ST HELENA

REVISED EDITION OF THE LAWS, 2017

PUBLIC HEALTH AND SAFETY

MENTAL HEALTH AND MENTAL CAPACITY ORDINANCE, 2015[1]

Ordinance 14 of 2015
In force 29 February 2016

Amended by Ordinance 14 of 2017

Subsidiary legislation:
COURTS (MENTAL CAPACITY AND APPOINTMENT OF DEPUTIES) RULES, 2016
Legal Notice 16 of 2016
Amended by L.N. 15/2017

MENTAL HEALTH AND MENTAL CAPACITY (LASTING POWER OF ATTORNEY) REGULATIONS, 2017
Legal Notice 22 of 2017 (in force 29 December 2017)

MENTAL HEALTH AND MENTAL CAPACITY ORDINANCE, 2015

ARRANGEMENT OF SECTIONS

1. Short title and commencement

CHAPTER 1
MENTAL HEALTH CARE AND TREATMENT

PART 1
INTERPRETATION

2. Interpretation

PART 2
APPLICATION OF CHAPTER AND APPROVAL OF PRACTITIONERS AND MEDICAL CENTRES

---

[1] *Under section 10 of the Revised Edition of the Laws Ordinance, 1999 this text is authoritative and is the sole authentic edition in respect of the law contained in it as at 29 December 2017.*

3. Application of Chapter
4. Approved practitioners
5. Approved medical centre

PART 3
COMPULSORY DETENTION IN HOSPITAL

6. Detention for assessment
7. Hospital treatment orders
8. Detention by registered nurse where patient already in hospital
9. Effect of hospital treatment order
10. Duty to keep patients under continuing review
11. Duty of ward manager to give information to detained patients
12. Patient's right to independent examination
13. Patient's right of access to legal practitioner
14. Discharge of patient
15. Duty of ward manager to inform nearest relative of discharge
16. Senior Medical Officer to consider representations
17. Leave of absence from hospital
18. Patients absent without leave
19. Transfer to hospital

PART 4
CONVEYING PATIENTS TO HOSPITAL

20. Warrant to search for and remove patients
21. Mentally disordered persons found in public places
22. Custody, conveyance and detention
23. Retaking of patients escaping from custody

PART 5
COMMUNITY TREATMENT ORDERS

24. Community treatment orders
25. Conditions
26. Duration of community treatment order
27. Effect of community treatment order
28. Duty to give information to community patients
29. Power to recall to hospital
30. Powers in respect of recalled patients
31. Effect of revoking community treatment order
32. Effect of expiry of community treatment order

PART 6
GUARDIANSHIP

33. Application for guardianship
34. Effect of guardianship order
35. Duty to keep patients under continuing review
36. Duty to give information to patients subject to guardianship

37. Transfer of guardianship
38. Discharge of guardianship
39. Senior Medical Officer to consider representations on guardianship
40. Patient subject to guardianship absent without leave

PART 7
MENTAL HEALTH TRIBUNAL

41. Composition of Mental Health Tribunal
42. Appeal against hospital treatment order
43. Appeal against community treatment order
44. Appeal against revocation of community treatment order
45. Renewal of hospital treatment order
46. Renewal of community treatment order
47. Tribunal procedure and evidence
48. Tribunal to give reasons

PART 8
PATIENTS CONCERNED IN CRIMINAL PROCEEDINGS OR UNDER SENTENCE

49. Remand to hospital for report on accused's mental condition
50. Remand of accused to hospital for treatment
51. Power of court to order detention in hospital or guardianship
52. Interim detention orders
53. Information to facilitate criminal guardianship orders
54. Effect of criminal guardianship orders
55. Restriction orders
56. Powers of Governor in respect of patients subject to restriction orders
57. Power to discharge patients subject to restriction orders
58. Applications concerning conditionally discharged patients
59. Transfer of prisoners to hospital
60. Further provisions as to transfer orders
61. Effect of detention under this Part
62. Variation of orders under this Part
63. Information about hospitals
64. Detention orders and overseas removal orders
65. Requirements as to evidence

PART 9
REMOVAL OF PATIENTS FROM ST HELENA

66. Removal of patients from St Helena
67. Restraint of a patient in transit
68. Further provisions as to overseas removal orders
69. Notifications

PART 10
MEDICAL TREATMENT

70. Patients to whom Part 10 applies

71. Treatment not requiring consent
72. Treatment requiring consent or second opinion
73. Plans of treatment
74. Withdrawal of consent
75. Urgent treatment
76. Prohibited treatments

PART 11
MISCELLANEOUS

77. Powers of entry and inspection
78. Welfare of certain hospital patients
79. Code of practice
80. General protection of detained patients
81. Complaint to Tribunal
82. Informal admission of patients
83. Accommodation for children
84. No duty to make further enquiries
85. Conflicts of interest
86. Protection for acts done in pursuance of this Chapter

PART 12
OFFENCES

87. Forgery and false statements
88. Ill-treatment of patients
89. Assisting patients to absent themselves without leave
90. Obstruction

PART 13
SUPPLEMENTARY

91. Regulations
92. Meaning of “relative" and “nearest relative”
93. Appointment by court of acting nearest relative

CHAPTER 2
MENTAL CAPACITY PROVISIONS

PART 1
PRELIMINARY

94. Interpretation

PART 2
PERSONS WHO LACK CAPACITY

95. The principles
96. Persons who lack capacity
97. Inability to make decisions

98. Best interests

PART 3
ACTS IN CONNECTION WITH CARE OR TREATMENT

99. Acts in connection with care or treatment
100. Limitations on acts under section 99
101. Payment for necessary goods and services
102. Expenditure

PART 4
LASTING POWERS OF ATTORNEY

103. Lasting powers of attorney
104. Appointment of donees
105. Lasting powers of attorney: restrictions
106. Scope of lasting powers of attorney: gifts
107. Revocation of lasting powers of attorney, etc.
108. Protection of donee and others if no power created or power revoked
109. Powers of court in relation to validity of lasting powers of attorney
110. Powers of court in relation to operation of lasting powers of attorney

PART 5
ADVANCE DECISIONS TO REFUSE TREATMENT

111. Advance decisions to refuse treatment
112. Validity and applicability of advance decisions
113. Effect of advance decisions

PART 6
GENERAL POWERS OF COURT AND APPOINTMENT OF DEPUTIES

114. Power to make declarations
115. Powers to make decisions and appoint deputies: general

116. Powers to make decisions and appoint deputies: minors
117. Section 115 powers: personal welfare
118. Section 115 powers: property and affairs
119. Appointment of deputies
120. Restrictions on deputies

PART 7
EXCLUDED DECISIONS AND DECLARATORY PROVISIONS

121. Excluded decisions
122. Mental health care and treatment
123. Voting rights

PART 8
PUBLIC GUARDIAN

124. Public Guardian
125. Functions of Public Guardian
126. Annual report

PART 9
SUPPLEMENTARY POWERS, PRACTICE AND PROCEDURE OF COURT

127. Interim orders and directions
128. Power to call for reports
129. Applications to court
130. Court Rules
131. Costs

PART 10
MISCELLANEOUS

132. Codes of practice
133. Ill-treatment
134. Information relating to persons who lack capacity
135. Scope of Chapter
136. Amendment of Schedules
137. Regulations
138. Repeal and transitional provisions

First Schedule: Lasting Powers of Attorney: Formalities
Second Schedule: Property and Affairs: Supplementary Provisions
Third Schedule: Savings and Transitional Provisions

AN ORDINANCE to make provision for the reception, detention, care and treatment of mentally disordered persons; to make provision relating to persons who lack capacity; and for connected or incidental purposes.

Short title and commencement

1. This Ordinance may be cited as the Mental Health and Mental Capacity Ordinance, 2015 and comes into force on publication.

CHAPTER 1
MENTAL HEALTH CARE AND TREATMENT

PART 1
INTERPRETATION

Interpretation

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

"absent without leave" has the meaning given by section 18 and any reference to absence

without leave is a reference to being liable to be taken into custody under that section;

"Advisory Committee" means the Advisory Committee on the Prerogative of Mercy established by section 30(1) of the Constitution;

"appropriate medical treatment" in relation to a person suffering from mental disorder is a reference to medical treatment which is appropriate in his or her case, taking into account the nature and degree of the mental disorder and all other circumstances of his or her case;

"approved medical centre" means a medical centre designated under section 5;

"approved doctor" means a doctor approved under section 4(1);

"approved professional" means a nurse, social worker or other professional approved under section 4(2);

"approved practitioner" means an approved doctor or an approved professional;

"available", in relation to treatment, does not necessarily mean available in St Helena;

"Chief Immigration Officer" means the person for the time being appointed to that position under the Immigration Ordinance, 2011;

"Chief Magistrate" means the person for the time being appointed to that position under the Magistrates' Court Ordinance, 2011;

"code of practice" has the meaning given by section 79;

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

"community treatment order" means an order made under section 24;

"detention order" has the meaning given by section 51;

"guardianship order" has the meaning given by section 33;

"hospital" means the General Hospital in Jamestown or any other hospital approved by the Governor for the purposes of this Chapter;

"hospital treatment order" has the meaning given by section 7;

"interim detention order" has the meaning given by section 52;

"learning disability" means a state of arrested or incomplete development of the mind which includes significant impairment of intelligence and social functioning;

"legal practitioner" means—

(a) the Public Solicitor appointed under the Legal Aid, Assistance and Services Ordinance, 2017; or

(b) a Lay Advocate appointed under that Ordinance;

"medical practitioner" means a person qualified to practise medicine in St Helena in accordance with the Medical Practitioners Ordinance, 1910;

"medical treatment" includes nursing, psychological intervention and specialist mental health habilitation, rehabilitation and care; and a reference to medical treatment in relation to mental disorder is a reference to medical treatment the purpose of which is to alleviate, or to prevent a worsening of, the disorder or one or more of its symptoms or manifestations;

"mental disorder" means any disorder or disability of the mind: but—

(a) dependence on alcohol or drugs is not a disorder or disability of the mind;

(b) for the purposes of hospital treatment orders and community treatment orders, a learning disability is not a disorder or disability of the mind, unless it is associated with abnormally aggressive or seriously irresponsible conduct;

"nearest relative", in relation to a patient, has the meaning given by section 92;

"order for discharge" has the meaning given by section 14;

"overseas removal order" has the meaning given by section 66;

"patient" means a person suffering or appearing to suffer from mental disorder;

"Public Guardian" means the officer appointed as such under section 124;

"registered nurse" means a nurse registered under section 5 of the Nurses and Midwives Ordinance, 1987;
"relative" has the meaning given by section 92;
"restriction order" has the meaning given by section 55;
"Senior Medical Officer" means the person for the time being holding the post of Senior Medical Officer/Clinical Director, including any person acting in that capacity;
"transfer order" has the meaning given by section 59;
"Tribunal" means the Mental Health Tribunal constituted under section 41; and
"ward manager" means the registered nurse or other medical professional appointed to be in charge of the in-patient accommodation at a hospital or approved medical centre (or in his or her absence, or if no such appointment has been made, the senior nurse on duty).

(2) If this Chapter permits one person to act on another's behalf (in those terms), express authorisation is not required.

PART 2
APPLICATION OF CHAPTER AND APPROVAL OF PRACTITIONERS AND MEDICAL CENTRES

Application of Chapter

3. This Chapter deals with the reception, care and treatment of mentally disordered patients, and other related matters.

Approved practitioners

4. **(1)** The Governor may approve any medical practitioner as an approved doctor for the purposes of this Chapter.

(2) The Governor may approve any nurse, social worker or other professional as an approved professional for the purposes of this Chapter.

(3) The list of approved practitioners must be reviewed by the Senior Medical Officer annually and may be amended at any time by the Governor.

(4) Before making or amending the list the Governor must consult the Senior Medical Officer on the appropriate qualifications, training and experience required by different classes of professionals—
(a) for initial inclusion on the list; and
(b) for keeping their name on the list.

(5) If the Senior Medical Officer is also an approved doctor, he or she may carry out any of the functions of an approved doctor under this Chapter.

Approved medical centre

5. **(1)** The Governor may designate any place as an approved medical centre for the purposes of this Chapter.

(2) Authorisation may be permanent or temporary and may be absolute or

conditional.

(3) The Governor may amend or revoke an authorisation.

(4) Before exercising a power under this section the Governor must consult the Senior Medical Officer.

PART 3
COMPULSORY DETENTION IN HOSPITAL

Detention for assessment

6. **(1)** A patient may be detained at a hospital or approved medical centre by order of an approved doctor for up to 72 hours for the purposes of assessment.

(2) An order for detention for assessment may be made on the grounds that the patient—

(a) is suffering 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; and

(b) ought to be detained for that purpose for his or her own health or safety or to protect others.

(3) The approved doctor must—

(a) certify at the time of detention that in his or her opinion the conditions set out in subsection (2) are satisfied; and

(b) record the reasons for that decision.

(4) The approved doctor must arrange for the patient to be interviewed by an approved professional as soon as practicable.

(5) The approved doctor must as soon as practicable decide whether in his or her opinion the patient meets the grounds for detention for treatment.

(6) An approved doctor who decides that a patient does not meet the grounds for detention for treatment must—

(a) record the reasons for that decision; and

(b) discharge the patient immediately from detention under this section.

(7) An approved doctor who decides that a patient does meet the grounds for detention for treatment must—

(a) convene a multi-disciplinary conference of approved practitioners to consider the findings of the assessment and any other pertinent information relating to the patient;

(b) if practicable, arrange for the conference to include all approved practitioners who have previous acquaintance with the patient; and

(c) arrange for the conference to be held during the first 72 hours of the patient's detention for assessment.

(8) A patient who is not detained for treatment must be discharged immediately

after being detained for assessment for 72 hours.

Hospital treatment orders

7. **(1)** A patient may be detained at a hospital for the purposes of treatment in accordance with an order under this section (a **"hospital treatment order"**).

(2) A hospital treatment order may not be made unless—

(a) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him or her to receive medical treatment in a hospital;

(b) it is necessary for the health or safety of the patient or for the protection of others that he or she should receive treatment which cannot be provided unless he or she is detained under this section;

(c) the patient has been assessed by an approved doctor within the preceding 72 hours (either voluntarily or during detention for assessment under section 6);

(d) a multi-disciplinary conference of approved practitioners has met to consider the findings of the assessment and any other pertinent information relating to the patient and has approved the patient's detention for treatment; and

(e) appropriate medical treatment is available for him or her.

(3) The multi-disciplinary conference must, if practicable, include all approved practitioners who have previous acquaintance with the patient.

(4) If a hospital treatment order is made, it must be by at least one approved doctor and one approved professional, each of whom—

(a) has seen the patient within the preceding 72 hours;

(b) certifies that in his or her opinion the conditions set out in subsection (2) are satisfied; and

(c) must record the reasons for his or her decision.

(5) A patient may be detained in hospital under a hospital treatment order while it has effect.

(6) A hospital treatment order lasts for 6 months beginning with the date on which it is made and ceases to have effect at the end of that period, unless—

(a) the patient is discharged during that period;

(b) the order is renewed or further renewed by the Tribunal under Part 7; or

(c) section 31(5) applies.

Detention by registered nurse where patient already in hospital

8. **(1)** This section applies if a patient is receiving treatment as an in-patient in a hospital or an approved medical centre and a registered nurse thinks that—

(a) the patient is suffering from mental disorder to such a degree that it is necessary for his or her health or safety or for the protection of others for him or her to be immediately prevented from leaving the hospital or approved medical centre; and

(b) it is not practicable to secure the immediate attendance of an approved doctor.

(2) The patient may be detained in the hospital or approved medical centre, which may last until an approved doctor has arrived and decided whether to make an order under

section 6, but may not last for more than 6 hours.

(3) A patient may be detained under subsection (2) only if the registered nurse records in writing that subsection (1) is satisfied.

(4) A registered nurse who makes a record under subsection (3) must arrange for it to be delivered to the Senior Medical Officer as soon as possible.

Effect of hospital treatment order

9. If a hospital treatment order is made in respect of a person, any previous order under this Chapter for his or her detention or treatment (including a community treatment order) or reception into guardianship ceases to have effect.

Duty to keep patients under continuing review

10. The Senior Medical Officer must keep under review a patient detained for treatment pursuant to a hospital treatment order to ensure that the grounds for detention continue to be met.

Duty of ward manager to give information to detained patients

11. **(1)** If a person is detained under this Chapter, the ward manager must, as soon as practicable, take any practicable steps to ensure that the patient understands—

(a) under which provision of this Chapter he or she is for the time being detained;
(b) the effect of that provision;
(c) what rights to apply to the Tribunal are available; and
(d) any relevant effect of provisions of this Chapter relating to—
(i) independent examination;
(ii) legal practitioners;
(iii) nearest relatives;
(iv) the code of practice; and
(v) complaints.

(2) Information given under subsection (1) must be given both orally and in writing.

(3) The ward manager must take any practicable steps to give a copy of information provided in writing in accordance with subsection (2) to any person who appears to be the patient's nearest relative as soon as reasonably practicable after giving the information to the patient: but such information must not be given contrary to the patient's wishes.

(4) The functions of the ward manager under this section may be discharged by—
(a) an approved practitioner; or
(b) a registered nurse involved in the care of the patient.

Patient's right to independent examination

12. **(1)** A patient who has been detained under a hospital treatment order is

entitled to be examined in private at any reasonable time by an independent psychiatrist or other suitably qualified professional person.

(2) The nearest relative of a patient who has been detained under a hospital treatment order is entitled to arrange for the patient to be examined in private at any reasonable time by an independent psychiatrist or other suitably qualified professional person: but this subsection does not allow any examination to which the patient objects.

(3) This section does not require the Senior Medical Officer or the St Helena Government to arrange or fund an examination.

Patient's right of access to legal practitioner

13. (1) A patient who has been detained under a hospital treatment order is entitled to meet a legal practitioner in private at any reasonable time.

(2) The nearest relative of a patient who has been detained under a hospital treatment order is entitled to arrange for the patient to meet a legal practitioner in private at any reasonable time: but this subsection does not allow any meeting to which the patient objects.

(3) This section does not require the Senior Medical Officer or the St Helena Government to provide or fund any services of a legal practitioner.

Discharge of patient

14. (1) A patient who is liable to be detained under this Part ceases to be so liable if an order is made in writing discharging him or her absolutely from detention (an **"order for discharge"**).

(2) A community patient ceases to be liable to recall under Part 5 if an order for discharge is made under this section.

(3) If the Senior Medical Officer thinks that the grounds for detention of a patient under a hospital treatment order no longer apply, or may no longer apply, he or she must arrange for the patient as soon as practicable to be—

(a) assessed by an approved doctor; and

(b) interviewed by an approved professional.

(4) Whenever a patient is assessed under subsection (3), the Senior Medical Officer must, as soon as practicable, convene a multi-disciplinary conference of approved practitioners, to consider the findings of the assessment and any other pertinent information relating to the patient.

(5) The conference must, if practicable, include all approved practitioners who have been professionally concerned with the patient's medical treatment during detention.

(6) If the conference approves the revocation of the hospital treatment order, an order for discharge must be made by one approved doctor and one approved professional, each of whom—

(a) has seen the patient within the preceding 72 hours;
(b) certifies that in his or her opinion the grounds for detaining the patient under a hospital treatment order no longer apply; and
(c) records the reasons for his or her decision.

Duty of ward manager to inform nearest relative of discharge

15. (1) The ward manager must take such steps as are practicable to inform the person (if any) whom the ward manager thinks is the patient's nearest relative if the patient—
(a) was detained for assessment or treatment under this Part and is to be discharged; or
(b) is a community patient and is to be discharged from hospital under Part 5;
but the ward manager must not take any such steps against the patient's wishes.

(2) The information under subsection (1) must be given at least 3 days before the discharge, if practicable.

Senior Medical Officer to consider representations

16. (1) The Senior Medical Officer must consider any representations requesting that a person be detained for assessment or treatment if the representations are made by—
(a) one or more relatives of the person; or
(b) an approved practitioner.

(2) The Senior Medical Officer must consider any representations requesting that a patient who is detained under a hospital treatment order be discharged from hospital because the grounds for an order no longer apply, if the representations are made by—
(a) the patient;
(b) the patient's nearest relative; or
(c) an approved practitioner.

(3) Upon receiving representations the Senior Medical Officer must—
(a) review the patient's medical notes if available; and
(b) make such enquiries as he or she thinks appropriate in the circumstances.

(4) In the case of a patient who is subject to a hospital treatment order, enquiries under subsection (3)*(b)* must, where practicable, include consulting all approved practitioners who have been involved in the patient's care since the making of the order.

(5) Enquiries under subsection (3)*(b)* may include asking the patient voluntarily to be assessed by an approved doctor and interviewed by an approved professional.

(6) If the Senior Medical Officer has been involved with a patient's medical treatment during detention under a hospital treatment order—
(a) the Senior Medical Officer must arrange for another approved doctor to undertake the review under subsection (3);
(b) if the approved doctor concludes that the grounds for detention no longer apply, or might no longer apply, he or she must convene a multi-disciplinary conference of approved practitioners to consider the findings of the review and any other

pertinent information relating to the patient; and

(c) the conference must, where practicable, include all approved practitioners who have been involved in the patient's care since the making of the order.

Leave of absence from hospital

17. (1) This section applies to a patient who is detained in a hospital or approved medical centre under this Part.

(2) The Senior Medical Officer may grant the patient leave to be absent from the hospital or centre.

(3) Leave may be subject to conditions which the Senior Medical Officer thinks necessary in the patient's interests or for the protection of others.

(4) Leave may be granted—

(a) indefinitely;

(b) for specified occasions; or

(c) for a specified period (which may be extended by further leave granted in the patient's absence).

(5) The Senior Medical Officer must not grant leave for a period of 7 days or more (or extend a period so that it lasts for 7 days or more) without first considering whether the patient should be dealt with under a community treatment order.

(6) In granting leave the Senior Medical Officer may, if it appears to be necessary in the patient's interests or for the protection of others, direct that the patient remain in custody during his or her absence, in which case the patient may be kept in the custody of—

(a) any staff member of the hospital or centre from which the patient is absent; or

(b) any other person authorised in writing by the Senior Medical Officer.

(7) If the Senior Medical Officer thinks it necessary in the interests of a patient's health or safety or for the protection of others, the Senior Medical Officer may by notice in writing revoke the leave of absence and recall the patient to the hospital or centre.

(8) Notice under subsection (7) must be given to the patient or to a person in charge of the patient.

(9) Revocation of leave of absence does not allow detention of a person who has ceased to be liable for detention for treatment.

(10) The functions of the Senior Medical Officer under this section may be discharged on his or her behalf by—

(a) any approved doctor; or

(b) any approved professional authorised in writing by the Senior Medical Officer.

Patients absent without leave

18. (1) If a patient who is for the time being liable to be detained in a hospital or approved medical centre under this Chapter for assessment or treatment—

(a) is absent without leave under section 17;
(b) fails to return to the hospital or centre on the expiry of, or in accordance with a condition of, leave under section 17;
(c) fails to return to the hospital or centre on being recalled under section 17; or
(d) fails to comply with a condition of leave under section 17,

the patient may be taken into custody and returned to the hospital or centre.

(2) The patient referred to in subsection (1), or a community patient who is absent from the hospital to which he or she is recalled under Part 5, may be taken into custody and returned to the hospital or centre by—

(a) any approved professional;
(b) any staff member of the hospital or centre;
(c) a police officer; or
(d) any person authorised in writing by the Senior Medical Officer.

(3) A patient may not be taken into custody under this section after the end of the period—

(a) for which he or she is liable to be detained; or
(b) in the case of a community patient, during which the community treatment order is in force.

(4) A reference to **"returning"** a person who is absent without leave includes a reference to taking him or her to a hospital or other place for the first time if he or she has failed to comply with a requirement to go there.

Transfer to hospital

19. (1) If a patient is detained for assessment at an approved medical centre, the Senior Medical Officer may arrange for the patient to be transferred to a hospital if he or she thinks it—

(a) necessary to enable the assessment to be completed; or
(b) otherwise in the patient's best interests.

(2) If a patient transferred to a hospital under subsection (1) is not detained for treatment and is discharged, the Senior Medical Officer must arrange for the patient to be returned to the approved medical centre as soon as practicable: ~~Provided that~~ but this subsection does not apply if the patient declines the offer of transport.

(3) If a patient who was detained for assessment at an approved medical centre is subsequently detained for treatment before being transferred to a hospital, the Senior Medical Officer must arrange for the transfer as soon as practicable.

PART 4
CONVEYING PATIENTS TO HOSPITAL

Warrant to search for and remove patients

20. (1) Subsection (2) applies if the Chief Magistrate, or 2 justices of the peace, on information on oath laid by an approved practitioner think 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;
(b) being unable to care for himself or herself, is living alone in any place; or
(c) is dangerous to himself or herself or others.

(2) The Chief Magistrate or justices may issue a warrant authorising a police officer—
(a) to enter, if need be by force, any premises specified in the warrant in which the person is believed to be; and
(b) if the police officer thinks fit, to remove the person, as quickly as is reasonably practicable, to a hospital or approved medical centre.

(3) If the Chief Magistrate, or 2 justices of the peace, on information on oath laid by a police officer or a person authorised by virtue of this Chapter to take (or retake) a patient to any place or into custody, think that—
(a) there is reasonable cause to believe that the patient is to be found on premises; and
(b) admission to the premises has been refused or that a refusal of admission is likely,
the Chief Magistrate or the justices, as the case may be, may issue a warrant authorising a police officer to enter, if need be by force, and remove the patient.

(4) A person who is removed to a hospital or approved medical centre in the execution of a warrant issued under this section may be detained there for a period not exceeding 6 hours for the purpose of—
(a) enabling him or her to be examined by an approved doctor;
(b) enabling him or her to be interviewed by an approved professional; and
(c) making any necessary arrangements for his or her treatment or care.

(5) Information or a warrant under this section need not name the patient.

Mentally disordered persons found in public places

21. (1) If a police officer finds, in a place to which the public have access, a person whom the police officer thinks is suffering from mental disorder and is in immediate need of care or control, the police officer may, if he or she thinks it necessary in the interests of that person or for the protection of others, take the person, as quickly as is reasonably practicable, to a hospital or approved medical centre.

(2) A person who is taken to a hospital or approved medical centre under this section may be detained there for a period not exceeding 6 hours for the purpose of—
(a) enabling him or her to be examined by an approved doctor;
(b) enabling him or her to be interviewed by an approved professional; and
(c) making any necessary arrangements for his or her treatment or care.

Custody, conveyance and detention

22. (1) A person required or authorised by virtue of this Chapter to be taken to any place or detained in any place is, while being taken or detained, in legal custody.

(2) A person required or authorised by virtue of this Chapter to take a person into custody, or to take or detain any person, has all the powers, authorities, protection and privileges of a police officer for that purpose.

(3) A person taken into custody or detained by virtue of this Chapter may be searched by—

(a) the person taking the person into custody or detaining the person;

(b) a police officer; or

(c) an approved practitioner.

(4) A reference in this section to taking a person includes any similar expression used elsewhere in this Chapter.

Retaking of patients escaping from custody

23. (1) This section applies if a person who is in legal custody by virtue of this Chapter escapes.

(2) The person may be retaken by—

(a) the person in whose custody he or she was before the escape;

(b) a police officer; or

(c) an approved practitioner.

(3) In addition, if at the time of the escape the person was liable to detention under Part 3, or was a community patient who had been recalled under Part 5, he or she may be retaken by any person who could take him or her into custody in a case of absence without leave.

PART 5
COMMUNITY TREATMENT ORDERS

Community treatment orders

24. (1) The Senior Medical Officer may discharge a patient detained under a hospital treatment order and make a community treatment order if—

(a) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for the patient to receive medical treatment;

(b) it is necessary for his or her health or safety or for the protection of others that he or she should receive medical treatment;

(c) treatment can be provided without the patient continuing to be detained (subject to the possibility of recall);

(d) it is necessary that the Senior Medical Officer should be able to exercise the power of recall under this Part; and

(e) appropriate medical treatment is available for the patient.

(2) The Senior Medical Officer must not make a community treatment order unless—

(a) an approved doctor records in writing that in his or her opinion the criteria in subsection (1) are met; and

(b) an approved professional records in writing—

(i) that he or she agrees with that opinion; and
(ii) that it is appropriate to make the order.

(3) In considering the criterion in subsection (1)*(d)*, regard must be had in particular to—

(a) the patient's history of mental disorder and any other relevant factors; and
(b) what risk there would be of a deterioration of the patient's condition if he or she were not detained in the hospital (as a result of *inter alia* refusing or neglecting to receive medical treatment).

(4) A patient discharged under subsection (1) is subject to recall in accordance with this Part.

Conditions

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

(2) The order may specify conditions only if the approved practitioners acting under section 24 think them necessary or appropriate for—

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

(3) The order must include the condition that the patient makes himself or herself available for assessment by an approved doctor, and for interview by an approved professional, during the last 4 weeks of the period of 6 months beginning with the day on which the order was made.

(4) The Senior Medical Officer may from time to time by order in writing vary or suspend any conditions of a community treatment order.

(5) The Senior Medical Officer must consider any representations received from an approved practitioner about varying or suspending the conditions of a community treatment order.

(6) Failure to comply with a condition of a community treatment order may be taken into account in considering recall under this Part (but recall is not limited to cases of non-compliance).

Duration of community treatment order

26. A community treatment order expires when—

(a) the period of 6 months beginning with the day on which the order was made ends without the order being renewed by the Tribunal under Part 7;
(b) the patient is discharged under Part 3;
(c) the patient is discharged by the Tribunal under Part 7;
(d) the patient is removed from St Helena pursuant to an overseas removal order; or
(e) the order is revoked.

Effect of community treatment order

27. A hospital treatment order in respect of a patient does not cease to have effect if the patient becomes a community patient, but while the patient is a community patient—

(a) authority to detain him or her under the hospital treatment order is suspended; and

(b) he or she is not to be treated as liable to detention, for any purpose of this Chapter.

Duty to give information to community patients

28. (1) The Senior Medical Officer must, as soon as practicable, take such steps as are practicable to ensure that a community patient understands—

(a) the effect of the provisions of this Chapter applying to community patients; and

(b) what rights of applying to the Tribunal are available.

(2) For the purposes of subsection (1) information must be given orally and in writing.

(3) The Senior Medical Officer must, when the information is given to the patient under subsection (2) or within a reasonable time thereafter, take such steps as are practicable to furnish the person (if any) appearing to the Senior Medical Officer to be the patient's nearest relative with a copy of any such written information given to the patient: but such information must not be given against the patient's wishes.

(4) The functions of the Senior Medical Officer under this section may be discharged on the Senior Medical Officer's behalf by any approved practitioner.

Power to recall to hospital

29. (1) The Senior Medical Officer may recall a community patient to hospital if the Senior Medical Officer thinks that—

(a) the patient requires medical treatment in hospital for his or her mental disorder; and

(b) there would be a risk of harm to the patient's health or safety or to others if the patient were not recalled to hospital for that purpose.

(2) The Senior Medical Officer may also recall a community patient to hospital if the patient fails to comply with a condition of the community treatment order.

(3) A patient may be recalled to a hospital even though he or she is already there.

(4) The power of recall is exercised by giving notice in writing to the patient.

(5) The functions of the Senior Medical Officer under this section may be discharged on the Senior Medical Officer's behalf by any approved doctor.

Powers in respect of recalled patients

30. (1) This section applies to a community patient who is detained in a

hospital by virtue of a notice recalling him there.

(2) The Senior Medical Officer may by order in writing revoke the community treatment order if—

(a) an approved doctor records in writing that in his or her opinion the grounds for detention pursuant to a hospital treatment order are met; and

(b) an approved professional records in writing that—

(i) he or she agrees with that opinion; and

(ii) it is appropriate to revoke the community treatment order.

(3) The Senior Medical Officer may at any time by order in writing require the patient to be released, but an order under this subsection may not be made if the community treatment order has been revoked.

(4) If the period of 72 hours expires without either the patient being released or the community treatment order being revoked, the patient must be released.

(5) For purposes of subsection (4), the period of 72 hours begins with the time when the patient is first detained in hospital by virtue of the recall notice under section 29.

(6) A reference in this section to release is a reference to being released from detention by virtue of the recall notice, and if a patient is released—

(a) the recall notice lapses; and

(b) the patient remains subject to the community treatment order.

Effect of revoking community treatment order

31. (1) This section applies if a patient's community treatment order is revoked under this Part.

(2) The patient's hospital treatment order has effect as if the patient had never been discharged from hospital by virtue of the community treatment order.

(3) The provisions of this or any other Ordinance relating to patients detained or liable to be detained pursuant to a hospital treatment order apply to the patient as they did before the community treatment order was made.

(4) The ward manager must apply the provisions of section 11 about providing information.

(5) If a community treatment order is revoked more than 5 months after the day on which the hospital treatment order was made or last renewed, the hospital treatment order expires at the end of the period of 2 months beginning with the date of revocation, unless renewed by the Tribunal under Part 7.

Effect of expiry of community treatment order

32. On expiry of a community treatment order—

(a) the community patient is discharged absolutely from liability to recall under this Part; and

(b) the hospital treatment order ceases to have effect.

PART 6
GUARDIANSHIP

Application for guardianship

33. **(1)** A patient who has attained the age of 16 years may be received into guardianship pursuant to an order made by the Tribunal (a **"guardianship order"**).

(2) A guardianship order must not be made unless—

(a) the patient is suffering from mental disorder of a nature or degree which warrants his or her reception into guardianship under this section; and

(b) it is necessary in the patient's interests or for the protection of others that the patient should be so received.

(3) An application for a guardianship order may not be made unless—

(a) the patient has been assessed by an approved doctor, and interviewed by an approved professional, within the preceding 14 days either voluntarily or during detention for assessment; and

(b) a multi-disciplinary conference of approved practitioners has met to consider the findings of the assessment and any other pertinent information relating to the patient and has approved an application for a guardianship order.

(4) The conference must, if practicable, include all approved practitioners who have previous acquaintance with the patient.

(5) If the conference approves an application for a guardianship order, the Senior Medical Officer must within 14 days make an application to the Tribunal.

(6) An application must be accompanied by written reports from one approved doctor and one approved professional, each of whom—

(a) has seen the patient within the preceding 28 days;

(b) certifies that in his or her opinion the conditions in subsection (2) are satisfied; and

(c) records the reasons for his or her decision.

(7) An application must nominate to act as the patient's guardian either—

(a) the Crown; or

(b) another person (whether or not a public officer) who is approved by the Senior Medical Officer for the purpose and who confirms in writing willingness to act.

(8) An application must give such information as it reasonably can about how the proposed guardian could be expected to exercise in relation to the patient the powers conferred by a guardianship order.

(9) Before making an application the Senior Medical Officer must consult the person (if any) appearing to the Senior Medical Officer to be the patient's nearest relative, unless the Senior Medical Officer thinks that in the circumstances consultation is not reasonably practicable or would involve unreasonable delay.

(10) If the Tribunal decides to make a guardianship order, the following rules have effect for the purposes of appointing a guardian:

(a) If the application nominates a person whom the court thinks suitable and willing to act, the Tribunal must appoint that person;

(b) failing an appointment under paragraph *(a)*, the Tribunal may specify a person whom it thinks suitable and willing to act;

(c) failing an appointment under either paragraph *(a)* or *(b)*, the Tribunal must appoint the Crown.

(11) In determining an application for a guardianship order or any other matter under this Part, the Tribunal must apply the same procedure as for applications under Part 7.

(12) For the purposes of this section, the functions of the Crown are to be exercised by the Attorney General acting in the public interest—

(a) through a person appointed by the Attorney General; and

(b) in consultation with—

(i) the Senior Medical Officer;

(ii) one or more approved practitioners;

(iii) one or more suitably qualified professional persons chosen by the Attorney General; or

(iv) any combination of sub-paragraphs (i) to (iii) chosen by the Attorney General.

Effect of guardianship order

34. (1) A guardianship order confers on the person named as guardian, to the exclusion of any other person the power to—

(a) require the patient to reside at a place specified by the guardian;

(b) require the patient to attend at places and times so specified for the purpose of medical treatment, occupation, education or training; and

(c) require access to the patient to be given, at any place where the patient is residing, to any approved practitioner or other person so specified.

(2) If a patient is received into guardianship, any previous guardianship order or hospital treatment order ceases to have effect.

Duty to keep patients under continuing review

35. (1) The Senior Medical Officer must keep under review any patient received into guardianship to ensure that the grounds for the guardianship order continue to be met.

(2) The Senior Medical Officer must arrange for a patient received into guardianship to be assessed by an approved practitioner at regular intervals of not more than 3 months.

(3) The Senior Medical Officer must submit to the Tribunal at regular intervals of not more than 12 months written reports from one approved doctor and one approved professional, each of whom—

(a) has seen the patient within the preceding 28 days;
(b) certifies that in his or her opinion—
(i) the patient is suffering from mental disorder of a nature or degree which warrants his or her remaining subject to a guardianship order; and
(ii) it is necessary in the interests of the welfare of the patient or for the protection of others that the patient should remain subject to a guardianship order; and
(c) records the reasons for his or her decision.

Duty to give information to patients subject to guardianship

36. **(1)** The Senior Medical Officer must, as soon as practicable, take such steps as are practicable to ensure that a patient received into guardianship understands—
(a) the effect of the provisions of this Chapter applying to patients received into guardianship; and
(b) the rights of applying to the Tribunal that are available.

(2) Information given under subsection (1) must be given both orally and in writing.

(3) The Senior Medical Officer must, when the information is given to the patient under subsection (2) or within a reasonable time thereafter, take such steps as are practicable to furnish the person (if any) appearing to the Senior Medical Officer to be the patient's nearest relative with a copy of any written information given to the patient: ~~Provided that~~ but such information must not be given against the patient's wishes.

(4) The functions of the Senior Medical Officer under this section may be discharged on the Senior Medical Officer's behalf by any approved practitioner.

Transfer of guardianship

37. **(1)** If the guardian of a patient received into guardianship under this Part—
(a) dies; or
(b) gives notice in writing to the Senior Medical Officer that he or she desires to relinquish the functions of guardian,
the guardianship vests in the Crown (subject to any application to the Tribunal for the transfer of the patient into the guardianship of another person).

(2) While a guardian is incapacitated from acting by illness or any other cause, the guardian's functions may be performed on his or her behalf by—
(a) the Crown; or
(b) any other person approved for the purpose by the Tribunal.

(3) If the Tribunal thinks, on application by the Senior Medical Officer, that a guardian under this Part (other than the Crown) has performed his or her functions negligently or in a manner contrary to the interests of the welfare of the patient, the Tribunal may order that the guardianship of the patient be transferred to—
(a) the Crown; or
(b) any other person approved for the purpose by the Tribunal.

(4) For the purposes of this section the functions of the Crown are to be exercised by the Attorney General acting in the public interest—

(a) through a person appointed by the Attorney General; and

(b) in consultation with—

(i) the Senior Medical Officer;

(ii) one or more approved practitioners;

(iii) one or more suitably qualified professional persons chosen by the Attorney General; or

(iv) any combination of subparagraphs (i) to (iii) chosen by the Attorney General.

Discharge of guardianship

38. (1) A guardianship order may be discharged by the Tribunal on the application of—

(a) the Senior Medical Officer;

(b) the patient;

(c) the patient's nearest relative;

(d) a person with whom the patient is living; or

(e) the patient's guardian (other than the Crown).

(2) The Tribunal must direct the discharge of the guardianship order with respect to a patient, if not satisfied—

(a) that he or she is then suffering from mental disorder of a nature or degree which warrants guardianship; and

(b) that guardianship is necessary in the interests of his or her welfare or for the protection of others.

(3) If an application for the discharge of a guardianship order is made under subsection (1)*(c), (d)* or *(e)*, the applicant is entitled to—

(a) submit written evidence to the Tribunal;

(b) be heard by the Tribunal in person;

(c) be represented before the Tribunal by a legal representative or by any other person nominated by the patient for this purpose;

(d) present written and oral evidence from an independent psychiatrist or other suitably qualified professional person;

(e) be accompanied to the Tribunal hearing by relatives or friends; and

(f) receive copies of such reports as the Tribunal thinks fit.

Senior Medical Officer to consider representations on guardianship

39. (1) The Senior Medical Officer must consider any representations requesting that a person be received into guardianship, if the representations are received from—

(a) relatives of the patient; or

(b) an approved practitioner.

(2) The Senior Medical Officer must consider any representations requesting that an application be made for the discharge of a guardianship order because the grounds for an order no longer apply, if the representations are received from—

(a) the patient;
(b) the patient's nearest relative; or
(c) an approved practitioner.

(3) On receiving representations the Senior Medical Officer must—
(a) review the patient's medical notes where available; and
(b) make any enquiries he or she thinks appropriate in the circumstances, which may include asking the patient voluntarily to be assessed by an approved doctor and interviewed by an approved professional.

Patient subject to guardianship absent without leave

40. If a patient who is subject to guardianship is absent without the guardian's leave from the place at which he or she is required by the guardian to reside, the patient may be taken into custody and returned to that place by—
(a) any approved practitioner;
(b) a police officer; or
(c) any person authorised in writing by the Senior Medical Officer.

PART 7
MENTAL HEALTH TRIBUNAL

Composition of Mental Health Tribunal

41. **(1)** There is to be a tribunal, known as the Mental Health Tribunal, for the purpose of dealing with applications and references under this Chapter.

(2) The Tribunal is constituted by the Chief Magistrate and 2 justices of the peace, or in the absence or incapacity of the Chief Magistrate, by 3 justices of the peace.

(3) The Tribunal must be chaired—
(a) by the Chief Magistrate, if present; or
(b) otherwise, by a member chosen by the Tribunal.

Appeal against hospital treatment order

42. **(1)** A patient who has been detained pursuant to a hospital treatment order may apply to the Tribunal for an order for discharge.

(2) An application must be made within 3 months of the making of the order.

(3) The Tribunal must direct the discharge of a patient if not satisfied that—
(a) he or she is suffering from mental disorder of a nature or degree which warrants his or her detention in hospital for medical treatment for at least a limited period;
(b) detention is justified in the interests of the patient's own health or safety or with a view to the protection of others; and
(c) appropriate medical treatment is available for the patient.

(4) Subsection (3) does not require the Tribunal to direct discharge if the Tribunal 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 in such a case —

(a) may recommend the Senior Medical Officer to consider whether to make a community treatment order; and

(b) may (but need not) further consider the patient's case if the Senior Medical Officer does not make a community treatment order.

(5) A direction of the Tribunal that a patient be discharged must specify the date on which it takes effect.

Appeal against community treatment order

43. (1) A community patient may apply to the Tribunal for an order for discharge.

(2) An application must be made within 3 months of the making of the order.

(3) The Tribunal must direct the discharge of a patient if not satisfied that—

(a) he or she is suffering from mental disorder of a nature or degree which makes it appropriate for him or her to receive medical treatment;

(b) it is necessary for the patient's health or safety or for the protection of others that he or she should receive medical treatment;

(c) it is necessary that the Senior Medical Officer should continue to be able to exercise the power to recall the patient to hospital; and

(d) appropriate medical treatment is available for the patient.

(4) In determining whether the criterion in subsection (3)*(c)* is met, the Tribunal must, in particular, having regard to the patient's history of mental disorder and any other relevant factors, consider what risk there would be of a deterioration of the patient's condition if he or she were to continue not to be detained in a hospital (as a result of *inter alia* refusing or neglecting to receive medical treatment).

(5) Subsection (3) does not require the Tribunal to direct the discharge of a patient just because they think it might be appropriate for the conditions attached to the community treatment order to be varied, and the Tribunal in such a case —

(a) may recommend that the Senior Medical Officer consider whether to vary the conditions; and

(b) may (but need not) further consider the patient's case if the Senior Medical Officer does not vary the conditions.

(6) A direction of the Tribunal that a patient be discharged must specify the date on which it takes effect.

Appeal against revocation of community treatment order

44. (1) A patient whose community treatment order is revoked so that he or she becomes liable to detention under a hospital treatment order may apply to the Tribunal for an order for discharge of the hospital treatment order.

(2) An application must be made within 3 months of the making of the order.

(3) The Tribunal must direct the discharge of a patient if not satisfied that—

(a) he or she is suffering from mental disorder of a nature or degree which warrants his or her detention in hospital for medical treatment for at least a limited period;

(b) detention is justified in the interests of the patient's own health or safety or with a view to the protection of others; and

(c) appropriate medical treatment is available for the patient.

(4) If the Tribunal does not direct the discharge of a patient, the Tribunal must consider the reasons for the revocation of the community treatment order and—

(a) may recommend that the Senior Medical Officer consider whether to make a further community treatment order; and

(b) may (but need not) further consider the patient's case if the Senior Medical Officer does not make a further community treatment order.

Renewal of hospital treatment order

45. (1) The Tribunal may renew (or further renew) a hospital treatment order for a period of 6 months.

(2) The Senior Medical Officer must arrange for a patient who is detained pursuant to a hospital treatment order to be assessed by an approved doctor, and interviewed by an approved professional, not less than 4 weeks before the day on which the order would expire unless renewed.

(3) The Senior Medical Officer must convene a multi-disciplinary conference of approved practitioners to consider the findings of the assessment and any other pertinent information relating to the patient.

(4) The conference must—

(a) be held not less than 3 weeks before the day on which the hospital treatment order would expire unless renewed; and

(b) if practicable, include all approved practitioners who have been professionally concerned with the patient's medical treatment since the hospital treatment order was made.

(5) If the conference approves the renewal of the hospital treatment order, a recommendation that the patient be detained for treatment for a further period of 6 months must be made to the Tribunal by one approved doctor and one approved professional, who must each—

(a) certify that in his or her opinion the conditions set out in subsection (6) are satisfied; and

(b) record the reasons for his or her decision.

(6) The conditions are that—

(a) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him or her to receive medical treatment in a hospital;

(b) it is necessary for the patient's health or safety or for the protection of others that he or she should receive such treatment;

(c) treatment cannot be provided unless he or she continues to be detained; and

(d) appropriate medical treatment is available.

(7) An application to the Tribunal for the renewal of the hospital treatment order must be—

(a) made by the Senior Medical Officer within 7 days after the conference; and

(b) accompanied by the recommendation from the approved doctor and approved professional.

(8) The Tribunal must renew the hospital treatment order if satisfied that—

(a) the patient is suffering from mental disorder of a nature or degree which warrants his or her detention in hospital for medical treatment for at least a limited period;

(b) detention is justified in the interests of the patient's own health or safety or with a view to the protection of others; and

(c) appropriate medical treatment is available.

Renewal of community treatment order

46. (1) The Tribunal may renew (or further renew) a community treatment order for a period of 6 months.

(2) The Senior Medical Officer must arrange for a community patient to be assessed by an approved doctor, and interviewed by an approved professional, not less than 4 weeks before the day on which a community treatment order would expire if not renewed.

(3) The Senior Medical Officer must convene a multi-disciplinary conference of approved practitioners to consider the findings of the assessment and any other pertinent information relating to the patient.

(4) The conference must—

(a) be held not less than 2 weeks before the day on which the community treatment order would expire unless renewed; and

(b) if practicable, include all approved practitioners who have been professionally concerned with the patient's medical treatment since the community treatment order was made.

(5) If the conference approves the renewal of the community treatment order, a recommendation that the community treatment order be renewed for a further period of 6 months must be made to the Tribunal by one approved doctor and one approved professional who must each—

(a) certify that in his or her opinion the conditions set out in subsection (6) are satisfied; and

(b) record the reasons for his or her decision.

(6) The conditions are that—

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

(b) it is necessary for the patient's health or safety or for the protection of others that he or she should receive medical treatment;

(c) subject to the patient's being liable to recall by the Senior Medical Officer in accordance with Part 5, treatment can be provided without detention in hospital;

(d) it is necessary that the Senior Medical Officer should continue to be able to exercise the power to recall the patient to hospital; and

(e) appropriate medical treatment is available.

(7) In determining whether subsection (6)*(d)* is satisfied, the approved practitioners must, having regard to the patient's history of mental disorder and any other relevant factors, consider in particular what risk there would be of a deterioration of the patient's condition if he or she were to continue not to be detained in hospital (as a result of *inter alia* refusing or neglecting to receive medical treatment).

(8) An application to the Tribunal for the renewal of community treatment order must—

(a) be made by the Senior Medical Officer within 7 days after the conference; and

(b) be accompanied by the recommendation from the approved doctor and approved professional.

(9) The Tribunal must renew the community treatment order if satisfied that—

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

(b) it is necessary for the patient's health or safety or for the protection of others that he or she should receive such treatment;

(c) it is necessary that the Senior Medical Officer should continue to be able to exercise the power to recall the patient to hospital; and

(d) appropriate medical treatment is available.

(10) In determining whether subsection (9)*(c)* is satisfied, the Tribunal must, having regard to the patient's history of mental disorder and any other relevant factors, consider in particular what risk there would be of a deterioration of the patient's condition if he or she were to continue not to be detained in a hospital (as a result of *inter alia* refusing or neglecting to receive medical treatment).

Tribunal procedure and evidence

47. (1) The Tribunal must convene to consider any application under this Part within 7 days after the application is lodged.

(2) The Senior Medical Officer must make arrangements for the presentation of written and oral evidence to the Tribunal.

(3) If the patient is represented by a legal practitioner—

(a) a copy of any reports submitted by or on behalf of the Senior Medical Officer must be given to the legal practitioner; and

(b) the legal practitioner may disclose the reports (or their substance) to the patient, unless the Tribunal directs that all or any part of the reports or their substance is to be withheld from the patient in the patient's interests or for other special reasons.

(4) If the patient is not represented by a legal practitioner, the substance of any reports submitted by or on behalf of the Senior Medical Officer must be disclosed to the patient, unless the Tribunal directs that all or any part of the substance is to be withheld in the

patient's interests or for other special reasons.

(5) The patient is entitled in relation to any application to—

(a) submit written evidence to the Tribunal;

(b) be heard by the Tribunal in person;

(c) be represented before the Tribunal by a legal representative or by any other person nominated by the patient;

(d) present written and oral evidence from an independent psychiatrist or other suitably qualified professional person; and

(e) be accompanied to the Tribunal hearing by relatives or friends.

(6) A copy of any written evidence submitted to the Tribunal by or on behalf of the patient must be given to the Senior Medical Officer.

(7) A copy of any written evidence submitted to the Tribunal by or on behalf of the patient or the Senior Medical Officer must be provided to the patient's nearest relative unless—

(a) the patient objects; or

(b) the Tribunal directs it to be withheld in the patient's interests or for other special reasons.

(8) The Senior Medical Officer is entitled to legal representation before the Tribunal.

(9) The Tribunal may—

(a) receive evidence in addition to any presented by or on behalf of the Senior Medical Officer or the patient;

(b) direct the Senior Medical Officer or the patient to present evidence.

(10) The Tribunal may determine its procedure (subject to this section and to any rules under subsection (16)) and, in particular, the Tribunal may give directions—

(a) for disposal of an application without a formal hearing;

(b) regulating the circumstances in which a patient may be represented by persons other than legal practitioners;

(c) for making available to parties interested in the hearing any documents or a statement of any oral information obtained by or provided to the Tribunal.

(11) Subject to subsection (12), an application nust not be disposed of without a formal hearing if—

(a) the patient requests a hearing;

(b) the Senior Medical Officer requests a hearing; or

(c) the Tribunal thinks a hearing is necessary.

(12) An application may be disposed of without a formal hearing despite subsection (11), if the Tribunal decides, on the recommendation of the Senior Medical Officer, that a hearing might be detrimental to the health of the patient.

(13) The Tribunal must meet in private, unless it directs that members of the public, or a specified class of members of the public, may attend specified proceedings.

(14) No report of proceedings of the Tribunal may be published, unless ~~it~~ the Tribunal directs a full or partial report to be published.

(15) Before giving a direction under subsection (13) or (14), the Tribunal must consider whether such publication would prejudice—

(a) the interests of justice; or

(b) the protection of the private lives of the patient or others concerned in the proceedings.

(16) The Governor in Council may make rules about the Tribunal's procedure (subject to the provisions of this section), provided that before making rules the Governor in Council must consult—

(a) the Chief Magistrate; and

(b) the Senior Medical Officer.

Tribunal to give reasons

48. (1) Not later than 7 days after a hearing, the Tribunal must issue its decision in writing, together with a statement of its reasons.

(2) The decision and reasons must be sent to—

(a) the Senior Medical Officer;

(b) the patient's legal practitioner (if any);

(c) the patient, except where the Tribunal thinks it undesirable in the patient's interests or for other special reasons; and

(d) the patient's nearest relative, unless the patient objects.

PART 8
PATIENTS CONCERNED IN CRIMINAL PROCEEDINGS OR UNDER SENTENCE

Remand to hospital for report on accused's mental condition

49. (1) A court may remand an accused person to hospital or prison for a report on his or her mental condition.

(2) An **"accused person"** is a person who is awaiting—

(a) trial before the court for an offence punishable with imprisonment; or

(b) sentence by the court having entered a guilty plea, or having been convicted after trial, in respect of an offence punishable with imprisonment.

(3) The powers conferred by this section may be exercised only if—

(a) the court is satisfied, on the written or oral evidence of an approved doctor, that there is reason to suspect that the accused person is suffering from a mental disorder;

(b) the court is satisfied, on the written or oral evidence of the Senior Medical Officer or an approved doctor, that arrangements have been made for the accused's admission to hospital; and

(c) the court thinks it would be impracticable for a report on the accused's mental condition to be made if he or she were remanded on bail.

(4) If a court has remanded an accused person for a report, it may further remand him or her if the court, on the written or oral evidence of the Senior Medical Officer or of an approved doctor responsible for making the report, thinks that a further remand is necessary for completing the assessment of the accused person's mental condition.

(5) A further remand may be ordered without the accused person being brought before the court if—

(a) he or she is represented by a legal practitioner; and

(b) the legal practitioner is given an opportunity of being heard by the court.

(6) An accused person may not be remanded (or further remanded) for more than—

(a) 28 days at a time; or

(b) 12 weeks in all.

(7) A court which has remanded an accused person may terminate the remand at any time.

(8) An accused person remanded to hospital is entitled to—

(a) be examined privately (at his or her own expense) by a psychiatrist or other suitably qualified professional person chosen by him or her and approved by the court;

(b) obtain (at his or her own expense) a report from that person on the accused person's mental condition; and

(c) apply to the court on the basis of the report for the remand to be terminated.

(9) If an accused person is remanded under this section, a police officer or other person directed to do so by the court must convey the accused person to hospital.

(10) An accused person remanded under this section who absconds from, or on the way to, hospital—

(a) may be arrested without warrant by a police officer; and

(b) after being arrested must be brought as soon as practicable before the court.

(11) If an accused person is brought before a court under subsection (10) the court may—

(a) terminate the remand; and

(b) deal with the accused person in any way in which it could have dealt with him or her instead of remanding under this section.

Remand of accused person to hospital for treatment

50. (1) A court may, instead of remanding an accused person in custody, remand him or her to hospital if satisfied—

(a) on the written or oral evidence of an approved doctor and an approved professional, that the accused person is suffering from mental disorder of a nature or degree which makes it appropriate for him or her to be detained in a hospital for medical treatment;

(b) on the written or oral evidence of an approved doctor and an approved professional, that appropriate medical treatment is available; and

(c) on the written or oral evidence of the Senior Medical Officer or of an approved doctor, that arrangements have been made for the accused person's admission to hospital.

(2) If a court has remanded an accused person under this section it may further remand him or her if the court, on the written or oral evidence of an approved doctor, thinks that a further remand is warranted.

(3) An accused person may be further remanded without being brought before the court if—

(a) he or she is represented by a legal practitioner; and

(b) the legal practitioner is given an opportunity of being heard by the court.

(4) An accused person may not be remanded (or further remanded) under this section for more than—

(a) 28 days at a time; or

(b) 12 weeks in all.

(5) If a court has remanded an accused person it may terminate the remand at any time.

(6) An accused person remanded to hospital is entitled to—

(a) be examined privately (at his or her own expense) by a psychiatrist or other suitably qualified professional person chosen by him or her and approved by the court;

(b) obtain (at his or her own expense) a report from that person on the accused person's mental condition; and

(c) apply to the court on the basis of the report for the remand to be terminated.

(7) If an accused person is remanded under this section, a police officer or other person directed to do so by the court must convey the accused person to hospital.

(8) An accused person remanded under this section who absconds from, or on the way to, hospital—

(a) may be arrested without warrant by a police officer; and

(b) after being arrested must be brought as soon as practicable before the court.

(9) If an accused person is brought before a court under subsection (8) the court may—

(a) terminate the remand; and

(b) deal with the accused person in any way in which it could have dealt with him or her instead of remand under this section.

(10) For purposes of this section, **"accused person"** has the same meaning as in section 49.

Power of court to order detention in hospital or guardianship

51. (1) This section applies where a person (**"the offender"**) is convicted of an offence punishable with imprisonment other than an offence the sentence for which is

fixed by law.

(2) The convicting court may by order authorise the offender's detention in hospital (**a "detention order"**), if the court—

(a) is satisfied, on the written or oral evidence of an approved doctor and an approved professional, that the offender is suffering from mental disorder of a nature or degree which makes detention in hospital for treatment appropriate;

(b) is satisfied, on the written or oral evidence of an approved doctor and an approved professional, that treatment is available;

(c) is satisfied, on the written or oral evidence of the Senior Medical Officer or an approved doctor, that arrangements have been made for the offender's admission to hospital; and

(d) thinks, 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 or her, that an order under this section is the most suitable method of disposing of the case.

(3) The convicting court may make an order placing the offender under the guardianship of the Crown or a person who is named in the order (whether or not a public officer) and who is approved by the Crown for the purpose (a **"criminal guardianship order"**), if—

(a) the offender has attained the age of 16;

(b) the court is satisfied, on the written or oral evidence of an approved doctor and an approved professional, that the offender is suffering from mental disorder of a nature or degree which makes guardianship under Part 6 appropriate;

(c) the court is satisfied that the Crown or another person is willing to receive the offender into guardianship; and

(d) the court thinks, 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 or her, that an order under this section is the most suitable method of disposing of the case.

(4) A court may make an order under subsection (2) or (3) in respect of a person who has not been convicted if—

(a) the person is charged with an offence that is triable summarily;

(b) the court would have power on conviction to make an order under subsection (2) or (3); and

(c) the court is satisfied that the person committed the offence.

(5) If an order is made under this section the court must not—

(a) pass any sentence or make any (other) order for imprisonment or detention in respect of the offence;

(b) impose a fine or make a probation order in respect of the offence;

(c) make a supervision order in respect of the offender; or

(d) make an order binding over a parent or guardian of the offender,

but the court may make any other order which it has power to make apart from this section.

(6) In this section **"the Crown"** means the Attorney General, acting in the public interest—

(a) through a person appointed by the Attorney General; and

(b) in consultation with—

(i) the Senior Medical Officer;

(ii) one or more approved practitioners;

(iii) one or more suitably qualified professional persons chosen by the Attorney General; or

(iv) any combination of sub-paragraphs (i) to (iii) chosen by the Attorney General.

Interim detention orders

52. **(1)** This section applies if—

(a) a person (**"the offender"**) is convicted of an offence punishable with imprisonment other than an offence the sentence for which is fixed by law;

(b) the court is satisfied, on the written or oral evidence of an approved doctor and an approved professional, that the offender is suffering from mental disorder;

(c) the court is satisfied, on the written or oral evidence of an approved doctor and an approved professional, 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 detention order to be made; and

(d) the court is satisfied, on the written or oral evidence of the Senior Medical Officer or an approved doctor, that arrangements have been made for the offender's admission to hospital.

(2) The court may, before making a detention order or dealing with the offender in some other way, make an order (an **"interim detention order"**) authorising the offender's detention in hospital.

(3) An interim detention order—

(a) has effect for a period, not exceeding 12 weeks, specified in the order;

(b) may be renewed for further periods of not more than 28 days at a time if the court, on the written or oral evidence of an approved doctor, thinks that the continuation is warranted; and

(c) must not continue in force for more than 12 months in all.

(4) The court must terminate an interim detention order if it—

(a) makes a detention order in respect of the offender; or

(b) decides after considering the written or oral evidence of an approved doctor and an approved professional to deal with the offender in some other way.

(5) An interim detention order may be renewed (or further renewed) without the offender being brought before the court if—

(a) the offender is represented by a legal practitioner; and

(b) the legal practitioner is given an opportunity of being heard by the court.

(6) An offender who absconds from, or on the way to, a hospital where the offender is to be detained pursuant to an interim detention order—

(a) may be arrested without warrant by a police officer; and

(b) must, after being arrested, be brought before the court as soon as practicable,

and the court may terminate the order and deal with the offender in any way in which it could have dealt with him or her if no order had been made.

(7) If an offender is subject to an interim detention order, the court may make a detention order without the offender being brought before the court if—

(a) the offender is represented by a legal practitioner; and

(b) the legal practitioner is given an opportunity of being heard by the court.

Information to facilitate criminal guardianship orders

53. (1) If a court is considering making a criminal guardianship order in respect of an offender, it may request the Crown—

(a) to inform the court whether a person approved by the Crown is willing to receive the offender into guardianship; and

(b) if so, to give such information as the Crown reasonably can about how the person could be expected to exercise in relation to the offender the powers conferred on the guardian by a criminal guardianship order.

(2) The Crown must comply with a request under subsection (1).

(3) In this section **"the Crown"** means the Attorney General, acting in the public interest—

(a) through a person appointed by the Attorney General; and

(b) in consultation with—

(i) the Senior Medical Officer;

(ii) one or more approved practitioners;

(iii) one or more suitably qualified professional persons chosen by the Attorney General; or

(iv) any combination of sub-paragraphs (i) to (iii) chosen by the Attorney General.

Effect of criminal guardianship orders

54. (1) A criminal guardianship order confers on the Crown or other person named as guardian the same powers as are conferred on a guardian by a guardianship order under Part 6.

(2) A criminal guardianship order may be transferred or discharged in the same way as a guardianship order under Part 6, but such a transfer may be made only to a person approved by the Crown.

(3) In this section **"the Crown"** means the Attorney General, acting in the public interest—

(a) through a person appointed by the Attorney General; and

(b) in consultation with—

(i) the Senior Medical Officer;

(ii) one or more approved practitioners;

(iii) one or more suitably qualified professional persons chosen by the Attorney General; or

(iv) any combination of sub-paragraphs (i) to (iii) chosen by the Attorney General.

Restriction orders

55. **(1)** A court may make a **"restriction order"** if—

(a) a detention order is made in respect of an offender; and

(b) the court thinks it necessary for the protection of the public from serious harm that the offender be subject to the restrictions specified in this section.

(2) In considering whether to make a restriction order, the court must have regard to—

(a) the nature of the offence;

(b) the antecedents of the offender; and

(c) the risk of his or her committing further offences if set at liberty.

(3) A restriction order may not be made unless at least one of the approved practitioners whose evidence was taken into account by the court in deciding to make the detention order gave oral evidence.

(4) The restrictions under a restriction order are as follows:

(a) Restriction 1 is that—

(i) the provisions of Parts 3 and 7 about duration, renewal and expiry of authority to detain do not apply; and

(ii) the patient continues to be liable to be detained by virtue of the detention order until discharged under this Part.

(b) Restriction 2 is that the provisions of Part 5 about community treatment orders and community patients do not apply.

(c) Restriction 3 is that the consent of the Governor is required for the exercise of a power under Part 3—

(i) to grant leave of absence to the patient; or

(ii) to order the patient's discharge.

(d) Restriction 4 is that the Senior Medical Officer's power to recall a patient during leave of absence (and to take the patient into custody and return him) may be exercised by the Governor at any time.

(5) If a restriction order in respect of a patient ceases to have effect while the relevant detention order has effect, this Chapter applies as if the patient had been admitted to hospital pursuant to a detention order (without a restriction order) made on the date on which the restriction order ceased to have effect.

(6) While a patient is subject to a restriction order, the Senior Medical Officer must arrange for an approved doctor or other suitably qualified professional person to examine the patient and report to the Governor at regular intervals of not more than 12 months.

(7) A report under subsection (6) must contain any particulars required by the Governor.

(8) The Governor must consult the Advisory Committee on the exercise of the Governor's functions under this section.

Powers of Governor in respect of patients subject to restriction orders

56. **(1)** If the Governor is satisfied that in the case of any patient a restriction order is no longer required for the protection of the public from serious harm, the Governor may direct that the patient cease to be subject to a restriction order.

(2) At any time while a restriction order is in force in respect of a patient, the Governor may by warrant discharge the patient from hospital. A discharge may be absolute or conditional and —

(a) on being absolutely discharged, the patient ceases to be liable to detention under the detention order, and the restriction order ceases to have effect; and

(b) while a patient is conditionally discharged, the Governor may at any time by warrant recall the patient to a hospital specified in the warrant.

(3) If a restriction order ceases to have effect while a patient is conditionally discharged (and has not been recalled), the patient—

(a) is absolutely discharged on the date when the restriction order ceases to have effect; and

(b) ceases to be liable to be detained under the detention order.

(4) If the Governor is satisfied that a patient subject to a restriction order should attend at a place in the interests of justice or for the purposes of a public inquiry—

(a) the Governor may direct that the patient be taken to that place; and

(b) the patient must be kept in custody while being taken to that place, while there and while being returned, unless the Governor otherwise directs.

(5) The Governor must consult the Advisory Committee on the exercise of the Governor's functions under this section.

Power to discharge patients subject to restriction orders

57. **(1)** A patient who is subject to a restriction order may apply to the Tribunal for an order of absolute or conditional discharge.

(2) An application under subsection (1) may be made—

(a) during the period of 6 months beginning with the date of the restriction order; and

(b) after that, at intervals of not less than 12 months, or more frequently with the leave of the Tribunal.

(3) If a period of 3 years during which a patient could make an application ends without an application being made, the Governor must refer the patient's case to the Tribunal, and the referral is to be treated for all purposes as an application for absolute or conditional discharge.

(4) On an application (or referral) the Tribunal must direct the patient's discharge if the Tribunal is not satisfied that—

(a) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him or her to be liable to be detained in a hospital for medical treatment;

(b) it is necessary for the patient's health or safety or for the protection of others that he or she should receive medical treatment; and

(c) appropriate medical treatment is available.

(5) The Tribunal must make a discharge—

(a) absolute, if not satisfied that it is appropriate for the patient to remain liable to be recalled to hospital for further treatment; and

(b) conditional, if satisfied that it is appropriate for the patient to remain liable to recall.

(6) A patient who is absolutely discharged ceases to be liable to be detained under the detention order, and the restriction order ceases to have effect.

(7) A patient who is conditionally discharged—

(a) may be recalled by the Governor; and

(b) must comply with any conditions imposed by the Tribunal at the time of discharge or by the Governor later.

(8) The Governor may vary a condition imposed (whether by the Tribunal or by the Governor) under subsection (7).

(9) If a restriction order ceases to have effect and the patient has been conditionally discharged under this section (and not recalled), the patient is absolutely discharged on the date when the restriction order ceases to have effect, and ceases to be liable to detention under the detention order.

(10) The Tribunal may defer implementation of a direction for conditional discharge of a patient until arrangements have been made to the Tribunal's satisfaction.

(11) The Governor must consult the Advisory Committee on the exercise of the Governor's functions under this section.

Applications concerning conditionally discharged patients

58. (1) This section applies where a patient subject to a restriction order is conditionally discharged under section 57.

(2) The patient may apply to the Tribunal for an order of absolute discharge.

(3) An application under subsection (1) may be made—

(a) during the period of 12 months beginning with the date of conditional discharge; and

(b) after that, at intervals of not less than 12 months, or more frequently with the leave of the Tribunal.

(4) If the patient is recalled to hospital, the Governor must refer the patient's case to the Tribunal during the period of four weeks beginning with the date of recall and the referral is to be treated for all purposes as an application for absolute discharge.

(5) On an application (or reference), the Tribunal may—

(a) vary a condition of the discharge;

(b) add a new condition;

(c) direct that the restriction order is to cease to have effect.

(6) If the Tribunal gives a direction under subsection (5)*(c)*, the patient ceases to be liable to be detained under the detention order.

(7) While a patient is subject to a conditional discharge, the Senior Medical Officer must arrange for an approved doctor or other suitable person to examine the patient and report to the Governor at regular intervals of not more than 6 months.

(8) A report must contain any particulars required by the Governor.

(9) The Governor must consult the Advisory Committee on the exercise of the Governor's functions under this section.

Transfer of prisoners to hospital

59. (1) This section applies to—
(a) persons serving a sentence of imprisonment;
(b) other persons detained in a prison or remand centre;
(c) persons remanded in custody;
(d) civil prisoners, that is to say, persons committed by a court to prison for a limited term; and
(e) persons detained under the Immigration Ordinance, 2011.

(2) The court or authority which made the order by virtue of which this section applies to a person (**"the prisoner"**) may order that the prisoner be removed to and detained in a specified hospital (a **"transfer order")** .

(3) A transfer order may be made only if the court or authority is satisfied, on the written or oral evidence of an approved doctor and an approved professional that—
(a) the prisoner is suffering from mental disorder of a nature or degree which makes it appropriate for him or her to be detained in a hospital for medical treatment;
(b) appropriate medical treatment is available; and
(c) arrangements have been made for the prisoner's admission to hospital.

(4) A transfer order has the same effect as a detention order.

(5) A transfer order ceases to have effect—
(a) when the order by virtue of which this section applies ceases to have effect (or would have ceased to have effect but for the transfer order); or
(b) earlier, in accordance with section 60.

Further provisions as to transfer orders

60. (1) This section applies where—
(a) a transfer order is made in respect of a person; and
(b) a decision is then made that the person no longer requires, or can no longer be given, treatment in hospital for mental disorder.

(2) A decision under subsection (1)*(b)* may be made by—

(a) an approved doctor and an approved professional; or
(b) the Tribunal.

(3) The person who makes the decision must immediately notify the court or authority which made the transfer order.

(4) That court or authority—
(a) may make any order in respect of the person that it thinks necessary or expedient to ensure that the order by virtue of which section 59 applied to the person continues to have effect as if the transfer order had not been made; and
(b) must include provision for terminating the transfer order.

Effect of detention under this Part

61. (1) A person who is detained in hospital pursuant to a detention order or a transfer order is to be treated for the purposes of this Chapter as if detained under a hospital treatment order made on the date of the detention or transfer order.

(2) A person's continuing detention in hospital pursuant to a detention order or a transfer order requires authorisation by the Tribunal under Part 7 as though he or she were detained under a hospital treatment order, unless he or she is also subject to an overseas removal order.

(3) Time spent detained in hospital under this Part is to be treated as time in custody in calculating time spent towards serving a sentence of imprisonment or other detention.

Variation of orders under this Part

62. (1) The Crown may apply to the court which made an order under this Part for the order to be varied to provide for the person detained to be transferred from the hospital named in the order to another hospital (whether in St Helena, the United Kingdom or elsewhere).

(2) In considering an application under subsection (1), the court may request the Senior Medical Officer to provide such information as he or she can reasonably obtain with respect to the hospital (whether in St Helena, the United Kingdom or elsewhere) to which it is proposed that the person detained be transferred.

(3) The Senior Medical Officer must comply with a request under subsection (2).

(4) In this section **"the Crown"** means the Attorney General, acting in the public interest—
(a) through a person appointed by the Attorney General; and
(b) in consultation with—
(i) the Senior Medical Officer;
(ii) one or more approved practitioners;
(iii) one or more suitably qualified professional persons chosen by the Attorney General; or
(iv) any combination of subparagraphs (i) to (iii) chosen by the Attorney

General.

Information about hospitals

63. **(1)** A court which is considering whether to make an order under this Part in respect of a person may request the Senior Medical Officer to provide such information as he or she can reasonably obtain with respect to any hospital (whether in St Helena, the United Kingdom or elsewhere) at which arrangements could be made for the admission of the person pursuant to the order.

(2) The Senior Medical Officer must comply with a request under subsection (1).

(3) If the person concerned has not attained the age of 18 years, the information which may be requested under subsection (1) includes, in particular, information about the availability of accommodation or facilities designed so as to be specially suitable for patients under that age.

Detention orders and overseas removal orders

64. **(1)** A detention order, interim detention order or transfer order may be made in conjunction with an overseas removal order, so that the offender is removed from St Helena to be detained for medical treatment in a hospital elsewhere if the court is satisfied, on the written or oral evidence of the Senior Medical Officer, that—

(a) appropriate medical treatment is available at that hospital; and

(b) arrangements have been made for the offender's transportation and admission to that hospital.

(2) The overseas removal order may be made at the same time as or after the detention order.

Requirements as to evidence

65. **(1)** Evidence required from an approved practitioner under this Part may not be presented—

(a) by a relative of the patient;

(b) by a person who has a business relationship with the patient; or

(c) in other circumstances where the court thinks there might be a conflict of interest.

(2) If a report is tendered in evidence pursuant to a direction of a court and otherwise than by or on behalf of the person who is the subject of the report—

(a) if that person is represented by a legal practitioner, a copy of the report must be given to the legal practitioner;

(b) if that person is not so represented, the substance of the report must be disclosed to him or her or, in the case of a person who has not attained the age of 18, to any parent or guardian present in court; and

(c) except where the report relates only to arrangements for admission to a hospital, that person may require the signatory of the report to be called to give oral evidence, and may call evidence to rebut the evidence in the report.

PART 9

REMOVAL OF PATIENTS FROM ST HELENA

Removal of patients from St Helena

66. **(1)** The Tribunal may order the removal of a patient from St Helena for treatment or detention (an **"overseas removal order"**).

(2) An overseas removal order may be made only if the Tribunal is satisfied, on the written or oral evidence of an approved doctor and an approved professional, that—

(a) the patient is suffering from mental disorder;

(b) the patient cannot be treated effectively in St Helena; and

(c) it is necessary in the patient's interests or for the protection of the public that the patient be removed from St Helena.

Restraint of a patient in transit

67. **(1)** If a patient is to be removed from St Helena under an overseas removal order, the Tribunal may authorise—

(a) the forcible administration of medication by a medical practitioner during the journey;

(b) forcible restraint during the journey;

(c) other specified measures during the journey.

(2) Authorisation under subsection (1) may be given only if the Tribunal is satisfied, on the written or oral evidence of an approved doctor and an approved professional, that—

(a) any medication authorised is neither irreversible nor hazardous; and

(b) the medication, restraint or other measures authorised are the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or herself or to others.

(3) For the purposes of this section, treatment is—

(a) irreversible if it has unfavourable and irreversible physical or psychological consequences; and

(b) hazardous if it entails significant physical hazard.

Further provisions as to overseas removal orders

68. **(1)** An overseas removal order has the same effect as a hospital treatment order until the patient leaves St Helena, unless the Tribunal orders otherwise.

(2) An overseas removal order must, whenever practicable, specify the aircraft or ship in which the patient is to be removed from St Helena.

(3) An overseas removal order may include directions—

(a) for the conveyance of the patient to his or her destination;

(b) for his or her detention in any place or on board any aircraft or ship until arrival at any specified place.

(4) If a patient is removed from St Helena pursuant to an overseas removal order,

any application, order or direction made under this Chapter ceases to have effect once the patient arrives at—

(a) the destination; or

(b) another place specified in the order for this purpose.

(5) There is no right of appeal against an overseas removal order.

Notifications

69. On making an overseas removal order, the Tribunal must send copies of the order to—

(a) the Governor, and

(b) the Chief Immigration Officer.

PART 10
MEDICAL TREATMENT

Patients to whom Part 10 applies

70. This Part applies to a patient who is—

(a) liable to be detained for treatment under this Chapter; or

(b) a community patient who has been recalled to hospital.

Treatment not requiring consent

71. **(1)** A patient's consent is not required for medical treatment given for his or her mental disorder by or under the direction of an approved doctor.

(2) Subsection (1) does not permit medicine to be given, without consent, to a person detained under this Chapter for more than 3 months.

Treatment requiring consent or second opinion

72. **(1)** This section applies to the administration of medicine for mental disorder to a person detained under this Chapter after the first 3 months of administering the medicine.

(2) A patient may not be given treatment unless an approved doctor (other than the approved doctor in charge of the treatment) certifies in writing that it is appropriate for the treatment to be given and that —

(a) the patient has consented to the treatment, and is capable of understanding its nature, purpose and likely effects;

(b) the patient is not capable of understanding those matters; or

(c) the patient is capable of understanding those matters and has not consented, but it is in the patient's best interests for the treatment to be given.

(3) Before giving a certificate, an approved doctor must consult two other persons—

(a) neither of whom is the approved doctor in charge of the treatment;

(b) both of whom have been professionally concerned with the patient's medical

treatment; and

(c) at least one of whom is a registered nurse.

Plans of treatment

73. A consent or certificate under section 72 may relate to a plan of treatment under which the patient is to be given (whether within a specified period or otherwise) one or more forms of treatment.

Withdrawal of consent

74. **(1)** Consent of a patient to treatment given for the purposes of this Part may be withdrawn, in which case any continuation of the treatment is to be treated as a separate course.

(2) If a patient consents to treatment for the purposes of this Part, but before the completion of the treatment ceases to be capable of understanding its nature, purpose and likely effects, the patient must be treated as withdrawing consent and any continuation of the treatment is to be treated as a separate course.

(3) If it is certified for the purposes of this Part that a patient is not capable of understanding the nature, purpose and likely effects of treatment and the patient later becomes capable of understanding its nature, purpose and likely effects, before the treatment is completed, the certificate ceases to apply and the remainder of the treatment is to be treated as a separate course.

(4) A patient who has consented to a plan of treatment may withdraw consent to further treatment under the plan.

(5) This section is subject to the provisions about urgent treatment in section 75.

Urgent treatment

75. **(1)** Neither consent of the patient nor a second opinion from an approved doctor is required for treatment—

(a) which is immediately necessary to save the patient's life;

(b) which is immediately necessary to prevent a serious deterioration of his or her condition, and is not irreversible;

(c) which is immediately necessary to alleviate serious suffering by the patient, and is neither irreversible nor hazardous; or

(d) which is immediately necessary, is the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or herself or to others, and is neither irreversible nor hazardous.

(2) The provisions of this Part about withdrawal of consent to treatment do not prevent continuation of treatment (whether or not under a plan) until the provisions requiring consent or a second opinion can be complied with, if the approved doctor responsible for the patient's treatment thinks that discontinuance would cause serious suffering to the patient.

(3) For the purposes of this section, treatment is—

(a) irreversible if it has unfavourable and irreversible physical or psychological consequences; and
(b) hazardous if it entails significant physical hazard.

Prohibited treatments

76. **(1)** The following treatments are prohibited—
(a) any surgical operation for destroying brain tissue or for destroying the functioning of brain tissue; and
(b) electro-convulsive therapy.

(2) Other provisions of this Chapter are subject to this section.

PART 11
MISCELLANEOUS

Powers of entry and inspection

77. **(1)** An approved practitioner may at all reasonable times enter and inspect any premises in which a patient is living, if he or she has reasonable cause to believe that the patient is not under proper care.

(2) Before exercising the power in subsection (1) a practitioner must, if asked to do so, show a document proving that he or she is an approved practitioner.

(3) This section does not permit entry to a hospital.

Welfare of certain hospital patients

78. **(1)** This section applies to—
(a) children and young persons in the care of the Crown by virtue of a care order within the meaning of the Welfare of Children Ordinance, 2008 (as amended from time to time); and
(b) persons in whose case the functions of nearest relative under this Chapter have been transferred to the Crown.

(2) If a patient to whom this section applies is admitted to a hospital (whether or not for treatment for mental disorder), the Senior Medical Officer must—
(a) arrange for regular visits to be made to the patient by an approved professional; and
(b) take such other steps in relation to the patient while in the hospital as would be expected to be taken by parents.

Code of practice

79. **(1)** The Senior Medical Officer must ensure that a code of practice is prepared—
(a) for the guidance of approved practitioners in relation to the detention of patients in hospital for assessment or treatment under this Chapter;
(b) for the guidance of approved practitioners and other professionals in relation to

the medical treatment of patients suffering from mental disorder;

(c) for the guidance of approved practitioners in relation to the removal of patients from St Helena under this Chapter; and

(d) dealing with other related matters.

(2) The code of practice must include a statement of the principles which the Senior Medical Officer thinks should inform decisions under this Chapter.

(3) The Senior Medical Officer must, in particular, ensure that each of the following matters is addressed in the statement of principles:

(a) respect for patients' past and present wishes and feelings;

(b) respect for diversity generally including, in particular, diversity of religion, culture and sexual orientation;

(c) minimising restrictions on liberty;

(d) involvement of patients in planning, developing and delivering care and treatment appropriate to them;

(e) avoidance of unlawful discrimination;

(f) effectiveness of treatment;

(g) views of carers and other interested parties;

(h) patient wellbeing and safety; and

(i) public safety.

(4) The Senior Medical Officer must also have regard to the desirability of ensuring—

(a) the efficient use of resources; and

(b) the equitable distribution of services.

(5) In performing functions under this Chapter, approved practitioners must have regard to the code of practice.

(6) The Senior Medical Officer must keep the code of practice under review and arrange for it to be revised from time to time.

(7) Before the code of practice is prepared or revised, the Senior Medical Officer must consult—

(a) a suitably qualified and experienced psychiatrist;

(b) all persons appearing on the list of approved practitioners; and

(c) such other persons or bodies as appear to be concerned.

(8) On preparing or revising the code of practice, the Senior Medical Officer must send a copy to the Governor.

(9) The Senior Medical Officer must ensure that the code of practice as it has effect at any time—

(a) is published; and

(b) is available at all times to hospital staff, patients, their nearest relatives and legal practitioners.

General protection of detained patients

80. **(1)** The Senior Medical Officer must keep under review the exercise of functions under this Chapter in respect of the detention of patients, patients liable to be detained and community patients.

(2) The Senior Medical Officer must investigate—

(a) any complaint made by a person in respect of a matter that occurred while he or she was detained under this Chapter or recalled to hospital under Part 5 and which he or she thinks has not been satisfactorily dealt with; and

(b) any other complaint as to the exercise of functions under this Chapter in respect of a person who is or has been detained or liable to detention or who is or has been a community patient.

(3) The Senior Medical Officer may arrange for a suitably qualified person to investigate on his or her behalf a complaint in accordance with subsection (2).

(4) If a complaint alleges negligence or misconduct on the part of the Senior Medical Officer, the Senior Medical Officer must arrange for it to be investigated by a suitably qualified person.

(5) For the purpose of a review or investigation under this section, the Senior Medical Officer or a person authorised by the Senior Medical Officer may at any reasonable time require the production of, and inspect, records relating to the detention or treatment of a person who is or has been detained under this Chapter or liable to detention or who is or has been a community patient.

(6) The Senior Medical Officer must consider the results of an investigation and take such steps as may be available to rectify any ongoing defect identified by the investigation concerning the exercise of functions under this Chapter.

(7) The Senior Medical Officer must send a written report to the complainant about—

(a) the results of the investigation; and

(b) any steps taken as an outcome of the investigation.

Complaint to Tribunal

81. **(1)** If a complaint has been investigated under section 80 and the complainant has exhausted any further complaints procedures available, the complainant may refer the complaint to the Tribunal.

(2) A complaint may be referred only if the Governor thinks that condition 1 or 2 is satisfied.

(3) Condition 1 is that—

(a) the matter complained of has a seriously detrimental effect in respect of a person (**"the victim"**) who is or has been detained under this Chapter or been liable to detention or who is or has been a community patient; and

(b) the victim or his or her nearest relative has consented to the referral (where the victim is not the complainant).

(4) Condition 2 is that—

(a) the complaint has identified a serious and ongoing defect in the exercise of functions under this Chapter; and

(b) either the Senior Medical Officer has not taken steps to remedy the defect or the steps have not been effective.

(5) If a complaint is referred under this section, the Tribunal must take such steps and adopt such procedure as it thinks necessary to investigate and consider the complaint and make findings and recommendations to the Governor.

(6) When considering a complaint, the Tribunal must have regard to the code of practice.

(7) For the purpose of considering a complaint, the Tribunal or a person authorised by the Tribunal may at any reasonable time require the production of, and inspect, records relating to the detention or treatment of any person who is or has been detained under this Chapter or been liable to detention or who is or has been a community patient.

(8) On receipt of findings and recommendations under subsection (5), the Governor must consult such persons and take such steps as the Governor thinks appropriate.

Informal admission of patients

82. (1) Nothing in this Chapter prevents a patient who requires treatment for mental disorder from being admitted to or remaining in a hospital or medical centre without any order or direction under this Chapter.

(2) In the case of a patient aged 16 or 17 years who has capacity to consent to the making of arrangements for admission to or remaining in a hospital or medical centre—

(a) arrangements may be made in reliance on the patient's consent even though there are one or more persons who have parental responsibility for him or her within the meaning of the Welfare of Children Ordinance, 2008; and

(b) arrangements may not be made without that consent on the basis of the consent of a person who has parental responsibility for him or her.

Accommodation for children

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

(a) is detained under this Chapter; or

(b) is admitted to a hospital pursuant to arrangements of the kind mentioned in section 82.

(2) A patient detained for assessment at an approved medical centre must be transported as soon as reasonably practicable to a hospital.

(3) The Senior Medical Officer must ensure that the patient's environment in the hospital is suitable having regard to his or her age (subject to his or her needs) and, for that purpose, the Senior Medical Officer must consult a person who appears to have suitable knowledge or experience of cases involving patients who have not attained the age of 18

years.

No duty to make further enquiries

84. An order for the detention or treatment of a patient which appears to be duly made and to be founded on the necessary medical recommendations may be acted upon without further proof of—

(a) the signature or qualifications of the person by whom the order or recommendation is made or given; or

(b) any matter of fact or opinion stated in it.

Conflicts of interest

85. No action may be taken for the purposes of this Chapter by an approved practitioner or Tribunal member who—

(a) is a relative of the person concerned;

(b) has a business relationship with him or her; or

(c) might have a conflict of interest for any other reason.

Protection for acts done pursuant to this Chapter

86. (1) No person is liable on any ground (including want of jurisdiction) to civil or criminal proceedings by reason only of anything done or purportedly done under or by virtue of this Chapter.

(2) Subsection (1) does not apply to an act done in bad faith or without reasonable care.

(3) Civil proceedings may not be brought in respect of anything done or purportedly done under or by virtue of this Chapter, without the leave of the Supreme Court.

(4) This section applies to omissions in the same manner as it applies to acts.

PART 12
OFFENCES

Forgery and false statements

87. (1) It is an offence for a person to be in possession or control without reasonable excuse of a document to which this subsection applies, knowing or believing it to be false.

(2) It is an offence for a person to be in possession or control without reasonable excuse of a document so closely resembling a document to which this subsection applies as to be calculated to deceive.

(3) Subsections (1) and (2) apply to—

(a) medical or other recommendations or reports under this Chapter; and

(b) other documents required or authorised to be made for any purpose of this Chapter.

(4) It is an offence for a person wilfully to make a false entry or statement in a document required or authorised to be made for any purpose of this Chapter.

(5) It is an offence for a person with intent to deceive to make use of an entry or statement in a document required or authorised to be made for any purpose of this Chapter, knowing or believing the entry or statement to be false.

(6) A person who commits an offence under this section is liable on conviction to a fine of £10,000 or imprisonment for 2 years, or both.

Ill-treatment of patients

88. (1) It is an offence for a member of staff in a hospital or approved medical centre to—

(a) ill-treat or wilfully neglect a patient receiving treatment for mental disorder as an in-patient in the hospital or centre; or

(b) ill-treat or wilfully neglect, on the premises of the hospital or centre, a patient receiving treatment for mental disorder as an out-patient.

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

(3) A person who commits an offence under this section is liable on conviction to a fine of £20,000 or imprisonment for 5 years, or both.

Assisting patients to absent themselves without leave

89. (1) It is an offence for a person to induce or knowingly assist a person who is liable to be detained in a hospital or who is a community patient to absent himself or herself without leave.

(2) It is an offence for a person to induce or knowingly assist a person in legal custody by virtue of this Chapter to escape.

(3) It is an offence for a person —

(a) knowingly to harbour a patient who is absent without leave or is otherwise at large and liable to be retaken under this Chapter; or

(b) to give him or her assistance with intent to prevent, hinder or interfere with his or her being taken into custody or returned to the hospital or other place where he or she ought to be.

(4) A person who commits an offence under this section is liable on conviction to a fine of £10,000 or imprisonment for 2 years, or both.

Obstruction

90. (1) It is an offence for a person without reasonable cause—

(a) to refuse to allow premises to be inspected in accordance with this Chapter;

(b) to refuse to allow a person to be visited, interviewed or examined in accordance with this Chapter;
(c) to refuse access to a person for any of those purposes;
(d) to refuse to produce a document or record for inspection in accordance with this Chapter;
(e) otherwise to obstruct a person in the exercise of a function under this Chapter.

(2) It is an offence for a person to insist on being present at an examination or interview in accordance with this Chapter, having been required to withdraw.

(3) A person who commits an offence under this section is liable on conviction to a fine of £5,000 or imprisonment for 3 months, or both.

PART 13
SUPPLEMENTARY

Regulations

91. (1) The Governor in Council may by regulations make provision which appears necessary or expedient for the purpose of giving effect to this Ordinance.

(2) Regulations may in particular prescribe forms to be used for any purpose of this Ordinance.

Meaning of "relative" and "nearest relative"

92. (1) In this Chapter, **"relative"** means any of the following persons—
(a) life partner;
(b) son or daughter;
(c) father or mother;
(d) brother or sister;
(e) grandparent;
(f) grandchild;
(g) uncle or aunt; and
(h) nephew or niece.

(2) In deducing relationships for the purposes of this section—
(a) a relationship of the half-blood is to be treated as a relationship of the whole blood;
(b) a person is to be treated as the child of his or her father only if the father has parental responsibility within the meaning of the Welfare of Children Ordinance, 2008 (or had such parental responsibility immediately before the child's 18th birthday); and
(c) any person who is not resident in St Helena is to be ignored.

(3) In this Chapter, **"nearest relative"** means the person highest on the list in subsection (1) who is for the time being surviving, regardless of sex, and where there is more than one person qualifying under one paragraph of subsection (1)—
(a) relatives of the whole blood are preferred to relatives of the half-blood; and
(b) subject to paragraph *(a)*, the elder or eldest is preferred.

(4) If a patient ordinarily resides with, or is cared for by, one or more of his or her relatives, that relative has, or those relatives have, preference in applying subsection (1) (and subsection (3) is subject to this subsection).

(5) If a patient ordinarily resided with or was cared for by one or more of his or her relatives before becoming an in-patient in a hospital or approved medical centre, while the patient is in the hospital or centre that relative has, or those relatives have, preference in applying subsection (1) (and subsection (3) is subject to this subsection).

(6) In determining a patient's nearest relative in accordance with this section no account is to be taken of—

(a) a life partner of the patient, who is permanently living apart from the patient, either by agreement or under an order of a court, or who has deserted or has been deserted by the patient for a period which has not come to an end; or

(b) a relative, other than the patient's life partner, father or mother, who has not attained the age of 18.

(7) If a patient ordinarily resides with a person other than a relative, and has been ordinarily residing with that person for a period of not less than 5 years, that person is treated for the purposes of this section as a relative, coming last in the list in subsection (1).

(8) If a patient ordinarily resided with or was cared for by a person other than a relative before becoming an in-patient in a hospital or approved medical centre, and had been ordinarily residing with that person for a period of not less than 5 years, while the patient is in the hospital or centre that person is treated for the purposes of this section as a relative, coming last in the list in subsection (1).

(9) If a patient is in the care of the Crown by virtue of a care order under the Welfare of Children Ordinance, 2008, the Crown is the patient's nearest relative.

(10) If a residence order under the Welfare of Children Ordinance, 2008 is in force with respect to a patient, the person named in the residence order is the patient's nearest relative.

(11) If a guardian has been appointed for a patient who has not attained the age of 18 years, the guardian (or guardians) is (or are together to be taken as) the patient's nearest relative.

(12) If a patient is a ward of court, any power exercisable in relation to the patient by his or her nearest relative may be exercised only—

(a) by the court; or

(b) with the leave of the court.

Appointment by court of acting nearest relative

93. (1) The Supreme Court may on an application as provided by subsection (3) by order direct that the functions of the nearest relative of the patient are to be exercised by a specified person.

(2) An order under subsection (1) must specify—

(a) any person nominated in the application whom the court thinks suitable and willing to act; or

(b) failing paragraph *(a)*, a person whom the court thinks suitable and willing to act; or

(c) failing paragraphs *(a)* and *(b)*, the Crown.

(3) An order may be made only on the application of—

(a) the patient;

(b) a relative of the patient;

(c) a person with whom the patient is residing (or was residing immediately before the patient's admission to a hospital or medical centre);

(d) an approved professional.

(4) An application for an order may be made only on one of the following grounds:

(a) the patient has no nearest relative within the meaning of this Chapter, or ~~that~~ it is not reasonably practicable to ascertain whether he or she has such a relative, or who that relative is;

(b) the nearest relative is incapable of acting by reason of mental disorder or other illness;

(c) the nearest relative has acted without regard to the welfare of the patient or the interests of the public; or

(d) the nearest relative is otherwise not suitable to act.

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

(6) While an order made under this section is in force, this Chapter applies 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 specified in the order.

(7) For the purposes of subsection (6) it does not matter whether or not the person who was the patient's nearest relative when the order was made is still the nearest relative.

(8) An order may be discharged by the court on the application of—

(a) the patient;

(b) the person specified in the order; or

(c) the nearest relative of the patient (except a nearest relative in respect of whom the order was made under subsection (4)*(c)* or *(d)*).

(9) The court may vary an order so as to substitute another specified person on the application of—

(a) the patient;

(b) the presently specified person; or

(c) an approved professional.

(10) If the specified person dies, the functions of the nearest relative are not exercisable by any person until the order is discharged or varied.

(11) An order, unless previously discharged, ceases to have effect—

(a) at the end of the period specified in the order; or

(b) if no period is specified, when the patient ceases to be liable to be detained for assessment or treatment.

(12) In this section **"the Crown"** means the Attorney General, acting in the public interest—

(a) through a person appointed by the Attorney General; and

(b) in consultation with—

(i) the Senior Medical Officer;

(ii) one or more approved practitioners;

(iii) one or more suitably qualified professional persons chosen by the Attorney General; or

(iv) any combination of sub-paragraphs (i) to (iii) chosen by the Attorney General.

CHAPTER 2
MENTAL CAPACITY PROVISIONS

PART 1
PRELIMINARY

Interpretation

94. (1) In this Chapter, unless the context otherwise requires—

"court" means the Supreme Court;

"deputy" means a person appointed under section 115(2)(*b*);

"donee" has the meaning given to it in section 103(1);

"lasting power of attorney" has the meaning given to it in section 103;

"life-sustaining treatment", in relation to a person, means treatment which, in the view of another person providing health care for that person, is necessary to sustain life;

"property" includes any thing in action and any interest in real or personal property;

"treatment" includes a diagnostic or other procedure;

"will" includes codicil.

(2) In this Chapter, references to making decisions, in relation to a donee of a lasting power of attorney or a deputy appointed by the court, include, where appropriate, acting on decisions made.

PART 2
PERSONS WHO LACK CAPACITY

The principles

95. (1) The principles stated in this section apply for the purposes of this Chapter.

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

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

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

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

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

Persons who lack capacity

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

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

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

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

(*b*) a condition of a person, or an aspect of his or her behaviour, which might lead others to make unjustified assumptions about that person's capacity.

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

(5) Subject to section 116, no power which a person may exercise under this Chapter—

(*a*) in relation to someone who lacks capacity; or

(*b*) where such person reasonably thinks that someone lacks capacity,

is exercisable in relation to a person below 16 years of age.

Inability to make decisions

97. (1) For the purposes of section 96, a person is unable to make a decision for himself or herself if he or she is unable to—

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

(*b*) retain that information;

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

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

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

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

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

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

(*a*) deciding one way or another; or

(*b*) failing to make the decision.

Best interests

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

(*a*) P's age or appearance; or

(*b*) a condition of P, or an aspect of his or her behaviour, which might lead others to make unjustified assumptions about what might be in P's best interests.

(2) The person making the determination must consider all the relevant circumstances and, in particular, take the steps specified in subsections (3) to (8).

(3) The person making the determination must consider—

(*a*) whether it is likely that P will at some time have capacity in relation to the matter in question; and

(*b*) if it appears likely that he or she will, when that is likely to be.

(4) The person making the determination must, so far as is reasonably practicable, permit and encourage P to participate, or to improve P's ability to participate, as fully as possible in any act done for P and any decision affecting P.

(5) If the determination relates to life-sustaining treatment, the person making it must not, in considering whether the treatment is in the best interests of P, be motivated by a desire to bring about P's death.

(6) If the determination relates to the disposition or settlement of P's property, the person making it must be motivated by a desire to ensure, so far as is reasonably practicable, that P's property is preserved for application towards the costs of P's maintenance during his or her life.

(7) The person making the determination must consider, so far as is reasonably ascertainable—

(*a*) P's past and present wishes and feelings (and, in particular, any relevant written statement made by P when he or she had capacity);

(*b*) the beliefs and values that would be likely to influence P's decision if he or she had capacity; and

(*c*) the other factors that P would be likely to consider if he or she were able to do so.

(8) The person making the determination must take into account, if it is practicable and appropriate to consult them, the views of—

(*a*) anyone named by P as someone to be consulted on the matter in question or on matters of that kind;

(*b*) anyone engaged in caring for P or interested in his or her welfare;

(*c*) any donee of a lasting power of attorney granted by P; and

(*d*) any deputy appointed for P by the court,

as to what would be in P's best interests and, in particular, as to the matters mentioned in subsection (7).

(9) The duties imposed by subsections (1) to (8) also apply in relation to the exercise of any powers which—

(*a*) are exercisable under a lasting power of attorney; or

(*b*) are exercisable by a person under this Chapter where he or she reasonably believes that another person lacks capacity.

(10) In the case of an act done, or a decision made, by a person other than the court, there is sufficient compliance with this section if (having complied with the requirements of subsections (1) to (8)) he or she reasonably believes that what he or she does or decides is in the best interests of the person concerned.

(11) In subsection (2), relevant circumstances are those—

(*a*) of which the person making the determination is aware; and

(*b*) which it would be reasonable to regard as relevant.

PART 3
ACTS IN CONNECTION WITH CARE OR TREATMENT

Acts in connection with care or treatment

99. (1) Subject to section 100, if a person ('D') does an act in connection with the care or treatment of another person ('P'), the act is one to which this section applies if—

(*a*) before doing the act, D takes reasonable steps to establish whether P lacks capacity in relation to the matter in question; and

(*b*) when doing the act, D reasonably believes that—

(i) P lacks capacity in relation to the matter; and

(ii) it will be in P's best interests for the act to be done.

(2) D does not incur any liability in relation to the act that he or she would not have incurred if P had—

(*a*) had capacity to consent in relation to the matter; and

(*b*) consented to D's doing the act.

(3) This section does not —

(*a*) exclude a person's civil liability for loss or damage, or his or her criminal liability, resulting from his or her negligence in doing the act; or

(*b*) affect the operation of any advance medical directive under sections 111 to 113.

Limitations on acts under section 99

100. **(1)** If D does an act that is intended to restrain P, it is not an act to which section 99 applies unless the following 2 further conditions are satisfied:

(a) D reasonably believes that it is necessary to do the act in order to prevent harm to P; and

(b) the act is a proportionate response to the likelihood of P's suffering harm and to the seriousness of that harm.

(2) For the purposes of this section, D restrains P if ~~he or she~~D—

(*a*) uses, or threatens to use, force to secure the doing of an act which P resists; or

(*b*) restricts P's liberty of movement, whether or not P resists.

(3) Section 99 does not authorise a person to do an act which is inconsistent with a decision made, within the scope of the authority of, and in accordance with this Chapter, by—

(*a*) a donee of a lasting power of attorney granted by P; or

(*b*) a deputy appointed for P by the court.

(4) Subsection (3) does not prevent a person providing life-sustaining treatment, or doing any act which he or she reasonably believes to be necessary to prevent a serious deterioration in P's condition, while a decision as respects any relevant issue is sought from the court.

Payment for necessary goods and services

101. **(1)** If necessary goods or services are supplied to a person who lacks capacity to contract for the supply, he or she must pay a reasonable price for them.

(2) In subsection (1), **"necessary"** means suitable to a person's condition in life and to his or her actual requirements at the time when the goods or services are supplied.

Expenditure

102. **(1)** If an act to which section 99 applies involves expenditure for necessary goods or services within the meaning of section 101, it is lawful for D to apply money in P's actual possession for meeting the expenditure.

(2) If the expenditure is borne for P by D, it is lawful for D to—

(*a*) reimburse himself or herself out of money in P's actual possession; or

(*b*) be otherwise indemnified by P.

(3) Subsections (1) and (2) do not affect any power under which (apart from those subsections) a person—

(*a*) has lawful control of P's money or other property; and

(*b*) has power to spend money for P's benefit.

PART 4
LASTING POWERS OF ATTORNEY

Lasting powers of attorney

103. **(1)** A lasting power of attorney is a power of attorney under which the donor ('P') confers on the donee (or donees) authority to make decisions about all or any of the following:

(*a*) P's personal welfare or specified matters concerning P's personal welfare;

(*b*) P's property and affairs or specified matters concerning P's property and affairs,

when P no longer has capacity to make such decisions.

(2) A lasting power of attorney is not created unless—

(*a*) section 104 is complied with;

(*b*) an instrument conferring authority of the kind mentioned in subsection (1) is made and registered in accordance with the First Schedule; and

(*c*) at the time when P executes the instrument, P has attained the age of 18 years and has capacity to execute it.

(3) An instrument which purports to create a lasting power of attorney but does not comply with this section, section 104 or the First Schedule, confers no authority.

(4) The authority conferred by a lasting power of attorney is subject to—

(*a*) the provisions of this Chapter and, in particular, sections 95 and 98; and

(*b*) any conditions or restrictions specified in the instrument.

Appointment of donees

104. **(1)** A donee of a lasting power of attorney must be—

(*a*) an individual who has attained the age of 18 years; or

(*b*) if the power relates only to P's property and affairs, either such an individual or a trust corporation or any other body of persons in a class prescribed as being eligible to be appointed as donees.

(2) A person who is an undischarged bankrupt may not be appointed as donee of a lasting power of attorney in relation to P's property and affairs.

(3) Subsections (4) to (7) apply in relation to an instrument under which 2 or more persons are to act as donees of a lasting power of attorney.

(4) The instrument may appoint persons to act—

(*a*) jointly;

(*b*) jointly and severally; or

(*c*) jointly in respect of some matters and jointly and severally in respect of others.

(5) To the extent that it does not specify whether the persons are to act jointly or jointly and severally, the instrument is to be assumed to appoint them to act jointly.

(6) If the persons are to act jointly, a failure, as respects one of them, to comply with the requirements of subsection (1) or (2) or Part I or II of the First Schedule prevents a lasting power of attorney from being created.

(7) If the persons are to act jointly and severally, a failure, as respects one of them, to comply with the requirements of subsection (1) or (2) or Part I or II of the First Schedule prevents the appointment taking effect in the case of that person, but does not

prevent a lasting power of attorney from being created in the case of the other person or persons.

(8) An instrument used to create a lasting power of attorney—

(*a*) cannot give the donee (or, if more than one, any of them) power to appoint a substitute or successor; but

(*b*) may itself appoint a person to replace the donee (or, if more than one, any of them) on the occurrence of an event mentioned in section 107(5)(*a*) to (*d*) which has the effect of terminating the donee's appointment.

Lasting powers of attorney: restrictions

105. (1) A donee under a lasting power of attorney (or, if more than one, any of them) may only make decisions under the lasting power of attorney if P lacks capacity or the donee reasonably believes that P lacks capacity in relation to the matter in question.

(2) A lasting power of attorney does not authorise the donee (or, if more than one, any of them) to do an act that is intended to restrain P, unless—

(a) the donee reasonably believes that it is necessary to do the act in order to prevent harm to P; and

(b) the act is a proportionate response to the likelihood of P's suffering harm and to the seriousness of that harm.

(3) For the purposes of this section, the donee restrains P if he or she—

(*a*) uses, or threatens to use, force to secure the doing of an act which P resists; or

(*b*) restricts P's liberty of movement, whether or not P resists; or

(c) authorises another person to do any of those things in paragraph *(a)* or *(b)*.

(4) If a lasting power of attorney authorises the donee (or, if more than one, any of them) to make decisions about P's personal welfare, the authority extends to giving or refusing consent to the carrying out or continuation of a treatment by a person providing health care for P.

(5) Subsection (4) is subject to the provisos that—

(a) any decision made under it is subject to sections 111 to 113;

(b) the donee may not make any decision with respect to the carrying out or continuation of life-sustaining treatment on P, unless the instrument contains express provision to that effect.

Scope of lasting powers of attorney: gifts

106. (1) If a lasting power of attorney confers authority to make decisions about P's property and affairs, it does not authorise a donee (or, if more than one, any of them) to dispose of the donor's property by making gifts except to the extent permitted under subsection (2).

(2) The donee may make gifts—

(a) on customary occasions to persons (including himself) who are related to or connected with the donor; or

(b) to any charity to whom the donor made or might have been expected to make gifts,

if the value of each such gift is not unreasonable having regard to all the circumstances and, in particular, the size of the donor's estate.

(3) In this section, **"customary occasion"** means—

(a) the occasion or anniversary of a birth, a marriage or the formation of a civil partnership; or

(b) any other occasion on which presents are customarily given within families or among friends or associates.

Revocation of lasting powers of attorney, etc.

107. (1) This section applies if—

(*a*) P has executed an instrument with a view to creating a lasting power of attorney; or

(*b*) a lasting power of attorney is registered as having been conferred by P,

and in this section, references to revoking the power include revoking the instrument.

(2) P may, at any time when he or she has capacity to do so, revoke the power.

(3) P's bankruptcy revokes the power so far as it relates to P's property and affairs.

(4) The occurrence in relation to a donee of an event mentioned in subsection (5)—

(a) terminates his or her appointment; and

(b) except in the circumstances referred to in subsection (6), revokes the power.

(5) The events for purposes of subsection (4) are—

(*a*) the disclaimer of the appointment by the donee in accordance with any requirements prescribed for the purposes of this section by regulations;

(*b*) subject to subsection (7), the death or bankruptcy of the donee or, if the donee is a trust corporation or any other body of persons in a class prescribed as being eligible to be appointed as donees, its winding-up or dissolution;

(*c*) subject to subsection (8), the dissolution or annulment of a marriage between the donor and the donee;

(*d*) the lack of capacity of the donee.

(6) The circumstances referred to in subsection (4) are—

(*a*) the donee is replaced under the terms of the instrument;

(*b*) the donee is one of 2 or more persons appointed to act as donees jointly and severally in respect of any matter and, after the event, there is at least one remaining donee.

(7) The bankruptcy of a donee or equivalent act by a corporate donee does not terminate the appointment, or revoke the power, in so far as the donee's authority relates to P's personal welfare.

(8) The dissolution or annulment of a marriage between the donor and the donee

does not terminate the appointment of a donee, or revoke the power, if the instrument provided that it was not to do so.

Protection of donee and others if no power created or power revoked

108. **(1)** Subsections (2) and (3) apply if—

(*a*) an instrument has been registered under the First Schedule as a lasting power of attorney; but

(*b*) a lasting power of attorney was not created,

whether or not the registration has been cancelled at the time of the act or transaction in question.

(2) A donee who acts in purported exercise of the power does not incur any liability (to P or any other person) because of the non-existence of the power unless at the time of acting the donee—

(*a*) knows that a lasting power of attorney was not created; or

(*b*) is aware of circumstances which, if a lasting power of attorney had been created, would have terminated the authority to act as a donee.

(3) Any transaction between the donee and another person is, in favour of that person, as valid as if the power had been in existence, unless at the time of the transaction that person has knowledge of a matter referred to in subsection (2).

(4) If the interest of a purchaser depends on whether a transaction between the donee and the other person was valid by virtue of subsection (3), it is conclusively presumed in favour of the purchaser that the transaction was valid if—

(*a*) the transaction was completed within 12 months of the date on which the instrument was registered; or

(*b*) the other person makes a statutory declaration, before, or within 3 months after, the completion of the purchase, that that person had no reason at the time of the transaction to doubt that the donee had authority to dispose of the property which was the subject of the transaction.

(5) If 2 or more donees are appointed under a lasting power of attorney, this section applies as if references to the donee were to all or any of them.

Powers of court in relation to validity of lasting powers of attorney

109. **(1)** This section and section 110 apply if—

(*a*) P has executed or purported to execute an instrument with a view to creating a lasting power of attorney; or

(*b*) an instrument has been registered as a lasting power of attorney conferred by P.

(2) The court may determine any question relating to—

(*a*) whether one or more of the requirements for the creation of a lasting power of attorney have been met;

(*b*) whether the power has been revoked or has otherwise come to an end.

(3) Subsection (4) applies if the court is satisfied that—

(*a*) that fraud or undue pressure was used to induce P to—

(i) execute an instrument for the purpose of creating a lasting power of attorney; or
(ii) create a lasting power of attorney; or

(*b*) the donee (or, if more than one, any of them) of a lasting power of attorney—
(i) has behaved, or is behaving, in a way that contravenes the donee's authority or is not in P's best interests; or
(ii) proposes to behave in a way that would contravene the donee's authority or would not be in P's best interests.

(4) The court may—
(*a*) direct that an instrument purporting to create the lasting power of attorney is not to be registered; or
(*b*) if P lacks capacity to do so, revoke the instrument or the lasting power of attorney.

(5) If there is more than one donee, the court may under subsection (4)(*b*) revoke the instrument or the lasting power of attorney so far as it relates to any of them.

(6) In this section, **"donee"** includes an intended donee.

Powers of court in relation to operation of lasting powers of attorney

110. (1) The court may determine any question as to the meaning or effect of a lasting power of attorney or an instrument purporting to create one.

(2) The court may—
(*a*) give directions with respect to decisions which—
(i) the donee of a lasting power of attorney has authority to make; and
(ii) P lacks capacity to make;
(*b*) give any consent or authorisation to act which the donee would have to obtain from P if P had capacity to give it.

(3) The court may, if P lacks capacity to do so—
(*a*) give directions to the donee with respect to the rendering by the donee of reports or accounts and the production of records kept by the donee for that purpose;
(*b*) require the donee to supply information or produce documents or things in the donee's possession as donee;
(*c*) give directions with respect to the remuneration or expenses of the donee;
(*d*) relieve the donee wholly or partly from any liability which the donee has or may have incurred on account of a breach of duty as a donee.

(4) The court may authorise the making of gifts which are not within section 106(3).

(5) If 2 or more donees are appointed under a lasting power of attorney, this section applies as if references to the donee were to all or any of them.

PART 5
ADVANCE DECISIONS TO REFUSE TREATMENT

Advance decisions to refuse treatment

111. (1) In this Part, **"advance decision"** means a decision made by a person ('P'), after he or she has reached 18 and when he or she has capacity to do so, that if—

(a) at a later time and in such circumstances as P specifies, a specified treatment is proposed to be carried out or continued by a person providing health care for P; and

(b) at that time P lacks capacity to consent to the carrying out or continuation of the treatment,

the specified treatment is not to be carried out or continued.

(2) For the purposes of subsection (1)*(a)*, a decision may be regarded as specifying a treatment or circumstances even though expressed in layman's terms.

(3) P may withdraw or alter an advance decision at any time when he or she has capacity to do so.

(4) A withdrawal (including a partial withdrawal) need not be in writing.

(5) An alteration of an advance decision need not be in writing (unless section 112(5) applies in relation to the decision resulting from the alteration).

Validity and applicability of advance decisions

112. (1) An advance decision does not affect the liability which a person may incur for carrying out or continuing a treatment in relation to P unless the decision is at the material time—

(a) valid, and

(b) applicable to the treatment.

(2) An advance decision is not valid if P has—

(a) withdrawn the decision at a time when he or she had capacity to do so;

(b) under a lasting power of attorney created after the advance decision was made, conferred authority on the donee (or, if more than one, any of them) to give or refuse consent to the treatment to which the advance decision relates; or

(c) done anything else clearly inconsistent with the advance decision remaining his or her fixed decision.

(3) An advance decision is not applicable to the treatment in question if at the material time P has capacity to give or refuse consent to it.

(4) An advance decision is not applicable to the treatment in question if—

(a) that treatment is not the treatment specified in the advance decision;

(b) any circumstances specified in the advance decision are absent; or

(c) there are reasonable grounds for believing that circumstances exist which P did not anticipate at the time of the advance decision and which would have affected his or her decision had he or she anticipated them.

(5) An advance decision is not applicable to life-sustaining treatment unless—

(a) the decision is verified by a statement by P to the effect that it is to apply to that

treatment even if life is at risk; and

(b) the decision and statement comply with subsection (6).

(6) A decision or statement complies with this subsection only if—

(a) it is in writing;

(b) it is signed by P or by another person in P's presence and by P's direction;

(c) the signature is made or acknowledged by P in the presence of a witness; and

(d) the witness signs it, or acknowledges his or her signature, in P's presence.

(7) The existence of any lasting power of attorney other than one of a description mentioned in subsection (2)*(b)* does not prevent the advance decision from being regarded as valid and applicable.

Effect of advance decisions

113. (1) If P has made an advance decision which is—

(a) valid; and

(b) applicable to a treatment,

the decision has effect as if P had made it, and had had capacity to make it, at the time when the question arises whether the treatment should be carried out or continued.

(2) A person does not incur liability for carrying out or continuing the treatment unless, at the time, the person is satisfied that an advance decision exists which is valid and applicable to the treatment.

(3) A person does not incur liability for the consequences of withholding or withdrawing a treatment from P if, at the time, the person reasonably believes that an advance decision exists which is valid and applicable to the treatment.

(4) The court may make a declaration as to whether an advance decision—

(a) exists;

(b) is valid;

(c) is applicable to a treatment.

(5) Nothing in an apparent advance decision stops a person—

(a) providing life-sustaining treatment; or

(b) doing any act the person reasonably believes to be necessary to prevent a serious deterioration in P's condition,

while a decision as respects any relevant issue is sought from the court.

PART 6
GENERAL POWERS OF COURT AND APPOINTMENT OF DEPUTIES

Power to make declarations

114. (1) The court may make declarations as to—

(*a*) whether a person has or lacks capacity to make a decision specified in the declaration;

(*b*) whether a person has or lacks capacity to make decisions on such matters as are described in the declaration;

(*c*) the lawfulness or otherwise of any act done, or yet to be done, in relation to that person.

(2) In subsection (1)(*c*), **"act"** includes an omission and a course of conduct.

Powers to make decisions and appoint deputies: general

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

(*a*) P's personal welfare; or

(*b*) P's property and affairs.

(2) The court may—

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

(*b*) appoint a person (a **"deputy"**) to make decisions on P's behalf in relation to the matter or matters.

(3) The powers of the court under this section are subject to this Chapter and, in particular, to sections 95 and 98.

(4) When deciding whether it is in P's best interests to appoint a deputy, the court must have regard (in addition to the matters mentioned in section 98) to the principles that—

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

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

(5) Subject to section 120, the court may make such further orders or give such directions, and confer on a deputy such powers or impose on him or her such duties, as it thinks necessary or expedient for giving effect to, or otherwise in connection with, an order or appointment made by it under subsection (2).

(6) Without affecting section 98, the court may make the order, give the directions or make the appointment on such terms as it considers are in P's best interests, even though no application is before the court for an order, directions or an appointment on those terms.

(7) An order of the court may be varied or discharged by a subsequent order, subject to paragraph 6 of the Second Schedule.

(8) The court may, in particular, revoke the appointment of a deputy or vary the powers conferred on a deputy if it is satisfied that he or she—

(*a*) has behaved, or is behaving, in a way that contravenes the authority conferred on him or her by the court or is not in P's best interests; or

(*b*) proposes to behave in a way that would contravene that authority or would not be in P's best interests.

Powers to make decisions and appoint deputies: minors

116. (1) Subject to subsection (2), the powers under section 115 as respects any

matter may be exercised even though P has not attained the age of 16 years, if the court considers it likely that P will still lack capacity to make decisions in respect of that matter when he or she attains the age of 18 years.

(2) When deciding whether it is in P's best interests to appoint a deputy to make decisions on P's behalf, the court must have regard (in addition to the matters mentioned in section 115) to the principle that an appointment of a parent or guardian of P as deputy is to be preferred to the appointment of any other person as deputy.

Section 115 powers: personal welfare

117. (1) The powers under section 115 as respects P's personal welfare include—

(*a*) deciding where P is to live;
(*b*) deciding what contact, if any, P is to have with any specified person;
(*c*) making an order prohibiting a named person from having contact with P;
(*d*) subject to subsection (3), giving or refusing consent to the carrying out or continuation of a treatment by a person providing health care for P;
(*e*) giving a direction that a person responsible for P's health care allow a different person to take over that responsibility.

(2) Subsection (1) is subject to sections 111 to 113 and section 120.

Section 115 powers: property and affairs

118. (1) Subject to this section and section 120, the powers under section 115 as respects P's property and affairs include—

(*a*) the control and management of P's property;
(*b*) the sale, exchange, charging, gift or other disposition of P's property;
(c) the acquisition of property in P's name or on P's behalf;
(*d*) the carrying on, on P's behalf, of any profession, trade or business;
(*e*) the taking of a decision which will have the effect of dissolving a partnership of which P is a member;
(*f*) the carrying out of any contract entered into by P;
(*g*) the discharge of P's debts and of any of P's obligations, whether legally enforceable or not;
(*h*) the settlement of any of P's property by way of trust, whether for P's benefit or for the benefit of others;
(i) the execution for P of a will;
(j) the exercise of any power (including a power to consent) vested in P, whether beneficially or as trustee under a trust;
(k) the conduct of legal proceedings in P's name or on P's behalf;
(l) the maintenance and education of P's spouse, parent, child under age 21 or disabled child.

(2) No will may be made under subsection (1)(*i*) unless P has attained the age of 18 years.

(3) The Second Schedule supplements this section.

Appointment of deputies

119. **(1)** A deputy appointed by the court must be—

(*a*) an individual who has attained the age of 21 years; or

(*b*) as respects powers in relation to property and affairs, either such an individual, or a trust corporation or any other body of persons in a class prescribed as being eligible to be appointed as donees.

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

(3) A person may not be appointed as a deputy without the person's consent.

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

(*a*) jointly;

(*b*) jointly and severally; or

(c) jointly in respect of some matters and jointly and severally in respect of others.

(5) When appointing a person as deputy, the court may at the same time appoint one or more other persons to succeed the person (a **"successor deputy")**—

(*a*) in circumstances, or on the happening of events, specified by the court; and

(*b*) for a period specified by the court.

(6) In the case of an application to which section 116 applies, the court must have regard to the wishes of the parents or guardian of P on the choice of the successor deputy.

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

(8) The deputy is entitled—

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

(*b*) if the court so directs when making the appointment, to remuneration out of P's property for discharging them.

(9) The court may confer on a deputy powers to—

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

(*b*) exercise all or any specified powers in respect of it, including the powers of investment the court determines.

(10) The court may require a deputy—

(*a*) to give to the Public Guardian such security as the court thinks fit for the due discharge of the deputy's functions; and

(*b*) to submit to the Public Guardian reports at times or at intervals the court directs.

Restrictions on deputies

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

(2) Nothing in section 115(5) or 117 permits a deputy to be given power to—
(*a*) prohibit a named person from having contact with P; or
(*b*) direct a person responsible for P's health care to allow a different person to take over that responsibility.

(3) A deputy must not be given powers with respect to—
(*a*) the settlement of P's property, whether for P's benefit or for the benefit of others;
(*b*) the execution for P of a will; or
(c) the exercise of any power (including a power to consent) vested in P, whether beneficially or as trustee or otherwise.

(4) A deputy must not be given power to make a decision on behalf of P which is inconsistent with a decision made by the donee of a lasting power of attorney granted by P (or, if there is more than one donee, by any of them) which is within the scope of the donee's authority and in accordance with this Chapter.

(5) The authority conferred on a deputy is subject to this Chapter and, in particular, sections 95 and 98.

(6) A deputy must not do an act that is intended to restrain P unless—
(a) in doing the act, the deputy is acting within the scope of an authority expressly conferred on the deputy by the court;
(b) P lacks, or the deputy reasonably believes that P lacks, capacity in relation to the matter in question;
(c) the deputy reasonably believes that it is necessary to do the act in order to prevent harm to P; and
(d) the act is a proportionate response to the likelihood of P's suffering harm and to the seriousness of that harm.

(7) For the purposes of this section, a deputy restrains P if the deputy—
(*a*) uses, or threatens to use, force to secure the doing of an act which P resists;
(*b*) restricts P's liberty of movement, whether or not P resists; or
(c) authorises another person to do anything in paragraph *(a)* or *(b)*.

PART 7
EXCLUDED DECISIONS AND DECLARATORY PROVISIONS

Excluded decisions

121. Nothing in this Chapter permits a decision on any of the following matters to be made on behalf of a person:
(*a*) consenting to marriage;
(*b*) consenting to touching of a sexual nature;
(c) consenting to a decree of divorce being granted on the basis of 2 years' separation;
(*d*) consenting to a child's being placed for adoption by an adoption agency or to the making of an adoption order under the Welfare of Children Ordinance, 2008 or any other law or arrangements regarding adoption;
(e) discharging parental responsibilities in matters not relating to a child's property;

(f) adopting or renouncing a religion;
(g) making or revoking an advance medical directive under sections 111 to 113;
(h) any other matter prescribed.

Mental health care and treatment

122. (1) Nothing in this Chapter authorises a person to—
(*a*) give a patient medical treatment for mental disorder; or
(*b*) consent to a patient's being given medical treatment for mental disorder,
if, at the time when it is proposed to treat the patient, his or her treatment is regulated by Chapter 1.

(2) In this section, **"medical treatment"** and **"mental disorder"** have the same meanings as in Chapter 1.

Voting rights

123. Nothing in this Chapter permits a decision on voting at an election for any public office, or at a national referendum, to be made on behalf of a person.

PART 8
PUBLIC GUARDIAN

Public Guardian

124. (1) For the purposes of this Chapter, there is to be an officer known as the Public Guardian, to be appointed by the Governor.

(2) The Public Guardian may in writing appoint any public officer as an authorised officer for the purposes of this Chapter.

(3) The Public Guardian may delegate to any authorised officer all or any of the functions or powers conferred on the Public Guardian by this Chapter except the powers conferred by this subsection.

(4) The Public Guardian may disclose information obtained in connection with the administration or execution of this Chapter to any authorised officer if this is necessary to enable such officer to perform his or her official duties under this Chapter.

(5) An authorised officer to whom information under subsection (4) is disclosed may only disclose or use such information to the extent necessary for performing his or her official duties under this Chapter.

(6) A person who contravenes subsection (5) commits an offence.
Penalty: A fine of £5,000 or imprisonment for one year, or both.

(7) Subsections (4) and (5) do not affect any right of disclosure under this Chapter or any other written law or rule of law.

Functions of Public Guardian

125. **(1)** The Public Guardian has the following functions:

(*a*) establishing and maintaining a register of lasting powers of attorney;

(*b*) establishing and maintaining a register of orders appointing deputies;

(c) supervising deputies appointed by the court;

(d) receiving security which the court requires a person to give for the discharge of the person's functions;

(e) receiving reports from donees of lasting powers of attorney and deputies appointed by the court;

(*f*) reporting to the court on any matters relating to proceedings under this Chapter the court requires;

(*g*) dealing with representations (including complaints) about the way in which a done of a lasting power of attorney or a deputy appointed by the court is exercising the donee's powers;

(h) investigating any contravention or alleged contravention of any provision of this Chapter;

(*i*) publishing, in any manner the Public Guardian thinks appropriate, any information he or she thinks appropriate about the discharge of his or her functions.

(2) The functions conferred by subsection (1)*(c)* and (*g*) may be discharged in co-operation with any other person who has functions in relation to the care or treatment or the property and affairs of a person who lacks capacity.

(3) The Governor in Council may, by regulations, make provision—

(*a*) conferring on the Public Guardian other functions in connection with this Chapter;

(*b*) in connection with the discharge by the Public Guardian of his or her functions.

(4) Regulations made under subsection (3)(*b*) may in particular make provision as to—

(*a*) the giving of security by deputies appointed by the court and the enforcement and discharge of security so given;

(*b*) the fees which may be charged by the Public Guardian;

(c) the way in which, and funds from which, such fees are to be paid;

(*d*) exemptions from and reductions in such fees;

(*e*) remission of such fees in whole or in part;

(*f*) the making of reports to the Public Guardian by deputies appointed by the court and others who are directed by the court to carry out any transaction for a person who lacks capacity.

(5) For the purpose of enabling the Public Guardian to carry out his or her functions, the Public Guardian may, at all reasonable times, examine and take copies of—

(a) any health record; and

(b) any record of, or held by, the relevant department of the Government and compiled in connection with a social services function,

so far as the record relates to a person who lacks capacity.

(6) The Public Guardian may also for that purpose interview in private a person who lacks capacity.

Annual report

126. The Public Guardian must make an annual report to the Governor about the discharge of his or her functions.

PART 9
SUPPLEMENTARY POWERS, PRACTICE AND PROCEDURE OF COURT

Interim orders and directions

127. The court may, pending the determination of an application to it in relation to a person, make an order or give directions in respect of any matter if—

(*a*) there is reason to believe that the person lacks capacity in relation to the matter;

(*b*) the matter is one to which its powers under this Chapter extend; and

(c) it is in the person's best interests to make the order, or give the directions, without delay.

Power to call for reports

128. (1) This section applies where, in proceedings brought in respect of a person ('P') who lacks capacity, the court is considering a question relating to that person.

(2) The court may require a report to be made to it by the Public Guardian.

(3) The court may require the Health Directorate and Safeguarding Directorate to arrange for a report to be made by one of its officers or employees.

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

(5) Court Rules made under section 130 may specify matters which, unless the court directs otherwise, must also be dealt with in the report.

(6) The report may be made in writing or orally as the court may direct.

(7) In complying with a requirement under this section, the Public Guardian may, at all reasonable times, examine and take copies of—

(*a*) any health record; and

(*b*) any record held by any person and compiled in connection with a social services function,

so far as the record relates to P.

(8) If the Public Guardian is making a visit in the course of complying with a requirement, he or she may interview P in private.

Applications to court

129. (1) No permission is required for an application to the court for the exercise of any of its powers under this Chapter by—

(*a*) a person who lacks, or is alleged to lack, capacity and, if such a person has not

attained the age of 18 years, by anyone with parental rights with respect to that person;

(*b*) the donor or a donee of a lasting power of attorney to which the application relates;

(c) a deputy appointed by the court for a person to whom the application relates;

(*d*) a person named in an existing order of the court, if the application relates to the order; or

(*e*) the Public Guardian if it appears to him or her that—

(i) a person lacks capacity;

(ii) no application has been made or is likely to be made for an order under this Chapter; and

(iii) an order under this Chapter is necessary for the protection of the personal welfare, property or affairs of that person.

(2) Subject to the Court Rules made under section 130, permission is required for any other application to the court.

(3) In deciding whether to grant permission the court must, in particular, have regard to—

(*a*) the applicant's connection with the person to whom the application relates;

(*b*) the reasons for the application;

(c) the benefit to the person to whom the application relates of the proposed order or directions; and

(*d*) whether the benefit can be achieved in any other way.

Court Rules

130. (1) The Chief Justice may make Rules of Court with respect to the practice and procedure of the court to regulate and prescribe the procedure and practice to be followed in respect of proceedings under this Chapter.

(2) Without limiting subsection (1), the Rules may make provision—

(*a*) as to the manner and form in which proceedings are to be commenced;

(*b*) as to the persons entitled to be notified of, and be made parties to, the proceedings;

(c) or enabling the court to appoint a suitable person to act in the name of, or on behalf of, or to represent the person to whom the proceedings relate;

(*d*) for matters referred to in section 130(5) and on paragraph 5 of the Third Schedule;

(e) for enabling an application to the court to be disposed of without a hearing;

(f) for enabling the court to proceed with, or with any part of, a hearing in the absence of the person to whom the proceedings relate;

(g) for enabling or requiring the proceedings or any part of them to be conducted in private and for enabling the court to determine who is to be admitted when the court sits in private and to exclude specified persons when it sits in public;

(h) as to what may be received as evidence (whether or not admissible apart from these Rules) and the manner in which it is to be presented;

(i) for the enforcement of orders made and directions given in the proceedings;

(j) for regulating matters relating to the costs of those proceedings, including prescribing scales of costs to be paid to legal or other representatives;

(k) as to the way in which, and funds from which, fees and costs are to be paid;

(l) for charging fees and costs upon the estate of the person to whom the proceedings relate, provided that such charge must not cause any interest of the person in any property to fail or terminate or to be prevented from recommencing;

(m) for the payment of fees and costs within a specified time after the death of the person to whom the proceedings relate or the conclusion of the proceedings.

Costs

131. (1) The costs of and incidental to all proceedings in the court are in its discretion.

(2) The court has full power to determine by whom and to what extent the costs are to be paid.

(3) The court may, in any proceedings—

(*a*) disallow; or

(*b*) order the legal or other representatives concerned to meet,

the whole of any wasted costs or such part of them as may be determined by the court .

(4) In subsection (3)—

"legal or other representative", in relation to a party to proceedings, means any person exercising a right of audience or right to conduct litigation on the party's behalf;

"wasted costs" means any costs incurred by a party—

(*a*) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative; or

(*b*) which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay.

PART 10
MISCELLANEOUS

Codes of practice

132. (1) The Governor in Council may issue one or more codes of practice—

(*a*) for the guidance of persons assessing whether a person has capacity in relation to any matter;

(*b*) for the guidance of persons acting in connection with the care or treatment of another person;

(c) for the guidance of donees of lasting powers of attorney;

(*d*) for the guidance of deputies appointed by the court; and

(*e*) with respect to any other matters concerned with this Chapter that the Governor in Council thinks fit.

(2) The Governor in Council may revoke, vary, revise or amend the whole or any part of any code of practice issued under this section in any manner the Governor in Council thinks fit.

(3) The Governor in Council may publish any such code of practice, including

any revocation, variation, revision or amendment to it, in any manner the Governor in Council thinks fit.

(4) It is the duty of a person to have regard to any relevant code of practice if the person is acting in relation to a person who lacks capacity and is doing so in one or more of the following ways:

(*a*) as the donee of a lasting power of attorney;
(*b*) as a deputy appointed by the court;
(c) in a professional capacity; or
(*d*) for remuneration.

(5) If it appears to a court conducting any civil or criminal proceedings that—

(*a*) a provision of a code of practice; or
(*b*) a failure to comply with a code of practice,

is relevant to a question arising in the proceedings, the provision or failure must be taken into account in deciding the question.

(6) A code of practice issued under this section is not subsidiary legislation.

Ill-treatment

133. (1) Subsection (2) applies if a person ('D')—

(*a*) has the care of a person ('P') who lacks, or whom D reasonably believes to lack, capacity;
(*b*) is the donee of a lasting power of attorney created by P; or
(c) is a deputy appointed by the court for P.

(2) D commits an offence if D ill-treats or causes, procures or knowingly permits P to be ill-treated by any other person.
Penalty: A fine, or imprisonment for 5 years, or both.

(3) For the purposes of this section, D ill-treats P if D—

(*a*) subjects P to physical or sexual abuse;
(*b*) wilfully or unreasonably does, or causes P to do, any act which endangers or is likely to endanger the safety of P or which causes or is likely to cause P—
  (i) any unnecessary physical pain, suffering or injury;
  (ii) any emotional injury; or
  (iii) any injury to P's health or development; or
(c) wilfully or unreasonably neglects, abandons or exposes P with full intention of abandoning P or in circumstances that are likely to endanger the safety of P or to cause P—
  (i) any unnecessary physical pain, suffering or injury;
  (ii) any emotional injury; or
  (iii) any injury to P's health or development.

(4) For the purpose of subsection (3)*(c)*, D is deemed to have neglected P in circumstances likely to cause P unnecessary physical pain, suffering or injury or emotional injury or injury to P's health or development if D wilfully or unreasonably neglects to provide adequate food, clothing, medical aid, lodging, care or other necessities of life for P.

(5) D may be convicted of an offence under this section even if —

(*a*) actual suffering or injury on the part of P or the likelihood of any suffering or injury on the part of P was obviated by the action of another person; or

(*b*) P dies.

(6) *Omitted*

Information relating to persons who lack capacity

134. (1) Any person who knows or has reason to suspect that a person who lacks capacity is in need of care or protection may make a notification to the Public Guardian of the facts and circumstances on which the person's knowledge or suspicion is based.

(2) Any health care worker who makes a notification under subsection (1)—

(*a*) is not, by virtue of doing so, to be held in any proceedings before any court or tribunal or in any other respect to have breached any code of professional etiquette or ethics, or to have departed from any accepted form of professional conduct; and

(*b*) insofar as he or she has acted in good faith, incurs no civil or criminal liability in respect of the notification or the provision of any information contained in the notification.

(3) In subsection (2), **"health care worker"** means any medical practitioner, dentist, pharmacist, therapist, psychologist, social worker, counsellor, nurse, attendant or other person providing health care services.

Scope of Chapter

135. Nothing in this Chapter is to be taken to affect the law relating to murder, culpable homicide not amounting to murder or abetment of suicide.

Amendment of Schedules

136. The Governor in Council may, by order published in the *Gazette*, amend, add to or vary the First, Second or Third Schedule.

Regulations

137. The Governor in Council may make such regulations as may be necessary or expedient for carrying out the purposes and provisions of this Chapter and for prescribing anything that may be required or authorised to be prescribed by this Chapter.

Repeal and transitional provisions

138. (1) The Mental Health Ordinance, Cap. 57, is repealed.

(2) The Third Schedule has effect with respect to transitional matters arising from the repeal of the Mental Health Ordinance, Cap. 57.

FIRST SCHEDULE

(Sections 103(2) and (3), 104(6) and (7), 108(1) and 136)

LASTING POWERS OF ATTORNEY: FORMALITIES

TABLE OF CONTENTS

PART I
MAKING INSTRUMENTS

1. General requirements as to making instruments
2. Requirements as to content of instruments
3. Failure to comply with prescribed form

PART II
REGISTRATION

4. Applications and procedure for registration
5. Notification
6. Instrument not made properly or containing ineffective provision
7. Deputy already appointed
8. Objection by donee
9. Objection by donor
10. Registration
11. Evidence of registration

PART III
CANCELLATION OF REGISTRATION AND NOTIFICATION OF SEVERANCE

12. Cancellation of registration
13. Direction by court to cancel registration
14. Circumstances for severance or cancellation
15. Delivery of instrument on cancellation of registration

PART IV
RECORDS OF ALTERATIONS IN REGISTERED POWERS

16. Partial revocation of power as a result of bankruptcy
17. Termination of appointment of donee which does not revoke power
18. Replacement of donee
19. Severance of ineffective provisions

20. Delivery of instrument for attachment of note
21. Notification of alterations

PART I
MAKING INSTRUMENTS

General requirements as to making instruments

1. **(1)** An instrument is not made in accordance with this Schedule unless—

(*a*) it is in the prescribed form;

(*b*) it complies with paragraph 2; and

(c) any prescribed requirements in connection with its execution are satisfied.

(2) Regulations may make different provision according to whether—

(*a*) the instrument relates to personal welfare or to property and affairs (or to both);

(*b*) only one or more than one donee is to be appointed (and if more than one, whether jointly or jointly and severally).

Requirements as to content of instruments

2. **(1)** The instrument must include—

(*a*) the prescribed information about the purpose of the instrument and the effect of a lasting power of attorney;

(*b*) a statement by the donor to the effect that he or she—

(i) has read the prescribed information or a prescribed part of it (or has had it read to him or her); and

(ii) intends the authority conferred under the instrument to mean authority to make decisions on his or her behalf in circumstances where he or she no longer has capacity;

(c) a statement by the donor—

(i) naming a person or persons whom the donor wishes to be notified of any application for the registration of the instrument; or

(ii) stating that there are no persons whom he or she wishes to be notified of any such application;

(*d*) a statement by the donee (or, if more than one, each of them) to the effect that the donee—

(i) has read the prescribed information or a prescribed part of it (or, if an individual, has had it read to him or her); and

(ii) understands the duties imposed on a donee of a lasting power of attorney under sections 95 and 98; and

(*e*) a certificate by a person of a prescribed description that, in his or her opinion, at the time when the donor executes the instrument—

(i) the donor understands the purpose of the instrument and the scope of the authority conferred under it;

(ii) no fraud or undue pressure is being used to induce the donor to create a lasting power of attorney; and

(iii) there is nothing else which would prevent a lasting power of attorney from being created by the instrument.

(2) A certificate under sub-paragraph (1)(*e*) must—

(*a*) be made in the prescribed form; and

(*b*) include any prescribed information.

(3) The certificate may not be given by a person appointed as donee under the instrument.

Failure to comply with prescribed form

3. **(1)** If an instrument differs in an immaterial respect in form or mode of expression from the prescribed form, it is to be treated by the Public Guardian as sufficient in point of form and expression.

(2) The court may declare that an instrument which is not in the prescribed form is to be treated as if it were, if it is satisfied that the persons executing the instrument intended it to create a lasting power of attorney.

(3) An instrument is to be treated as being made in the prescribed form if it complies with the form that was prescribed at the time of its making.

PART II
REGISTRATION

Applications and procedure for registration

4. **(1)** An application to the Public Guardian for the registration of an instrument intended to create a lasting power of attorney must—

(*a*) be made in the prescribed form; and

(*b*) include any prescribed information.

(2) The application may be made—

(*a*) by the donor;

(*b*) by the donee or donees; or

(c) if the instrument appoints 2 or more donees to act jointly and severally in respect of any matter, by any of the donees.

(3) The application must be accompanied by—

(*a*) the instrument; and

(*b*) any fee prescribed.

(4) A person who, in an application for registration, makes a statement which he or she knows to be false in a material particular commits an offence.
Penalty: A fine, or imprisonment for 2 years, or both.

(5) Subject to paragraphs 6 to 9, the Public Guardian must register the instrument as a lasting power of attorney at the end of the prescribed period if the application complies with sub-paragraphs (1), (2) and (3) of this paragraph.

Notification

5. **(1)** As soon as is practicable after receiving an application by the donor under paragraph 4(2)(*a*) and determining that the application is in order, the Public Guardian must notify the donee (or donees) that the application has been received.

(2) As soon as is practicable after receiving an application by a donee (or donees) under paragraph 4(2)(*b*) and determining that the application is in order, the Public Guardian must notify the donor that the application has been received.

(3) As soon as is practicable after receiving an application by a donee under

paragraph 4(2)*(c)* and determining that the application is in order, the Public Guardian must notify—

(*a*) the donor; and

(*b*) the donee or donees who did not join in making the application,

that the application has been received.

(4) A notice under this paragraph must include such information, if any, as is prescribed.

(5) The court may—

(a) on the application of the donor, dispense with the requirement to notify under subparagraph (1); or

(b) on the application of the donee or donees concerned, dispense with the requirement to notify under subparagraph (2) or (3),

if satisfied that no useful purpose would be served by giving the notice.

Instrument not made properly or containing ineffective provision

6. **(1)** If it appears to the Public Guardian that an instrument accompanying an application under paragraph 4 is not made in accordance with this Schedule, the Public Guardian must not register the instrument unless the court directs him or her to do so.

(2) Sub-paragraph (3) applies if it appears to the Public Guardian that the instrument contains a provision which would—

(*a*) be ineffective as part of a lasting power of attorney; or

(*b*) prevent the instrument from operating as a valid lasting power of attorney.

(3) The Public Guardian—

(*a*) must apply to the court for it to determine the matter under section 110(1); and

(*b*) pending the determination by the court, must not register the instrument.

(4) Sub-paragraph (5) applies if the court determines under section 110(1) (whether or not on an application by the Public Guardian) that the instrument contains a provision which would—

(*a*) be ineffective as part of a lasting power of attorney; or

(*b*) prevent the instrument from operating as a valid lasting power of attorney.

(5) The court must—

(*a*) notify the Public Guardian that it has severed the provision; or

(*b*) direct him or her not to register the instrument.

(6) If the court notifies the Public Guardian that it has severed a provision, he or she must register the instrument with a note to that effect attached to it.

Deputy already appointed

7. **(1)** Sub-paragraph (2) applies if it appears to the Public Guardian that—

(*a*) there is a deputy appointed by the court for the donor; and

(*b*) the powers conferred on the deputy would, if the instrument were registered, to any extent conflict with the powers conferred on the attorney.

(2) The Public Guardian must not register the instrument unless the court directs him or her to do so.

Objection by donee

8. **(1)** Sub-paragraph (2) applies if a donee—

(*a*) receives a notice under paragraph 6 or 7(2)(*b*) of an application for the registration of an instrument; and

(*b*) before the end of the prescribed period, gives notice to the Public Guardian of an objection to the registration on the ground that an event mentioned in section 107(3) or (5)(*a*) to (*d*) has occurred which has revoked the instrument.

(2) If the Public Guardian is satisfied that the ground for making the objection is established, he or she must not register the instrument unless the court, on the application of the person applying for the registration—

(*a*) is satisfied that the ground is not established; and

(*b*) directs the Public Guardian to register the instrument.

(3) Sub-paragraph (4) applies if a donee—

(*a*) receives a notice under paragraph 5 of an application for the registration of an instrument; and

(*b*) before the end of the prescribed period—

(i) makes an application to the court objecting to the registration on a prescribed ground; and

(ii) notifies the Public Guardian of the application.

(4) The Public Guardian must not register the instrument unless the court directs him or her to do so.

Objection by donor

9. **(1)** This paragraph applies if the donor—

(*a*) receives a notice under paragraph 5 of an application for the registration of an instrument; and

(*b*) before the end of the prescribed period, gives notice to the Public Guardian of an objection to the registration.

(2) The Public Guardian must not register the instrument unless the court, on the application of the donee or, if more than one, any of them—

(*a*) is satisfied that the donor lacks capacity to object to the registration; and

(*b*) directs the Public Guardian to register the instrument.

Registration

10. If an instrument is registered under this Schedule, the Public Guardian must give notice of the fact in the prescribed form to—

(*a*) the donor; and

(*b*) the donee or, if more than one, each of them.

Evidence of registration

11. A document duly certified by the Public Guardian as a copy of an instrument registered under this Schedule is *prima facie* evidence of—

(*a*) the contents of the instrument; and

(*b*) the fact that it has been registered.

PART III
CANCELLATION OF REGISTRATION AND NOTIFICATION OF SEVERANCE

Cancellation of registration

12. **(1)** The Public Guardian must cancel the registration of an instrument as a lasting power of attorney on being satisfied that the power has been revoked—

(*a*) as a result of the donor's bankruptcy; or

(*b*) on the occurrence of an event mentioned in section 107(5)(*a*) to (*d*).

(2) If the Public Guardian cancels the registration of an instrument, he or she must notify—

(*a*) the donor; and

(*b*) the donee or, if more than one, each of them.

Direction by court to cancel registration

13. The court must direct the Public Guardian to cancel the registration of an instrument as a lasting power of attorney if it—

(*a*) determines under section 109(2)(*a*) that a requirement for creating the power was not met;

(*b*) determines under section 109(2)(*b*) that the power has been revoked or has otherwise come to an end; or

(c) revokes the power under section 109(4)(*b*).

Circumstances for severance or cancellation

14. **(1)** Sub-paragraph (2) applies if the court determines under section 110(1) that a lasting power of attorney contains a provision which—

(*a*) is ineffective as part of a lasting power of attorney; or

(*b*) prevents the instrument from operating as a valid lasting power of attorney.

(2) The court must—

(*a*) notify the Public Guardian that it has severed the provision; or

(*b*) direct him or her to cancel the registration of the instrument as a lasting power of attorney.

Delivery of instrument on cancellation of registration

15. On the cancellation of the registration of an instrument, any person who possesses all or any of the following documents must deliver them to the Public Guardian to be cancelled:

(*a*) the instrument;

(*b*) any office copies of the instrument;

(c) any copies of the instrument that have been certified by the Public Guardian under paragraph 11.

PART IV
RECORDS OF ALTERATIONS IN REGISTERED POWERS

Partial revocation of power as a result of bankruptcy

16. If in the case of a registered instrument it appears to the Public Guardian that under section 107 a lasting power of attorney is revoked in relation to the donor's property and affairs (but not in relation to other matters), the Public Guardian must attach to the instrument a note to that effect.

Termination of appointment of donee which does not revoke power

17. If in the case of a registered instrument it appears to the Public Guardian that an event has occurred which—

(*a*) has terminated the appointment of the donee; but

(*b*) has not revoked the instrument,

the Public Guardian must attach to the instrument a note to that effect.

Replacement of donee

18. If in the case of a registered instrument it appears to the Public Guardian that the donee has been replaced under the terms of the instrument, the Public Guardian must attach to the instrument a note to that effect.

Severance of ineffective provisions

19. If in the case of a registered instrument the court notifies the Public Guardian under paragraph 14(2)(*a*) that it has severed a provision of the instrument, the Public Guardian must attach to it a note to that effect.

Delivery of instrument for attachment of note

20. If the Public Guardian is required to attach a note to a registered instrument under paragraph 16, 17, 18 or 19, any person who possesses all or any of the following documents must deliver them to the Public Guardian for the note to be attached:

(*a*) the instrument;

(*b*) any office copies of the instrument;

(c) any copies of the instrument that have been certified by the Public Guardian under paragraph 11.

Notification of alterations

21. If the Public Guardian attaches a note to an instrument under paragraph 16, 17, 18 or 19, he or she must give notice of the note to the donee or donees of the power (or, as the case may be, to the other donee or donees of the power).

SECOND SCHEDULE
(Sections 118(3) and 136)

PROPERTY AND AFFAIRS: SUPPLEMENTARY PROVISIONS

TABLE OF CONTENTS

1. Wills: general
2. Provision that may be made in will
3. Wills: requirements relating to execution
4. Wills: effect of execution
5. Vesting orders ancillary to settlement, etc.
6. Variation of settlements
7. Vesting of property in person appointed outside St Helena
8. Preservation of interests in property disposed of on behalf of person lacking capacity
9. Charge on property of person lacking capacity

Wills: general

1. Paragraphs 2, 3 and 4 apply in relation to the execution of a will, by virtue of section 118, on behalf of P (being a person who lacks capacity).

Provision that may be made in will

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

Wills: requirements relating to execution

3. **(1)** Sub-paragraph (2) applies if under section 115 the court makes an order or gives directions requiring or authorising a person (the authorised person) to execute a will on behalf of P.

(2) Any will executed pursuant to the order or direction must—

(*a*) state that it is signed by P acting by the authorised person;

(*b*) be signed by the authorised person with the name of P and his or her own name, in the presence of 2 or more witnesses present at the same time;

(c) be attested and subscribed by those witnesses in the presence of the authorised person; and

(*d*) be sealed with the official seal of the court.

Wills: effect of execution

4. **(1)** This paragraph applies where a will is executed in accordance with paragraph 3.

(2) The Wills Act, 1837 (UK) has effect in relation to the will as if it were signed by P by his or her own hand, except that—

(*a*) section 9 of the 1837 Act (requirements as to signing and attestation) does not apply; and

(*b*) in the subsequent provisions of that Act any reference to execution in the manner required by that Act is to be read as a reference to execution in accordance with paragraph 3 of this Schedule.

(3) The will has the same effect for all purposes as if—
(*a*) P had had the capacity to make a valid will; and
(*b*) the will had been executed by P in the manner required by the 1837 Act.

(4) Sub-paragraph (3) does not have effect in relation to the will in so far as it—
(*a*) disposes of immovable property outside St Helena; or
(*b*) relates to any other property or matter if, when the will is executed—
(i) P is domiciled outside St Helena; and
(ii) the condition in sub-paragraph (5) is met.

(5) The condition referred to in sub-paragraph (4)(*b*)(ii) is that, under the law of P's domicile, any question of P's testamentary capacity would fall to be determined in accordance with the law of a place outside St Helena.

Vesting orders ancillary to settlement, etc.

5. **(1)** If provision is made by virtue of section 118 for—
(*a*) the settlement of any property of P; or
(*b*) the exercise of a power vested in P of appointing trustees or retiring from a trust,
the court may also make as respects the property settled or the trust property any consequential vesting or other orders the case requires.

(2) The power under sub-paragraph (1) includes, in the case of the exercise of such a power, any order which could have been made in such a case under Part IV of the Trustee Act 1925 (UK).

Variation of settlements

6. **(1)** If a settlement has been made by virtue of section 118, the court may by order vary or revoke the settlement if—
(*a*) the settlement makes provision for its variation or revocation;
(*b*) the court is satisfied that a material fact was not disclosed when the settlement was made; or
(c) the court is satisfied that there has been a substantial change of circumstances.

(2) Any such order may give any consequential directions the court thinks fit.

Vesting of property in person appointed outside St Helena

7. **(1)** Sub-paragraph (2) applies if the court is satisfied—
(*a*) that under the law prevailing in a place outside St Helena a person ('M') has been appointed to exercise powers in respect of the property or affairs of P on the ground (however formulated) that P lacks capacity to make decisions with respect to the management and administration of P's property and affairs; and
(*b*) that, having regard to the nature of the appointment and to the circumstances of the case, it is expedient that the court should exercise its powers under this

paragraph.

(2) The court may direct—

(a) any stocks standing in the name of P; or

(b) the right to receive dividends from the stocks,

to be transferred into M's name or otherwise dealt with as required by M, and may give such directions as the court thinks fit for dealing with accrued dividends from the stocks.

(3) In sub-paragraph (2), **"stocks"** includes—

(*a*) shares; and

(*b*) any funds, annuity or security transferable in the books kept by any corporate body or unincorporated company or society or by an instrument of transfer either alone or accompanied by other formalities,

and **"dividends"** is to be construed accordingly.

Preservation of interests in property disposed of on behalf of person lacking capacity

8. **(1)** Sub-paragraphs (2) and (3) apply if—

(*a*) P's property has been disposed of by virtue of section 118;

(*b*) under P's will or intestacy, or by a gift perfected or nomination taking effect on P's death, any other person would have taken an interest in the property but for the disposal; and

(c) on P's death, any property belonging to P's estate represents the property disposed of.

(2) The person takes the same interest, if and so far as circumstances allow, in the property representing the property disposed of.

(3) If the property disposed of was real property, any property representing it is to be treated, so long as it remains part of P's estate, as if it were real property.

(4) The court may direct that, on a disposal of P's property which—

(*a*) is made by virtue of section 118; and

(*b*) would apart from this paragraph result in the conversion of personal property into real property,

property representing the property disposed of is to be treated, so long as it remains P's property or forms part of P's estate, as if it were personal property.

(5) References in sub-paragraphs (1) to (4) to the disposal of property are to—

(*a*) the sale, exchange, charging of or other dealing (otherwise than by will) with property other than money;

(*b*) the removal of property from one place to another;

(c) the application of money in acquiring property;

(*d*) the transfer of money from one account to another,

and references to property representing property disposed of are to be construed accordingly and as including the result of successive disposals.

(6) The court may give any directions that appear to it necessary or expedient for the purpose of facilitating the operation of sub-paragraphs (1), (2) and (3), including the carrying of money to a separate account and the transfer of property other than money.

Charge on property of person lacking capacity

9. **(1)** Sub-paragraph (2) applies if the court has ordered or directed the expenditure of money—

(*a*) for carrying out permanent improvements on any of P's property; or

(*b*) otherwise for the permanent benefit of any of P's property.

(2) The court may order that—

(*a*) the whole of the money expended or to be expended; or

(*b*) any part of it,

is to be a charge on the property either without interest or with interest at a specified rate.

(3) An order under sub-paragraph (2) may provide for excluding or restricting the operation of paragraph 8(1), (2) and (3).

(4) A charge under sub-paragraph (2) may be made in favour of such person as is just and, in particular, where the money charged is paid out of P's general estate, may be made in favour of a person as trustee for P.

(5) No charge under sub-paragraph (2) may confer any right of sale or foreclosure during P's lifetime.

THIRD SCHEDULE

(Sections 136 and 138)

SAVINGS AND TRANSITIONAL PROVISIONS

Mental health care and treatment

1. Anything done under the Mental Health Ordinance, Cap. 57, with respect to any matter in Chapter 1 of this Ordinance, continues to have effect after the coming into force of this paragraph as if done under this Ordinance; but—

(a) any order under that Ordinance lapses unless confirmed by the Senior Medical Officer within 2 weeks of the coming into force of this paragraph; and

(b) before confirming such order the Senior Medical Officer must apply, in any manner that appears appropriate, any provisions of this Ordinance which would have applied if the order had been made under this Ordinance (and which had no equivalent under that Ordinance).

Mental capacity provisions

2. **(1)** This paragraph applies where, immediately before the commencement of this Ordinance, there is a committee of the person or a committee of the estate of a person ('P') (individually referred to as the **"committee"**) appointed under section 36 of the Mental Health Ordinance, Cap. 57.

(2) On and after the commencement of this Ordinance—

(*a*) the members of the committee are, notwithstanding section 119(1), deemed to be deputies appointed by the court to act jointly to make decisions on P's behalf, but

with the powers and functions that the committee had immediately before that date; and

(*b*) a reference in any written law to a deputy appointed by the court includes members of the committee which by virtue of sub-paragraph (*a*) are deemed to be deputies appointed under this Ordinance.

(3) On an application to the court by any member of the committee, the court may, without affecting section 115(8), revoke the member's appointment as P's deputy.

(4) If a member of the committee may not make a decision on behalf of P in relation to a relevant matter by virtue of section 120(1), the member must apply to the court.

(5) If, on the application, the court is satisfied that P has capacity in relation to the relevant matter, the court—

(*a*) must revoke the member's appointment as P's deputy in relation to that matter; and

(*b*) may, in relation to any other matter, exercise in relation to P any of the powers which it has under sections 114 to 119.

(6) If the court is not so satisfied, it may exercise in relation to P any of the powers which it has under sections 114 to 119.

(7) The appointment of a member of the committee as P's deputy ceases to have effect if P dies.

(8) In this paragraph, **"relevant matter"** means a matter in relation to which, immediately before the commencement date, the committee was authorised to act on behalf of P.

Orders, appointments, etc.

3. (1) Any order or appointment made, direction or authority given or other thing done under the Mental Health Ordinance, Cap. 57 before the commencement of this Ordinance and in force immediately before that commencement continues to have effect despite the repeal of that Ordinance.

(2) In so far as any such order, appointment, direction, authority or thing could have been made, given or done under sections 114 to 120 if those sections had then been in force at the time it was made, given or done—

(*a*) it must be treated as made, given or done under those sections; and

(*b*) the powers of variation and discharge conferred by section 115(7) apply accordingly.

(3) Sub-paragraph (1) has effect in relation to every order, appointment, direction, authority or thing made, given or done by any committee of the person or estate of a mentally disordered person subject to paragraph 1 of this Schedule.

Accounts

4. The Court Rules made under section 130 may provide that, in a case where paragraph 1 applies, the members of the committee are to have a duty to render accounts—

(*a*) while they are members of the committee; and
(*b*) after they are discharged.

MENTAL HEALTH AND MENTAL CAPACITY ORDINANCE, 2015

COURTS (MENTAL CAPACITY AND APPOINTMENT OF DEPUTIES) RULES, 2016

(Section 130, as read with section 8 of the Courts (Appeals and Rules) Ordinance, 2017 and section 89(2) of the Constitution)

TABLE OF CONTENTS

1. Citation
2. Application for declaration regarding mental capacity
3. Application for appointment as deputy
4. Assessment of the proposed deputy
5. Proceedings
6. Attendance by Attorney General
7. Attendance by person who is subject of application
8. Fees

Schedule 1: Forms
Schedule 2: Fees

Citation

1. These Rules may be cited as the Courts (Mental Capacity and Appointment of Deputies) Rules, 2016.

Application for declaration regarding mental capacity

2. **(1)** An application for a declaration under section 114 of the Ordinance with respect to—

(a) the mental capacity of a person (P); or

(b) the lawfulness or otherwise of any act done or to be done in relation to P,

must be made in the form prescribed in Form A in Schedule 1 and be accompanied by a certificate from a practitioner referred to in sub-rule (3), confirming that P lacks capacity and specifying in which areas P lacks capacity.

(2) An application under this rule may be accompanied by an application for appointment of a deputy under rule 3.

(3) The Governor, in consultation with the Senior Medical Officer/Clinical Director, may approve any medical practitioner, nurse, social worker or other professional as being competent to issue a certificate for purposes of sub-rule (1).

Application for appointment as deputy

3. **(1)** An application for appointment of a deputy in relation to a person (P) who lacks capacity must be made in the form prescribed in Form B in Schedule 1 and must

be accompanied by the following:

(a) where the application is not made simultaneously with an application for a declaration as provided in Rule 2(2)—

(i) a certified copy of a declaration made under section 114 of the Ordinance within the last 12 months; and

(ii) a certificate from a practitioner approved under rule 2(3) confirming that the circumstances surrounding P's lack of capacity have not changed since that declaration was made;

(b) a statement from the proposed deputy including—

(i) his or her relationship to P;

(ii) why he or she seeks to act as deputy for P;

(iii) why it is in P's best interests for him or her to act as deputy;

(iv) over what issues he or she should act as deputy;

(v) what, if any, expenses he or she seeks from P's property;

(vi) whether he or she is a deputy or donee for any other person and, if so, whether he or she has sufficient time and resources to act as deputy for P; and

(vii) whether he or she seeks for the court to appoint a successor deputy;

(c) a statement from the Public Guardian including—

(i) the outcome of the checks referred to in Rule 3(3);

(ii) whether there are any other persons who seek to act as deputy for P;

(iii) whether he or she supports the applicant, providing reasons therefor;

(iv) what concerns, if any, he or she has in relation to the applicant;

(v) whether he or she considers there is a need for the appointment of a deputy for P;

(vi) what powers or restrictions, if any, should be placed on the deputy;

(vii) the frequency of reports to be made by the deputy to the Public Guardian;

(viii) whether any expenses are justified to be paid to the deputy from P's property;

(ix) whether the applicant is a deputy or donee for any other person and, if so, whether the Public Guardian is of the view that the applicant has sufficient time and resources to act as deputy for P;

(x) the views of P, if possible to ascertain; and

(xi) whether the court should appoint a successor deputy for P.

(2) The application under sub-rule (1) must be submitted to the Registrar of the Supreme Court.

Assessment of the proposed deputy

4. (1) The applicant must, at least 28 days prior to submitting an application under rule 2, notify the Public Guardian and the Attorney General of his or her intention to apply for appointment as deputy.

(2) The Public Guardian, or his or her representative, must meet with the proposed applicant on at least one occasion to discuss the application.

(3) The Public Guardian, or his or her representative, must undertake the following checks:

(a) a full background and criminal record check;

(b) a discussion with the applicant's family and/or friends; and
(c) a discussion with the applicant's employer, if applicable.

Proceedings

5. **(1)** Upon receipt of the application, a statement from the Public Guardian and any information provided by the Attorney General, the court must consider whether the matter can be disposed of without a hearing and advise the parties accordingly.

(2) In the event that the court considers that a hearing is required, it must decide whether—

(a) the proceedings should be conducted in private;
(b) a suitable person must be appointed to act on behalf of or represent P in the application;
(c) any further evidence is required and, if so, from whom.

Attendance by Attorney General

6. **(1)** The Attorney General or his or her representative, must, if the Attorney General considers it necessary and appropriate, attend the hearing for appointment as deputy and act as *amicus curiae.*

(2) The court may request the assistance of the Attorney General or his or her representative at any hearing relating to a deputy or proposed deputy.

Attendance by person who is subject of application

7. P need not attend the hearing if—

(a) a certificate from a practitioner approved under rule 2(3) who is involved in P's care declares that attending would not be in P's best interest;
(b) P is physically unable to attend;
(c) the court is satisfied that P's views, as far as is possible, have been ascertained and recorded; or
(d) the court declares that P's attendance is not required.

Fees

8. **(1)** An application under these Rules must be accompanied by the fee prescribed in Schedule 2, unless the applicant submits with such application a request for an order under sub-rule (2) setting out the reasons for such request.

(2) The court may order that an applicant is exempt from paying the fee under sub-rule (1) where the court is satisfied that payment thereof will cause serious hardship and that in the circumstances it is just and equitable not to enforce payment thereof.

(3) If the court denies a request for an order under sub-rule (2), the court must not hear the application under rule 2 or 3 until the prescribed fee is paid.

SCHEDULE 1
(Rules 2 and 3)

FORM A

APPLICATION FOR DECLARATION WITH RESPECT TO MENTAL CAPACITY

(Section 114(1) of the Mental Health and Mental Capacity Ordinance, 5

To: The Honourable Chief Justice.

I (Name of Applicant).....
of
(Address).....
.....
HEREBY APPLY for a declaration under section 114(1) of the Mental Health and Mental Capacity Ordinance, 2015, with respect to:
(Name of Person)….....

of (Address)
.....
*(1) The abovementioned person lacks capacity to make decisions on the following matter or matters:
OR
*(2) The court is requested to make a declaration on the lawfulness or otherwise of the following acts done or to be done with respect to abovementioned person:
(*Delete whichever is not applicable)
……
……
……
……
……

This application is based on the grounds set out in the accompanying certificate by:
(Name of Approved Practitioner):……

Dated this .....……, 20...…… .

_____
(Signature)
Applicant.

_____

FORM B

APPLICATION FOR APPOINTMENT AS DEPUTY

(Section 115(2)(b) of the Mental Health and Mental Capacity Ordinance, 2015)

To: The Honourable the Chief Justice.

I (Name of Applicant)
….....

of
(Address).....
.....
HEREBY APPLY for an order under section 115(2)(b) of the Mental Health and Mental Capacity Ordinance, 2015, to be appointed as Deputy in relation to:
(Name of Person)….....
of (Address) .....
who lacks capacity in relation to a matter or matters concerning his or her—
*(a) personal welfare; or

*(b) property and affairs.
(*Delete whichever is not applicable)
This application is based on the grounds set out in the accompanying statements.
Dated this .....……, 20...…… .

_____
(Signature)
Applicant.

SCHEDULE 2
(Rule 8)

FEES

Application for declaration with respect to mental capacity	£12
Application for appointment as deputy	£12

_____

MENTAL HEALTH AND MENTAL CAPACITY ORDINANCE, 2015

MENTAL HEALTH AND MENTAL CAPACITY (LASTING POWER OF ATTORNEY) REGULATIONS, 2017
(Sections 91(2) and 137 and First Schedule)

TABLE OF CONTENTS

1. Citation
2. Lasting power of attorney
3. Certificate
4. Registration of instrument with Public Guardian
5. Objection by donee or donor
6. Notice of registration
Schedule 1 Form A: Lasting power of attorney for property and financial affairs
Schedule 2 Form B: Lasting power of attorney for personal health and welfare
Schedule 3 Fees

Citation

1. These Regulations may be cited as the Mental Health and Mental Capacity (Lasting Power of Attorney) Regulations, 2017.

Lasting power of attorney

2. (1) An instrument creating a lasting power of attorney relating to property and affairs under section 103 of the Ordinance must be in the form and contain the information as set out in Form A in the Schedule to these Regulations.

(2) An instrument creating a lasting power of attorney relating to personal health and welfare under section 103 of the Ordinance must be in the form and contain the information as set out in Form B in the Schedule to these Regulations.

Certificate

3. (1) A certificate required by paragraph 2(1)*(e)* of Schedule 1 to the Ordinance must be in the form and contain the information as set out in section 9 of Form A or Form B.

(2) The certificate referred to in paragraph (1) must, subject to paragraph (3), be given by a person chosen by the donor as being someone who—

(a) has known the donor personally for the period of at least 2 years immediately preceding the date on which that person signs the certificate; or

(b) has professional skills and expertise such as the donor's medical practitioner, a healthcare professional or a solicitor;

and the person so chosen by the donor under paragraph *(a)* or *(b)*must be able to certify the matters set out in paragraph (2)(1)*(e)* of Schedule 1 to the Ordinance.

(3) A person is disqualified from giving a certificate under paragraph (1) if that person is—

(a) a family member of the donor;

(b) a donee of that lasting power of attorney;

(c) a family member of a donee referred to in item *(b)*;

(d) a director or employee of a trust corporation acting as a donee referred to in item *(b)*;

(e) a business partner or employee of the donor or a donee of that lasting power of attorney;

(f) a donee of—

(i) any other lasting power of attorney; or

(ii) an enduring power of attorney,

which has been executed by the donor (whether or not it has been revoked);

(g) an owner, director, manager or employee of any care home in which the donor is living when the instrument is executed; or

(h) a family member of a person referred to in item *(g)*.

(4) For the purposes of this regulation, "family member" in relation to a person means his or her spouse, life partner, son, daughter, step-son, step-daughter or parent.

Registration of instrument with Public Guardian

4. An application to the Public Guardian for the registration of an instrument intended to create a lasting power of attorney must be made by completing sections 11, 12 and 13 of the relevant form (Form A or Form B) and must be accompanied by any fees prescribed in Schedule 3.

Objection by donee or donor

5. (1) The prescribed period for objection by a donee or donor under paragraph 8 or 9 of Schedule 1 to the Ordinance is 21 days.

(2) The prescribed ground for objection by a donee under paragraph 8(3)*(b)*(ii) of Schedule 1 to the Ordinance is that that an event mentioned in section 107(3) or (5)*(a)* to *(d)* has occurred which has revoked the instrument.

Notice of registration

6. Notice of registration of an instrument under paragraph 10 of Schedule 1 to the Ordinance must be given by the Public Guardian in writing and state the name of the donor, the name of the attorney(s) and the date upon which the instrument was entered into the register.

SCHEDULE 1
(Regulation 2(1))

FORM A
Lasting power of attorney for property and financial affairs

(For technical reasons, this form cannot be reproduced in full on the website; it is available from the address shown in the General Introduction. The following is the substance of Form A.)

Section 1 - The donor

You are appointing other people to make decisions on your behalf. You are 'the donor'. Restrictions - you must be at least 18 years old and be able to understand and make decisions for yourself (called 'mental capacity'). If you are filling this in for a friend or relative and they can no longer make decisions independently, they can't make an LPA.

Section 2 - The attorneys

The people you choose to make decisions for you are called your 'attorneys'. Your attorneys don't need special legal knowledge or training. They should be people you trust and know well. Common choices include your husband, wife or partner, son or daughter, or your best friend. You need at least one attorney, but you can have more. You'll also be able to choose 'replacement attorneys' in section 4. They can step in if one of the attorneys you appoint can no longer act for you. To appoint a trust corporation, fill in the first attorney space and tick the box in that section. They must sign Continuation sheet 4. Restrictions - Attorneys must be at least 18 years old and must have mental capacity to make decisions. They must not be bankrupt or subject to a debt relief order.

Section 3 - How should your attorneys make decisions?
You need to choose whether your attorneys can make decisions on their own or must agree some or all decisions unanimously. Whatever you choose, they must always act in your best interest.
I only appointed one attorney (turn to section 4)
How do you want your attorneys to work together?
(tick one box only)
Jointly and severally
Attorneys can make decisions on their own or together. Most people choose this option because it's the most practical. Attorneys can get together to make important decisions if they wish, but can make simple or urgent decisions on their own. It's up to the attorneys to choose when they act together or alone. It also means that if one of the attorneys dies or can no longer act, your LPA will still work. If one attorney makes a decision, it has the same effect as if all the attorneys made that decision.
Jointly
Attorneys must agree unanimously on every decision, however big or small. Remember, some simple decisions could be delayed because it takes time to get the attorneys together. If your attorneys can't agree a decision, then they can only make that decision by going to court. Be careful - if one attorney dies or can no longer act, all your attorneys be-come unable to act. This is because the law says a group appointed 'jointly' is a single unit. Your LPA will stop working unless you appoint at least one replacement attorney (in section 4).
Jointly for some decisions, jointly and severally for other decisions
Attorneys must agree unanimously on some decisions, but can make others on their own. If you choose this option, you must list the decisions your attorneys should make jointly and agree unanimously on Continuation sheet 2. The wording you use is important. Be Careful - if one attorney dies or can no longer act, none of your attorneys will be able to make any of the decisions you have said should be made jointly. Your LPA will stop working for those decisions unless you appoint at least one replacement attorney (in section 4). Your original attorneys will still be able to make any of the other decisions alongside your replacement attorneys. *If you choose 'jointly for some decisions…', you may want to take legal advice*

Section 4 - Replacement attorneys
This section is optional, but we recommend you take a look at it Replacement attorneys are a backup in case one of your original attorneys can't make decisions for you anymore. To appoint a trust corporation, fill in the first attorney space below and tick the box in that section. They must sign Continuation sheet 4.
Reasons replacement attorneys step in - if one of your original attorneys dies, loses capacity, no longer wants to be your attorney or is no longer legally your husband or wife or civil partner.
Restrictions - replacement attorneys must be at least 18 years old and have mental capacity to make decisions. They must not be bankrupt or subject of a debt relief order.
When and how your replacement attorneys can act
Replacement attorneys usually step in when one of your original attorneys stops acting for you. If there's more than one replacement attorney, they will all step in at once. If they fully replace your original attorney(s) at once, they will usually act jointly. You can change some aspects of this, but most people don't. *You should consider taking legal advice if you want to change how your replacement attorneys act* I want to change when or how my attorneys can act (optional).
Use Continuation sheet 2.
More Replacements - I want to appoint more than two replacements.

Use Continuation sheet 1

Section 5 - When can your attorneys make decisions?

You can allow your attorneys to make decisions:

□ as soon as the LPA has been registered by the Public Guardian

□ only when you don't have mental capacity

While you have mental capacity you will be in control of all decisions affecting you. If you choose the first option, your attorneys can only make decisions on your behalf if you allow them to. They are responsible to you for any decisions you let them make. Your attorneys must always act in your best interest.

Who do you want to your attorneys to be able to make decisions? (mark only one option)

As soon as my LPA has been registered (and also when I don't have mental capacity)

Most people choose this option because it is the most practical. While you still have mental capacity, your attorneys can only act with your consent. If you later lose capacity, they can continue to act on your behalf for all decisions covered by this LPA. This option is useful if you are unable to make your own decisions but there's another reason you want your attorneys to help you - for example, if you are away on holiday, or if you have a physical condition that makes it difficult to visit the bank, talk on the phone, or sign documents.

Only when I don't have mental capacity

Be careful - this can make your LPA a lot less useful. Your attorneys might be asked to prove you do not have mental capacity each time they try to use this LPA.

Section 6 - People to notify when the LPA is registered

This section is optional

You can let people know that you're going to register your LPA. They can raise any concerns they have about the LPA - for example, if there was any pressure or fraud in making it. When the LPA is registered, the person applying to register (you or one of your attorneys) must send a notice to each 'person to notify'. You can't put your attorneys or replacement attorneys on here. People to notify can object to the LPA. After that, they are no longer involved in the LPA. Choose people who care about your best interests and who would be willing to speak up if they were concerned.

I want to appoint another person to notify (maximum is 5) - use Continuation sheet 1

Section 7 - Your legal rights and responsibilities

Everyone signing the LPA must read this information

In sections 8 to 10, you, the certificate provider, all your attorneys and your replacement attorneys must sign this lasting power of attorney to form a legal agreement between you (a deed). By signing this lasting power of attorney, you (the donor) are appointing people (attorneys) to make decisions for you. LPAs are governed by the Mental Health and Mental Capacity Ordinance (MHMCO) and regulations made under it. Attorneys must have regard to these documents. Your attorneys must follow the principles of the MHMCO.

1. Your attorneys must assume that you can make your own decisions unless it is established that you cannot do so.

2. Your attorneys must help you to make as many of your own decisions as you can. They must take all practical steps to help you make a decision. They can only treat you as unable to make a decision if they have not succeeded in helping you make a decision through all those steps.

3. Your attorneys must not treat you as unable to make a decision simply because you make an unwise decision.

4. Your attorneys must act and make decisions in your best interests when you are unable to make a decision.

5. Before your attorneys make a decision or act for you, they must consider whether you can make the decision or act in a way that is less restrictive of your rights and freedom but still achieves the purpose. Your attorneys must always act in your best interests. Before this LPA can be used

 it must be registered by the Public Guardian (PG).

 It may be limited to when you don't have mental capacity, according to your choice in section 5

Cancelling your LPA: You can cancel this LPA at any time, as long as you have the mental capacity to do so. It doesn't matter if the LPA has been registered or not. Your will and your LPA: Your attorneys cannot use this LPA to change your will. This LPA will expire when you die. Your attorneys must then send the registered LPA, any certified copies and a copy of your death certificate to the Public Guardian.

Section 8 - Signature: donor

By signing this page I confirm all of the following:

 I have read this lasting power of attorney (LPA) including section 7 'Your legal rights and responsibilities', or I have had it read to me.

 I appoint and give my attorneys authority to make decisions about my property and financial affairs, including when I cannot act for myself because I lack mental capacity, subject to the terms of this LPA and to the provisions of the MHMCO.

 I have either appointed people to notify (in section 6) or I have chosen not to notify anyone when the LPA is registered

 I agree to the information I've provided being used by the Public Guardian in carrying out their duties. ! Be Careful Sign this page (and any continuation sheets) before anyone signs sections 9 and 10.

Donor

Signed (or marked) by the person giving this lasting power of attorney and delivered as a deed.

If you have used Continuation sheets 1 or 2 you must sign and date each continuation sheet at the same time as you sign this page. If you can't sign this LPA you can make a mark instead. If you can't sign or make a mark you can instruct someone else to sign for you, using Continuation sheet 3.

Witness

The witness must not be an attorney or replacement attorney appointed under this LPA, and must be aged 18 or over.

Section 9 - Signature: certificate provider

Only sign this section after the donor has signed section 8 The 'certificate provider' signs to confirm they've discussed the lasting power of attorney (LPA) with the donor, that the donor understands what they are doing and that nobody is forcing them to do it. The 'certificate provider' should be either:

 Someone who has known the donor personally for at least 2 years, such as a friend, neighbour, colleague or former colleague.

 Someone with relevant professional skills, such as the donor's GP, a healthcare professional or a solicitor.

A certificate provider can't be one of the attorneys.

Certificate provider's statement

I certify that, as far as I'm aware, at the time of signing section 8:

□ The donor understood the purpose of this LPA and the scope of the authority conferred under it.

□ No fraud or undue pressure is being used to induce the donor to create this LPA.

□ There is nothing else which would prevent this LPA from being created by the completion of this instrument.

By signing this section I confirm that:

□ I am aged 18 or over

□ I have read this LPA, including section 7 'Your legal rights and responsibilities'

There is no restriction on my acting as a certificate provider

□ The donor has chosen me as someone who has known them for at least 2 years OR

□ The donor has chosen me as a person with relevant professional skills and expertise

Section 10 - Signature: attorney or replacement

Only sign this section after the certificate provider has signed section 9

All the attorneys and replacement attorneys need to sign. There are 4 copies of this page - make more copies if you need to sign.

By signing this section I understand and confirm all of the following:

□ I am aged 18 or over

□ I have read this lasting power of attorney (LPA) including section 7 'Your legal rights and responsibilities', or have had it read to me

□ I have a duty to act based on the principles of the MHMCO.

□ I must make decisions and act in the best interests of the donor. □ I must take into account any instructions or preferences set out in this LPA

□ I can make decisions and act only when this LPA has been registered and at the time indicated in section 5 of this LPA

Further statement by a replacement attorney: I understand that I have the authority to act under this LPA only after an original attorney's appointment is terminated. I must notify the Public Guardian if this happens.

Attorney or replacement attorney

Signed (or marked) by the attorney or replacement attorney and delivered as a deed.

Witness

The witness must not be the donor of this LPA, and must be aged 18 or over.

Now register your LPA

Before the LPA can be used, it must be registered by the Public Guardian (PG). Continue filling in this form to register the LPA.

People to notify

If there are any 'people to notify' listed in section 6, you must notify them that you are registering the LPA now. Send each of them a copy of sections 1 to 10 of this form. When you sign section 13 of this form, you are confirming that you've sent the copies to the 'people to notify'.

Register now

You do not have to register immediately, but it's a good idea in case you've made any mistakes. If you delay until after the donor loses mental capacity, it will be impossible to fix any errors. This could make the whole LPA invalid and it will not be possible to register or use it.

Register your lasting power of attorney

Section 11 - The applicant

You can only apply to register if you are either the donor or attorney(s) for this LPA. The donor and attorney(s) should not apply together.
Who is applying to register the LPA?

(tick one only)

Donor - the donor needs to sign section 13

Attorney(s) - if the attorneys were appointed jointly (in section 3) then they all need to sign section 13. Otherwise, only one of the attorneys need to sign. Write the name and date of birth for each attorney that is applying to register the LPA. Don't include any attorneys who are not applying.

Section 12 - Who do you want to receive the LPA?

We need to know who to send the LPA to once it's registered. We might also need to contact someone with questions about the application. We already have the addresses of the donor and attorneys, so you don't have to repeat any of those here, unless they have changed.
Who would you like to receive this LPA and any correspondence?

The donor

An attorney (write name below)

Other (write name and address below)

How would the person above prefer to be contacted? You can choose more than one.

Post

Phone

Email

Section 13 - Signature

Do not sign this section until after sections 8, 9 and 10 have been signed.
The person applying to register the LPA (see section 11) must sign and date this section. This is either the donor or attorney(s) but not both together. If the attorneys are applying to register the LPA and they were appointed to act jointly (in section 3), they must sign all.
By signing this section I confirm the following:

 I apply to register the LPA that accompanies this application

 I have informed 'people to notify' named in section 6 of the LPA (if any) of my intention to register the LPA

 I certify that the information in this form is correct to the best of my knowledge and belief If more than 4 attorneys need to sign, make copies of this page.

SCHEDULE 2

(Regulation 2(2))

FORM B

Lasting power of attorney relating to personal health and welfare

(For technical reasons, this form cannot be reproduced in full on the website; it is available from the address shown in the General Introduction. The following is the substance of Form B.)

Section 1 - The donor

You are appointing other people to make decisions on your behalf. You are 'the donor'.
Restrictions - you must be at least 18 years old and be able to understand and make decisions for yourself (called 'mental capacity'). If you are filling this in for a friend or relative and they can no longer make decisions independently, they can't make an LPA

Section 2 - The attorneys

The people you choose to make decisions for you are called your 'attorneys'. Your attorneys don't need special legal knowledge or training. They should be people you trust and know well. Common choices include your husband, wife or partner, son or daughter, or your best friend. You need at least one attorney, but you can have more. You'll also be able to choose 'replacement attorneys' in section 4. They can step in if one of the attorneys you appoint can no longer act for you.

Restrictions - Attorneys must be at least 18 years old and must have mental capacity to make decisions.

Section 3 - How should your attorneys make decisions?

You need to choose whether your attorneys can make decisions on their own or must agree some or all decisions unanimously. Whatever you choose, they must always act in your best interests.

I only appointed one attorney (turn to section 4)

How do you want your attorneys to work together? (tick one box only)

Jointly and severally

Attorneys can make decisions on their own or together. Most people choose this option because it's the most practical. Attorneys can get together to make important decisions if they wish, but can make simple or urgent decisions on their own. It's up to the attorneys to choose when they act together or alone. It also means that if one of the attorneys dies or can no longer act, your LPA will still work. If one attorney makes a decision, it has the same effect as if all the attorneys made that decision.

Jointly

Attorneys must agree unanimously on every decision, however big or small. Remember, some simple decisions could be delayed because it takes time to get the attorneys together. If your attorneys can't agree a decision, then they can only make that decision by going to court. Be careful - if one attorney dies or can no longer act, all your attorneys be-come unable to act. This is because the law says a group appointed 'jointly' is a single unit. Your LPA will stop working unless you appoint at least one replacement attorney (in section 4).

Jointly for some decisions, jointly and severally for other decisions

Attorneys must agree unanimously on some decisions, but can make others on their own. If you choose this option, you must list the decisions your attorneys should make jointly and agree unanimously on. The wording you use is important. Be careful - if one attorney dies or can no longer act, none of your attorneys will be able to make any of the decisions you have said should be made jointly. Your LPA will stop working for those decisions unless you appoint at least one replacement attorney (in section 4). Your original attorneys will still be able to make any of the other decisions alongside your replacement attorneys. *If you choose 'jointly for some decisions…', you may want to take legal advice*

Section 4 - Replacement attorneys

This section is optional, but we recommend you take a look at it. Replacement attorneys are a backup in case one of your original attorneys can't make decisions for you anymore.

Reasons replacement attorneys step in - if one of your original attorneys dies, loses capacity, no longer wants to be your attorney or is no longer legally your husband, wife or civil partner.

Restrictions - replacement attorneys must be at least 18 years old and have mental capacity to make decisions.

When and how your replacement attorneys can act

Replacement attorneys usually step in when one of your original attorneys stops acting for you. If there's more than one replacement attorney, they will all step in at once. If they fully replace your original attorney(s) at once, they will usually act jointly. You can change some aspects of this, but most people don't. *You should consider taking legal advice if you want to change how your replacement attorneys act*

I want to change when or how my attorneys can act (optional). Use Continuation sheet 2.

More Replacements - I want to appoint more than two replacements. Use Continuation sheet 1

Section 5 - Life-sustaining treatment

This is an important part of your LPA. You must choose whether your attorneys can give or refuse consent to life-sustaining treatment on your behalf. Life-sustaining treatment means care, surgery, medicine or other help from doctors that's needed to keep you alive, for example:

- a serious operation, such as a heart bypass or organ transplant
- cancer treatment
- artificial nutrition or hydration (food or water given other than by mouth)

Whether some treatments are life-sustaining depends on the situation. If you had pneumonia, a simple course of antibiotics could be life-sustaining. Decisions about life-sustaining treatment can be needed in unexpected circumstances, such as routine operation that didn't go as planned.

Who do you want to make decisions about life-sustaining treatment? (sign only one option)

Option A - I give my attorneys authority to give or refuse consent to life-sustaining treatment on my behalf.

If you choose this option, your attorneys can speak to doctors on your behalf as if they were you

Option B - I do not give my attorneys authority to give or refuse consent to life-sustaining treatment on my behalf.

If you choose this option, your doctors will take into account the views of the attorneys and of people who are interested in your welfare as well as any written statement you have made, where it is practical and appropriate.

Section 6 - People to notify when the LPA is registered

This section is optional

You can let people know that you're going to register your LPA. They can raise any concerns they have about the LPA - for example, if there was any pressure or fraud in making it. When the LPA is registered, the person applying to register (you or one of your attorneys) must send a notice to each 'person to notify'. You can't put your attorneys or replacement attorneys on here. People to notify can object to the LPA. After that, they are no longer involved in the LPA. Choose people who care about your best interests and who would be willing to speak up if they were concerned. I want to appoint another person to notify (maximum is 5) - use Continuation sheet 1

Section 7 - Your legal rights and responsibilities

Everyone signing the LPA must read this information

In sections 8 to 10, you, the certificate provider, all your attorneys and your replacement attorneys must sign this lasting power of attorney to form a legal agreement between you (a deed). By signing this lasting power of attorney, you (the donor) are appointing people (attorneys) to make decisions for you. LPAs are governed by the Mental Health and Mental

Capacity Ordinance (MHMCO) and regulations made under it. Attorneys must have regard to these documents. Your attorneys must follow the principles of the MHMCO.

1. Your attorneys must assume that you can make your own decisions unless it is established that you cannot do so.

2. Your attorneys must help you to make as many of your own decisions as you can. They must take all practical steps to help you make a decision. They can only treat you as unable to make a decision if they have not succeeded in helping you make a decision through all those steps.

3. Your attorneys must not treat you as unable to make a decision simply because you make an unwise decision.

4. Your attorneys must act and make decisions in your best interests when you are unable to make a decision.

5. Before your attorneys make a decision or act for you, they must consider whether you can make the decision or act in a way that is less restrictive of your rights and freedom but still achieves the purpose. Your attorneys must always act in your best interests. Before this LPA can be used it must be registered by the Public Guardian (PG). Your attorneys can only use this LPA if you don't have mental capacity.

Cancelling your LPA: You can cancel this LPA at any time, as long as you have the mental capacity to do so. It doesn't matter if the LPA has been registered or not.

Your will and your LPA: Your attorneys cannot use this LPA to change your will. This LPA will expire when you die. Your attorneys must then send the registered LPA, any certified copies and a copy of your death certificate to the Public Guardian.

Section 8 - Signature: donor

By signing this page I confirm all of the following:

□ I have read this lasting power of attorney (LPA) including section 7 'Your legal rights and responsibilities', or I have had it read to me.

□ I appoint and give my attorneys authority to make decisions about my health and welfare, when I cannot act for myself because I lack mental capacity, subject to the terms of this LPA and to the provisions of the MHMCO.

□ I confirm I have chosen either Option A or Option B about life sustaining treatment in section 5 of this LPA.

□ I have either appointed people to notify (in section 6) or I have chosen not to notify anyone when the LPA is registered

□ I agree to the information I've provided being used by the Public Guardian in carrying out its duties. Be Careful

Sign this page and section 5 (and any continuation sheets) before anyone signs sections 9 and 10.

Donor

Signed (or marked) by the person giving this lasting power of attorney and delivered as a deed.

You must also sign Section 5 (page 6) at the same time as you sign this page. If you have used Continuation sheets 1 or 2 you must sign and date each continuation sheet at the same time as you sign this page. If you can't sign this LPA you can make a mark instead. If you can't sign or make a mark you can instruct someone else to sign for you, using Continuation sheet 3.

Witness

The witness must not be an attorney or replacement attorney appointed under this LPA, and must be aged 18 or over.

Section 9 - Signature: certificate provider

Only sign this section after the donor has signed section 8

The ‘certificate provider’ signs to confirm they’ve discussed the lasting power of attorney (LPA) with the donor, that the donor understands what they are doing and that nobody is forcing them to do it.

The ‘certificate provider’ should be either:

 Someone who has known the donor personally for at least 2 years, such as a friend, neighbour, colleague or former colleague.

 Someone with relevant professional skills, such as the donor’s GP, a healthcare professional or a solicitor.

A certificate provider can’t be one of the attorneys.

Certificate provider’s statement

I certify that, as far as I’m aware, at the time of signing section 8:

 The donor understood the purpose of this LPA and the scope of the authority conferred under it.

 No fraud or undue pressure is being used to induce the donor to create this LPA

 There is nothing else which would prevent this LPA from being created by the completion of this instrument. By signing this section I confirm that:

 I am aged 18 or over

 I have read this LPA, including section 7 ‘Your legal rights and responsibilities’

 There is no restriction on my acting as a certificate provider

 The donor has chosen me as someone who has known them for at least 2 years OR

 The donor has chosen me as a person with relevant professional skills and expertise

Section 10 - Signature: attorney or replacement

Only sign this section after the certificate provider has signed section 9 All the attorneys and replacement attorneys need to sign. There are 4 copies of this page - make more copies if you need to.

By signing this section I understand confirm all of the following:

 I am aged 18 or over.

 I have read this lasting power of attorney (LPA) including section 7 ‘Your legal rights and responsibilities’, or have had it read to me.

 I have a duty to act based on the principles of the MHMCO.

 I must make decisions and act in the best interests of the donor.

 I must take into account any instructions or preferences set out in this LPA.

 I can make decisions and act only when this LPA has been registered.

 I can make decisions and act only when the donor lacks mental capacity.

Further statement by a replacement attorney: I understand that I have the authority to act under this LPA only after an original attorney’s appointment is terminated. I must notify the Public Guardian if this happens.

Attorney or replacement attorney

Signed (or marked) by the attorney or replacement attorney and delivered as a deed.

Witness

The witness must not be the donor of this LPA, and must be aged 18 or over.

Now register your LPA

Before the LPA can be used, it must be registered by the Public Guardian (PG). Continue filling in this form to register the LPA. People to notify If there are any ‘people to notify’ listen in section 6, you must notify them that you are registering the LPA now. Fill in and send each of them a copy of sections 1 to 10 of this form. When you sign section 13 of this form, you are confirming that you’ve sent the copies to the ‘people to notify’.

Register now
You do not have to register immediately, but it's a good idea in case you've made any mistakes. If you delay until after the donor loses mental capacity, it will be impossible to fix any errors. This could make the whole LPA invalid and it will not be possible to register or use it.
Register your lasting power of attorney

Section 11 - The applicant
You can only apply to register if you are the donor or attorney(s) for this LPA. The donor and attorney(s) should not apply together.
Who is applying to register the LPA? (tick one only)
Donor - the donor needs to sign section 13.
Attorney(s) - if the attorneys were appointed jointly (in section 3) then they all need to sign in section 13. Otherwise, only one of the attorneys needs to sign. Write the name and date of birth for each attorney that is applying to register the LPA. Don't include any attorneys who are not applying.

Section 12 - Who do you want to receive the LPA?
We need to know who to send the LPA to once it's registered. We might also need to contact someone with questions about the application. We already have the addresses of the donor and attorneys, so you don't have to repeat any of those here, unless they have changed. Who is applying to register the LPA? (tick one only)
The donor An attorney (write name below)
Other (write name and address below)
How would the person above prefer to be contacted? You can choose more than one.
Post
Phone
Email

Section 13 - Signature
Do not sign this section until after sections 8, 9 and 10 have been signed. The person applying to register the LPA (see section 11) must sign and date this section. This is either the donor or attorney(s) but not both together. If the attorneys are applying to register the LPA and they were appointed to act jointly (in section 3), they must sign all.
By signing this section I confirm the following:

- □ I apply to register the LPA that accompanies this application
- □ I have informed 'people to notify' named in section 6 of the LPA (if any) of my intention to register the LPA
- □ I certify that the information in this form is correct to the best of my knowledge and belief

If more than 4 attorneys need to sign, make copies of this page.

SCHEDULE 3
(Regulation 4)

FEES

Fee to register Lasting Power of Attorney with Public Guardian	£12.00