

CHAPTER No. 2

**MENTAL HEALTH (AMENDMENT)
ACT 2006**

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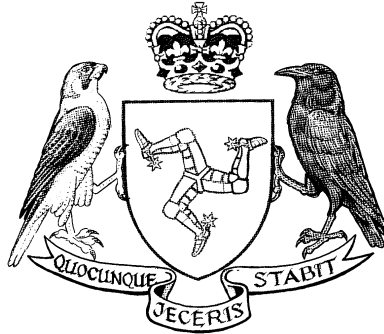
MENTAL HEALTH (AMENDMENT) ACT 2006

Arrangement of Sections

Section

1. Transfer of patients between the Island and other countries.
2. Assisting patients to absent themselves without leave, etc.
3. Orders for detention during Her Majesty's pleasure.
4. Nearest relative of patient.
5. Discharge of patient.
6. Constitution of Tribunal.
7. Amendment of Limitation Act 1984.
8. Short title and commencement.

Schedule — Transfer of patients.



Isle of Man } Signed in Tynwald: 25th April 2006
 in Wit } Received Royal Assent: 25th April 2006
 Announced to Tynwald: 25th April 2006

AN ACT

to amend the law relating to the transfer of patients between the Island and other countries; to abolish directions that persons be detained during Her Majesty's pleasure; to amend the constitution of the Mental Health Review Tribunal; to amend the law relating to the nearest relatives of patients; and for connected purposes.

WE, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows (that is to say): —

1. For Part 6 (removal and return of patients) of the Mental Health Act 1998 there are substituted the provisions set out in the Schedule.

Transfer of patients between the Island and other countries.

[c. 3]

2. (1) After section 124 of the Mental Health Act 1998 insert —

Assisting patients in other jurisdictions to absent themselves without leave.

124A. (1) Where a person in a relevant territory is under or by virtue of a relevant provision —

Assisting patients to absent themselves without leave, etc.

(a) liable to be detained in a hospital, or

(b) subject to guardianship, or to measures of control similar to guardianship,

any person who in the Island induces or knowingly assists that person to absent himself without leave given under such provision is guilty of an offence.

(2) Where a person in a relevant territory is under or by virtue of a relevant provision required to comply with a condition imposed —

- (a) to secure that the mental health of that person may be assessed, or that the person may be treated for mental disorder, or
- (b) for that person's protection or the protection of other persons,

any person who in the Island induces or knowingly assists that person to breach that condition is guilty of an offence.

(3) Where a person in a relevant territory is in legal custody under or by virtue of a relevant provision, any person who in the Island induces or knowingly assists that person to escape from such custody is guilty of an offence.

(4) Subsection (5) applies to a person who —

- (a) is under or by virtue of a relevant provision liable to be detained in a hospital or taken into custody in a relevant territory;
- (b) is under or by virtue of a relevant provision —
 - (i) liable to be detained in a hospital,
 - (ii) subject to guardianship, or to measures of control similar to guardianship,

and is absent without leave given under that provision;

- (c) is in breach of a condition mentioned in subsection (2); or
- (d) has escaped from legal custody under or by virtue of a relevant provision.

(5) Any person who in the Island —

- (a) knowingly harbours a person to whom this subsection applies, or

- (b) gives such a person any assistance with intent to prevent, hinder or interfere with that person being taken or retaken into custody or taken or returned to the hospital or other place where that person ought to be,

is guilty of an offence.

(6) Any person guilty of an offence under this section is liable —

- (a) on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both;
- (b) on conviction on information, to custody for a term not exceeding 2 years or to a fine, or to both.

(7) In this section —

“relevant provision”, in relation to a person who is or has been in a relevant territory, means provision having effect in that territory and corresponding or similar to any provision of this Act;

“relevant territory” has the same meaning as in Part 6.”.

(2) In sections 122(5), 123(4), 124(4) and 125(3) of that Act, for “imprisonment” (in each place) substitute “custody”.

(3) In section 131(2) (warrant to search for and remove patients) of that Act, the words from “or under section 88” to “Parliament)” (in the second place) are repealed.

3. (1) After the commencement of this section no order may be made under section 54(1)(a) of the Criminal Jurisdiction Act 1993 that a defendant or appellant be detained during Her Majesty’s pleasure.

Orders for detention during Her Majesty’s pleasure.

[c. 9]

(2) Section 54 of the said Act of 1993 is amended as follows —

- (a) paragraph (a) of subsection (1) is repealed;
- (b) in subsection (2), for the words from “shall make” to the end of the subsection substitute “shall make a hospital order”;

- (c) in subsection (4), the words “an order under subsection (1)(a) or” are repealed.

(3) Section 52 (effect of direction for detention during Her Majesty’s pleasure) of the Mental Health Act 1998 is repealed.

(4) Where immediately before the commencement of this section an order referred to in subsection (1) is in force in relation to any person, it shall have effect as a hospital order together with a restriction order, made under the said section 54 without limit of time on the date when the direction was given.

Nearest
relative of
patient.

4. (1) In section 40 (appointment by court of acting nearest relative) of the Mental Health Act 1998 —

- (a) in subsection (2), for paragraph (a) substitute —

“(a) the patient;

(aa) any relative of the patient;”;

- (b) in subsection (3) —

(i) at the end of paragraph (c) omit “or”; and

(ii) after paragraph (d) insert “; or

(e) that the patient objects to the nearest relative acting as such.”.

(2) In section 41 (discharge and variation of s.40 orders) of that Act —

- (a) in subsection (1), for paragraphs (a) and (b) substitute —

“(a) in any case, by the patient;

(b) in any case, by the person having the functions of the nearest relative of the patient by virtue of the order;

(c) where the order was made on the ground specified in section 40(3)(a) or (b), or where the person who was the nearest relative of the patient when the order was made has ceased to be his or her nearest relative, by the nearest relative of the patient.”;

- (b) for subsection (2) substitute —

“(2) An order made under section 40 in respect of a patient may be varied by the High Court upon application made by —

- (a) the patient,
- (b) the person having the functions of the nearest relative by virtue of the order, or
- (c) an approved social worker,

by substituting for the person mentioned in paragraph (b) the Department or 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.”.

5. (1) In section 80 (powers of Mental Health Review Tribunal) of the Mental Health Act 1998, for subsection (1) substitute — Discharge of patient.

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

- (a) the Tribunal shall direct the discharge of a patient liable to be detained under section 2 if they are not satisfied —
 - (i) that the patient is then suffering from mental disorder or from mental disorder of a nature or degree which warrants detention in a hospital for assessment (or for assessment followed by medical treatment) for at least a limited period; or
 - (ii) that the patient’s detention as aforesaid is justified in the interests of the patient’s own health or safety or with a view to the protection of other persons;
- (b) the Tribunal shall direct the discharge of a patient liable to be detained otherwise than under section 2 if they are not satisfied —
 - (i) that the patient is then suffering from mental illness, psychopathic disorder, severe mental impairment or mental impairment or from any of those forms of disorder of a nature or degree which makes it appropriate for the patient to

be liable to be detained in a hospital for medical treatment; or

- (ii) that it is necessary for the health or safety of the patient or for the protection of other persons that the patient should receive such treatment; or
- (iii) in the case of an application by virtue of section 74(1)(i), that the patient, if released, would be likely to act in a manner dangerous to other persons or to the patient.”.

(2) In section 81 (power to discharge restricted patients) of that Act, for subsections (1) and (2) substitute —

“(1) Where an application to the Tribunal is made by a restricted patient who is subject to a restriction order, or where the case of such a patient is referred to the Tribunal, they shall direct the absolute discharge of the patient if —

- (a) they are not satisfied as to the matters mentioned in section 80(1)(b)(i) or (ii); and
- (b) they are 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), subsection (1)(a) applies but subsection (1)(b) does not apply, the Tribunal shall direct the conditional discharge of the patient.”.

Constitution
of Tribunal.

6. (1) Paragraph 1 of Schedule 3 (Mental Health Review Tribunal) to the Mental Health Act 1998 is amended as follows —

- (a) in sub-paragraph (b) (medical members), for “3 persons” substitute “5 persons”;
- (b) in sub-paragraph (c) (lay members), for “3 persons” substitute “4 persons”.

(2) After paragraph 2 of Schedule 3 to the Mental Health Act 1998 insert —

“**2A.** If there is good cause to do so, Tynwald may by resolution remove from office a member (other than the High Bailiff) of the Mental Health Review Tribunal.”.

7. In section 36 (interpretation) of the Limitation Act 1984 — Amendment of Limitation Act 1984.
(a) in subsection (3), for “1974” substitute “1998”;
(b) after subsection (4) insert — [c.18]

“(4A) The Council of Ministers may by order amend subsection (4)(a) to take account of any change in the law of any part of the United Kingdom or any of the Channel Islands.

(4B) An order under subsection (4A) shall not have effect unless it is approved by Tynwald.”.

8. (1) This Act may be cited as the Mental Health (Amendment) Act 2006. Short title and commencement.

(2) Sections 1, 2 and 3 and the Schedule shall come into operation on such day or days as the Department of Health and Social Security may by order appoint.

Section 1.

SCHEDULE

TRANSFER OF PATIENTS

“PART 6

TRANSFER OF PATIENTS

Introductory. **88.** (1) In this Part —

“appropriate authority”, in relation to a relevant territory, means such authority exercising functions in that territory as may be prescribed;

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Department;

“relevant territory” means such of the following territories as may be prescribed (either generally or in relation to any specified provision of this Part) —

- (a) England and Wales;
- (b) Scotland;
- (c) Northern Ireland;
- (d) the Bailiwick of Jersey;
- (e) the Bailiwick of Guernsey.

(2) References in this Part to a hospital, being a hospital in the Island, shall be construed as references to a hospital within the meaning of Part 2.

(3) Section 43 has effect as if references in that section to Part 2 included references to this Part, so far as this Part applies to patients removed to the Island thereunder.

Removal of certain patients to relevant territory.

89. (1) This section applies to a patient who —

- (a) is for the time being liable to be detained under this Act;
- (b) is for the time being subject to guardianship by virtue of a guardianship application under section 7 or a guardianship order; or
- (c) in respect of whom a supervision and treatment order under section 54(1)(ca) of the Criminal Jurisdiction Act 1993 is for the time being in force,

[c.9]

[c.15] other than a patient who is liable to be detained by virtue of paragraph 1 or 3 of Schedule 2A to the Summary Jurisdiction Act 1989 or section 54(4) of or Schedule 1A to the said Act of 1993 (interim hospital orders and remands to hospital).

(2) If it appears to the Department that —

- (a) suitable arrangements have been made for a patient's treatment, assessment, care, supervision or control in a relevant territory; and
- (b) it is in the interests of the patient to remove the patient to a relevant territory,

the Department may authorise the removal of the patient to that territory and may give any necessary directions for the patient's conveyance to the destination.

(3) Where —

- (a) a person is subject to a hospital order with a restriction order; and
- (b) the Department has authorised, or intends to authorise, the removal of that person to a relevant territory under subsection (2),

the Department of Home Affairs may direct that the person be kept in custody in such place of safety as that Department may direct until such removal.

(4) In the case of a patient who is subject to a restriction order, restriction direction or limitation direction —

- (a) subsection (2) has effect with the omission of paragraph (b); and
- (b) if the order or direction was of limited duration, that order or direction and any related hospital order, transfer direction or hospital direction shall continue in force so as to apply to the patient if the patient returns to the Island at any time before the end of the period for which it would have continued in force.

(5) Except as provided by subsection (4)(b), where the patient is removed from the Island in pursuance of subsection (2), any application, order or direction by virtue of which the patient is liable to be detained or subject to guardianship or the patient's discharge is restricted, or any supervision and treatment order, as the case may be, shall cease to have effect.

90. (1) The Department may by regulations provide that a specified order, direction or other act authorising a patient to be detained or restricting a patient's discharge under the law of a relevant territory is to be treated for the purposes of this Act as equivalent to a specified application, order or direction under Part 2 or 3, or under the Summary Jurisdiction Act 1989 or the Criminal Jurisdiction Act 1993, by virtue of which a patient is liable to be detained or the patient's discharge is restricted, as the case may be.

Detained patient removed from relevant territory.

(2) Subsections (3) to (5) apply to a patient authorised to be detained under the law of a relevant territory who is removed to the Island from that territory under a provision corresponding or similar to section 89.

(3) The patient shall be treated for the purposes of this Act as if —

- (a) the patient were suffering from such form of mental disorder, and
- (b) on the date of arrival in the Island the patient had been admitted to such hospital, in pursuance of such application, order or direction made or given on that date,

as is recorded in that patient's case in accordance with regulations; and references in this Act to the form or forms of mental disorder specified in the relevant application, order or direction shall be construed as including references to the form or forms of mental disorder so recorded.

(4) Where the patient was immediately before removal liable to be detained by virtue of an order, direction or other act made, given or done —

- (a) when a sentence of imprisonment, detention or custody was imposed by a court in the relevant territory, or
- (b) while the patient was serving such a sentence,

the patient shall be treated as if the sentence were a sentence of custody imposed by a court in the Island.

(5) Where the patient was immediately before removal subject to an order, direction or other act restricting the discharge of the patient, being an order, direction or act of limited duration, the order or direction to which the patient is subject by virtue of subsection (3) shall expire on the date on which the first-mentioned order, direction or act would have expired if the patient had not been removed.

Other patients removed from relevant territory.

91. (1) The Department may by regulations specify any kind of care, supervision or control of patients under the law of a relevant territory (an "equivalent regime") which is to be treated for the purposes of this section as equivalent to —

- (a) guardianship by virtue of a guardianship application under section 7 or a guardianship order; or
- (b) supervision and treatment by virtue of a supervision and treatment order under section 54(1)(ca) of the Criminal Jurisdiction Act 1993.

(2) A patient subject to an equivalent regime in a relevant territory who is removed to the Island under a provision corresponding or similar to section 89 shall be treated for the purposes of this Act as if —

- (a) the patient were suffering from such form of mental disorder as is recorded in that patient's case in accordance with regulations,
- (b) on the date of arrival at the place where the patient is to reside the patient had been so received in pursuance of a guardianship application, guardianship order or supervision and treatment order, as the case may be, and
- (c) the application had been accepted or the order had been made, as the case may be, on that date;

and references in this Act to the form or forms of mental disorder specified in the relevant application or order shall be construed as including references to the form or forms of mental disorder so recorded.

Transfer of responsibility for certain patients.

92. (1) If it appears to the Department of Home Affairs, in the case of a patient who —

- (a) is subject to a restriction order or restriction direction;
- (b) has been conditionally discharged under section 49 or 81; and
- (c) intends to remove, or has removed, from the Island to a relevant territory,

that a transfer under this subsection would be in the interests of the patient, that Department may, with the consent of the appropriate authority, transfer responsibility for the patient to that authority.

(2) A patient responsibility for whom is transferred to the Department of Home Affairs by an appropriate authority, with the consent of that Department, under a provision corresponding or similar to subsection (1) shall be treated —

- (a) as if on the date of the transfer the patient had been conditionally discharged under section 49 or 81; and
- (b) as if the patient were subject to a restriction order or restriction direction.

(3) Where a patient referred to in subsection (2) was immediately before the transfer subject to an order or direction restricting the patient's discharge, being an order or direction of limited duration, the restriction order or restriction direction to which the patient is subject by virtue of subsection (2) shall expire on the date on which the first-mentioned order or direction would have expired if the transfer had not been made.

93. (1) The Department may by regulations specify any form of care, supervision or control of patients under the law of a relevant territory which is to be treated for the purposes of this section as equivalent to after-care under supervision (an "equivalent regime"). Patients subject to other regimes.

- (2) A supervision application may be made in respect of a patient who —
- (a) is subject in a relevant territory to an equivalent regime; and
 - (b) intends to remove, or has removed, from that territory in order to reside in the Island.

(3) The provisions of this Act relating to supervision applications, or patients subject to after-care under supervision, shall apply in relation to a patient in respect of whom a supervision application is or is to be made by virtue of this section, subject to such modifications as are prescribed.

(4) The Department may by regulations provide that, subject to such conditions as are prescribed, a patient who —

- (a) is subject to after-care under supervision; and
- (b) intends to remove, or has removed, from the Island in order to reside in a relevant territory,

shall cease to be so subject.

Removal of
foreign
patients.

94. (1) This section applies to any patient who is neither a British citizen nor a Commonwealth citizen having the right of abode in the Island by virtue of section 2(1)(b) of the Immigration Act 1971 (an Act of Parliament), as it has effect in the Island, being a patient who is receiving treatment for mental illness as an in-patient in a hospital in the Island and is detained pursuant to —

- (a) an application for admission for treatment;
- (b) a hospital order; or
- (c) an order or direction under any enactment having the same effect as a hospital order,

other than a patient who is liable to be detained by virtue of paragraph 1 or 3 of Schedule 2A to the Summary Jurisdiction Act 1989 or section 54(4) of or Schedule 1A to the said Act of 1993 (interim hospital orders and remands to hospital).

(2) If it appears to the Department that suitable arrangements have been made for the removal of a patient to whom this section applies to a country or territory outside the British Islands and for the patient's treatment, assessment, care, supervision or control there and that it is in the interests of the patient to remove the patient, the Department may, subject to subsection (3) —

- (a) by warrant authorise the removal of the patient from the place where the patient is receiving treatment as mentioned in subsection (1); and
- (b) give such directions as the Department thinks fit for the conveyance of the patient to the patient's destination in that country or territory and for the patient's detention in any place or on board any ship or aircraft until arrival at any specified port or place in any such country or territory.

(3) The Department shall not exercise its powers under subsection (2) in the case of any patient except with the approval of the Tribunal.

(4) Where the Department exercises its powers under subsection (2) in respect of a patient subject to a restriction order or restriction direction of limited duration, that order or direction and any related hospital order or transfer direction shall continue in force so as to apply to the patient if the patient returns to the Island at any time before the end of the period for which it would have continued in force.

(5) Except as provided by subsection (4), where a patient liable to be detained by virtue of an application, order or direction under Part 2 or 3 or under the Criminal Jurisdiction Act 1993 or the Summary Jurisdiction Act 1989 is removed from the Island in pursuance of arrangements referred to in subsection (2), the application, order or direction shall cease to have effect when the patient is duly received into a hospital or other institution in pursuance of those arrangements.

Powers of
detention.

95. (1) Any person who under any provision corresponding or similar to section 18 or 134 may be taken into custody in a relevant territory may be taken into custody in, and returned to the territory in question from, the Island by an approved social worker or a constable.

(2) A person shall not be returned to a relevant territory under subsection (1) unless the Department is satisfied that the return is appropriate in the circumstances and has authorised it.

(3) A person who is returned to a relevant territory under subsection (1) shall be conveyed in accordance with any necessary directions by the Department.

(4) A patient being conveyed to —

(a) a hospital or other institution under section 90(2); or

(b) a place referred to in section 91(2)(b),

shall be deemed to be in legal custody, and section 134 shall apply to the patient as if the patient were in legal custody by virtue of section 133.

(5) The reference to an approved social worker or a constable in subsection (1), and in section 134 as applied by subsection (4), includes a person of such a description, or holding such an office or exercising such functions in a relevant territory, as may be prescribed.”.