any police officer or approved social worker, and
- (b) if at the time of escape he was liable to be detained in an approved establishment under Part V, by any other person who could take him into custody under section 37 if he had absented himself without leave.

(2) A person to whom subsection (1)(b) applies shall not be retaken under this section after the expiration of the period within which he could be retaken under section 37 if he had absented himself without leave on the day of the escape unless he is subject to a restriction order under Part IX or an order or direction having the same effect as a restriction order; and section 37(4) 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 91 or 92 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 an approved establishment within the meaning of Part V, shall apply in relation to a person who escapes –

- (a) while being taken to or from such establishment in pursuance of –
 - (i) any Ordinance or subordinate legislation made under this Law, or
 - (ii) any order, direction or authorisation under Part IX or X (other than under section 63, 64, 65, 68, 82 or 83),
- (b) while being taken to or detained in a place of safety in pursuance of an order under Part IX (other than under section 63, 64, 65 or 68) pending his admission to such establishment, or
- (c) while being detained in pursuance of a certificate issued under section 51(1) or 52(1),

as if he were liable to be detained in that establishment and, if he had not previously been received in that establishment, as if he had been so received.

(5) In computing for the purposes of the power to give directions under section 66(4) and for the purposes of section 67(1) 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.

Return of patients absent without leave.

95. (1) Where a patient, who is for the time being liable to be detained under Part V, this Part or section 66 or 70, in an approved establishment has been given leave to be absent by the responsible medical officer under section 36(1), subject to conditions imposed by that officer under section 36(3), absents himself without permission from any place where he is required to reside in accordance with those conditions, he may, subject to the provisions of this section, be taken into custody and returned to the approved establishment or place by any of the persons specified in subsection (2).

(2) The persons specified for the purposes of subsection (1) are –

- (a) the responsible medical officer of the patient to whom any order under Part V, this Part or section 66 or 70 relates,
- (b) any person appointed for the purpose by the responsible medical officer of the patient to whom any order under Part V, this Part or section 66 or 70 relates,
- (c) an approved social worker,
- (d) a police officer.

Code of practice for guidance of medical practitioners, approved social workers and others.

96. (1) [The Committee for Health & Social Care] may prepare a code of practice –

- (a) for the guidance of medical practitioners, approved social workers and managers and staff of approved establishments in relation to the admission of patients

to approved establishments under this Law, and

- (b) for the guidance of medical practitioners, managers and staff of approved establishments and members of other professions in relation to the medical treatment of patients.

(2) A code of practice prepared under this section shall, in particular, specify the forms of treatment in addition to any prescribed under section 55 which in the opinion of [the Committee for Health & Social Care] give rise to special concern and which should accordingly not be given by an approved 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 sections 55(2)(a) and (b) has been given by an approved medical practitioner.

NOTE

In section 96, the words "T/the Committee for Health & Social Care" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

Protection for acts done in pursuance of this Law.

97. (1) No liability is incurred by any person in respect of anything done, or omitted to be done –

- (a) in the discharge or purported discharge of their functions under this Law, or
- (b) in pursuance of this Law or any Ordinance or subordinate legislation made under this Law,

unless the thing was done or omitted to be done in bad faith or without reasonable care.

(2) Subsection (1) does not apply in respect of the States of Guernsey or the Chief Pleas of Sark.

Powers of courts with respect to property and affairs of patient.

98. The Third Schedule (which provides for powers exercisable by the courts with respect to the property and affairs of a patient) has effect.

Interpretation.

99. (1) In this Law, unless the context requires otherwise –

for the definition of "**absent without leave**": see section 37(6),

for the definition of "**accused person**": see sections 63(3) and 65(2),

"**Advocate**" means an advocate of the Royal Court,

"**appropriate Bailiwick authority**" means –

(a) for, or in respect of, Guernsey and Alderney, [the Committee for Health & Social Care], and

(b) for, or in respect of, Sark, the Committee,

"**approved establishment**" means an establishment which is approved under section 6,

"**approved medical practitioner**" means a medical practitioner approved under section 5 and includes an approved mental health practitioner,

"approved mental health practitioner" means a mental health practitioner approved by the appropriate Bailiwick authority,

"approved social worker" means a social worker approved under section 7 and includes an approved mental health practitioner,

"assessment order" means an order granted by a Law Officer under section 21,

"authorised nurse" means a nurse of such type or description and holding such qualifications as [the Committee for Health & Social Care] may determine,

"authorised occupational therapist" means an occupational therapist of such type or description and holding such qualifications as [the Committee for Health & Social Care] may determine,

"Bailiwick" means the Bailiwick of Guernsey,

"care plan" means a plan of treatment for a patient in respect of whom a community treatment order is in force,

"Chief Pleas" means the Chief Pleas of Sark,

"child" means a person under 18 years of age,

"civil partner" means a person who has registered as the civil partner of a patient under the Civil Partnership Act 2004^{**h**}, or who is treated under that

^{**h**} An Act of Parliament (2004 c. 33).

Act as having formed a civil partnership by virtue of having registered an overseas relationship within the meaning of that Act,

"code of practice" means a code of practice prepared by [the Committee for Health & Social Care] under this Law,

"Committee" means the [Medical & Emergency Services Committee] of the Chief Pleas of Sark,

"community patient" means a patient in respect of whom a community treatment order is in force,

"community treatment order" means an order made by a responsible medical officer under section 26,

for the definition of **"the community treatment period"**: see section 28(2),

"Convention rights" has the meaning given by section 1(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000ⁱ,

"[the Committee for Health & Social Care]" means (except for the purposes of sections 9 to 11 (in relation to which see section 12) and 88 and 89 (in relation to which see section 88(4))) the States of Guernsey [Committee for Health & Social Care],

"enactment" means any Law, Ordinance or subordinate legislation,

ⁱ Order in Council No. XIV of 2000 as amended by G.S.I. No. I of 2005 and No. 27 of 2006.

"function" includes a power and a duty,

"Guernsey" includes Herm and Jethou,

"hospital" means a hospital wholly or mainly maintained by [the Committee for Health & Social Care] and any hospital accommodation controlled and administered by the Committee,

for the definition of **"hospital treatment order"**: see section 66(1),

for the definition of **"interim hospital treatment order"**: see section 68(1),

"the 1939 Law" means the Mental Treatment Law (Guernsey), 1939^j,

"Law Officer" means Her Majesty's Procureur or Her Majesty's Comptroller,

"medical practitioner" means –

- (a) in relation to Guernsey and Alderney a recognised medical practitioner within the meaning of the Doctors, Dentists and Pharmacists Ordinance, 1987^k, and
- (b) in relation to Sark, a medical practitioner authorised to practise medicine in Sark by the Committee,

^j Ordres en Conseil Vol. XI, p. 405; Vol. XIII, p. 245; Vol. XVII, p. 64; Vol. XIX, p. 269; Vol. XXIII, p. 328; Vol. XXVII, pp. 144 and 517 and Vol. XXVIII, p. 569.

^k Recueil d'Ordonnances Tome XXIV, pp. 79, 238 and 262.

for the definitions of "**medical treatment**" and "**treatment**": see section 2(3),

for the definitions of "**mental disorder**" and "**mentally disordered**": see section 1(2),

"mental health practitioner" means a person holding such qualifications as [the Committee for Health & Social Care] may determine and who is approved by [the Committee for Health & Social Care] to carry out functions which approved medical practitioners may carry out under this Law,

for the definition of "**nearest relative**": see Part IV,

"nominated representative" means a person appointed by a patient or [the Committee for Health & Social Care] under section 9,

"overseas transfer order" means an order granted by a Law Officer under section 82,

for the definition of "**the Panel**": see section 40(1),

"parent" means, in relation to a child in Guernsey or Alderney, a father or mother who has parental responsibility in respect of the child,

"parental responsibility" has the meaning given under section 5 of the Children (Guernsey and Alderney) Law, 2008,

for definition of "**patient**": see section 2(2),

"police officer" means –

- (a) in relation to Guernsey, Herm and Jethou –
 - (i) a member of the salaried police force of the Island of Guernsey, or
 - (ii) within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,
- (b) in relation to Alderney –
 - (i) a member of the salaried police force of the Island of Guernsey,
 - (ii) a member of any police force which may be established by the States of Alderney, or
 - (iii) within the limits of his jurisdiction, a special constable appointed under section 47 of the Government of Alderney Law, 2004¹, and
- (c) in relation to Sark –
 - (i) the Constable, an Assistant Constable or the Vingtenier of Sark,
 - (ii) a special constable appointed under section 54

¹ Order in Council No. III of 2005.

of the Reform (Sark) Law, 2008^m, or

- (iii) a member of the salaried police force of the Island of Guernsey,

"postal operator" has the same meaning as in the Post Office (Bailiwick of Guernsey) Law, 2001ⁿ,

"postal packet" has the same meaning as in the Post Office (Bailiwick of Guernsey) Law, 2001,

"prescribed" means prescribed by regulations made by [the Committee for Health & Social Care],

for the definition of **"prisoner"**: see section 74,

for the definition of **"relative"**: see Part IV,

"representative" means a nominated representative,

"responsible medical officer", in relation to a patient, means the medical practitioner or approved medical practitioner in charge of the treatment of the patient,

"restricted patient" means a patient in respect of whom a restriction order is in force,

^m Order in Council Nos. V, VI and XXVII of 2008.

ⁿ Order in Council No. XV of 2001; No. XXX of 2003 and Recueil d'Ordonnances Tome XXIX, p. 406.

for the definition of "**restriction order**": see section 70,

"**the Royal Court**" means the Royal Court of Guernsey sitting as an Ordinary Court,

"**second opinion approved doctor**" means a medical practitioner approved as a second opinion approved doctor under section 5,

"**Seneschal**" means the Seneschal of Sark, the Deputy Seneschal or a Lieutenant Seneschal,

"**States**" means the States of Guernsey,

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect,

"**supervisor**" means the person named as supervisor in a community treatment order,

for the definition of "**treatment**": see section 2(3),

"**treatment order**" means an order made by a Law Officer under section 24,

for the definition of "**the Tribunal**": see section 40(5), and

"**uniform scale**" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law,

1989^o.

(2) Unless the context requires otherwise, a reference in this Law to the carrying out of a function includes the performance of a duty and the exercise of a power.

(3) Unless the context requires otherwise, a reference in this Law to an enactment is a reference thereto as amended, re-enacted (with or without modification), extended or applied.

(4) The Interpretation (Guernsey) Law, 1948^P applies –

(a) to the interpretation of this Law throughout the Bailiwick, and

(b) in the absence of any provision to the contrary contained therein, to the interpretation of any Ordinance, or subordinate legislation, made under this Law –

(i) throughout the Bailiwick, and

(ii) for the avoidance of doubt, in the case of any subordinate legislation, as it applies to the interpretation of a Guernsey enactment.

NOTES

^o Ordres en Conseil Vol. XXXI, p. 278 and Order in Council No. XVIII of 2009.

^P Ordres en Conseil Vol. XIII, p. 355.

In section 99,

the words in, first, the first and, second, the second pairs of square brackets in the definition of the expression "the Committee for Health & Social Care" in subsection (1) and, third, the words "the Committee for Health & Social Care" in square brackets wherever else occurring were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(3), Schedule 3, paragraph 6, section 2, Schedule 1, paragraph 5 and section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016;

the words in square brackets in the definition of the expression "Committee" in subsection (1) were substituted by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2017, section 2, Schedule, paragraph 3, with effect from 18th January, 2017.

The functions, rights and liabilities of the Health and Social Services Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Health & Social Care and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 5, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

The functions, rights and liabilities of the Medical Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Medical & Emergency Services Committee and its Chairman by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2017, section 1, Schedule, paragraph 3, with effect from 18th January, 2017, subject to the savings and transitional provisions in section 3 of the 2017 Ordinance.

In accordance with the provisions of the Regulation of Health Professions (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015, section 27(2), with effect from 3rd December, 2015, the reference in this section to a "recognised medical practitioner" is to be construed as a reference to a registered practitioner within the meaning of section 26(1) of the 2015 Ordinance.

In accordance with the provisions of the Police Force (Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the references herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.

The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.

Power to carry Law into effect by Ordinance.

100. (1) The States may by Ordinance make such additional provision as they think fit for the purposes of carrying this Law into effect in Guernsey and Alderney.

(2) The Chief Pleas may by Ordinance make such additional provision as they think fit for the purposes of carrying this Law into effect in Sark.

NOTE

The following Ordinances have been made under section 100:

Mental Health (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2013;

Mental Health (Miscellaneous Provisions) (Sark) Ordinance, 2013;

Mental Health (Transfer of Patients) (Guernsey and Alderney) Ordinance, 2016.

General provisions as to Ordinances, orders, regulations and rules.

101. (1) An Ordinance, order, regulations or rules under this Law –

- (a) may be amended or repealed by a subsequent Ordinance, order, regulations or rules hereunder, and
- (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient (including, without limitation, provision making consequential amendments to this Law and any other enactment).

(2) Any power to make an Ordinance, order, regulations or rules under this Law may be exercised –

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised –
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes, or
 - (iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) Regulations, rules or any order (other than rules or an order of a court or the Tribunal) under this Law shall be laid before a meeting of the States as soon as possible after being made; and, if at that or the next meeting the States resolve that the regulations or order be annulled, then they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations or rules or a new order.

Codes of practice.

102. (1) A code of practice under this Law may be amended or repealed by a subsequent code of practice hereunder.

(2) Any power to issue a code of practice under this Law may be exercised –

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

(b) so as to make, as respects the cases in relation to which it is exercised –

(i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

(ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

(iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) Before preparing a code of practice under this Law or making any alteration in it, [the Committee for Health & Social Care] shall consult such bodies as appear to it to be concerned (including, without limitation, the Committee).

(4) [The Committee for Health & Social Care] shall publish any code for the time being in force under this section in such manner as appears to it to be appropriate.

NOTE

In section 102, the words "T/the Committee for Health & Social Care" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

Special provisions governing application of regulations and codes of practice to Sark.

103. Regulations made, and any code of practice issued, by [the Committee for Health & Social Care] shall not have effect in respect of Sark until, and unless, they have been approved by resolution of the Committee.

NOTE

In section 103, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

Savings and transitional provisions.

104. The Fourth Schedule (which makes savings and transitional provisions) has effect.

Repeals and amendments.

105. The Fifth Schedule (which makes consequential amendments and repeals) has effect.

Rules of court.

106. (1) Subject to subsection (3), a court may by order make rules dealing with all procedural and incidental matters arising under this Law, and generally for carrying this Law into effect.

- (2) Rules under subsection (1) may, without limitation be made –
- (a) in respect of the practice and procedure to be followed in connection with proceedings before the court under this Law, and
 - (b) without prejudice to the generality of paragraph (a), generally in respect of –
 - (i) applications under this Law (including the hearing and determination of applications otherwise than in open court), and
 - (ii) practice and procedure under this Law before the court,
 - (c) in respect of evidence including, without limitation, rules as to the admission of evidence and evidential presumptions,
 - (d) for the visiting and interviewing of patients in private by or under the directions of the court, and
 - (e) in respect of the joinder of such persons as parties.

(3) Rules made under subsection (1) by the Court of Alderney or the Court of the Seneschal shall, without prejudice to the validity of anything done under them, or to the making of new rules, cease to have effect –

- (a) if they are disapproved by the Royal Court, immediately upon such disapproval, or

- (b) if they are not approved by the Royal Court within 3 months after being made, at the expiration of those 3 months.
- (4) Subsection (1) is without prejudice to any other power to make rules.
- (5) Unless the context requires otherwise, for the purposes of this section, "**court**" means –
 - (a) in respect of Alderney, the Court of Alderney,
 - (b) in respect of Sark, the Court of the Seneschal, and
 - (c) in respect of Guernsey, the Royal Court (and for the purposes of this section, "the Royal Court" means the Royal Court sitting as a Full Court).

NOTE

The following Rules have been made by Order of the Royal Court under section 106:

*Mental Health Review Tribunal Procedure Rules, 2012;
Mental Health Review Tribunal Procedure (Amendment) Rules,
2018.*

Citation.

107. This Law may be cited as the Mental Health (Bailiwick of Guernsey) Law, 2010.

Commencement.

108. (1) This Law shall come into force –

- (a) in respect of Guernsey and Alderney, on the day appointed by Ordinance of the States, and
- (b) in respect of Sark, on the day appointed by Ordinance of the Chief Pleas.

(2) An Ordinance under subsection (1) may appoint different dates for different provisions and for different purposes.

NOTES

The Law was brought into force in respect of Guernsey and Alderney on 8th April, 2013 by the Mental Health (Bailiwick of Guernsey) Law, 2010 (Commencement) Ordinance, 2013, section 1.

The Law was brought into force in respect of Sark on 10th April, 2013 by the Mental Health (Bailiwick of Guernsey) Law, 2010 (Commencement) (Sark) Ordinance, 2013, section 1.

FIRST SCHEDULE
FUNCTIONS OF NEAREST RELATIVE

Section 18(a)

Representations upon applications under section 20 or 23.

1. (1) A patient's nearest relative is entitled, where reasonably practicable, to be informed of any proposal to make an application in respect of the patient under section 20 or 23.

(2) A failure to inform a nearest relative about a proposal to make an application in accordance with subparagraph (1) shall not render the application invalid or prevent a Law Officer from making a valid order under the relevant section.

Notice of and attendance at Tribunal hearings.

2. Subject to the provisions of any rules made by the Royal Court under section 40(6), a patient's nearest relative is entitled –

(a) to notice of, and

(b) to attend,

any hearing of the Tribunal convened in order to consider any matter concerning the patient.

Details of treatment.

3. A patient's nearest relative is entitled to written details of treatment which [the Committee for Health & Social Care] or the Committee, as the case may be, intend to provide for the patient.

Notice of and attendance at meetings relating to treatment.

4. A patient's nearest relative is entitled –

(a) to notice of, and

(b) to attend,

any meetings arranged by [the Committee for Health & Social Care] or the Committee, as the case may be, relating to treatment which it is proposed to provide for the patient.

Involvement in decisions relating to treatment.

5. It is a function of a patient's nearest relative to be involved, insofar as reasonably practicable, in all decisions relating to the treatment of the patient.

NOTE

In the First Schedule, the words "the Committee for Health & Social Care" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

SECOND SCHEDULE Sections 18(a), 67 and 71
HOSPITAL TREATMENT, RESTRICTION AND TRANSFER ORDERS

PART A
EFFECT OF HOSPITAL TREATMENT ORDER

Detention and treatment.

1. A patient to whom a hospital treatment order relates shall be detained for the duration of the order for the purpose of providing him with any medical treatment which –

- (a) may be appropriate in his circumstances, and
- (b) may be provided lawfully under this Law.

Duration of order.

2. A hospital treatment order shall remain in force for a period of 6 months from the date upon which it is first made and may thereafter be renewed in accordance with paragraph 3 for a period of 12 months or successive periods of 12 months.

Application for renewal.

3. An application for renewal of a hospital treatment order shall be made, by –

- (a) the approved social worker of the patient to whom the order relates,
- (b) where [the Committee for Health & Social Care] is responsible for the approved establishment in which the

patient is detained, [the Committee for Health & Social Care], or

- (c) where the Committee is responsible for the approved establishment in which the patient is detained, the Committee,

to the Royal Court in the manner, and on the grounds, set out respectively in paragraphs 4 and 5.

Manner of application for renewal.

4. An application shall be made by delivering to Her Majesty's Greffier, or any of his deputies, an application in such form, containing such information and accompanied by such documentation signed or certified by such person as rules of court made under section 106 may provide.

Grounds of application for renewal.

5. The grounds of an application made in respect of a patient are that –

- (a) he is suffering from mental disorder of a nature or degree that warrants his admission to and detention in an approved establishment in order that he may receive treatment there,
- (b) he ought to be so admitted and detained –
 - (i) in the interests of his own health and safety, or
 - (ii) with a view to the protection of other people from harm, and

- (c) the treatment he ought to receive cannot be provided unless he is so admitted and detained.

Discharge of order.

6. The provisions of section 35(1), (4) and (5) ("Discharge of and request to discharge patient") shall have effect in respect of a hospital treatment order, subject to the modification that for "an assessment order, treatment order or community treatment order", where that expression occurs in section 35(1) and (4), substitute "a hospital treatment order".

Leave of absence.

7. The provisions of section 36 ("Leave of absence") shall have effect in respect of a hospital treatment order, subject to the following modifications –

- (a) for "an assessment or treatment order" substitute "a hospital treatment order", and
- (b) in subsection (2)(a) for "assessment or treatment under section 22 or 25, as the case may be" substitute "treatment".

Return of patients absent without leave.

8. (1) Where a patient who is for the time being liable to be detained under section 67 in an approved establishment –

- (a) absents himself from the establishment without leave given under section 36 (as that section has effect under section 67 and paragraph 7),
- (b) fails to return to the establishment –

(i) upon the expiration of any period for which leave to be absent was given to him, or

(ii) following revocation of leave to be absent,

under that section (as it has effect as described above),
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 to be absent under that section (as it has effect as described above),

he may, subject to the provisions of this paragraph, be taken into custody and returned to the approved establishment or place by any of the persons specified in subparagraph (2).

(2) The persons specified for the purposes of subparagraph (1) are

—

(a) the responsible medical officer of the patient to whom a hospital treatment order relates,

(b) any person appointed for the purpose by the responsible medical officer of the patient to whom the order relates,

(c) an approved social worker, or

(d) a police officer.

Transfer of patients.

9. (1) A patient who is for the time being liable to be detained in an approved establishment under section 67 may, subject to subparagraph (2), at any time be transferred by the managers of the establishment to any other approved establishment.

(2) A patient shall not be transferred pursuant to subparagraph (1) except with the consent of –

- (a) that patient's responsible medical officer, and
- (b) the Royal Court.

(3) The managers of an approved establishment shall, as soon as practicable after exercising their powers under this section in respect of a patient, so inform the person appearing to them to be the patient's nearest relative.

(4) The provisions of section 67 apply to a patient transferred to another approved establishment in pursuance of this paragraph as if –

- (a) the hospital treatment order made in respect of the patient were an order for his admission to that other establishment, and
- (b) the patient had been admitted to that other establishment at the time when he was originally admitted in pursuance of that order.

PART B

EFFECT OF RESTRICTION ORDER

Detention and treatment.

1. A patient to whom a restriction order relates shall be detained for the duration of the order for the purpose of providing him with any medical treatment which –

- (a) may be appropriate in his circumstances, and
- (b) may be provided lawfully under this Law.

Discharge of order.

2. The provisions of sections 35(1), (4) and (5) ("Discharge of and request to discharge patient") shall have effect in respect of a restriction order, subject to the following modifications –

- (a) for subsection (1) substitute –

"(1) The Royal Court may, by notice in writing, discharge the patient.",

- (b) in subsection (4) for "an assessment order, treatment order or community treatment order" substitute "a hospital treatment order" and
- (c) in subsection (5) for "the responsible medical officer" substitute ", or on behalf of, the Royal Court".

Leave of absence.

3. The provisions of section 36 ("Leave of absence") shall have effect in respect of a restriction order, subject to the following modifications –

- (a) in subsection (1) –

- (i) for "an assessment or treatment order" substitute "a restriction order", and
 - (ii) immediately after "may" insert "with the consent of the Royal Court ",
- (b) in subsection (2)(a) for "assessment or treatment under section 22 or 25, as the case may be" substitute "treatment",
- (c) in subsection (3), immediately after "officer" insert ", with the consent of the Royal Court," and
- (d) in subsection (4), immediately after "or" insert ", with or without the consent of the Royal Court,".

Return of patients absent without leave.

4. (1) Where a patient who is for the time being liable to be detained under section 71 in an approved establishment –

- (a) absents himself from the establishment without leave given under section 36 (as that section has effect under section 71 and paragraph 3),
- (b) fails to return to the establishment –
 - (i) upon the expiration of any period for which, leave to be absent was given to him, or
 - (ii) following revocation of leave to be absent,

under that section (as it has effect as described above),
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 to be absent under that section (as it has effect as described above),

he may, subject to the provisions of this paragraph, be taken into custody and returned to the approved establishment or place by any of the persons specified in subparagraph (2).

- (2) The persons specified for the purposes of subparagraph (1) are

—

- (a) the responsible medical officer of the patient to whom a hospital treatment order relates,
- (b) any person appointed for the purpose by the responsible medical officer of the patient to whom the order relates,
- (c) an approved social worker, or
- (d) a police officer.

Transfer of patients.

5. (1) A patient who is for the time being liable to be detained in an approved establishment under section 71 may, subject to subparagraph (2), at any time be transferred by the managers of the establishment to any other approved establishment.

(2) A patient shall not be transferred pursuant to subparagraph (1) except with the consent of –

- (a) that patient's responsible medical officer, and
- (b) the Royal Court.

(3) The managers of an approved establishment shall, as soon as practicable after exercising their powers under this section in respect of a patient, so inform the person appearing to them to be the patient's nearest relative.

(4) The provisions of section 71 apply to a patient transferred to another approved establishment in pursuance of this paragraph as if –

- (a) the restriction order made in respect of the patient were an order for his admission to that other establishment, and
- (b) the patient had been admitted to that other establishment at the time when he was originally admitted in pursuance of that order.

NOTE

In the Second Schedule, the words "the Committee for Health & Social Care" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

THIRD SCHEDULE Section 98
POWERS OF COURTS WITH RESPECT TO PROPERTY AND AFFAIRS OF
PATIENT

Exercise of functions under this Schedule.

1. (1) The functions of the court under this Schedule shall be exercisable where –

- (a) on the application of any person described in subparagraph (2), and
- (b) after considering medical evidence,

it is satisfied that a person is incapable by reason of mental disorder, of managing and administering his property and affairs; and a person as to whom the court is so satisfied is referred to in this Schedule as a "**patient**".

(2) An application to the court under subparagraph (1) may be made by –

- (a) a relative of the patient,
- (b) a Law Officer, or
- (c) any other person whom the court thinks fit.

General functions of the court with respect to property and affairs of patient.

2. (1) The court may, with respect to the property and affairs of a patient, order, authorise or secure the doing of all such things as appear necessary or expedient –

- (a) for the maintenance or other benefit of the patient,
- (b) for the maintenance or other benefit of any relative of the patient,
- (c) for making provision for other persons or purposes for whom or which the patient might be expected to provide if he were capable of managing and administering his property and affairs, and
- (d) otherwise for administering the patient's property and affairs,

whether by way of guardianship (the customary law rules in respect of which are to be read in the context of, and if necessary as subject to, this Schedule) or otherwise.

(2) In the exercise of the powers conferred by this paragraph regard shall be had primarily to the requirements of the patient but, subject to that primary duty, the court shall, in administering a patient's affairs, have regard to –

- (a) the interests of creditors, and
- (b) the desirability of making provision for –
 - (i) responsibilities, duties, commitments and obligations of the patient, and
 - (ii) the claims and expectations of others,

notwithstanding that they may not be legally enforceable.

Powers of the court as to patient's property and affairs.

3. (1) Without prejudice to the generality of paragraph 2, the court shall have power to make such orders and give such directions and authorities as it thinks fit for the purposes of that paragraph and in particular may for those purposes make orders or give directions or authorities for –

- (a) the control (with or without the transfer or vesting of property or the payment into or lodgement in the court of money or securities), administration and management of any property of the patient,
- (b) the sale, exchange, charging or other disposition of or dealing with any property of the patient including, for the avoidance of doubt –
 - (i) the holding of any property on the patient's behalf, and
 - (ii) the delivery of any property to such person as the court thinks fit,
- (c) the acquisition of any property in the name or on behalf of the patient,
- (d) the settlement of any property of the patient, or the gift of any property of the patient to any such persons or for any such purposes as are mentioned in paragraph 2(1)(b) and (c),
- (e) the execution for the patient of –

- (i) a will making any provision (whether by way of disposing of property or exercising a power or otherwise) which could be made by a will executed by the patient if he were capable of managing and administering his property and affairs, or
- (ii) a power of attorney conferring –
 - (A) on such donee of the power, or
 - (B) if there is more than one such donee, on such donees acting jointly or acting jointly and severally, as the case may be,

such authority, as the court thinks fit, to do on behalf of the patient anything which the patient, if he were capable of managing and administering his property and affairs, could lawfully do by an attorney,
- (f) the carrying on by a suitable person of any profession, trade or business of the patient,
- (g) the dissolution of any partnership of which the patient is a member,
- (h) the carrying out of any contract entered into by the patient,
- (i) the conduct of legal proceedings in the name of the

patient or on his behalf,

- (j) the reimbursement out of the property of the patient, with or without interest, of money applied by any person either in payment of the patient's debts (whether legally enforceable or not) or for the maintenance or other benefit of the patient or members of his family or in making provision for other persons or purposes for whom or which he might be expected to provide if he were capable of managing and administering his property and affairs,
- (k) the exercise of any power (including a power to consent) vested in the patient, whether beneficially, or as guardian or trustee, or otherwise,
- (l) the delivery to the court of accounts and other documents –
 - (i) in such form, and
 - (ii) at such times or intervals,as the court may direct,
- (m) the deposit with the court of security in respect of any property and the forfeiture of such security in the event of loss, dissipation or diminution in value, and
- (n) the settlement of expenses and fees incurred in the administration and management of the property and

affairs of the patient.

(2) If under subparagraph (1) provision is made for the settlement of any property of a patient, or the exercise of a power vested in a patient of appointing or removing trustees or retiring from a trust, the court may also make as respects the property settled or trust property such consequential vesting or other orders as the case may require, including (in the case of the exercise of such a power) any order which could have been made in such a case under the Trusts (Guernsey) Law, 2007^q.

(3) Where under this paragraph a settlement or trust has been made of any property of a patient, and the court is satisfied, at any time before the death of the patient, that –

- (a) any material fact was not disclosed when the settlement or trust was made,
- (b) there has been any substantial change in circumstances,
- (c) it is in the interests of justice to do so, or
- (d) there is some other good reason,

it may by order vary the settlement or trust in such manner as it thinks fit, and give any consequential directions.

(4) The power of the court to make or give an order, direction or authority for the execution of a will or power of attorney for a patient –

^q Orders in Council No. III of 2008.

- (a) shall not be exercisable at any time when the patient is a child, and
- (b) shall not be exercised unless the court has reason to believe that the patient is incapable of making a valid will or power of attorney, as the case may be, for himself.

Supplementary provisions as to wills executed under paragraph 3.

4. (1) Where under paragraph 3(1) the court makes or gives an order, direction or authority requiring or authorising a person (in this section referred to as **"the authorised person"**) to execute a will for a patient, any will executed in pursuance of that order, direction or authority shall be expressed to be signed by the patient acting by the authorised person, and shall be –

- (a) signed by the authorised person with the name of the patient, and with his own name, in the presence of two or more witnesses present at the same time, and
- (b) attested and signed by those witnesses in the presence of the authorised person (but not necessarily in the presence of any other witness).

(2) A will executed in accordance with the provisions of subparagraph (1) shall have effect for all purposes as if –

- (a) the patient were capable of making a will,
- (b) the will had been signed by the patient in his own hand, and

- (c) the will had been executed by him in the manner required under the law of that part of the Bailiwick in which the execution took place.

Supplementary provisions as to powers of attorney executed under paragraph 3.

5. (1) Where under paragraph 3(1) the court makes or gives an order, direction or authority requiring or authorising a person (in this section referred to as **"the authorised person"**) to execute a power of attorney for a patient, any power executed in pursuance of that order, direction or authority shall be –

- (a) expressed to be signed by the patient acting by the authorised person, and
- (b) signed by the authorised person with the name of the patient, and with his own name, in accordance with section 1 of the Powers of Attorney and Affidavits (Bailiwick of Guernsey) Law, 1995^r.

(2) A power of attorney executed in accordance with the provisions of subparagraph (1) shall have effect for all purposes as if –

- (a) the patient were capable of conferring the power,
- (b) the power had been signed by the patient in his own hand, and
- (c) the power had been executed by the patient in the manner required under section 1 of the Powers of Attorney and Affidavits (Bailiwick of Guernsey) Law,

^r Ordres en Conseil Vol. XXXVI, p. 116.

1995.

Court's powers in cases of emergency.

6. Where it is represented to the court and it has reason to believe, that a person may be incapable, by reason of mental disorder, of managing and administering his property and affairs, and the court is of the opinion that it is necessary to make immediate provision for any of the matters referred to in paragraph 2, then pending the determination of the question whether that person is so incapable the court may exercise in relation to the property and affairs of that person any of the powers conferred on it in relation to the property and affairs of a patient by this Schedule so far as is requisite for enabling that provision to be made.

Interpretation of this Schedule.

7. Unless the context requires otherwise, for the purposes of this Schedule –

"**affairs**", in relation to a patient, includes every action and decision which the patient might, but for his incapacity, need or be reasonably expected to take in respect of his personal, family, working and social life, including actions and decisions concerning his accommodation, care and treatment, and his general welfare, well-being and fulfilment,

"**court**" means –

- (a) where the patient is residing in Alderney, the Court of Alderney,
- (b) where the patient is residing in Sark, the Court of the Seneschal, and
- (c) in any other case, the Royal Court,

"patient" has the meaning assigned to it by paragraph 1,

"property" –

- (a) means real and personal property of any description, wherever situated, and any share, right or interest therein, and includes tangible or intangible property and any debt or thing in action, and
- (b) in relation to rights and interests, includes rights and interests whether vested, contingent, defeasible or future, and

"will" includes a testament, codicil, an appointment by will or by writing in the nature of a will in exercise of a power, and also an appointment by will of a guardian of a child, and any other testamentary disposition.

FOURTH SCHEDULE
SAVINGS AND TRANSITIONAL PROVISIONS

Section 104

Admission orders under the 1939 Law.

1. (1) An admission order made by a Law Officer under Part II of the 1939 Law, which is in force immediately before the coming into force of this Schedule, shall be treated as if it were a treatment order granted under section 24.

(2) Subject to the discharge of the patient under section 35, an order treated as a treatment order under subparagraph (1) shall remain in force for a period of 12 months from the date upon which it was made under Part II of the 1939 Law and may thereafter be renewed in accordance with section 24(3) for a period of 12 months or successive periods of 12 months.

Applications under Part II of the 1939 Law.

2. (1) An application under Part II of the 1939 Law made, but not determined, immediately before the coming into force of this Schedule, shall be treated as if it were an application for a treatment order under section 23.

(2) An application treated as if it were an application for a treatment order under subparagraph (1) may be made –

- (a) by any person who could have made an application, and
- (b) by means of a petition for an admission order and any accompanying documents,

under Part II of the 1939 Law.

(3) For the purposes of determining an application treated as if it were an application for a treatment order under subparagraph (1), a Law Officer may

require the submission to him of such further particulars of the application, information or documents as he may reasonably specify for the purpose of determining the application.

Temporary admission orders under the 1939 Law.

3. (1) A temporary admission order made by a Law Officer under Article 34 of the 1939 Law, which is in force immediately before the coming into force of this Schedule, shall be treated as if it were an assessment order granted under section 21.

(2) Subject to the discharge of the patient under section 35, an order treated as an assessment order under subparagraph (1) shall remain in force for a period of 28 days from the date upon which it was made under Article 34 of the 1939 Law.

Applications under Article 34 of the 1939 Law.

4. (1) An application under Article 34 of the 1939 Law made, but not determined, immediately before the coming into force of this Schedule, shall be treated as if it were an application for an assessment order under section 20.

(2) An application treated as if it were an application for an assessment order under subparagraph (1) may be made –

- (a) by any person who could have made an application, and
- (b) by means of a recommendation and any accompanying documents,

under Article 34 of the 1939 Law.

(3) For the purposes of determining an application treated as if it

were an application for an assessment order under subparagraph (1), a Law Officer may require the submission to him of such further particulars of the application, information or documents as he may reasonably specify for the purpose of determining the application.

Prescribed books under the 1939 Law.

5. The prescribed books to be used for the purposes of the 1939 Law shall continue to be maintained for the purposes of this Law and irrespective of the repeal of the 1939 Law and the Mental Treatment (Forms) (Regulations) Ordinance, 1956^s by section 105.

Persons detained on an urgency order under Article 3 of the Mental Treatment (Amendment) (Guernsey) Law, 1956.

6. (1) An urgency order under Article 3 of the Mental Treatment (Amendment) (Guernsey) Law, 1956^t, which is in force immediately before the coming into force of this Schedule shall be treated as if it were an assessment order granted under section 21.

(2) Subject to the discharge of the patient under section 35, an order treated as an assessment order under subparagraph (1) shall remain in force for a period of 28 days from the date upon which it was made under Article 3 of the 1939 Law.

^s Recueil d'Ordonnances Tome XI, p. 243 (to which there are amendments not relevant to this Law).

^t Ordres en Conseil Vol. XVII, p. 64.

FIFTH SCHEDULE
CONSEQUENTIAL AMENDMENTS AND REPEALS

Section 105

Amendment of Criminal Justice (Special Verdicts) (Guernsey) Law, 1961^u

1. The Criminal Justice (Special Verdicts) (Guernsey) Law, 1961^u is amended as follows –

(a) for "a mental hospital" wherever appearing substitute "an approved establishment",

(b) in section 2(1), for the words "order him to be detained during Her Majesty's pleasure; and such person shall thereupon be detained in a mental hospital until further Order" substitute –

"(a) make a hospital treatment order in respect of him under section 66(3) of the Mental Health (Bailiwick of Guernsey) Law, 2010, or

(b) make no order",

(c) for section 2(2), substitute –

"(2) Where –

(a) the offence to which the special verdict under subsection (1) relates is an offence the sentence for which is fixed by law, and

^u Ordres en Conseil Vol. XVIII, p. 355; Vol. XIX, p. 269 and Vol. XXIII, p. 328.

- (b) the Royal Court has power to make a hospital treatment order,

the Royal Court shall make a hospital treatment order with a restriction order (whether or not it would have power to make a restriction order apart from this subsection).",

- (d) in section 4, for "1939 Law" substitute "Mental Health (Bailiwick of Guernsey) Law, 2010",

- (e) in sections 4, 5 and 6 delete "or section two" wherever appearing,

- (f) in section 5 –

- (i) for "the Consultant Psychiatrist" where first appearing, substitute "an approved medical practitioner responsible for the treatment of the patient", and

- (ii) for "the Consultant Psychiatrist" where secondly appearing, substitute "the approved medical practitioner",

- (g) for section 8 substitute –

"Application of Mental Health (Bailiwick of Guernsey) Law, 2010 to persons detained under this Law.

8. The provisions of the Mental Health (Bailiwick of Guernsey) Law, 2010, or any enactment, instrument or code of practice made or issued

under that Law, relating to the powers and duties of the Department, the Committee, a medical practitioner, an approved medical practitioner, an approved mental health practitioner, an approved social worker, an authorised nurse, an authorised occupational therapist or a police officer (all as defined in section 99 of that Law), concerning patients liable to be detained in approved establishments under that Law, shall have effect as if any reference therein to a patient includes a reference to a person detained in an approved establishment in pursuance of the provisions, other than section 2, of this Law.",²

(h) in section 9(1) –

(i) for the definition of "Consultant Psychiatrist" substitute –

""approved medical practitioner" has the same meaning as in the Mental Health (Bailiwick of Guernsey) Law, 2010",

(ii) for the definition of "mental hospital", substitute –

""approved establishment" has the same meaning as in the Mental Health (Bailiwick of Guernsey) Law, 2010",

(iii) immediately after the definition of "approved establishment" as inserted by subparagraph (ii), insert the following definition –

""hospital treatment order" has the same meaning as in the Mental Health (Bailiwick of Guernsey) Law, 2010",

- (iv) immediately after the definition of "officer of police" insert the following definition –

""restriction order" has the same meaning as in the Mental Health (Bailiwick of Guernsey) Law, 2010,"

- (v) immediately after the definition of "restriction order" as inserted by subparagraph (iv), insert the following definition –

""the Royal Court" means the Royal Court of Guernsey sitting as an Ordinary Court.", and

- (vi) the definition of "the 1939 Law" is repealed.

Repeal of Mental Treatment Laws.

- 2. The following Laws are repealed –

- (a) the Law intituled "Loi ayant rapport aux Faibles d'Esprit"^v,
- (b) the Mental Treatment Law (Guernsey), 1939,
- (c) the Mental Treatment (Transfer of Patients from Alderney) Law, 1952^w,
- (d) the Mental Treatment (Amendment) (Guernsey) Law, 1956,

^v Ordres en Conseil Vol. VIII, p. 13.

^w Ordres en Conseil Vol. XV, p. 256.

- (e) the Mental Treatment (Amendment) (Guernsey) Law, 1964^x,
- (f) the Mental Treatment (Amendment) (Guernsey) Law, 1972^y,
- (g) the Mental Treatment (Amendment) (Guernsey) Law, 1979^z,
- (h) the Mental Treatment (Amendment) (Guernsey) Law, 1982^{aa}, and
- (i) the Mental Treatment (Amendment) (Guernsey) Law, 1984^{bb}.

Repeal of Mental Treatment Ordinances.

3. The following Ordinances are repealed –

- (a) the Mental Treatment (Forms) (Regulations) Ordinance, 1956,
- (b) the Mental Treatment (General) (Regulations)

^x Ordres en Conseil Vol. XIX, p. 269.
^y Ordres en Conseil Vol. XXIII, p. 328.
^z Ordres en Conseil Vol. XXVII, p. 144.
^{aa} Ordres en Conseil Vol. XXVII, p. 517.
^{bb} Ordres en Conseil Vol. XXVIII, p. 569.

Ordinance, 1956^{cc},

(c) the Mental Treatment (General) (Regulations)
(Amendment) Ordinance, 1964^{dd},

(d) the Mental Treatment (Forms) (Regulations)
(Amendment) Ordinance, 1964^{ee}, and

(e) the Mental Treatment (Forms) (Regulations)
(Amendment) Ordinance, 1972^{ff}.

**Amendment of Police Powers and Criminal Evidence (Bailiwick of Guernsey)
Law, 2003.**

4. Paragraph 1 of Schedule 3 to the Police Powers and Criminal Evidence
(Bailiwick of Guernsey) Law, 2003 is repealed.

¹ The Law was previously modified by the Emergency Powers (Coronavirus) (Mental Health) (Bailiwick of Guernsey) Regulations, 2020, regulation 1(a), Schedule, with effect from 2nd April, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) Regulations, 2020, regulation 20(a), Schedule 2, with effect from 16th April, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 2) Regulations, 2020, regulation 20(a), Schedule 2, with effect from 15th May, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 3) Regulations, 2020, regulation 19(a), Schedule 1, with effect from 13th June, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 4)

^{cc} Recueil d'Ordonnances Tome XI, p. 276.

^{dd} Recueil d'Ordonnances Tome XIV, p. 54.

^{ee} Recueil d'Ordonnances Tome XIV, p. 55.

^{ff} Recueil d'Ordonnances Tome XVIII, p. 121.

Regulations, 2020, regulation 13(a), Schedule 1, with effect from 10th July, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 5) Regulations, 2020, regulation 13(a), Schedule 1, with effect from 7th August, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 6) Regulations, 2020, regulation 15(a), Schedule 1, with effect from 4th September, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 7) Regulations, 2020, regulation 16(a), Schedule 1, with effect from 3rd October, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 8) Regulations, 2020, regulation 16(a), Schedule 1, with effect from 30th October, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 9) Regulations, 2020, regulation 17(a), Schedule 3, with effect from 27th November, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 10) Regulations, 2020, regulation 17(a), Schedule 3, with effect from 15th December, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) Regulations, 2021, regulation 18(a), Schedule 4, with effect from 13th January, 2021; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 2) Regulations, 2021, regulation 30, Schedule 3, with effect from 5th February, 2021; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 3) Regulations, 2021, regulation 36, Schedule 3, with effect from 5th March, 2021; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 4) Regulations, 2021, regulation 18, Schedule 2, with effect from 2nd April, 2021.

²

For subsequent amendments see the consolidated text of the Criminal Justice (Special Verdicts) (Guernsey) Law, 1961.