

MENTAL HEALTH ACT 1959

7 & 8 ELIZ. 2, CHAPTER 72

(Unrepealed provisions)

PART II

LOCAL AUTHORITY SERVICES

Functions of Welfare Authorities

8.—(1) For the purposes of subsection (8) of section twenty-one of the National Assistance Act 1948 (which restricts the duties of local authorities in respect of the provision of accommodation under that section by reference to the provision authorised or required to be made under other enactments) no account shall be taken of the provision authorised or required to be made by [local social services authorities]¹ under [paragraph 2 of Schedule 8 to the National Health Service Act 1977]² with respect to residential accommodation for persons who are or who have been suffering from mental disorder.

(2) The persons referred to in subsection (1) of section twenty-nine of the said Act of 1948 (which section enables local authorities to make arrangements for promoting the welfare of blind persons and other disabled persons described in the said subsection (1) shall include mentally disordered persons of any description; and for the purposes of subsection (6) of that section (which, among other things, excludes from that section the provision of accommodation or services required to be provided under the National Health Service Act 1946), no account shall be taken of the provisions of [Schedule 8 to the National Health Service Act 1977]² with respect to the provision of accommodation or services for such persons.

(3) Subsection (2) of this section shall not affect the operation of the provisions of Part IV of the National Assistance Act 1948 relating to [charities for disabled persons]³.

(4) Nothing in this section shall be construed as requiring a local authority to make a provision for the same purposes both under . . . Part III of the National Assistance Act 1948 [and under Schedule 8 to the National Health Service Act 1977]².

¹ Words in square brackets substituted by Local Government Act 1972.

² Words in square brackets substituted by National Health Service Act 1977.

³ Words in square brackets substituted by Residential Homes Act 1980.

9.— [*Repealed w.e.f. 14 October 1991 by Children Act 1989, s. 108(7) and Sch. 15*]

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PART IX

MISCELLANEOUS AND GENERAL

Offences

Amendment of Sexual Offences Act 1956

127.—(1) The Sexual Offences Act 1956 shall be amended as follows:—

- (a) for section seven there shall be substituted the following section:—

“Intercourse with defective

7.—(1) It is offence, subject to the exception mentioned in this section, for a man to have unlawful sexual intercourse with a woman who is a defective

(2) A man is not guilty of an offence under this section because he has unlawful sexual intercourse with a woman if he does not know and has no reason to suspect her to be a defective.”;

- (b) for section forty-five there shall be substituted the following section:—

“Meaning of ‘defective’

45. In this Act ‘defective’ means a person suffering from severe subnormality within the meaning of the Mental Health Act 1959.”;

and section eight of that Act shall cease to have effect.

- (2) [*Repealed by the Guardianship Act, 1973, s. 9 and Sch. 3.*]

Sexual intercourse with patients

128.—(1) Without prejudice to section seven of the Sexual Offences Act 1956 it shall be an offence, subject to the exception mentioned in this section,—

- (a) for a man who is an officer on the staff of or is otherwise employed in, or is one of the managers of, a hospital or mental nursing home to have unlawful sexual intercourse with a woman who is for the time being receiving treatment for mental disorder in that hospital or home, or to have such intercourse on the premises of which the hospital or home forms part with a woman who is for the time being receiving such treatment there as an out-patient;
- (b) for a man to have unlawful sexual intercourse with a woman who is a mentally disordered patient and who is subject to this guardianship under [the Mental Health Act 1983]¹ or is otherwise in his custody or care under [the Mental Health Act 1983]¹ or in pursuance of arrangements under . . . Part III of the National Assistance Act 1948 [or the National Health Service Act 1977]² or as a resident in a residential [care home within the meaning of Part I of the Registered Homes Act 1984]³.

(2) It shall not be an offence under this section for a man to have sexual intercourse with a woman if he does not know and has no reason to suspect her to be a mentally disordered patient.

(3) Any person guilty of an offence under this section shall be liable on conviction on indictment to imprisonment for a term not exceeding two years.

(4) No proceedings shall be instituted for an offence under this section by or with the consent of the Director of Public Prosecutions.

(5) This section shall be construed as one with the Sexual Offences Act 1956; and section forty-seven of that Act (which relates to the proof of exceptions) shall apply to the exception mentioned in this section.

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¹ Words in square brackets substituted by Mental Health Act 1983.

² Words in square brackets substituted by National Health Service Act 1977.

³ Words in square brackets substituted by Registered Homes Act 1984, Sch. 1.

⁴ Words in square brackets substituted by Local Government Act 1972. Ss. 195 and Sch. 23.

The first part of the Act deals with the powers of the Secretary of State in relation to the admission and detention of persons suffering from mental disorders in hospitals. It sets out the conditions under which a person may be admitted to a hospital and the circumstances in which a person already in a hospital may be detained. The Act also provides for the appointment of a Special Visitor to visit and report on the treatment of persons detained in hospitals.

The second part of the Act deals with the powers of the Secretary of State in relation to the admission and detention of persons suffering from mental disorders in hospitals. It sets out the conditions under which a person may be admitted to a hospital and the circumstances in which a person already in a hospital may be detained. The Act also provides for the appointment of a Special Visitor to visit and report on the treatment of persons detained in hospitals.

The third part of the Act deals with the powers of the Secretary of State in relation to the admission and detention of persons suffering from mental disorders in hospitals. It sets out the conditions under which a person may be admitted to a hospital and the circumstances in which a person already in a hospital may be detained. The Act also provides for the appointment of a Special Visitor to visit and report on the treatment of persons detained in hospitals.

The fourth part of the Act deals with the powers of the Secretary of State in relation to the admission and detention of persons suffering from mental disorders in hospitals. It sets out the conditions under which a person may be admitted to a hospital and the circumstances in which a person already in a hospital may be detained. The Act also provides for the appointment of a Special Visitor to visit and report on the treatment of persons detained in hospitals.

The fifth part of the Act deals with the powers of the Secretary of State in relation to the admission and detention of persons suffering from mental disorders in hospitals. It sets out the conditions under which a person may be admitted to a hospital and the circumstances in which a person already in a hospital may be detained. The Act also provides for the appointment of a Special Visitor to visit and report on the treatment of persons detained in hospitals.