

Acts reprinted pursuant to the Amendment Incorporation
Act, 1937

MENTAL DEFECTIVES ACT, 1935-1953
OFFENDERS PROBATION ACT, 1913-1953

With notes of judicial decisions affecting sections of the reprinted Acts



MENTAL DEFECTIVES ACT, 1935-1953.

BEING

MENTAL DEFECTIVES ACT, 1935, No. 2230 OF 1935
[ASSENTED TO 5TH DECEMBER, 1935.]

AS AMENDED BY

STATUTE LAW REVISION ACT, 1936, No. 2293 OF 1936
[ASSENTED TO 8TH OCTOBER, 1936.]

MENTAL DEFECTIVES ACT AMENDMENT ACT, 1939, No. 4 OF 1939
[ASSENTED TO 14TH SEPTEMBER, 1939.]

MENTAL DEFECTIVES ACT AMENDMENT ACT (No. 2), 1939, No. 31
OF 1939 [ASSENTED TO 14TH DECEMBER, 1939.]

MENTAL DEFECTIVES ACT AMENDMENT ACT, 1941, No. 42 OF 1941
[ASSENTED TO 20TH NOVEMBER, 1941.]

MENTAL DEFECTIVES ACT AMENDMENT ACT, 1945, No. 14 OF 1945
[ASSENTED TO 22ND NOVEMBER, 1945.]

MENTAL DEFECTIVES ACT AMENDMENT ACT, 1950, No. 40 OF 1950
[ASSENTED TO 30TH NOVEMBER, 1950.]

AND

MENTAL DEFECTIVES ACT AMENDMENT ACT, 1953, No. 53 OF 1953
[ASSENTED TO 17TH DECEMBER, 1953.]

An Act to consolidate certain Acts relating to the care and control of mentally defective persons and to the administration of their estates.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I.

PART I.

PRELIMINARY.

1. This Act may be cited as the "Mental Defectives Act, 1935-1953," and shall come into operation on a day to be fixed by proclamation. Short title and commencement.

2. This Act is a consolidation of the Acts mentioned in the twenty-eighth schedule, and the said Acts are hereby repealed. Consolidation and repeal.

s. 1. This Act was proclaimed to commence on 2nd January, 1936; *Gazette* 2nd January, 1936, p. 1.

PART I.

Arrangement
of Act.

1122, 1913,
s. 3
2125, 1933,
s. 4 (a).

Amended by
31, 1939,
ss. 3 (2),
14 (3) and
by 42, 1941,
s. 2 (2).

3. The provisions of this Act are arranged as follows:—
- PART I.—Preliminary.
- PART II.—Administration—
- DIVISION I.—The Director-General of Medical Services:
- DIVISION II.—Institutions and Officers thereof.
- PART III.—Reception and Detention of Patients—
- DIVISION I.—In Mental Hospitals and Receiving Houses and Wards:
- DIVISION II.—In Hospitals for Criminal Mental Defectives.
- PART IV.—Treatment, Inspection, and Discharge of Patients—
- DIVISION I.—Registers and Notices:
- DIVISION II.—Visitation and Inspection:
- DIVISION III.—Transfer and Trial Leave of Patients and Removals from the State:
- DIVISION IV.—Cottages or other Separate Accommodation for Special Payment Patients:
- DIVISION V.—Boarding out of Patients:
- DIVISION VI.—Discharge of Patients.
- PART V.—Administration of Estates of Mentally Defective Persons—
- DIVISION I.—Committees and Inquisitions:
- DIVISION II.—Powers of Public Trustee as Committee or Administrator: -
- DIVISION III.—Committees other than the Public Trustee:
- DIVISION IV.—Reciprocal powers of the Public Trustee:
- DIVISION V.—General and Miscellaneous.
- PART VI.—Voluntary Boarders.
- PART VII.—Treatment of Sailors, Soldiers and Airmen.
- PART VIIA.—Licensing of Private Mental Homes.
- PART VIII.—Offences.
- PART IX.—Miscellaneous.

4. (1) In this Act, except where inconsistent with the context or some other meaning is clearly intended—

“certificate” includes recommendation:

“Court” means the Supreme Court of the State, or any Judge thereof:

“Director-General” means the Director-General of Medical Services:

“hospital for criminal mental defectives” means a place declared by proclamation to be a hospital for criminal mental defectives under this Act:

* * * * *

“institution” means a mental hospital, receiving house, or receiving ward, or hospital for criminal mental defectives:

“Judge” means a Judge of the Supreme Court of the State:

“medical practitioner” means medical practitioner duly qualified according to the laws of the State and registered as such:

“mental hospital” means a place by this Act or by proclamation under this Act declared to be a mental hospital under this Act, including any cottages or other separate places and appurtenances within the limits of any such hospital which are set apart for the accommodation of special payment patients, but does not include a receiving house or receiving ward or a hospital for criminal mental defectives:

“mentally defective person” means a person who, owing to his mental condition, requires oversight, care, or control for his own good or in the public interest, and who, according to the nature of his mental defect and to the degree of oversight, care, or control deemed to be necessary, is included in one of the following classes:—

Class I.—“persons of unsound mind”—that is, persons who, owing to disorder of the mind, are incapable of managing themselves or their affairs:

Class II.—“persons mentally infirm”—that is, persons who, through mental infirmity arising from age or the decay of their faculties, are incapable of managing themselves or their affairs:

Interpretation.
1122, 1913,
s. 4.
1159, 1914,
s. 3.
2125, 1933,
s. 4 (a).

Inserted by
31, 1939,
s. 3 (1).

Definition of
Inspector-
General
repealed by
31, 1939,
s. 3 (1).

Cf. U.K.
3 & 4 Geo. 5
c. 28, s. 1.

Mental Defectives Act, 1935-1953.

Class III.—“idiots”—that is, persons so defective in mind from birth or from an early age as to be unable to guard themselves against common physical dangers:

Class IV.—“imbeciles”—that is, persons who though capable of guarding themselves against common physical dangers, are incapable, or if of school age will presumably when older be incapable, of earning their own living by reason of mental defect existing from birth or from an early age:

and the expressions “mental defect”, “mental defective,” and “mentally defective,” shall be construed accordingly:

“Minister” means the Minister of the Crown to whom for the time being the administration of this Act is committed by the Governor:

“official visitor” means an official visitor appointed under this Act for an institution, and when used with reference to any institution means an official visitor so appointed for that institution:

“part of the Empire” includes the United Kingdom, and any other part of the British Empire except this State:

“patient” means a person lawfully received into or detained, or ordered to be received into or detained, in any institution, notwithstanding that he may have escaped, or been permitted to be absent on trial leave or parole, or been boarded out, under this or any other Act:

“police officer” means any member of the police force:

“prescribed” means prescribed by this Act or the regulations or rules of court made under this Act:

“proclaimed part of the Empire” means—

(a) in section 123, any part of the Empire with respect to which a proclamation under subsection (1) of section 122 of this Act or subsection (1) of section 4 of the Mental Defectives Act Amendment Act, 1914, has been published in the *Government Gazette* and is for the time being in force:

(b) in section 124, any part of the Empire with respect to which a proclamation under sub-

section (2) of section 122 of this Act or subsection (2) of section 4 of The Mental Defectives Act Amendment Act, 1914, has been so published and is for the time being in force:

“Public Trustee” means the Public Trustee of this State:

“receiving house” means a place declared by proclamation to be a receiving house under this Act:

“receiving ward” means a ward of a public hospital declared by proclamation to be a receiving ward under this Act:

“special payment patient” means a patient on whose behalf payments are made or agreed to be made for cottage or other separate accommodation:

“superintendent” means the superintendent of a mental hospital, receiving house, or hospital for criminal mental defectives, or the person or authority for the time being having or exercising the control and management of any such hospital or house or of a receiving ward:

“this Act” includes regulations and rules of court made under this Act:

“visitor” means an official visitor appointed under this Act.

(2) When any Act or a provision of any Act is referred to in this Act, the reference shall be deemed to include any Act or provision of an Act amending or substituted for that Act or provision and any Act or provision amending the substituted Act or provision.

(3) When any Act is referred to in this Act, the reference shall be deemed to include all regulations for the time being in force made thereunder.

(4) Any reference to this Act in this or any other Act shall be deemed to include a reference to any Act repealed by this Act and to any Act repealed by any such repealed Act.

PART II.

PART II.

ADMINISTRATION.

DIVISION I.

DIVISION I.—THE DIRECTOR-GENERAL.

Heading amended by 31, 1939, s. 3 (3).

Appointment of Director-General of Medical Services.

Substituted by 31, 1939, s. 2.

Tenure of office.

1122, 1913, ss. 8 and 13.
2125, 1933, s. 4 (a).

Amended by 31, 1939, s. 3 (3).

5. (1) The Governor may, from time to time, appoint a medical practitioner to be Director-General of Medical Services.

(2) Subject to section 6, the Inspector-General of Hospitals shall be deemed to have been appointed as Director-General of Medical Services from the time he was appointed as Inspector-General of Hospitals.

(3) Every reference in every other Act and in every regulation, proclamation or instrument, to the Inspector-General of Hospitals shall be deemed to be a reference to the Director-General of Medical Services.

6. (1) Subject to this section, the Director-General shall be appointed for a term of five years, and may, from time to time, be reappointed for a further term of five years.

(2) The Governor may, at any time, dismiss the Director-General from office—

(a) for misbehaviour or incompetence; or

(b) if he is adjudicated bankrupt or insolvent, or makes a statutory assignment for the benefit of his creditors, or compounds with his creditors for less than twenty shillings in the pound; or

(c) if he becomes a member of the Executive Council or of either House of Parliament of the State or of the Commonwealth.

(3) Except as provided by subsection (2), the Director-General shall not be dismissed from his office by the Governor during the term thereof unless an address praying for his dismissal is presented to the Governor from both Houses of Parliament in one session, or from one House in one session and from the other House in the next session.

7. In case of the illness or other incapacity, or absence of the Director-General, or of a vacancy in the office of Director-General, the Governor may appoint a medical practitioner to be Deputy Director-General of Medical Services during any such illness, incapacity, absence, or vacancy. Every person so appointed shall, until his appointment is terminated by notice in the *Government Gazette*, have all the powers, rights, and privileges, and perform all the duties and functions of the Director-General.

Deputy Director-General.

1122, 1913, s. 19.

Amended by 31, 1939, s. 3 (3), (4).

8. (1) Subject to anything prescribed, the Director-General—

Powers of Director-General.
1122, 1913, s. 15.
1532, 1922, s. 4.
2125, 1933, s. 4.
Amended by 31, 1939, ss. 3 (3), 4.

(a) shall have the care, control, management, and supervision of all institutions (except receiving wards, and also except such, if any, hospitals for criminal mental defectives as are situated in any prison within the meaning of the Prisons Act, 1936);

(b) shall have and exercise all such other powers and duties as are conferred or imposed upon him by or under this Act.

(2) The Director-General—

(a) may make such inquiries as he thinks fit with respect to the care, treatment, or bodily or mental health of the patients in any institution, or with respect to any matter affecting the social or physical welfare, or comfort, or discipline of the patients in or inmates of any institution, or with respect to any other matter prescribed;

(b) for the purpose of any such inquiry may visit and inspect any institution and may ask questions of the superintendent of any institution or of any other officer or person employed in any institution.

9. The Director-General shall, from time to time, visit and inspect every institution, and shall and may discharge and exercise such other duties and powers as are imposed or conferred upon him by this Act, and also such duties and powers as are imposed and conferred upon him by any other Act or by the Governor.

Functions of Director-General.
1122, 1913, s. 20.
Of U.K. 3 & 4 Geo. 5 c. 25, s. 25.
Amended by 31, 1939, s. 3 (3).

10. (1) The Director-General shall annually make and furnish the Minister with a report on his administration under this Act, on the state and condition of the several institutions, the care of the patients therein, and any other matters which the Minister directs, and of any other matters which he thinks deserving of notice. He shall at all times furnish the Minister with such other reports and documents relating to the administration of this Act as the Minister requires of him.

Reports by the Director-General.
1122, 1913, s. 21.
2125, 1933, s. 4 (a).
Amended by 31, 1939, s. 3 (3).

(2) The Minister, on receipt of any such annual report, may publish the same in the *Government Gazette*, or in any other manner which he deems proper. Any such report shall be laid before both Houses of Parliament as early as practicable.

PART II.

Responsibility to the Minister.
1122, 1913, s. 22.
2125, 1933, s. 4 (a).

Amended by 31, 1939, s. 3 (3).

Delegation of powers of Director-General.

Inserted by 31, 1939, s. 5.

11. The Director-General shall be responsible to the Minister for the discharge and exercise of his duties and powers.

11a. The Director-General, with the approval of the Minister, may by notice in writing authorize any person, being the superintendent of an institution, to exercise such of the powers of the Director-General under this Act as are specified in the notice, and may, with the approval of the Minister, by notice in writing revoke any such authority. During the time any such authority is in force with respect to any person that person may exercise the powers of the Director-General specified in the authority.

DIVISION II.

DIVISION II.—INSTITUTIONS AND OFFICERS THEREOF.

Proclamation of mental hospital and receiving houses.

1122, 1913, s. 23.
Cf. U.K. 3 & 4 Geo. 5 c. 28, s. 35.

12. (1) The Governor may, from time to time, by proclamation, declare any place which he deems suitable for the purpose to be a mental hospital or a receiving house under this Act.

(2) The premises formerly known as the Parkside Lunatic Asylum are hereby declared to be a mental hospital under this Act.

(3) The Governor may, by proclamation, declare that any mental hospital or receiving house shall cease to be a mental hospital or receiving house under this Act.

Superintendents.

1122, 1913, s. 24.
2125, 1933, s. 4 (a).

Amended by 31, 1939, s. 3 (3).

13. The Governor may for each mental hospital or receiving house appoint a superintendent, and, if he deems it necessary, a deputy superintendent. No person shall be so appointed unless he is a medical practitioner and his appointment has been recommended by the Director-General.

Other officers.

1122, 1913, s. 25.
1532, 1922, s. 5.
2125, 1933, s. 4.

Amended by 31, 1939, s. 3 (3).

14. (1) The Director-General may, for any mental hospital or receiving house, appoint such medical or other officers and servants as the Director-General deems necessary, and may dismiss any officer or servant appointed by him: Provided that—

(a) as regards offices and positions specified in that behalf with respect to the mental hospital or receiving house in a proclamation by the Governor which is for the time being in force, no appoint-

ment or dismissal shall be made, without the approval of the Governor first obtained; and

(b) as regards other offices and positions, no appointment or dismissal shall be made without the approval of the Minister in writing first obtained.

(2) The Governor may, from time to time, make and rescind or vary any such proclamation, and any such proclamation shall come into force upon the publication thereof in the *Government Gazette*.

(3) Subject to anything prescribed, the Director-General may transfer any medical or other officer or servant appointed by him for any mental hospital to another mental hospital or to a receiving house, and may transfer any medical or other officer or servant appointed by him for any receiving house to another receiving house or to any mental hospital.

15. (1) Where the board of management of a public hospital, declared as such under the Hospitals Act, 1867, or the Hospitals Act, 1934, provides or sets apart a ward for the purpose, the Governor may, by proclamation, declare the ward to be a receiving ward under this Act for the temporary reception of mental defectives or persons presumably mentally defective.

Receiving
wards in
public
hospitals.
1122, 1913,
s. 26.

(2) The Governor, on the recommendation of the board of management of the hospital where there is a receiving ward, may make regulations for the control and management of the ward for medical attendance upon and other attention to persons detained therein, and for the inspection of the ward and persons.

(3) The Governor may, by proclamation, declare that any such receiving ward shall cease to be a receiving ward under this Act.

16. (1) The Governor may, from time to time, by proclamation, declare any mental hospital or any part thereof, or any part of any prison, or any other place which he deems suitable for the purpose, to be a hospital under this Act for criminal mental defectives.

Hospitals for
criminal
mental defectives.
1122, 1913,
s. 27.
Cf. U.K.
23 & 24
Vict. c. 75,
s. 1.

(2) The Governor may, by proclamation, declare that any hospital for criminal mental defectives shall cease to be a hospital under this Act for criminal mental defectives.

PART II.
DIVISION II.

Superintendent and officers.
1122, 1913,
s. 28.

17. (1) The Governor may for each hospital for criminal mental defectives appoint a superintendent and, if he deems it necessary, a deputy superintendent. No person shall be so appointed unless he is a medical practitioner.

(2) The Minister may for each such hospital appoint such other medical and other officers and servants as he deems necessary.

Duties of superintendent.
1122, 1913,
s. 29.

Amended by
31, 1939,
s. 3 (3).

18. (1) The superintendent of any institution shall have the control and management thereof in all matters connected with its internal routine and discipline, and shall be responsible for carrying out the duties by this Act imposed upon him, and for the due observance of the provisions of this Act in reference to all matters occurring within the institution.

(2) The superintendent shall in all cases be subject to any direction given by the Director-General and in the case of a receiving ward in a public hospital which is under the control and management of a board of management, the superintendent shall also be subject to any direction given by the said board acting within its powers and duties.

Duties of deputy superintendents.
1122, 1913,
s. 30.

19. The deputy superintendent (if any) of any institution shall, during the illness or other incapacity or absence of the superintendent thereof, have all the powers and immunities and perform all the duties and functions of the superintendent.

Leave of absence for resident superintendents and medical officers.
1122, 1913,
s. 31.

20. (1) Every superintendent, deputy superintendent, or other medical officer of an institution, who resides in the institution, shall, in lieu of any claim for long leave of absence under any Act relating to the public service, be entitled to and shall take six months' leave of absence on full salary after each period of five years' continuous service by him whilst in residence in any institution or institutions.

(2) This section shall apply notwithstanding that the service is, during part of any such period, in one of the capacities mentioned in subsection (1) hereof, and during part thereof, in another of those capacities, or that the residence is, during part of any such period, in one institution, and during part thereof, in another institution.

(3) Except so far as expressly provided by this section, nothing in this section shall be deemed to take away or limit any power of the Governor, or of the Minister, under any Act relating to the public service.

PART II.
DIVISION II.

21. (1) The Governor may for each institution, except a receiving ward, appoint three or more official visitors, one of whom shall be a medical practitioner of the male sex, one a medical practitioner of the female sex (if there is any such medical practitioner suitable and willing to be appointed and resident within ten miles of the institution), and one a special magistrate or a practitioner of the Supreme Court.

Official visitors.
1122, 1913, s. 32.
Cf. U.K. 53 Vict. c. 5, ss. 39, 177.
Cf. U.K. 20 & 21 Geo. 5 c. 23, s. 7.

(2) Any or all of the official visitors may be appointed to any or all institutions for which official visitors may be appointed.

(3) An official visitor shall be appointed for a term of one year. An official visitor may, from time to time, at the expiration of his term of office, be reappointed for a further term of one year if he has during his term of office made at least twelve visits in his official capacity to the institution for which it is proposed to reappoint him.

22. An official visitor shall not have jurisdiction to hold any inquest or inquiry, as a coroner or as a justice, concerning the death of any patient of any institution of which he is an official visitor.

Competency of official visitors to hold inquests.
1122, 1913, s. 33.

23. The official visitors of any institution shall and may discharge and exercise all such powers and duties as are conferred or imposed upon them by or under this Act, and shall report to the Minister at such times, in such manner, and on such matters as the Minister from time to time directs.

Functions of and reports by official visitors.
1122, 1913, s. 34.

PART III.

PART III.

RECEPTION AND DENTENTION OF PATIENTS.

DIVISION I.—IN MENTAL HOSPITALS AND RECEIVING HOUSES AND WARDS.

DIVISION I.

How Patients may be received into Mental Hospitals.

24. (1) If a complaint, on oath, is laid before any justice that any person is by the complainant believed to be mentally defective and—

Complaint before justice.
1122, 1913, s. 35.
Cf. U.K. 53 Vict. c. 5, s. 15.
Cf. U.K. 3 & 4 Geo. 5 c. 23, ss. 2 (1) (b), 4.

(a) is without sufficient means of support; or

(b) is wandering at large; or

(c) has been found under circumstances that denote a purpose of committing some offence against the law,

the justice may, by an order in the form in the first schedule, or to the like effect, signed by him, require a police officer to apprehend the person and take him before a justice.

(2) Any police officer who has reason to believe that any person found—

(a) wandering at large; or

(b) under circumstances denoting a purpose of committing some offence against the law,

is mentally defective, shall immediately apprehend and take the person, or cause him to be apprehended and taken, before a justice.

Power to
make recep-
tion order.

1122, 1918,
s. 36.
1532, 1922,
s. 6.

Gf. U.K.
53 Vict. c. 5,
s. 16.

Gf. U.K.
3 & 4 Geo. 5
c. 28, ss. 2, 4.

25. (1) The justice before whom any person is brought under section 24 shall call to his assistance a medical practitioner, and shall, at any convenient place, examine the person and make such inquiry as to him as he deems necessary.

(2) If the medical practitioner signs a certificate stating, with regard to the said person, the matters indicated in the form in the second schedule, and the justice is satisfied upon examination of the said person and of the medical practitioner, or upon other proof, that the said person is mentally defective, and—

(a) is without sufficient means of support; or

(b) was wandering at large; or

(c) was found under circumstances denoting a purpose of committing some offence against the law,

and is a proper person to be taken charge of and detained under care and treatment, the justice may, by an order signed by him in the form in the third schedule or to the like effect, direct the said person to be removed to and received in the mental hospital mentioned in the order.

(3) The said person shall thereupon be conveyed to the said hospital and be received and detained therein accordingly: Provided that he shall not be so received unless the order, accompanied by—

(a) a statement by the justice, as to the said person, of the particulars indicated in the fourth schedule, or such of the said particulars as are known to the justice; and

(b) the said certificate of the medical practitioner,

is produced to and left with the superintendent of the hospital or an officer of the hospital prescribed in that behalf in respect of the hospital.

26. Whenever a justice believes a person to be, or any person is reported to him to be, mentally defective and in such circumstances as are mentioned in paragraph (a), (b), or (c) of subsection (1) of section 24 he may, at any convenient place, notwithstanding that the person has not been brought before him under section 24, proceed with regard to the said person in the manner prescribed by section 25, and the provisions of the last-mentioned section shall apply accordingly.

Power of justice to proceed without complaint. 1122, 1913, s. 37.

27. (1) Whenever a police officer has knowledge that any person whom he believes to be mentally defective, though not in any of the circumstances mentioned in paragraphs (a), (b), and (c) of subsection (1) of section 24—

Steps preliminary to bringing person before two justices. 1122, 1913, s. 38. Cf. U.K. 53 Vict. c. 5, s. 13.

(a) is not under proper care and control; or

(b) is cruelly treated or neglected by any person having or assuming the care or charge of him,

the officer shall, within three days after obtaining any such knowledge, make complaint thereof, on oath, to a justice.

(2) The justice, upon any such complaint or upon the complaint on oath of any person whomsoever to the like effect shall either—

(a) himself visit and examine the alleged mental defective and make inquiry into the case; or

(b) by an order signed by him in the form in the fifth schedule or to the like effect, direct some medical practitioner to visit and examine the alleged mental defective and make inquiry as aforesaid, and to report in writing to the justice his opinion thereon.

(3) If it appears to the justice, upon his visit, examination, and inquiry, or upon the report of the medical practitioner, that the alleged mentally defective person is mentally defective and is in the circumstances mentioned in paragraphs (a) or (b) of subsection (1) he may, by order signed by him in the form in the sixth schedule or to the like effect, require any police officer to apprehend the alleged mentally defective person and take him before two justices.

PART III.
DIVISION I.Power of
justices to
make recep-
tion order.1122, 1913,
s. 39.
1532, 1922,
s. 7.

28. (1) The justices before whom any person is brought under section 27 shall call to their assistance a medical practitioner, and shall, at any convenient place, examine the said person and make such inquiry as to him as they deem necessary.

(2) If the medical practitioner signs a certificate stating, with respect to the said person, the matters indicated in the form in the second schedule, and the justices are satisfied upon examination of the said person and the medical practitioner, or upon other proof, that the said person is mentally defective and—

(a) is not under proper care and control; or

(b) is cruelly treated or neglected by any person having or assuming the care or charge of him, and

is a proper person to be taken charge of and detained under care and treatment, the justices may, by an order signed by them in the form in the seventh schedule or to the like effect, direct the said person to be removed to and received in the mental hospital mentioned in the order.

(3) The said person shall thereupon be conveyed to the said hospital and be received and detained therein accordingly: Provided that he shall not so be received unless the order, accompanied by—

(a) a statement by the justices, as to the said person, of the particulars indicated in the fourth schedule, or such of the said particulars as are known to such justices, and

(b) the said certificate of the medical practitioner,

is produced to and left with the superintendent of the hospital or an officer of the hospital prescribed in that behalf in respect of the hospital.

Power of
justices to
proceed with-
out complaint.
1122, 1913,
s. 40.

29. Whenever any two justices believe a person to be, or any person is reported to them to be, mentally defective and in such circumstances as are mentioned in paragraph (a) or (b) of subsection (1) of section 27, they may, at any convenient place, notwithstanding that the person has not been brought before them under the said section, proceed with regard to the person in manner prescribed by section 28 and the provisions of the last-mentioned section shall apply accordingly.

Reception in
mental hos-
pital on
request of
committee.
1122, 1913,
s. 41.
1532, 1922,
s. 8.

30. Where any person has been found a mental defective by inquisition or other proceeding in the Court, a request, in the form of the eighth schedule or to the like effect, signed by the committee appointed by the Court shall, without any further order or any medical certificate, be sufficient authority for the reception and detention of the person into any mental hospital: Provided that he shall not be so received unless the request, accompanied by—

- (a) an office copy of the order appointing the committee; and
- (b) a statement by the committee, as to the said person, of the particulars indicated in the fourth schedule, or such of the said particulars as are known to the committee,

is produced to and left with the superintendent of the hospital or an officer of the hospital prescribed in that behalf in respect of the hospital.

31. (1) Any person may be received into and detained in a mental hospital upon a request signed by some person, in the form in the ninth schedule or to the like effect, being produced to and left with the superintendent of the hospital or an officer of the hospital prescribed in that behalf in respect of the hospital: Provided that, subject to subsection (2), the request is accompanied by—

Reception in
mental hos-
pital on
request sup-
ported by two
medical
certificates.
1122, 1913,
s. 42.
1532, 1922,
s. 9.
Of. U.K.
53 Vict. c. 5,
s. 4 (1).
Of. U.K.
3 & 4 Geo. 5
c. 28, ss. 2-5.

- (a) a statement by the person signing the request, as to the person so received, of the particulars indicated in the fourth schedule, or such of the said particulars as are known to the person signing the request; and
- (b) certificates in the form and containing the particulars as to the person indicated in the second schedule of two medical practitioners, neither of whom is in partnership with, or is the parent, child, brother, or sister of, or an assistant to, the other, and each of whom has separately from the other personally examined the person to whom the certificates relate, within the period of seven clear days immediately preceding the reception of the said person.

(2) In special and urgent circumstances preventing examination by two medical practitioners as mentioned in subsection (1), a person may be received into a mental hospital under this section if the request and statement are accompanied by a certificate such as required by the said subsection of one medical practitioner, and the request sets

Of. U.K.
53 Vict. c. 5,
s. 11.

forth the circumstances relied on: Provided that the said person shall not be detained in the mental hospital for a longer period than three clear days unless, during that period, a certificate such as required by the said subsection is received by the superintendent from another medical practitioner, who would have been competent to give the second certificate required by the said subsection, and who has within the said period personally examined the said person.

Inserted by
14, 1945,
s. 2.

(3) If any police officer of or above the rank of inspector is satisfied—

- (a) that a request has been made by some person purporting to be in pursuance of subsection (1) for the reception in a mental hospital of some other person; and
- (b) that certificates have been given by two medical practitioners purporting to be in pursuance of subsection (1) or a certificate has been given by one medical practitioner purporting to be in pursuance of subsection (2),

that police officer or any other police officer specifically authorized by him with respect to the particular case may, on the request in writing of the person by whom the request aforesaid was made, apprehend the person to whom the request relates and convey him to the mental hospital.

How Patients may be received into Receiving Houses and Wards and subsequent proceedings.

Order for
reception
into a
receiving
house instead
of mental
hospital.

1122, 1913,
s. 43.
1532, 1922,
s. 10.

Cf. U.K.
3 & 4 Geo. 5
c. 28 ss. 3, 5.

Subsec. (1)
substituted
by 14, 1945,
s. 3 and
amended by
53, 1953,
s. 2 (a).

32. (1) When in any of the cases beforementioned in this Part, a medical practitioner has signed a certificate stating, with respect to a person, the matters indicated in the form in the second schedule and a justice or justices would have power under the foregoing provisions of this Part to make an order directing the said person to be removed to and received in a mental hospital, but the justice or justices are for any reason of opinion that it is advisable to remand the said person, the justice or justices may, by an order signed by him or them in the appropriate form in the eleventh schedule or to the like effect, direct the said person to be removed to and received for a period not exceeding thirty days in the receiving house or receiving ward mentioned in the order.

Inserted by
14, 1945,
s. 3 and
amended by
53, 1953,
s. 2 (b).

(1a) When in any of the cases beforementioned in this Part a justice or justices would, upon the certificate of a medical practitioner stating, with respect to a person, the matters indicated in the form in the second schedule, have

power under the foregoing provisions of this Part to make an order directing the said person to be removed to and received in a mental hospital but in lieu of signing a certificate as aforesaid, a medical practitioner signs a certificate stating with respect to such person the matters indicated in the tenth schedule, the justice or justices may, by an order signed by him or them in the appropriate form in the eleventh schedule or to the like effect, direct the said person to be removed to and received for a period not exceeding thirty days in the receiving house or receiving ward mentioned in the order.

(2) The said person shall thereupon be conveyed to the house or ward and be received and detained and treated therein accordingly: Provided that he shall not be so received unless the order, accompanied by—

(a) a statement by the justice or justices, as to the said person of the particulars indicated in the fourth schedule or such of the said particulars as are known to the justice or justices; and

(b) the certificate of the medical practitioner,

is produced to and left with the superintendent of the house or ward or an officer of the house or ward prescribed in that behalf in respect of the house or ward.

33. (1) When any person has been received in an institution under an order made under section 32, the superintendent shall, within thirty clear days from the time of his reception therein, cause the said person to be brought before a justice at the institution.

Further proceedings after reception in a receiving house or ward.

1122, 1913, s. 44.
1522, 1922, s. 11.
Of. U.K.
3 & 4 Geo. 5 c. 28, s. 16.

(2) The justice shall call to his assistance the superintendent or some other medical practitioner and shall examine the person and make such inquiry as to him as he deems necessary, and—

Amended by 31, 1939, s. 7 (a) and by 53, 1953, s. 3.

(a) if satisfied that the person is not mentally defective the justice may discharge him, in which case he shall no longer be detained in the institution:

(b) if the superintendent or medical practitioner signs a certificate stating, with respect to the person, the matters indicated in the form in the second schedule, and the justice is satisfied that the person is mentally defective and a proper person to be detained under care and treatment in a mental hospital, he may, by an order signed by him in the form in the twelfth schedule, or to the like effect, direct the person to be removed to and

Mental Defectives Act, 1935-1953.

received in the mental hospital mentioned in the order, and the said person shall thereupon be conveyed to the said mental hospital and be received and detained therein accordingly: Provided that he shall not be so received unless the order, accompanied by the said certificate, is produced to and left with the superintendent of the mental hospital or an officer of the mental hospital prescribed in that behalf in respect of the mental hospital:

(c) in any other case, the justice may, from time to time, by order signed by him in the form in the thirteenth schedule, or to the like effect, direct that the person be further detained in the receiving house or receiving ward for a period not exceeding thirty days.

(3) When any person is further detained under an order made under subsection (2), the provisions of subsections (1) and (2) shall apply from time to time.

(4) No person shall be detained in a receiving house or receiving ward, under an order made under section 32—

(a) for a longer period than thirty clear days without being brought, or again brought, before a justice to be dealt with as provided by subsection (2) hereof; nor

(b) for a longer period than six months in the aggregate at any one time.

Subsec. (5)
inserted by
31, 1939,
s. 7 (b) and
repealed by
53, 1953,
s. 3 (d).

* * * * *

Order where
insufficient
accommoda-
tion in house
or ward.
1122, 1918,
s. 45.

34. If in any case where an order has been made directing any person to be received into or further detained in a receiving house or receiving ward, there is not proper accommodation in the house or ward for the said person, the justice or justices may, by order in the form in the fourteenth schedule or to the like effect, direct that the said person be conveyed to and received and detained in some other suitable place until he can be received into the receiving house or receiving ward, and that when there is proper accommodation in the said house or ward he be removed thereto and received therein. The order shall have effect and be obeyed according to the tenor thereof.

Reception in receiving house or ward on request of patient or other person.
1122, 1913, s. 46.
1532, 1922, s. 12.
Cf. U.K. 53 Vict. c. 5, s. 229.
Cf. U.K. 20 & 21 Geo. 5 c. 23, s. 5.

35. (1) Any person may be received into and detained in a receiving house or receiving ward upon a request, in the form in the fifteenth schedule, or to the like effect, signed by himself or some other person, being produced to and left with the superintendent of the house or ward or an officer of the house or ward prescribed in that behalf in respect of the house or ward: Provided that, subject to subsection (2), the request is accompanied by—

- (a) a statement by the person signing the request, as to the person so received, of the particulars indicated in the fourth schedule, or such of the said particulars as are known to the person signing the request; and
- (b) a certificate in the form and containing the particulars as to the said person indicated in the second schedule or the tenth schedule, of a medical practitioner, who has personally examined the said person within the period of seven clear days immediately preceding his reception.

(2) In the case of a person to be received into and detained in a receiving ward under this section, it shall be sufficient if the request and statement are accompanied by a recommendation as to the said person in the form of the sixteenth schedule, or to the like effect, of a medical practitioner who has personally examined the said person within the period of seven clear days immediately preceding his reception.

(3) If any police officer of or above the rank of inspector is satisfied—

Inserted by 14, 1945, s. 4.

- (a) that a request has been made by some person purporting to be in pursuance of subsection (1) for the reception in a receiving house or receiving ward of some other person; and
- (b) that a certificate or recommendation has been given by a medical practitioner purporting to be in pursuance of subsection (1) or, as the case may be, subsection (2),

that police officer or any other police officer specifically authorized by him with respect to the particular case may, on the request in writing of the person by whom the request aforesaid was made, apprehend the person to whom the request relates and convey him to the receiving house or receiving ward.

PART III.
DIVISION I.

Reception in receiving ward on order of medical superintendent of public hospital.
1122, 1913, s. 47.

36. When the medical superintendent of a public hospital in which there is a receiving ward, or any other medical officer in charge of the hospital, is of opinion that any person under treatment therein should be removed to the ward, he may remove him accordingly, and the said person shall be received into and detained in the ward: Provided that the medical superintendent or officer shall make and sign an order for such reception in the form in the seventeenth schedule or to the like effect, which order shall be accompanied by a statement and a certificate such as mentioned in section 35.

Examination of patients received into receiving house or ward.
1122, 1913, s. 48.
1532, 1932, s. 13.

37. (1) Any person received into an institution under sections 35 or 36 shall be received as a patient for observation and treatment, and shall without delay be examined by the superintendent thereof. The patient shall continue in the institution for the period of two months unless sooner discharged or transferred to a mental hospital as provided by this section.

Amended by 31, 1939, s. 3 (3).

(2) The patient may be detained in the institution for a further period not exceeding four months if the Director-General certifies that it is desirable that the patient should be so detained.

(3) If after examination of the patient the superintendent thinks that he is not mentally defective, or though mentally defective, does not require treatment, he shall indorse upon the request and enter in the case book his opinion that the patient is not mentally defective, or though mentally defective does not require treatment (as the case may be), and the patient shall be at once discharged from the institution.

Inserted by 4, 1939, s. 2.

(3a) If, either at the time of or subsequent to the discharge of any patient as aforesaid, the superintendent is satisfied that the person so discharged is able to manage his own affairs, the superintendent may in the order of discharge or, as the case may require, at any time subsequent to the discharge (whether the discharge occurred before or after the passing of the Mental Defectives Act Amendment Act, 1939), certify that the person so discharged is able to manage his own affairs.

(4) If after any such examination the superintendent is of opinion that the patient is mentally defective and requires treatment in a mental hospital, he shall thereupon make an order under his hand for the transfer of the patient to the mental hospital mentioned in the order.

Amended by 31, 1939, s. 8.

(5) The order shall be accompanied by a copy of the request or order upon which the patient was received into the

receiving house or ward, and when produced to and left with the superintendent of the mental hospital mentioned therein or an officer of the hospital prescribed in that behalf in respect of the hospital, accompanied as aforesaid, shall be a full and sufficient authority for the reception of the patient into the mental hospital mentioned in the order and for his detention therein.

General.

38. (1) Except as hereinbefore provided, and subject to the provisions of this Act, no person shall be received into any mental hospital, receiving house, or receiving ward.

Person not to be received except as provided by the Act.

1122, 1913, s. 49.
Cf. U.K. 53 Vict. c. 5, s. 4.

(2) Notwithstanding subsection (1) of this section, nothing in this Act shall apply to the reception or detention in an institution of a person detained in pursuance of the provisions of section 77a of the Criminal Law Consolidation Act, 1935-1940.

Subsec. (2) inserted by 14, 1945, s. 5.

39. (1) The justice or justices making an order under this Division for the conveyance of any person to an institution may, by writing signed by him or them in the form in the eighteenth schedule or to the like effect, suspend the execution of the order for any period not exceeding fourteen days from the making thereof, and, when making any such suspension and in the meantime, may from time to time give such directions or make such arrangements for the proper care and control of the person as he or they consider necessary.

Suspension of order.

1122, 1913, s. 50.
Cf. U.K. 53 Vict. c. 5, s. 19.

(2) If the medical practitioner by whom any person is examined certifies in writing that he is not in a fit state to be removed, his conveyance to an institution under any order under this Division shall be delayed until the same or some other medical practitioner certifies, in writing, that the person is fit to be removed.

(3) Nothing in this Act contained shall be construed to restrain or prevent any relative or friend of the person in respect of whom an order under this Division is made, and who is not already detained in an institution, from retaining or taking the person under his own care, if he satisfies the justice or justices making the order that the said person will be properly taken care of, and the justice or justices so direct.

Cf. U.K. 53 Vict. c. 5, s. 22.

40. (1) Every medical practitioner signing any certificate in connection with the reception or detention of any person into or in any institution shall specify therein the facts upon which he has formed his opinion, distinguishing facts observed by himself from facts communicated to him by others.

Requirements of medical certificate.

1122, 1913, s. 51.
Cf. U.K. 53 Vict. c. 5, s. 28.

(2) No person shall be received into any institution under any certificate which purports to be founded only upon facts communicated by others.

General power of amendment of orders and certificates. 1122, 1913, s. 52, 1532, 1922, s. 14. Cf. U.K. 53 Vict. c. 5, ss. 34, 35. Amended by 31, 1939, s. 3 (3).

41. (1) If on or after the reception of any person into any institution it appears that any order or request, or any medical certificate, or any other document, upon which he has been received is in any respect incorrect or defective, the order, request, certificate, or other document may be amended by and on the sole authority of the person who signed the same at any time within one month next after the reception of such person: Provided that no such amendment shall have any force or effect unless sanctioned by the Director-General by writing signed by him.

(2) If any such order, request, certificate, or other document is at any time deemed by the Director-General to be incorrect or defective, and the same is not amended to his satisfaction within one month after the receipt by the superintendent of the institution of a direction in writing from the Director-General requiring the amendment of the same, the Director-General may, if he thinks fit, make an order for the discharge of the patient, and he shall be discharged accordingly.

(3) Notwithstanding that any order or request, or any medical certificate, statement, or other document, upon which any person has been received into any institution is in any respect incorrect or defective, that person may, subject to subsection (7), lawfully be received into and detained in the institution pending the amendment of the order, request, certificate, statement, or document, under the provisions of this section, for any period not exceeding one month next after the reception of the person.

(4) Upon the amendment of any order, request, certificate, statement, or other document being made and sanctioned as aforesaid, the order, request, certificate, statement, or document shall be as valid and effective for all purposes as if it had been so amended at the time it was made or signed.

(5) If, on or after the reception of any person into any institution, it appears that any order or request which, upon the reception, should have been produced to and left with the superintendent or other prescribed officer of the institution was not so produced and left, or that any medical certificate, statement, or other document which should have accompanied the order or request did not accompany the order or request—

(a) the order, request, certificate, statement, or other document may be produced to and left with the

superintendent or other prescribed officer of the institution at any time within seven days next after the reception of the person: Provided that no order, request, certificate, statement, or other document so produced and left shall have any force or effect unless sanctioned by the Director-General by writing signed by him; and

- (b) pending the production and leaving of the order, request, certificate, statement or other document, the person may, subject to subsection (7), lawfully be received into and detained in the institution for any period not exceeding seven days next after the reception of the person.

(6) Upon any order, request, certificate, statement, or other document being produced and left and sanctioned as aforesaid, the order, request, certificate, statement, or other document shall be as valid and effective for all purposes as if it had been produced to and left with the superintendent or a prescribed officer of the institution upon the reception of the person into the institution.

(7) Subsections (3) and (5) shall not apply unless—

- (a) the superintendent of the institution is of opinion that the person is, in the case of a person received into a mental hospital, mentally defective, or, in the case of a person received into a receiving house or receiving ward, apparently mentally defective and a proper person to be detained in the receiving house or receiving ward; and
- (b) the reception and detention of the person as aforesaid is, forthwith upon the discovery of the incorrectness or defect or of the want of production or leaving, as the case may be, reported to and sanctioned in writing by the Director-General.

42. (1) No medical practitioner who, or whose parent, child, brother, sister, or other relative, or partner, or assistant, signs the request for the reception of a person into an institution shall sign any certificate in connection with the reception of that person.

Who may not
sign certifi-
cates, etc.
1122, 1913,
s. 53.
Cf. U.K.
53 Vict. c. 5
ss. 4, 30, 32.

(2) Except as otherwise provided in this Act, no medical practitioner, who is the superintendent of, or a medical or other officer of, an institution, shall sign any order or certificate in connection with the reception of any person into that institution or his detention therein.

(3) No official visitor of an institution shall sign any order, request, or certificate in connection with the reception of any person into that institution or his detention therein.

Power to detain and recapture persons received into hospitals, etc. 1122, 1913, s. 54. Cf. U.K. 53 Vict. c. 5, s. 85. Cf. U.K. 3 & 4 Geo. 5, c. 28, ss. 11, 42.

43. Every person received under the provisions of this Act into any mental hospital, receiving house, or receiving ward, may be detained therein until he is removed or discharged as authorized by this Act. In case of the escape therefrom of any such person, he may, within three months from the date of the escape, be retaken by the superintendent of the institution, any officer or servant belonging thereto, any police officer, or any person authorized in that behalf by the Minister or the superintendent, and he shall thereupon be conveyed to and received and detained in the institution.

Provision in case of removal, transfer, or escape of patient. 1122, 1913, s. 55. Cf. U.K. 53 Vict. c. 5, s. 36.

44. Except as otherwise provided in this Act, whenever a patient—

- (a) is under any of the provisions of this Act, removed temporarily from an institution; or
- (b) is transferred from one institution to another institution; or
- (c) escapes from any institution and is retaken after such escape,

the certificate or certificates relating to and the original order or request for the reception of the patient shall respectively remain in force in the same manner as the same would have done if the patient had not been so removed or transferred, or had not so escaped and been retaken.

Cost of inquiries before justices. 1122, 1913, s. 56. Cf. U.K. 3 & 4 Geo. 5, c. 28, s. 13.

45. (1) The justice or justices by or before whom any proceedings under this Division are taken, may make such order as, subject to anything prescribed in that behalf, he or they think proper for the remuneration and reimbursement of any medical practitioner, the payment of witness fees and expenses, and other reasonable expenses of or connected with any examination and inquiry, and the conveyance of any person to any institution.

Amended by 31, 1939, s. 3 (3).

(2) Any amount ordered under this section shall be subject to the approval of the Director-General, who shall have power to disallow the amount altogether, or to increase or reduce the same, and to approve the amount as ordered or as increased or reduced by him; and his decision shall be final and without appeal.

(3) Any amount so approved may, if an order is made for the reception in an institution of the person in respect of

whom the proceedings were taken, be recovered in the same way as the costs of his maintenance in an institution is recoverable. If no such order is made, or if the amount ordered, or any part thereof, is not recovered as aforesaid, the amount ordered, or such part, shall be paid out of moneys voted by Parliament for the purposes of this Act.

DIVISION II.—IN HOSPITALS FOR CRIMINAL MENTAL DEFECTIVES.

DIVISION II.

46. If any person, while imprisoned or detained in any prison, gaol, reformatory, industrial school, or other place of confinement (not being an institution within the meaning of The Inebriates Act, 1908)—

Power to remove mentally defective criminals to hospital for mental defectives.
1122, 1913, s. 57.
Cf. U.K. 23 & 24 Vict. c. 75. s. 2.
Cf. U.K. 3 & 4 Geo. 5 c. 23, ss. 8, 9.
Cf. U.K. 25 & 26 Geo. 5 c. 32, s. 4.

- (a) under the sentence or order of any superior or inferior court or other tribunal whatsoever; or
- (b) under commitment for trial on a charge of any offence; or
- (c) for not finding bail for good behaviour or to keep the peace or to answer a criminal charge; or
- (d) under any other lawful authority,

appears to be mentally defective, the Minister, upon receipt of a certificate stating with respect to that person the matters indicated in the form in the nineteenth schedule, signed by a medical practitioner, may direct, by order signed by him, that the said person be removed to the hospital for criminal mental defectives mentioned in the order, and he shall be removed accordingly: Provided that if the person is imprisoned or detained either until the Governor's pleasure be known or during the Governor's pleasure, no order shall be made under this section until the Governor's consent thereto has been obtained.

47. (1) In any of the cases mentioned in section 46 where if the person concerned appeared to be mentally defective, the Minister may direct the person to be removed to a hospital for criminal mental defectives, but a medical practitioner signs a certificate stating with respect to the said person the matters indicated in the tenth schedule, the Minister, upon the receipt of the certificate, signed as aforesaid, may direct by order signed by him, that the said person be removed to the receiving house mentioned in the order, and he shall be removed accordingly: Provided that if the said person is imprisoned or detained either until the Governor's pleasure be known or during the Governor's pleasure, no order shall

Power to remove certain criminal mental defectives to receiving house.
1532, 1922, s. 15.
Cf. U.K. 47 & 48 Vict. c. 64, s. 2.

be made under this section until the Governor's consent thereto has been obtained.

(2) When any person is removed to a receiving house under this section, all the provisions of this Division shall apply to and in respect of that person as if he were removed to a hospital for criminal mental defectives.

(3) This section shall not apply in respect of any person under sentence or awaiting trial or sentence for any indictable offence.

Removal of
mental defec-
tives from
gaol, &c., to
mental
hospital.
1122, 1913,
s. 58.

48. When any criminal mental defective is removed from any prison, gaol, reformatory, industrial school, or other place of confinement to any hospital for criminal mental defectives the officer in charge of the prison, gaol, reformatory, industrial school, or other place of confinement shall furnish the superintendent of such hospital with a complete record of the patient's career (so far as known to the officer) and behaviour, together with a general report on the criminal mental defective.

Disposal of
patients in
hospitals for
criminal men-
tal defectives
on expiration
of their
sentences.
1122, 1913,
s. 59.
Ct. U.K.
47 & 48
Vict. c. 64,
s. 3.
Amended by
31, 1939,
s. 3 (3).

49. (1) Every person so removed and every other person placed in a hospital for criminal mental defectives, shall, subject to section 51, and in the case of a person kept in custody during the Governor's pleasure, subject to any direction of the Governor, be detained in some hospital for criminal mental defectives until it is certified by the Director-General alone, or by the superintendent of the hospital where he is detained and some other medical practitioner, that he is not mentally defective.

Subsec. (1a)
inserted by
4, 1939, s. 3,
and amended
by 31, 1939,
s. 3 (3).

(1a) If the Director-General or, as the case may be, the superintendent of the said hospital and the other medical practitioner, are satisfied that the said person is able to manage his own affairs, the Director-General or, as the case may be, the superintendent and other medical practitioner may, in the said certificate or at any time subsequent to the granting of the said certificate (whether the said certificate was granted before or after the passing of the Mental Defectives Act Amendment Act, 1939), certify that the said person is able to manage his own affairs. If the Director-General so certifies at any time after the granting of the said certificate, he shall give to the superintendent of the hospital notice in writing that he has so certified.

(2) Upon a certificate being given as required by subsection (1) hereof, if the person does not remain subject to be continued in custody, the Minister shall direct that he be discharged, and he shall be discharged accordingly; but other-

wise the Minister shall, by order signed by him, direct that the person be removed to the prison, gaol, reformatory, industrial school, or other place of confinement mentioned in the order, and he shall be removed accordingly.

(3) Upon removal, as provided by subsection (2) hereof, the said person shall undergo his sentence (if any) or shall otherwise be dealt with according to law, as if no order for his custody in or removal to a hospital for criminal mental defectives had been made. If he was detained under commitment for trial or under an order made under section 293 of the Criminal Law Consolidation Act, 1935, he may be arraigned and tried notwithstanding any detention or anything done under this Act or the said section or his previous arraignment for the same offence.

Amended by
S.L.R. Act,
1936.

50. The time during which any person removed after the twelfth day of August, nineteen hundred and fourteen, to any hospital for criminal mental defectives is detained therein, or is absent on trial therefrom, shall be credited to him as service, to the extent of the said time, of his term of imprisonment, unless the Governor, on the advice of the Director-General or the superintendent of the hospital, orders that it be not so credited.

Period of confinement in hospital for criminal mental defectives to be deducted from sentence.

1122, 1913,
s. 60.

Amended by
31, 1939,
s. 3 (3).

51. (1) Where any person has been removed to any hospital for criminal mental defectives, the Minister may, by order signed by him, direct that the person be transferred from the hospital either to some mental hospital or to some other hospital for criminal mental defectives, and may from time to time, by similar order, vary any such direction.

Transfer of criminal mental defectives.

1122, 1913,
s. 61.

Cf. U.K.
47 & 48
Vict. c. 64,
s. 5.

(2) No such person shall be transferred from any hospital for criminal mental defectives to any mental hospital unless the superintendent of the hospital for criminal mental defectives certifies that the person does not suffer from homicidal propensities or from mental defect of such a kind as to render his detention in a hospital for criminal mental defectives desirable.

52. (1) Where any patient detained in a mental hospital has been at any time previously detained as a criminal mental defective, if the Director-General or the superintendent of the hospital in which the patient is detained certifies that he is dangerous or violent and recommends that he be transferred to a hospital for criminal mental defectives, the Minister may, by order signed by him, direct the transfer of the patient to the hospital for criminal mental defectives mentioned in the order.

Patient previously detained in hospital for criminal mental defectives.

1122, 1913,
s. 62.

Amended by
31, 1939,
s. 3 (3).

(2) The Minister may, by order signed by him at any time, transfer the patient back to a mental hospital.

Orders under this Division to be sufficient authority for conveyance and detention.
1122, 1913,
s. 68.

53. (1) Any order made under this Division for the removal or transfer of any person shall be sufficient authority for all police officers and other persons entrusted with the conveyance of the person to keep and convey him accordingly, and to the superintendent, keeper, or other person in charge of the place to which the person is removed to keep and detain the person in the said place. The said person shall be deemed to be in legal custody whilst being conveyed or whilst kept and detained as aforesaid.

(2) Every such order shall be in duplicate, and one part shall be delivered to the superintendent, keeper, or other person in charge of the place from which the person is to be removed and the other to the superintendent, keeper, or other person in charge of the place to which he is to be removed.

Power of Governor to grant leave of absence on conditions.
1122, 1913,
s. 64.

54. (1) The Governor may by warrant under his hand permit any person confined in any hospital for criminal mental defectives to be absent therefrom upon trial leave for such period and upon such conditions as he thinks fit.

(2) If any such person does not return to the hospital within any such period, or if any of such conditions is broken, he may be retaken and dealt with as hereinafter prescribed in case of an escape.

Non-application of other provisions of this Act.
Inserted by
14, 1945,
s. 6.

54a. The provisions of this Act (other than the provisions of this Division) relating to the granting of trial leave to patients or to the discharge of patients, shall not apply to the granting of trial leave to or the discharge of any person confined in any hospital for criminal mental defectives and any such trial leave or discharge shall be granted only in accordance with the provisions of this Division.

Recapture in case of escape.
1122, 1913,
s. 65.
Cf. U.K.
23 & 24
Vict. c. 75,
s. 11.
Cf. U.K.
47 & 48
Vict. c. 64,
s. 11.
Cf. U.K.
3 & 4 Geo. 5
c. 28, s. 42.
Cf. U.K.
25 & 26
Geo. 5 c. 32,
s. 5.

55. In case of the escape of any person confined in any hospital for criminal mental defectives, he may be retaken at any time by the superintendent of the hospital, any officer or servant belonging thereto, any police officer, or any person authorized in that behalf by the Minister or the superintendent, and shall be conveyed to and received and detained in the hospital, subject, however, to the provisions of this Division.

56. (1) Any person who—

- (a) rescues, or attempts to rescue, or abets the escape or attempted escape of any person ordered under this Division to be conveyed to any hospital for criminal mental defectives during his conveyance thereto or therefrom, or during his confinement therein or in any other institution; or
- (b) being the superintendent or other officer or servant of, or other employee in any institution wherein any person is confined under this Division, through wilful neglect or connivance, permits any such person to escape, or secretes or abets or connives at any such escape,

shall be guilty of a felony, and shall be liable to imprisonment, for any term not exceeding three years.

(2) Any superintendent, officer, or servant of an institution, or other employee therein, who carelessly allows any person confined as aforesaid in the institution to escape, shall be guilty of a misdemeanour.

PART IV.

PART IV.

TREATMENT, INSPECTION, AND DISCHARGE OF PATIENTS.

DIVISION I.—REGISTERS AND NOTICES.

DIVISION I.

57. (1) In every institution the superintendent shall make, or cause to be made, an entry with respect to every patient there in a book to be kept for such entries, and to be called the "Register of Patients," according to the form and containing the particulars indicated in the twentieth schedule, or such other form, and containing such other particulars as are prescribed.

Register of
patients.
1122, 1913,
s. 67.
1532, 1922,
s. 16.

(2) The entry shall be made immediately on the reception of the patient, except as to the name of bodily disorder, the entry as to which shall be made forthwith after the reception of the patient, and except as to the form of mental disorder, the entry as to which shall be made within one month after the reception of the patient, and except as to the discharge, removal, or death of the patient, the entry or entries as to which shall be made within twenty-four hours after the same occurs.

PART IV.
DIVISION I.

Medical journal and case book,
1122, 1913,
s. 68.
1532, 1922,
s. 17.

58. In every institution the superintendent—

- (a) shall, once at least in every week, enter, or cause to be entered, in a book to be kept for such entries, and to be called the "Medical Journal," a statement according to the form and containing the particulars indicated in the twenty-first schedule, or such other form, and containing such other particulars as are prescribed;
- (b) shall also enter, or cause to be entered, in a book to be called the "Case Book" (to be kept for the purpose in the form prescribed), as soon as may be after the reception of any patient, a statement of the mental state and bodily condition of the patient at the time of his reception, and, from time to time, the history of his case whilst he continues in the institution, and in case of his death, an exact account of the autopsy (if any) of the patient; and
- (c) shall also enter, or cause to be entered, in a book to be called the "Prescriptions Book" a correct description of the medicines or other remedies used in the treatment of the patient's disorder, and a record of every case where drugs are used as a method of restraint.

Books now in use may be continued with necessary alterations.
1122, 1913,
s. 69.

59. The books called the "Book of Admissions," the "Medical Journal," and the "Case Book" respectively in use in any institution before the twelfth day of August, nineteen hundred and fourteen, may be used for the purposes of this Act under the names of the "Register of Patients," the "Medical Journal," and the "Case Book" respectively: Provided that such alterations are made therein for future entries as may be necessary for compliance with this Act.

Notice of admission, &c., of patients to be transmitted to Director-General.

1122, 1913,
s. 70.

Amended by
31, 1939,
s. 3 (3).

60. In every institution the superintendent shall, within twenty-four hours after the reception, discharge, removal, escape, or recapture of any patient, transmit a notice in writing of the reception, discharge, removal, escape, or recapture to the Director-General.

Notice of death to be transmitted to Director-General and relative.

1122, 1913,
s. 71.

Amended by
31, 1939,
s. 3 (3).

61. In case of the death of any patient in any institution, the superintendent, within twenty-four hours after the death, shall (in addition to any notice required by the law for the time being in force as to the registration of deaths)—

- (a) send to the Director-General a notice, signed by the superintendent, of the death and apparent cause of

death, and the names of any persons who were present at the death;

- (b) send a copy of the notice to the relative or one of the relatives mentioned in the statement accompanying the order or request (if any) for the reception of the patient, or to the person who signed the request (if any) or made the last payment (if any) on account of the patient.

62. Any superintendent who omits—

- (a) to make or cause to be made any entry; or
(b) to send or cause to be sent any notice,

Penalty for not making entry.
1122, 1913, s. 72.
Cf. U.K. 53 Vict. c. 5, s. 316.

required by this Division within the time prescribed by this Division, shall be guilty of an offence and liable to a penalty not exceeding twenty pounds.

63. Any superintendent or other person who knowingly sets forth, or causes to be set forth, in any entry or notice required by this Division any particular that is untrue, or knowingly omits therefrom, or causes to be omitted therefrom, any material fact, shall be guilty of a misdemeanour.

Penalty for false entry.
1122, 1913, s. 73.
Cf. U.K. 3 & 4 Geo. 5 c. 28, s. 57.

DIVISION II.—VISITATION AND INSPECTION.

DIVISION II.

64. (1) Every institution may, as often as the Director-General or an official visitor thinks fit, and shall at least once in every three months, be visited, without any previous notice, by the Director-General and each official visitor, either together or separately.

Provisions as to visits to hospitals.
1122, 1913, s. 74.
Cf. U.K. 53 Vict. c. 5, s. 39.
Cf. U.K. 3 & 4 Geo. 5 c. 28, s. 40.
Cf. U.K. 20 & 21 Geo. 5 c. 23, s. 7.

(2) Every such visit shall be made on such day or days, and at such hours of the day or night, and for such length of time as the Director-General or the official visitor thinks fit, and also at such times (if any) as the Minister directs.

Amended by 31, 1939, s. 3 (3), (5).

(3) The Director-General or official visitor when visiting any institution shall, as far as practicable, inspect every part of the same, and every outhouse, place, and building belonging thereto, whether communicating therewith or detached therefrom, and every part of the ground or appurtenances used or occupied therewith.

(4) He shall, as far as practicable, see every patient detained therein, and shall inquire whether any patient is under restraint or in seclusion, and, if so, why. He shall inspect the orders and certificates for the reception of all patients received into the institution since the last visit of the Director-General or an official visitor thereto.

(5) He shall also inquire whether the latest dated suggestions of the Director-General or an official visitor entered in the "Director-General's and Visitors' Book" of the institution mentioned in section 69 have or have not been attended to.

(6) He shall enter in the said "Director-General's and Visitors' Book" a minute of the condition of the institution and of the patients therein, and the number of patients under restraint or in seclusion, with the reasons therefor as stated; and he shall specify in the said book any irregularity in any such order or certificate as aforesaid; and he may also record in the said book any observation which he may deem proper as to any of the matters aforesaid or otherwise, and make any suggestions as to the management of the institution or the treatment of the patients therein.

65. The Director-General or an official visitor on his several visits to an institution shall inquire as to the care, treatment, and mental and bodily health of the patients therein, and make such further inquiries as to the social and physical welfare and comfort of the patients, or any other matters, as he deems expedient, and shall also make such (if any) other inquiries as are prescribed.

Inquiries to be made.

1122, 1913, s. 75.
Cf. U.K. 53 Vict. c. 5, s. 183.

Amended by 31, 1939, s. 3 (3).

66. (1) The Director-General, or, when visiting an institution, any official visitor, may require by summons in the form in the twenty-second schedule, or to the like effect, any person to appear before him and testify on oath concerning any of the matters respecting which the Director-General or an official visitor is by this Act authorized to inquire (which oath the Director-General or official visitor is hereby empowered to administer).

Power to summon and examine witnesses.

1122, 1913, s. 76.
Cf. U.K. 53 Vict. c. 5, s. 332.

Amended by 31, 1939, s. 3 (3).

(2) Any person who does not appear pursuant to any such summons without assigning some reasonable cause for not so appearing, or appears and refuses to be sworn or examined, or to answer any questions put to him relevant to the matter under inquiry, shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

(3) The Director-General or any official visitor may examine on oath any person appearing before him as a witness or present at any such inquiry touching any of the matters aforesaid, although no such summons as aforesaid has been served upon him.

67. The superintendent of any institution shall, if required, show, or cause to be shown, to the Director-General or official visitor visiting the same every part thereof and every person detained therein, and shall lay before him—

- (a) a list of all patients in the institution, distinguishing males from females, and specifying such as are deemed curable;
- (b) the several books by this Act required to be kept at the institution;
- (c) all orders and certificates relating to patients which have been received since the last visit of the Director-General or an official visitor; and
- (d) such other orders, certificates, documents, and papers relating to any of the patients at any time received into the institution as the Director-General or official visitor requires.

Duties of superintendent on inspection.
1122, 1913, s. 77.
1532, 1922, s. 18.
Cf. U.K. 53 Vict. c. 5, ss. 39, 194.

Amended by 31, 1939, s. 3 (3).

The Director-General or official visitor shall sign such books as are so produced to him so as to indicate that they have been so produced.

68. Any superintendent of an institution or other officer or person employed therein who in any way impedes the Director-General or an official visitor in his inspection and inquiry into any of the matters as to which he is by this Act authorized to inquire, or who does not give full and true answers to the best of his knowledge to any question which the Director-General or official visitor asks in reference to any such matter, shall be guilty of a misdemeanour.

Penalty for breach of duty by superintendent or other officer.
1122, 1913, s. 78.
1532, 1922, s. 19.

Amended by 31, 1939, s. 3 (3).

69. (1) There shall be hung up in some conspicuous part of every institution a plan thereof, and there shall be kept in every institution a copy of this Act bound up in a book to be called the "Director-General's and Visitors' Book," and the Director-General or any official visitor shall at the time of any visit by him enter in the book the result of his inspection and inquiries hereinbefore directed or authorized to be made, with such observation (if any) as he thinks proper and also such observations (if any) as he thinks fit respecting the state of mind or body of any patient in the institution.

Director-General's and Visitors' Book.
1122, 1913, s. 79.
Cf. U.K. 53 Vict. c. 5, s. 54.

Amended by 31, 1939, s. 3 (3), (5).

(2) The book called the "Visitors' Book" in use in any institution before the twelfth day of August, nineteen hundred and fourteen, may be used for the purposes of this Act under the name of the "Director-General's and Visitors' Book": Provided that any alterations which may be necessary for compliance with this Act are made therein.

PART IV.
DIVISION II.

Power to direct special visitation of any detained person.

1122, 1913, s. 80.
Cf. U.K. 53 Vict. c. 5, ss. 184, 185.

Amended by 31, 1939, s. 3 (3).

70. (1) Any Judge of the Court or the Minister may direct the Director-General or any official visitor or any other person to visit any patient detained in any institution or elsewhere or any other person under restraint as a mentally defective person in the care of any guardian, relative, or other person, and to make a report in writing to the Judge or the Minister (as the case may be) as to the mental and bodily state of the patient or other person. Any such direction shall be carried out accordingly, and shall be sufficient authority for the doing of all things necessary for carrying out such direction.

(2) Any person, not being in the employ of the Government, who acts under any such direction as aforesaid shall be paid by the Director-General such remuneration therefor as is certified by the Judge or the Minister (as the case may be), and any amount so paid shall be recoverable as part of the cost of the maintenance of the person visited.

Power of Director-General to give orders of admission to see any patient.

1122, 1913, s. 81.
Cf. U.K. 53 Vict. c. 5, s. 47.

Amended by 31, 1939, s. 3 (3).

71. (1) The Director-General may give an order in writing for the admission to any patient detained in any institution, except a hospital for criminal mental defectives, of any person on such condition as the Director-General thinks fit.

(2) If the superintendent of the institution in any way prevents the admission of any such person to any such patient on the production of the order he shall be guilty of an offence and liable to a penalty not exceeding ten pounds.

Letters of patients.

1122, 1913, s. 82.
Cf. U.K. 53 Vict. c. 5, s. 41.

Amended by 31, 1939, s. 3 (3).

72. (1) Every letter written by a patient in any institution and addressed to any person outside the institution shall be duly forwarded, unless the superintendent of the institution prohibits the forwarding thereof by indorsement thereon signed by him, in which case he shall lay the letter before the Director-General or an official visitor on his next visit, who may, if he thinks proper, direct that the same be forwarded.

(2) Any superintendent who fails so to lay before the Director-General or official visitor any such unforwarded letter, or fails to forward the same when directed as aforesaid, or is privy to the detention of any letter contrary to the provisions of this section, shall be guilty of an offence and liable to a penalty not exceeding twenty pounds. Any other person detaining any letter contrary to the provisions of this section shall be guilty of an offence and liable to a penalty not exceeding twenty pounds.

PART IV.
DIVISION II.

73. (1) Every patient shall, during his detention as a patient in any institution, be examined as to his mental soundness or defect and his general health at least six times in every year during the first three years and subsequently at least once in every year, by the superintendent of the institution or some other medical practitioner authorized by the superintendent. The superintendent or practitioner shall certify the result of the examination to the Director-General within such time and in such form as the Director-General from time to time directs.

Examinations of patients in institutions.
1122, 1913, s. 83,
1532, 1922, s. 20.

Amended by 31, 1939, s. 3 (3).

(2) For the purposes of this section the period or periods during which a patient has at the time been detained in any one or more of the institutions under this Act shall be counted in determining the duration of his detention.

(3) The provisions of this section shall be deemed to be cumulative upon, and not in any degree to interfere with or lessen, the other powers or to affect the other provisions of this Part.

DIVISION III.—TRANSFERS AND TRIAL LEAVE OF PATIENTS AND REMOVALS FROM THE STATE.

DIVISION III.

74. (1) The Director-General may, by order signed by him, direct the transfer of a patient from any institution to any other institution. The order shall be a sufficient authority for the transfer and conveyance of the patient and for his reception into the institution to which he is so ordered to be transferred and his detention therein.

Power of Director-General to order the transfer of patients.
1122, 1913, s. 84.
Cf. U.K. 3 & 4 Geo. 5 c. 28, s. 16.

(2) In every such case the patient shall be placed under the control of an attendant belonging to either of the institutions, and shall remain under such control until his transfer is duly effected.

Amended by 31, 1939, s. 3 (3).

(3) Any order made under this section shall be in duplicate, and one part shall be delivered to the superintendent of the institution from which the patient is to be transferred and the other to the superintendent of the institution to which he is to be transferred. The last-mentioned part shall be accompanied by the order or request upon which the patient was received as a patient, and an abstract of his treatment and progress certified by the superintendent of the first-mentioned institution.

75. (1) Notwithstanding anything contained in section 74, a patient shall not be transferred thereunder from any institution if the superintendent thereof certifies that he is unfit to be transferred, unless the Director-General on receipt of any such certificate directs that the patient be transferred.

No patient to be transferred if unfit.
1122, 1913, s. 85.
Amended by 31, 1939, s. 3 (3).

(2) If the patient is not transferred the Director-General shall cancel the order directing the transfer.

Power of superintendent to send a patient to any place for his health or on trial leave. 1122, 1913, s. 86. Cf. U.K. 53 Vict. c. 5, s. 55.

Amended by 31, 1939, s. 3 (3).

76. (1) The superintendent of any institution, with the consent in writing of the Director-General, may send or take under proper control any patient to any specified place for any definite time for the benefit of his health, or permit any patient to be absent from the institution upon trial leave or upon parole for such period as the superintendent thinks fit, and with such consent may, from time to time, without the return of the patient, renew the leave or parole.

(2) Before giving any such consent the Director-General may require the approval in writing of the person who signed the request (if any) for the reception of the patient or of the person by whom the last payment (if any) on account of the patient has been made.

(3) The Director-General may of his own authority permit any patient to be absent from any institution upon trial leave or upon parole for such period as the Director-General thinks fit.

Inserted by 31, 1939, s. 9.

(4) The superintendent of any institution may of his own authority permit any patient to be absent from the institution upon parole for any period, not exceeding twenty-four hours at any one time, as the superintendent thinks fit.

Inserted by 53, 1953, s. 4.

(5) The provisions of this section shall *mutatis mutandis* apply to any patient received in a receiving house or receiving ward pursuant to section 32, section 35 or section 36 and to any person detained in any place pursuant to section 34 and any such patient or person may, in pursuance of this section, be permitted to be absent from the receiving house, receiving ward, or place, as the case may be, in which he is detained, for any period which does not extend beyond the expiration of six months after the time the patient was received into the receiving house or receiving ward or, as the case may be, the person was detained pursuant to section 34.

Cancellation of leave. 1122, 1913, s. 87.

77. (1) Any permission to be absent granted under section 76 may, at any time during the period of leave or parole, be cancelled by the person who granted it, or his successor in office, by notice in writing delivered to the person (if any) to whom the charge of the patient has been committed for that period, or if there is no such person then to the patient himself.

Amended by 31, 1939, s. 3 (3).

(2) Any patient so absent on leave or parole may, at any time during the period of leave or parole, be taken and

returned to the institution by the superintendent thereof, the Director-General, or any person authorized in that behalf by the superintendent or the Director-General, or by any person to whom the charge of the patient during his absence was committed.

78. (1) If any patient does not return to the institution upon the cancellation of his permission to be absent he shall be deemed to have escaped therefrom on the date of the cancellation.

Patient deemed to have escaped if he does not return as required.

(2) If any patient does not return to the institution upon the expiration of his leave or parole, he shall be deemed to have escaped therefrom on the date of the expiration.

1122, 1913, s. 88.
Cf. U.K. 53 Vict. c. 5, s. 55 (8).

(3) In either of the cases before mentioned in this section, the patient may, unless he has been discharged, be recaptured within three months from the date when he is deemed to have escaped, and if not so recaptured he shall be deemed to have been discharged as unrecovered on the date when he is deemed to have escaped, but shall continue liable to visitation and inspection by the Director-General or an official visitor of the institution for such period as the Director-General deems advisable.

Amended by 31, 1939, s. 3 (3).

79. (1) If it appears to the Minister that any patient has any relative or friend in any place beyond the State who is willing to undertake the care and charge of him, and that it would be for his benefit if he were removed to that place, the Minister may, by writing signed by him, authorize the removal of the patient from the State and give such directions as he thinks proper for his safe custody and maintenance during and after his removal.

Power to take patients out of State. 1122, 1913, s. 89. 1532, 1922, s. 21.

(2) The Minister may demand and take such (if any) security as he thinks proper for the safe custody and maintenance of the patient during and after his removal.

(3) No authority shall be given for the removal of any such patient until after fourteen days' notice of the intention to apply for the authority has been given to the superintendent of the institution in which the patient is confined, or to the person in whose care or custody the patient is, unless the superintendent or person is himself the applicant for the authority.

(4) Any person removed from the State under this section shall be deemed to have been discharged.

(5) The Minister may, by notice published in the *Government Gazette*, declare that the foregoing provisions

PART IV.
DIVISION III.

of this section shall not apply in respect of any locality beyond the State specified in the notice, and thereupon the foregoing provisions of this section shall cease to apply accordingly. The Minister may in like manner at any time revoke or vary any such notice, and any such revocation or variation shall have effect accordingly.

Non-application to criminal mental defectives. 1122, 1913, s. 90.

80. This Division shall not apply to any person to whom Division II. of Part III. applies, unless that person is qualified to be discharged under the provisions of subsection (2) of section 49.

DIVISION IV. DIVISION IV.—COTTAGES OR OTHER SEPARATE ACCOMMODATION FOR SPECIAL PAYMENT PATIENTS.

Provision of cottage or other separate accommodation for special payment patients. 1122, 1913, s. 91.

81. The Governor may direct that any cottage or other separate place, and the appurtenances thereof, situated within the limits of any mental hospital, shall be set apart and used exclusively for the reception, care, and treatment of patients for whose accommodation payments according to a special scale or scales are made, and may, by regulation, prescribe what accommodation shall be provided therein for such patients, and the various scales of payment to be made for such patients.

When patients entitled to separate accommodation. 1122, 1913, s. 92.

82. Any patient in any mental hospital may, at any time after his reception therein, be placed as a special payment patient in any cottage or other place of separate accommodation set apart and used as mentioned in section 81: Provided that—

Amended by 31, 1939, s. 3 (3).

- (a) the Public Trustee has certified to the Director-General that sufficient arrangements have been made for payment for his accommodation therein according to the appropriate prescribed scale; and
- (b) the superintendent of the mental hospital has certified that the patient is fit to be so placed without danger to the patient himself or to other persons.

Control of special payment patients. 1122, 1913, s. 93.

83. Except as to the right to the separate accommodation provided for special payment patients, all special payment patients shall be subject to all the provisions of this Act in the same way as other patients.

When payments not made patients not entitled to separate accommodation. 1122, 1913, s. 94.

84. (1) In the event of the non-observance of any of the terms to be observed by any person under the arrangements made for the payment of the charges for any special payment patient, the Public Trustee may, by writing signed by him and delivered to the Director-General, direct that the special payment patient shall cease to be provided with separate accommodation.

Amended by 31, 1939, s. 3 (3).

(2) Thereupon the Director-General shall see that the patient is removed to some part of the same or another mental hospital which is not used for the accommodation of special payment patients, and he shall be treated as an ordinary patient.

85. The Public Trustee, in the administration, as committee or otherwise under this Act, of the estate of any patient, may, subject to any order of the Court to the contrary, make payments out of the estate for the accommodation of such patient as a special payment patient.

Power of Public Trustee to pay for separate accommodation.
1122, 1913, s. 95.

DIVISION V.—BOARDING OUT OF PATIENTS.

DIVISION V.

86. In any case in which the Director-General or the superintendent of the mental hospital in which a patient is confined certifies, in the form or to the effect in the twenty-third schedule, that the patient is harmless and is free from any symptoms indicating any tendency of a character dangerous either to the patient himself or to others, the patient may, by an order of the Director-General indorsed by him upon the certificate, be committed to the care of the person named in the order, to reside and board with that person in accordance with and subject to regulations for the boarding out of patients.

Power to board out harmless patients.
1122, 1913, s. 96.
Cf. U.K. 53 Vict. c. 5, c. 57.
Amended by 31, 1939, s. 3 (3).

87. (1) The Governor may make regulations for the boarding out of patients. The regulations shall provide that the same person shall not receive both male and female patients. The regulations shall prescribe, together with such other matters (if any) as the Governor considers necessary—

Regulations for boarding out of patients.
1122, 1913, s. 97.

- (a) the class or classes of persons with whom patients may or may not be placed to reside;
- (b) the distance from some institution within which any house in which a patient is to reside must be situate;
- (c) the maximum number of patients who may be placed to reside in any house;
- (d) the accommodation which every house in which any patient is to reside shall contain;
- (e) the general dietary scale which must be provided for patients boarded out;
- (f) the hours to be kept by patients in such houses;
- (g) the occupations which may be permitted to be followed by patients;

- (h) the degree of liberty and absence (if any) from place of residence which may be allowed to patients;
- (i) the inspection to which all such houses shall be subject; and
- (j) the scale or scales of payment to be made for patients.

(2) Subject to the regulations, patients so boarded out shall, until discharged, be subject to visitation, inspection, and recapture, and to the other provisions of this Act like ordinary patients.

Non-application to criminal mental defectives. 1122, 1913, s. 98.

88. This Division shall not apply to any person to whom Division II. of Part III. applies, unless that person is qualified to be discharged under the provisions of subsection (2) of section 49.

Patient discharged on request of person who signed the request for his reception. 1122, 1913, s. 99. Cf. U.K. 53 Vict. c. 5, s. 72.

Amended by 31, 1939, s. 3 (3).

89. (1) When the person who signed the request (if any) on which any patient was received into any institution requests, by writing signed by him, that the patient shall be discharged, then the patient shall be discharged, provided that the Director-General consents thereto.

(2) In case the said person is dead or is incapable by reason of mental defect, absence from the State, or otherwise of making a request for the discharge of the patient, then

- (a) the person who made the last payment on behalf of the patient;

or, if no such payment has been made within the next preceding six months, or the person who made it is incapable as aforesaid,

- (b) the husband or wife of the patient;

or, if there is no husband or wife, or if the husband or wife is incapable as aforesaid,

- (c) the father of the patient;

or, if there is no father, or the father is incapable as aforesaid, then

- (d) the mother of the patient;

or, if there is no mother, or the mother is incapable as aforesaid, then

- (e) any one of the nearest of kin for the time being of the patient,

may make the request required by subsection (1), and the request shall be sufficient if the Director-General consents thereto.

(3) If, either at the time of or subsequent to the discharge from any institution of any patient as aforesaid, the superintendent of the institution is satisfied that the person so discharged is able to manage his own affairs, the superintendent may in the order of discharge or, as the case may require, at any time subsequent to the discharge (whether the discharge occurred before or after the passing of the Mental Defectives Act Amendment Act, 1939) certify that the person so discharged is able to manage his own affairs.

Inserted by
4, 1939, s. 4.

90. (1) Whenever any patient has been allowed, pursuant to this Act, to be absent on trial leave or parole from any institution the superintendent may at any time, upon the certificate of a medical practitioner that the patient should no longer be treated under this Act as mentally defective, direct that the patient shall be discharged, and the patient shall be discharged accordingly.

Discharge of
patient absent
on trial.
1122, 1913,
s. 100.
Cf. U.K.
53 Vict. c. 5,
s. 55.

(2) No such patient shall be so discharged before the expiration of the time for which he has been so allowed to be absent if the Director-General has notified the superintendent that the discharge shall not be granted.

Amended by
31, 1939,
s. 3 (3).

(3) If, either at the time of or subsequent to the discharge of any person as aforesaid, the superintendent is satisfied that the person so discharged is able to manage his own affairs, the superintendent may in the order of discharge or, as the case may require, at any time subsequent to the discharge (whether the discharge occurred before or after the passing of the Mental Defectives Act Amendment Act, 1939), certify that the person so discharged is able to manage his own affairs.

Inserted by
4, 1939, s. 5.

91. The Director-General may of his own authority order the discharge of any patient detained in any institution, or absent therefrom upon trial leave or parole or as a boarded-out patient, and the patient shall be discharged accordingly.

Discharge by
Director-
General.
1122, 1913,
s. 101.
Cf. U.K.
53 Vict. c. 5,
s. 75.

Amended by
31, 1939,
s. 3 (3).

92. (1) When any official visitor or the superintendent of any institution certifies in writing to the Director-General that any patient is detained therein without sufficient cause, the Director-General may, if he thinks fit, order the discharge of the patient, and the patient shall be discharged accordingly.

Discharge on
recommenda-
tion of
visitor or
superinten-
dent.
1122, 1913,
s. 102.
Cf. U.K.
53 Vict. c. 5,
s. 77.

PART IV.
DIVISION VI.Amended by
31, 1939,
s. 3 (3).

(2) No official visitor shall sign any such certificate without previously conferring with the superintendent, if the latter so desires, nor without forwarding to the Director-General the reasons of the superintendent for not certifying (if such is the case) as mentioned in subsection (1) hereof.

Order that
patient is
able to
manage his
affairs.Inserted by
4, 1939, s. 6,
and amended
by 31, 1939,
s. 3 (3).

92a. If the Director-General, pursuant to any power conferred by section 91 or section 92, orders the discharge of any patient and the Director-General is, either at the time of or subsequent to the discharge, satisfied that the patient is able to manage his own affairs, the Director-General may in the order of discharge or, as the case may require, at any time subsequent to the discharge (whether the discharge occurred before or after the passing of the Mental Defectives Act Amendment Act, 1939), certify that the person so discharged is able to manage his own affairs. If the Director-General so certifies at any time subsequent to the said discharge, he shall give to the superintendent of the institution from which the patient was discharged notice in writing that he was so certified.

Discharge of
dangerous
and sick
patients.1122, 1913,
s. 103.
Cf. U.K.
53 Vict. c. 5,
s. 74.Amended by
31, 1939,
s. 3 (3).

93. (1) No patient shall be discharged under any of the powers before contained in this Division from any institution if the superintendent thereof certifies in writing that in his opinion the patient is dangerous and unfit to be at large, or from the state of his bodily health unfit to be removed, unless the Director-General, after the certificate has been produced to him, directs that the patient be discharged.

(2) Nothing in this section shall apply to any patient absent upon trial leave or parole.

Discharge of
patient on
undertaking
of a relative
or friend.1122, 1913,
s. 104.
Cf. U.K.
53 Vict. c. 5,
s. 79.Amended by
31, 1939,
s. 3 (3).

94. (1) Where application is made to the Director-General by any relative or friend of a patient detained in any institution requiring that he be delivered over to the care and control of the relative or friend, the Director-General may, if he thinks fit, after conferring with the superintendent of the institution and upon the execution by the relative or friend of a bond to His Majesty in the penalty of fifty pounds at least, conditioned that the patient shall be properly taken care of and shall be prevented from doing injury to himself or others, order that he be delivered over to such care and control; and the name of the patient shall be entered as discharged.

(2) If, either at the time of or subsequent to the order for the discharge of any patient as aforesaid, the Director-General is satisfied that the person so discharged is able to manage his own affairs, the Director-General may in the

Inserted by
4, 1939, s. 7,
and amended
by 31, 1939,
s. 3 (3).

order or, as the case may require, at any time subsequent to the discharge (whether the discharge occurred before or after the passing of the Mental Defectives Act Amendment Act, 1939), certify that the person so discharged is able to manage his own affairs. If the Director-General so certifies at any time after the making of the order, he shall give to the superintendent of the institution notice in writing that he has so certified.

95. (1) If a Judge receives information upon oath or otherwise, or has reason or cause to suspect, that any person who is not mentally defective is detained in any institution, the Judge may order the superintendent thereof to bring the person before him for examination at a time specified in the order.

Power of judge to order discharge of patient no longer mentally defective. 1122, 1913, s. 105.

(2) If, upon the examination of the detained person and of the superintendent and of any medical or other witness (power to summon whom to testify in the matter of the examination is hereby given to the Judge), it appears to the Judge that the person is not mentally defective, he may order that the person be immediately discharged from the institution, unless he is detained therein for some other cause by due process of law.

96. The provisions of this Division shall not apply—

- (a) to any person before or after the commencement of this Act found lunatic or mentally defective by inquisition or under any inquiry directed by a Judge under this Act; nor
- (b) to any person to whom Division II. of Part III. applies unless that person is qualified to be discharged under the provisions of subsection (2) of section 49.

Non-application to certain mental defectives. 1122, 1913, s. 106.

PART V.

PART V.

ADMINISTRATION OF ESTATES OF MENTALLY DEFECTIVE PERSONS.

DIVISION I.—COMMITTEES AND INQUISITIONS.

DIVISION I.

97. (1) Whenever an order is made—

- (a) by a justice or justices for the reception of any person in a mental hospital, whether the person is or is not at the time of the making of the order a patient in a receiving house or receiving ward; or

Notice of reception orders, discharges, and deaths to be sent to the Public Trustee. 1122, 1913, s. 107.

(b) by the superintendent of a receiving house or receiving ward for the transfer of any person who is a patient therein to a mental hospital; or

Amended by
S.L.R. Act,
1936.

(c) by the Minister for the removal of any person to a hospital for criminal mental defectives, except in a case where at the time of making the order the property of the person is vested in a curator or curators under or by virtue of Part X. of the Criminal Law Consolidation Act, 1935; or

Amended by
S.L.R. Act,
1936.

(d) by the Court in respect of any person under section 292 or 293 of the Criminal Law Consolidation Act, 1935,

the justice or justices, superintendent, Minister, or Court making the order shall forthwith send, or cause to be sent, notice in writing of the order to the Public Trustee.

(2) The superintendent of any institution shall send, or cause to be sent, to the Public Trustee notice in writing of the reception, discharge, or death of any patient in the institution within twenty-four hours after the reception, discharge, or death occurs.

Power of
Public
Trustee to
manage the
estates of
patients.
1122, 1913,
s. 108.
Cf. U.K.
3 & 4 Geo. 5
c. 28, s. 28.

98. (1) The Public Trustee shall have the custody and administration of the estate of every patient, and shall have in respect of the estate the same powers, duties, and functions as if he had been appointed the committee thereof under the provisions of this Act: Provided that this section shall not apply in the case of a patient—

(a) of whose estate a committee or administrator has been appointed under this Act; or

Amended by
S.L.R. Act,
1936.

(b) whose property is vested in a curator or curators under or by virtue of Part X. of the Criminal Law Consolidation Act, 1935.

(2) The powers, duties, and functions of the Public Trustee under this section in respect of the estate of any person shall cease—

(a) when the person dies and the Public Trustee receives notice thereof, as provided by section 97; or

(b) when a committee of the estate is appointed under the provisions of this Act; or

Amended by
S.L.R. Act,
1936.

(c) when the property of the person becomes vested in a curator or curators under or by virtue of Part X. of the Criminal Law Consolidation Act, 1935; or

- (d) when the person is discharged under this Act, and it appears from the notice of discharge sent to the Public Trustee, as provided by section 97, that he is able to manage his own affairs, or if it appears from a certificate given pursuant to section 37, 49, 89, 90, 92a, or 94, that the person discharged is able to manage his own affairs or if the discharge is made pursuant to section 33, 41, or 95.

(3) If any person, of whose estate the Public Trustee has by virtue of this section the custody and administration, is in any place beyond the State (whether the said person was removed to that place before or after the passing of the Mental Defectives Act Amendment Act, 1939, or pursuant to section 79 or otherwise) and the Public Trustee is satisfied that some person has pursuant to the laws in force in the said place been appointed to have the custody and administration of the estate of the first mentioned person, the Public Trustee may pay over or deliver to the person appointed as aforesaid the balance of the moneys or property belonging to the estate of the first mentioned person and received by the Public Trustee after—

Inserted by
4, 1939, s. 8
(b).

- (a) payment of all costs, charges, and expenses incurred in the matter; and
- (b) satisfying or providing for, wholly or in so far as appears to be necessary for the due administration of the estate, the claims against the estate of all persons residing in the State of whose claims he had notice,

without seeing to the application thereof and without incurring any liability in regard to such payment.

The provisions of this subsection are in addition to the provisions of Division IV. of Part V.

99. (1) The Court may, on petition by the Public Trustee, or any other person, appoint the Public Trustee or, subject to sections 118 and 119, any other person or persons as the committee of the estate of any patient.

Public Trustee or other persons appointed committee of estate without inquisition.
1122, 1913,
s. 109.

(2) Any committee appointed under this section shall have the same powers, duties, and functions as if he had been appointed after inquisition by the Court in accordance with the provisions in that behalf hereinafter contained.

s. 98. In *re* WILHELM. PUBLIC TRUSTEE v. RIEDEL AND ANOTHER (1941) S.A.S.R. 287. A certificate given by a medical practitioner alone that a patient is able to manage his affairs is a nullity for the purposes of section 98.

(3) Any committee appointed under this section shall continue in office until the person of whose estate he is committee dies, or the order appointing him as such committee is rescinded by the Court, notwithstanding the fact that the said person is no longer a patient within the meaning of this Act.

(4) The Court may at any time, on the petition of the person of whose estate a committee has been appointed under this section, or of the committee, or of any other person, rescind the order appointing the committee on proof that the said person is of sufficient ability to manage his own affairs, and that he is no longer a patient within the meaning of this Act.

(5) Subject to sections 118 and 119, the Court may at any time, on the petition of the person of whose estate a committee has been appointed under this section, or of the committee, or of any other person, and on proof that there is good cause for so doing, make an order appointing any other person or persons as the committee of the estate in lieu of the committee so appointed.

Inquisition as to state of mind of person alleged to be mentally defective.
1122, 1913, s. 110.
Of. U.K.
53 Vict. c. 5, s. 90, Part III.
Of. U.K.
3 & 4 Geo. 5 c. 28, ss. 5, 6.

100. (1) The Court may, on the petition of the Public Trustee, or of any other person, order an inquisition to be held as to whether any person alleged to be mentally defective, either in or out of the State, is mentally defective and incapable of managing his affairs.

(2) If the person so alleged to be mentally defective is in the State, he shall have notice, as prescribed, of the presentation of the petition.

(3) The inquisition shall be held in accordance with the order of the Court either by a Judge or by a special magistrate.

(4) No such inquisition shall be held or taken before a jury.

(5) If the person as to whom the inquisition is held is in the State the Judge or special magistrate holding the inquisition shall personally examine him touching his state of mind and his ability to manage his affairs, and for this purpose the said Judge or special magistrate may make an order directing the person to attend before him at the time and place specified in the order for examination, or directing any person having the custody of the said person to bring him before the said Judge or special magistrate for examination at the time and place so specified.

(6) A special magistrate holding any such inquisition shall, while so employed, have all the powers, authorities, and discretion of a Judge.

101. The inquisition shall be confined to the question whether or not the person as to whom the same is held is mentally defective and is incapable of managing his affairs; and no evidence as to anything done or said by him, or as to his demeanour or state of mind, at any time more than two years before the time of the presentation of the petition for the inquisition shall be receivable in proof of mental defect, unless the Judge or special magistrate holding the inquisition otherwise directs.

Scope of inquisition. 1122, 1913, s. 111.

102. (1) If the Judge or special magistrate holding the inquisition finds that the person as to whom the same is held is mentally defective and is incapable of managing his affairs, the said Judge or special magistrate shall certify his finding to the Court.

Certificate to Supreme Court when person found mentally defective on inquisition. 1122, 1913, s. 112.

(2) Any person so found to be mentally defective shall be deemed to be a person found lunatic on inquisition within the meaning of any Act or law relating to such lunatics.

103. If any person is so found to be mentally defective and to be incapable of managing his affairs, the Court may appoint the Public Trustee or, subject to sections 118 and 119, any other person or persons whom the Court thinks fit, to be the committee of the estate of such person.

Supreme Court may appoint committee. 1122, 1913, s. 113.

104. (1) Where it is, by the report of the Public Trustee, or by affidavit, or otherwise, established to the satisfaction of the Court—

Committee appointed without inquisition when estate not over £1,000.

(a) that any person is mentally defective, and is incapable of managing his affairs; and

1122, 1913, s. 114.

(b) that the value of the estate of the person does not exceed one thousand pounds, or that the income of his estate does not exceed fifty pounds per annum,

the Court may, without ordering any inquisition—

(i.) find that the person is mentally defective and is incapable of managing his affairs; and

(ii.) appoint the Public Trustee, or subject to sections 118 and 119, any other person or persons whom the Court thinks fit, to be the committee of the estate of the said person.

s. 104. In the matter of JOHN HIPWELL COLEMAN, a supposed lunatic (1887) 21 S.A.L.R. 1; 13 Austn. Digest 734, 744. Held, in the special circumstances, that a creditor could be heard on a petition for the appointment of a committee of the estate of a mental defective. Held also, in the special circumstances, that the court would accept the evidence of one medical practitioner only as to the condition of the mental defective.

(2) The application for an order under this section may be made by the Public Trustee or any other person, and if the person concerning whose estate the order is sought is in the State he shall have notice, as prescribed, of the application.

Power to
appoint new
committee.
1122, 1913,
s. 115.

105. Subject to sections 118 and 119, the Court may at any time, and from time to time, appoint any person or persons to be the committee of the estate of any person in lieu of any committee already appointed, whether appointed before or after the commencement of this Act.

Provision for
commitment
of estate
only.
1122, 1913,
s. 116.

106. (1) Where, on any inquiry or examination under Division I. of Part III., or any inquisition or application under this Part, it appears that a person alleged to be mentally defective is incapable of managing his affairs, but does not require oversight, care, or control with respect to himself, it may be specially so found and certified.

(2) Every such special finding and certificate shall be brought before a Judge of the Court, who shall thereupon make all such orders and direct all such acts to be done as may be necessary or proper relative to the commitment, management, and application of the estate of the person to whom the finding and certificate relate.

Inquisition as
to continuance
of mental
defect.
Substituted
by 31, 1939,
s. 10.

107. (1) If—

- (a) any person has been found to be mentally defective by inquisition under this Act or has been found lunatic on inquisition before the twelfth day of August, nineteen hundred and fourteen; or
- (b) any person has been found to be mentally defective and a committee of his estate has been appointed as provided by section 104,

the Court may at any time, on the petition of the said person, or of the committee of his estate, or of any other person, and on proof that the person so found mentally defective or lunatic is not at the time a patient within the meaning of this Act, and on being satisfied by inquisition duly held and taken that the person is no longer mentally defective and incapable of managing his affairs, rescind the order appointing the committee of his estate: Provided that the Court may, if it considers the value of the estate of the person or the circumstances of the case warrant so doing, and upon such further evidence as it deems sufficient, rescind the order appointing the committee without having directed an inquisition.

(2) Upon the making of any such order, the former inquisition and all proceedings thereon, or the finding of the Court

in proceedings under section 104 that the person is mentally defective and incapable of managing his affairs, as the case may be, shall thereupon be superseded.

(3) When an inquisition is directed as to whether the person is still mentally defective and incapable of managing his affairs, the inquisition shall be held in the same manner, with all necessary modifications, as an inquisition under the provisions hereinbefore contained.

The Judge or special magistrate holding the inquisition shall certify his finding thereon to the Court.

(4) Save as in this section provided, no proceedings shall be taken by way of the traverse or *supersedeas* of any inquisition or to rescind a finding of the Court, in proceedings under section 104, that a person is mentally defective and incapable of managing his affairs.

108. (1) When it is proved to the satisfaction of the Court that—

(a) any person is lawfully detained as a lunatic or as a person mentally defective in any place outside the State; or

(b) any person resident in any place outside the State has been found lunatic or mentally defective in any inquisition or other inquiry held by or by the authority of any Court having jurisdiction to appoint, in the place where that person so resides, a committee or other administrator of the estate of that person in the State,

Committee in case of person outside South Australia.

1122, 1913, s. 118.

the Court may, on the petition of the Public Trustee or of any other person, appoint the Public Trustee or, subject to sections 118 and 119, any other person or persons to be the committee of the estate of the person so detained as a lunatic or mentally defective person or so found lunatic or mentally defective.

(2) Any person so appointed shall have the same powers, duties, functions, and liabilities as if he had been appointed after inquisition held in accordance with the provisions hereinbefore contained.

(3) Any order appointing a committee under this section may be rescinded in the same manner as is hereinbefore provided with respect to an order appointing a committee of the estate of a mentally defective person so found by inquisition.

(4) Subject to sections 118 and 119, the Court may at any time make an order appointing the Public Trustee or any other person or persons to be the committee of the estate of any person in lieu of any committee appointed under this section.

Power of Court to make order as to payment of costs of inquisition. 1122, 1913, s. 119. Cf. U.K. 53 Vict. c. 5, s. 109.

109. The Court may order the costs, charges, and expenses of the presentation of any petition for an inquisition under this Act, and of the execution of any such inquisition, and of any proceedings consequent on any such inquisition, and of any application for the appointment of a committee, or new committee, or of any other application under this Part, to be paid either by the party presenting the petition or making the application, or by the party opposing the same, or out of the estate of the person in respect of whom the inquisition is held or sought or the application is made, or partly in one way and partly in another, as the Court in each case thinks proper.

DIVISION II.

DIVISION II.—POWERS OF PUBLIC TRUSTEE AS COMMITTEE OR ADMINISTRATOR.

Property not to vest in Public Trustee when acting as committee or administrator. 1122, 1913, s. 120.

110. When the Public Trustee is appointed under this Act as the committee of the estate of any person or becomes authorized by this Act to administer the estate of any person, the estate shall not thereby become vested in the Public Trustee, but he shall be entitled to the possession and management of the same in accordance with the provisions hereinafter contained.

Powers of Public Trustee exercisable without sanction of Court. 1122, 1913, s. 121. Cf. U.K. 53 Vict. c. 5, s. 117.

111. The Public Trustee, being appointed under this Act as the committee of the estate of any person, or being authorized by this Act to administer the estate of any person, may, without the leave of the Court, but subject to any order of the Court to the contrary, do any of the following things:—

- I. Take possession of all the property of the said person:
- II. Sell any property of the said person, other than freehold or leasehold property, either by public auction or private contract, and subject to such conditions as the Public Trustee thinks fit:
- III. Lease or concur in leasing any property of the said person for any term not exceeding three years (to take effect in possession within six months of the

Amended by 31, 1939, s. 11 (a).

s. 111. In *re* WILHELM. PUBLIC TRUSTEE v. RIEDEL AND ANOTHER (1941) S.A.S.R. 287. The effect of section 111 is that the Public Trustee may receive all moneys due to any person whose estate he is authorized to administer.

date of the lease), or from year to year, or for a weekly, monthly, or other like tenancy, or at will:

- iv. Repair and insure against fire or accident, any property of the said person:
- v. Pay all rates, taxes, insurance premiums, or other outgoings payable in respect of the property of the said person, or under any policy of insurance of any kind:
- vi. Surrender any policy of life assurance of the said person:
- vii. Grant powers of attorney to any person in or out of the State to do any act or thing with respect to the property of the person of whose estate he is committee or administrator which the Public Trustee can do as committee of the estate, or as authorized to administer the estate:
- viii. Institute or defend, in his own name or in the name of the person of whose estate he is committee or administrator, any action, suit, or other proceeding concerning the property of that person, and suffer judgment to go by default, or consent to any judgment, decree, or order in the action, suit, or proceeding, upon such terms as the Public Trustee thinks fit:
- ix. Compromise any claims or demands made against or by or on behalf of the said person or his estate, upon such terms as the Public Trustee thinks fit, and upon such evidence as he deems sufficient, and submit any such claims or demands to arbitration, and do all acts and things necessary to render any such compromise or arbitration effectual:
- x. Take proceedings to cause to be adjudicated a bankrupt or placed in liquidation any person or company indebted to the person of whose estate he is committee or administrator, and vote and act either personally or by proxy at all meetings of creditors, and in all other matters relating to the bankruptcy or liquidation:
- xi. Take criminal proceedings concerning the property of the said person:
- xii. Demand, receive, and recover all moneys payable or belonging to the said person:

Amended by
31, 1939,
s. 11 (b).

- xiii. Apply moneys belonging to the said person, whether arising from real or personal property, and whether income or capital, in or towards the payment of any debt, obligation, or liabilities of the said person, or incurred by the Public Trustee in the exercise, in respect of him or his estate, of the powers vested in the Public Trustee by this Act:
- xiv. Surrender, assign, or otherwise dispose of, with or without consideration, any onerous property belonging to the said person:
- xv. Surrender or concur in surrendering any lease, under which the said person is the lessee or the successor in title of the lessee, and accept a new lease:
- xvi. Accept a surrender of any lease under which the said person is the lessor or the successor in title of the lessor:
- xvii. Carry out and perform contracts entered into by the said person before the Public Trustee was appointed as the committee of his estate or became authorized to administer it:
- xviii. Bring lands under the provisions of The Real Property Act, 1886:
- xix. Apply, in his discretion, and in such manner and to such extent as he thinks fit, any money belonging to the said person, whether arising from real or personal property, and whether income or capital, for the maintenance of the said person, or of the husband or wife of the said person, or for the maintenance, education, or advancement of the children or grandchildren of the said person, or, in the event of the death of the said person, for the payment of the expenses of his funeral.

112. The Public Trustee, being appointed under this Act as the committee of the estate of any person, or being authorized by this Act to administer the estate of any person, may, with the sanction of an order of the Court, do any of the following things:—

- i. Sell any freehold or leasehold property of the said person by public auction or private contract in such manner and on such terms and conditions as the Public Trustee thinks fit:

Powers of Public Trustee exercisable with sanction of Court.
1122, 1913, s. 122.
Cf. U.K. 53 Vict. c. 5, ss. 117-120, 128.
Cf. U.K. 3 & 4 Geo. 5 c. 28, s. 22 (5).

- ii. Make exchange or partition of any property belonging to the said person, and give or receive any money for equality of exchange or partition:
- iii. Grant or concur in granting leases of any property of the said person for such terms and on such covenants and conditions as the Public Trustee thinks fit:
- iv. Execute any power of leasing vested in the said person having a limited estate only in the property over which the power extends:
- v. Expend money in the improvement of any property of the said person, by way of building or otherwise:
- vi. Carry on any trade or business of the said person:
- vii. Agree to an alteration of the condition of a partnership into which the said person had entered, or join in dissolving the partnership and dispose of the property thereof, or the interest of the said person therein and in the property thereof:
- viii. Exercise any power, or give any consent required for the exercise of any power, where the power is vested in the said person for his own benefit or the power of consent is in the nature of a beneficial interest in the said person:
- ix. Expend any moneys belonging to the said person in the maintenance, education, or advancement of the husband or wife of the said person, or of any relative of the said person, or of any person wholly or partially dependent on the said person, or continue such other acts of bounty or charity exercised or promised to be exercised by the said person as the Court, having regard to the circumstances and the amount or value of the estate of the said person, considers proper and reasonable.

113. The Public Trustee, being appointed under this Act as the committee of the estate of any person, or being authorized by this Act to administer the estate of any person may, with the sanction of an order of the Court, mortgage or charge (with or without power of sale, and on such terms as the Public Trustee thinks fit) any property of the said person for the purpose of raising, or securing, or repaying, with or without interest, money which is to be or which has been applied to all or any of the purposes following:

Power of Public Trustee to execute mortgages. 1122, 1913, s. 123. Cf. U.K. 53 Vict. c. 5, ss. 117-130.

- I. The payments of the debts or engagements of the said person:
- II. The discharge of any incumbrance on his property:
- III. The payment of any debt or expenditure incurred for the maintenance of the said person or for the maintenance and education of his family, or otherwise for his benefit:
- IV. The payment of or provision for the expenses of the future maintenance of the said person or the future maintenance and education of his family:
- V. The improvement or protection of the property of the said person:
- VI. The payment of any debts or liabilities incurred by the Public Trustee in the exercise of the powers conferred upon him by this Act in respect of the custody and administration of the property of the said person.

Exercise of powers without sanction of Court where estate does not exceed £1,000.

1122, 1913, s. 124.
Cf. U.K. 53 Vict. c. 5, s. 132.

Amended by 31, 1939, s. 12.

114. (1) If the Public Trustee files in the office of the Court a certificate signed by him that after due inquiry he believes that the value of the estate of any person of which he has been appointed the committee under the Act, or which he is authorized by this Act to administer, does not exceed the sum of one thousand pounds, after deducting all debts and liabilities payable thereout, the Public Trustee may thereafter exercise in respect of that estate, without the sanction of an order of the Court, but subject to any order of the Court to the contrary, any of the powers conferred upon him by sections 112 and 113.

(2) If at any time after the filing of such a certificate the Public Trustee has reason to believe that the value of the estate, after making such deductions as aforesaid, exceeds the sum of one thousand pounds, he shall not thereafter exercise any of the said powers without the sanction of an order of the Court; but nothing in this subsection shall so operate as to invalidate anything done by the Public Trustee in pursuance of subsection (1).

Effect of certificate by Public Trustee of his appointment as committee, &c.

1122, 1913, s. 125.

115. A certificate signed by the Public Trustee certifying that he has been appointed under this Act as the committee of the estate of any person, or that he is authorized under this Act to administer the estate of any person, and stating the date at which he was so appointed or became so authorized, and that the appointment or authority is still in force, shall, until the contrary is proved, be accepted by all Courts,

tribunals, officers, and other persons as sufficient evidence of the facts so certified and stated.

116. The provisions of section 102 of the Administration and Probate Act, 1919, shall apply to all moneys coming to the hands of the Public Trustee under the provisions of this Act.

Security and investment of moneys received by Public Trustee.
1122, 1913, s. 126.

117. (1) The Public Trustee shall have power, in the execution of his powers and duties under this Act, to summon persons before him, or before some person appointed in writing by him in that behalf. The Public Trustee or the person so appointed shall have power to administer oaths and take evidence as to any matters relating to the estate and affairs of any person of whose estate the Public Trustee is committee or whose estate he is administering, and to require the production of books and documents relating to those matters.

Public Trustee may obtain information on oath.
1122, 1913, s. 127.

(2) Any person on whom any such summons is served by delivering it to him or by leaving it at his usual place of business or abode, who, without such justification or excuse as the court hearing the charge considers reasonable, fails to appear according to the exigency of the summons, or, being present, refuses to be sworn or to give evidence or to answer such questions as are put to him by the Public Trustee or the person so appointed as aforesaid, or to produce any books or documents required by the summons to be produced, shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

DIVISION III.—COMMITTEES OTHER THAN THE PUBLIC TRUSTEE.

DIVISION III.

118. (1) No person other than the Public Trustee shall be appointed under this Act as the committee of the estate of any person, unless it is proved to the satisfaction of the Court that there is some sufficient reason why that person should be so appointed in preference to the Public Trustee.

When person other than the Public Trustee may be appointed committee.
1122, 1913, s. 128.

(2) When any application is made to the Supreme Court to appoint any other person than the Public Trustee as the committee of an estate of any person, notice of the application shall be given to the Public Trustee by the person making the same.

119. (1) No person other than the Public Trustee shall be appointed under this Act as the committee of the estate of any person until he has given to the Public Trustee such security as the Court directs and approves for the due administration of the estate.

Duty to give security to Public Trustee.
1122, 1913, s. 129.

(2) The security may be a bond, with or without a surety or sureties, or such other security as the Court directs and approves.

(3) The Court may at any time, on the application of the Public Trustee, require such committee to give to the Public Trustee further or other security for the due administration of the estate.

(4) The Court may at any time give leave to the Public Trustee to enforce any such security, and the Public Trustee shall thereupon proceed by action or otherwise to enforce the same accordingly. All moneys so received by the Public Trustee shall be deemed part of the estate of which the said person is or was the committee, and all costs and expenses so incurred by the Public Trustee shall be paid out of the said estate.

Powers of
committee.
1122, 1913,
s. 130.
1159, 1914,
s. 7.

120. (1) When any person other than the Public Trustee is appointed under this Act as the committee of an estate, that person shall have in respect of the estate such of the powers conferred on the Public Trustee by sections 111 to 114 as the Court in the order appointing the committee, or in any subsequent order or orders, directs.

(2) On the application of the Public Trustee or any relative of the person of whose estate the committee is appointed, the order whereby he was so appointed, or any such subsequent order, may from time to time be varied or rescinded by the Court.

Statement as
to estate.
1122, 1913,
s. 131.

121. (1) Every person, other than the Public Trustee, appointed under this Act as the committee of the estate of any person, shall render to the Public Trustee, at such times and in such form as the Public Trustee directs, a statement showing the property comprised in the estate, and the manner in which the property has been administered and applied, and the condition of the property, and such other particulars relating to the said estate as the Public Trustee directs.

(2) Every such statement shall be verified by the statutory declaration of the committee, and, where the Public Trustee so directs, shall be supported by vouchers.

(3) If any person fails or refuses to render any such statement, verified as aforesaid, in the manner and at the times directed by the Public Trustee, he shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

(4) The Public Trustee may cause any such statement or the accounts relating thereto to be examined and reported upon by any person appointed by him in that behalf.

DIVISION IV.—RECIPROCAL POWERS OF THE PUBLIC TRUSTEE.

DIVISION IV.

122. (1) The Governor, on being satisfied that the laws in force in any part of the Empire are such as to enable powers to be exercised in that part of the Empire in cases of patients residing in this State, substantially similar to the powers conferred by section 123 in cases of such patients as therein mentioned, may, by proclamation, declare that section 123 shall, subject to any exceptions and modifications stated in the proclamation, apply with respect to that part of the Empire, and thereupon and whilst the proclamation is in force section 123 shall apply accordingly.

Application of this Division. 1159, 1914, s. 4.

(2) The Governor, on being satisfied that adequate provision has been made by the laws in force in any part of the Empire for the recognition therein of orders and declarations made by the Supreme Court of this State in the exercise of its jurisdiction in lunacy, may, by proclamation, declare that section 124 shall, subject to any exceptions and modifications stated in the proclamation, apply with respect to that part of the Empire, and thereupon and whilst the proclamation is in force section 124 shall apply accordingly.

(3) The Governor may by proclamation revoke or alter any proclamation made under this section or The Mental Defectives Act Amendment Act, 1914.

(4) A copy of the *Government Gazette* purporting to contain a copy of a proclamation under this section or The Mental Defectives Act Amendment Act, 1914, shall be conclusive evidence of the validity, contents, making, and publication of the proclamation, and of the existence of all conditions precedent to the valid making thereof.

123. (1) If the officer charged by the laws of any proclaimed part of the Empire with the custody, recovery, collection, and administration of the estates of patients detained in any hospital, asylum, or other place therein established or authorized by law for the reception and care of persons of unsound mind—

Provision for Public Trustee to administer estates of patients in other parts of the Empire. 1159, 1914, s. 5.

- (a) certifies in writing under his hand and seal to the Public Trustee that any person is a patient residing in that part of the Empire and confined in any such hospital, asylum, or other place, and that he is possessed of, entitled to, or interested in, or appears to be entitled to or interested in, real or personal property in this State; and
- (b) by instrument in writing under his hand and seal authorizes the Public Trustee to collect, manage,

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sell, or otherwise dispose of and administer the property of the patient within this State, or to make inquiry respecting the same,

the Public Trustee shall have and may exercise over and in respect of the property of the patient within this State all the powers conferred upon him by Division II. of Part V. with respect to estates which he is by this Act authorized to administer.

(2) The Public Trustee may pay over or deliver to the said officer the balance of the moneys or property belonging to the estate of the patient received by the Public Trustee, after—

- (a) payment of all costs, charges, and expenses incurred in the matter, in and about the exercise of the powers conferred by this section; and
- (b) satisfying or providing for, wholly, or in so far as appears to be necessary for the due administration of the estate of the patient, the claims against the estate of all persons residing in this State of whose claims he has had notice,

without seeing to the application thereof and without incurring any liability in regard to such payment; and he shall duly account for the same to such officer.

(3) Upon the appointment under section 108, of a committee of the estate of any person, this section shall, subject to the order of the Court upon making the appointment or any subsequent order thereof, cease to operate with respect to the estate.

124. (1) When an order or declaration, made by a court of competent jurisdiction under the laws of any proclaimed part of the Empire in the exercise of its jurisdiction in lunacy, or a copy thereof certified as correct under the hand of the prothonotary or registrar or other proper officer of any such court, is produced to the Master of the Supreme Court, and a copy of the order or declaration is deposited with the said Master, the order or declaration or certified copy shall, subject to the payment of the prescribed fees (if any) be sealed with the seal of the Supreme Court.

(2) The order or declaration shall thereupon have the like force and effect and have the same operation, and every Master, Public Trustee, curator, guardian, committee, or receiver acting thereunder shall perform the same duties and be subject to the same liabilities, in this State, as if the order

or declaration had been made by the Supreme Court: Provided that a guardian, committee, or receiver appointed by or under any such order shall not have or exercise any power or authority thereunder after the order, or the certified copy thereof, has been so sealed until his appointment has been confirmed by the Supreme Court or a Judge thereof, which confirmation may be granted upon such terms as to the Court or Judge seem fit, or may be refused.

(3) This section shall apply to orders and declarations whether made before or after the commencement of this Act.

DIVISION V.—GENERAL AND MISCELLANEOUS.

DIVISION V.

125. Without restricting any other powers and authorities conferred by this Act, the Public Trustee or any other person appointed as the committee of the estate of any person, or the Public Trustee being authorized by this Act to administer the estate of any person, may apply to a Judge for advice or direction, under section 69 of the Administration and Probate Act, 1919; and the provisions of the said section shall apply in every case where the Public Trustee or any other person has been so appointed, or the Public Trustee is authorized as aforesaid.

Power of
Public
Trustee or
committee to
apply to
Court for
directions.

1122, 1913,
s. 132.

125a. In exercising any power to give any direction or make any order under this Act with respect to any property of a patient or of any person of whose estate a committee is appointed under this Act, the Court shall have power to make any order for the purpose of preserving so far as possible in the administration of the property of the patient or person, the quality, tenure and devolution of the property.

Powers of
Court.
Cf. U.K. 12 &
13 Geo. 5,
c. 60, s. 2
(8).

Inserted by
40, 1950, s. 2.

125b. (1) Any patient and any person of whose estate a committee is appointed under this Act and the heirs, executors, administrators, next of kin, devisees, legatees, and assigns of the patient or person shall have the same interest in any moneys arising from any sale, mortgage, lease or other disposition authorized by this Act or directed by the Court under this Act which may not have been applied under the powers given by this Act as he or they would have had in the property the subject of the sale, mortgage, lease or disposition if no sale, mortgage, lease or disposition had been made, and the surplus moneys shall be of the same nature as the property sold, mortgaged, leased or disposed of.

Interest in
property.
Cf. U.K. 53,
Vict. c. 5,
s. 123.

Inserted by
40, 1950, s. 2.

(2) In order to give effect to this section, the Court may make such orders and direct such conveyances, deeds and things (which may and shall accordingly be executed and done), as the Court thinks fit.

(3) The proceeds of any such sale, mortgage, lease or other disposition shall be placed to a special credit for the purpose of identification.

Exercise of powers vested in mentally defective person.
1122, 1913, s. 133.

126. When a power invested in any person in the character of trustee or guardian, or the consent of any person to the exercise of a power is necessary in the like character or as a check upon undue exercise of the power, and it appears to the Court to be expedient that the power should be exercised or the consent given, the committee (if any) of the estate of the said person, or the Public Trustee being authorized by this Act to administer the estate, may, in the name and on behalf of the said person, and with the sanction of an order of the Court made upon the application of any person interested in the exercise of the power, exercise the power or give the consent in such manner as the order directs.

Effect of appointment of new trustees.
1122, 1913, s. 134.
Amended by 31, 1939, s. 13.

127. Where under this Act the Public Trustee or any other person appointed as the committee of an estate, or the Public Trustee being authorized by this Act to administer an estate, exercises, under order of the Court, in the name and on behalf of any person a power of appointing new trustees, the persons who after and in consequence of the exercise of the power are the trustees shall have all the same rights and powers as they would have had if they had been appointed by order of the Court under the Trustee Act, 1936; and the Court may in such case, where it seems to be expedient, make any such order respecting the property subject to the trust as might have been made in the same case under the provisions of the said Act on the appointment thereunder of new trustees.

Power of committee or Public Trustee to execute assurances.
1122, 1913, s. 135.

128. (1) The Public Trustee or other person appointed as the committee of the estate of any person, or the Public Trustee being authorized by this Act to administer the estate of any person, may, in the name and on behalf of the said person, execute and do all such assurances and things as he deems necessary for effectuating any of the powers conferred upon him by this Act or by any order of the Court; and notwithstanding The Real Property Act, 1886, or any other Act or law, all assurances and things so executed or done shall have the same force and effect as if executed or done by such person himself, he not being mentally defective.

(2) Where under any power conferred by or under this Act, any real estate is sold, mortgaged, or charged, an effectual conveyance, transfer, mortgage, or charge may be made of any interest in any such estate of a married woman,

being a mentally defective person, without any acknowledgment by her.

129. Notwithstanding anything in this Act, the Public Trustee or other person appointed as the committee of the estate of any person, or the Public Trustee being authorized by this Act to administer the estate of any person, shall, in the exercise of any power conferred by this Act, be subject to any orders made in the matter by the Court.

Committee and Public Trustee subject to orders to Court.
1122, 1913, s. 136.

130. (1) No person of whose estate the Public Trustee or any other person has been appointed the committee, or whose estate the Public Trustee is by this Act authorized to administer, shall be capable, without the leave of the Court, of making any conveyance, transfer, lease, mortgage, or other disposition of his property, or any part thereof, or of entering into any contract, except for necessities. Every such conveyance, transfer, lease, mortgage, or other disposition, and every such contract other than for necessities, shall be voidable by the said person or by the Public Trustee or other committee on his behalf.

Limitation of contractual powers of person of whose estate a committee or administrator appointed.
1122, 1913, s. 137.

(2) The Court may by order, give leave to any such person to make any conveyance, transfer, lease, mortgage, or other disposition of his property, or of any part thereof, or to enter into any contract, if the Court is satisfied that the conveyance, transfer, lease, mortgage, disposition, or contract is for the benefit of the said person, and that he consents thereto with adequate understanding of the nature thereof.

(3) Nothing in this section shall affect the law relating to the validity of wills or other testamentary dispositions.

(4) Nothing in this section shall invalidate any conveyance, transfer, lease, mortgage, disposition, or contract made or entered into by any such person if the other party thereto acted in good faith without knowledge that a committee had been so appointed or that the Public Trustee was so authorized to administer the estate.

131. (1) All expenses incurred by the Public Trustee or other person appointed as the committee of the estate of any person, or by the Public Trustee in a case where he is authorized by this Act to administer the estate of any person, in the maintenance of the person or the administration of his estate, shall be charged against and payable out of the estate.

Payment of maintenance, cost of administration, and commission.
1122, 1913, s. 138.

(2) In addition to the provisions of subsection (1) hereof—

(a) section 112 of the Administration and Probate Act, 1919 (which provides for charging commission by

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the Public Trustee), shall apply in respect of all moneys coming under the control of the Public Trustee and forming part of any estate of which he is appointed committee, or which he is by this Act authorized to administer:

- (b) the Court may allow to any other committee such commission or other remuneration out of the estate of which he is committee, and either periodically or otherwise, as to the Court seems just and reasonable: Provided that no such allowance shall be made to any such committee who has neglected or failed to perform any duty imposed by or under section 121.

(3) The expenses and commission or remuneration to be charged by virtue of this section shall be payable out of the estate, although the said person dies, or the estate otherwise ceases to be under the administration of the Public Trustee or other committee, before the payment thereof.

132. Where any stock is standing in the name of, or is vested in, a committee (other than the Public Trustee) of the estate of a mentally defective person as such committee, and

- (a) the committee dies intestate or becomes mentally defective or resides out of the State; or
- (b) it is uncertain whether the committee is living or dead; or
- (c) the committee neglects or refuses to transfer the stock, or to receive and pay over the dividends thereof, as the Court directs,

the Court may order some person to transfer the stock or any part thereof to or into the name of a new committee or the Public Trustee or into Court or otherwise, and to receive and pay over the dividends thereof in such manner as the Court directs.

133. Where any stock is standing in the name of, or is vested in, a person residing out of the State, the Court, upon proof to its satisfaction that that person has been declared mentally defective and that his personal estate has been vested in a person appointed for the management thereof, according to the laws of the place where he is residing, may order some person to make such transfer as the Court directs of the stock or any part thereof to or into the name of the person so appointed or otherwise, and to receive and pay over the dividends thereof in such manner as the Court directs.

Power to transfer stock of mentally defective person in certain cases. 1122, 1913, s. 139. Cf. U.K. 53 Vict. c. 5, s. 133.

Transfer of stock in name of mentally defective person residing out of the State. 1122, 1913, s. 140. Cf. U.K. 53 Vict. c. 5, s. 134.

134. Where an order is made under section 132 or 133 for the transfer of stock, the person to be named in the order for making the transfer shall be some proper officer of the bank, company, or society whose stock is to be transferred.

Who shall be appointed to make transfer.
1122, 1913, s. 141.
Cf. U.K. 53 Vict. c. 5, s. 137.

135. Nothing in this Act contained shall subject the property of any person, or any part thereof, to the debts or demands of his creditors, further or otherwise than as the same is subject thereto by due course of law apart from this Act.

Act not to subject person's property to certain debts.
1122, 1913, s. 142.

136. For the purposes of this Part a person shall be deemed to be mentally defective if he is a "mentally defective person" within the meaning assigned to that expression by section 4, or if—

Meaning of "mentally defective person" in this Part.
1122, 1913, s. 143.

- (a) owing to his mental condition, he requires oversight, care, or control for his own good or in the public interest; and
- (b) though he may be capable of earning a living under favourable circumstances, he is incapable from mental deficiency existing from birth or from an early age, of competing on equal terms with his normal fellows or of managing himself and his affairs with ordinary prudence.

PART VI.

PART VI.

VOLUNTARY BOARDERS.

Voluntary boarders.
1532, 1922,
s. 23.
Cf. U.K.
20 & 21
Geo. 5 c. 23,
s. 1.

137. Notwithstanding anything contained in this Act, any person may, subject to anything prescribed, be admitted into and detained for care and treatment as a voluntary boarder in any institution upon making and signing a request in the prescribed form, containing a statement that he is aware that as a consequence of his so signing he is liable to be detained in the institution for three days after any application in writing to be discharged therefrom has been received by the superintendent of the institution.

Certificate and notice of admission.
1532, 1922,
s. 24.
Cf. U.K.
20 & 21
Geo. 5 c. 23,
s. 2.

138. Within twenty-four hours after any person is admitted into any institution as aforesaid, the superintendent shall—

- (a) sign a certificate in the prescribed form setting forth his opinion of the case and any recommendation he desires to make; and
- (b) forward to the Director-General the certificate and a notice of the admission, together with a copy of the request of the person admitted and a statement of what provision (if any) has been made by or on behalf of the person admitted for his maintenance whilst he is a voluntary boarder.

Amended by
31, 1939,
s. 3 (3).

Powers of Director-General.
1532, 1922,
s. 25.

139. The Director-General shall, in his discretion, make an order concerning the person so admitted—

- (a) requiring him to be discharged forthwith; or
- (b) consenting to his further detention.

Amended by
31, 1939,
s. 3 (3).

Restriction on admission of voluntary boarders.
1532, 1922,
s. 26.

140. No person shall be admitted into any institution as a voluntary boarder under the provisions of section 137 if the Director-General or the superintendent is of opinion that the case is not a proper one for care and treatment under the provisions of that section.

Amended by
31, 1939,
s. 3 (3).

Right of inspection.
1532, 1922,
s. 27.
Cf. U.K.
20 & 21
Geo. 5 c. 23,
s. 3.

141. Every voluntary boarder detained in any institution shall, if required, be produced to the Director-General or to any official visitor on his visits.

Amended by
31, 1939,
s. 3 (3).

Voluntary boarder not to be deemed mental defective.
1532, 1922,
s. 28.

142. No person shall, by reason only of his being a voluntary boarder and while he is a voluntary boarder, be deemed to be a "mental defective" or a "patient" within the meaning of this Act.

143. (1) If in the opinion of the Director-General or the superintendent a voluntary boarder in any institution becomes mentally defective in a degree so pronounced and sustained as to render it improper for him to be any longer treated as a voluntary boarder, the superintendent shall give notice of the fact in writing to the relative or friend (if any) of the voluntary boarder specified for that purpose in the request for admission. Any such notice may be given by post.

Provision in case of voluntary boarder becoming pronouncedly insane, etc. 1532, 1922, s. 29.

Amended by 31, 1939, s. 3 (3).

(2) If there is no such relative or friend, or if within seventy-two hours after the posting or delivery of such communication to the said relative or friend, a request, as provided by section 31 is not made for the reception of the voluntary boarder as a patient in an institution, the superintendent shall himself make the request forthwith. The superintendent may himself sign one of the certificates by section 31 required to accompany the said request.

144. A voluntary boarder shall be discharged—

- (a) in any case, on an order of the Minister or of the Director-General; or
- (b) in the case of a voluntary boarder in any institution, on an order of the superintendent; or
- (c) on the application of the voluntary boarder in writing to the superintendent of the institution in which he is detained, in which case the superintendent may detain the voluntary boarder for three days after he receives the application, but no longer.

Discharge of voluntary boarder.

1532, 1922, s. 30. Cf. U.K. 20 & 21 Geo. 5 c. 23, s. 2 (3).

Amended by 31, 1939, s. 3 (3).

145. (1) The Governor may make all such regulations as are by this Part required, permitted, or contemplated to be made, and all such regulations as may be necessary or convenient for carrying into effect the objects and purposes of sections 137 to 144.

Regulations. 1532, 1922, s. 31.

(2) Any such regulation may impose a penalty for a breach of the same or of any other regulation not exceeding in any case the sum of ten pounds.

PART VII.

PART VII.

TREATMENT OF SAILORS, SOLDIERS AND
AIRMEN.

Cf. U.K.
21 Geo. 5
c. 15.

Heading
amended by
42, 1941, s. 2
(1).

Interpreta-
tion.
1306, 1917,
s. 3.

Amended by
31, 1939,
s. 3 (2) and
by 42, 1941,
s. 3.

146. In this Part—

“commanding officer” means the officer (being a medical practitioner) medically in charge of the naval, military or air unit to which, for the time being, the person for whom treatment is required belongs:

“home” means any institution, home, house, private or public hospital or part thereof approved by the Director-General of Medical Services:

“superintendent” means the superintendent, owner, manager or person for the time being in charge of any home approved under this Part.

Sailors,
soldiers and
airmen suf-
fering from
mental dis-
order may be
received into
a home.

1306, 1917,
s. 4.

Amended by
42, 1941, s. 4.

147. (1) Notwithstanding anything contained in any Act, any person, whether for payment or not (if and so long as he complies with the conditions imposed by this Act) may receive to board or lodge, or may take the charge or care of, any person who—

(a) has been on service with any naval, military or air force of the Commonwealth or of any part of His Majesty's Dominions during any war in which His Majesty is engaged; and

(b) is suffering from mental disorder of recent origin and apparently of a temporary character arising from wounds, shock, disease, stress, exhaustion or any other cause arising out of that service.

(2) Any such last mentioned person shall be received only into a home approved under this Part, and shall be so received only on production of a request and statement in the form in the twenty-fourth schedule signed by the commanding officer.

Period of
detention.

1306, 1917,
s. 5.

Amended by
31, 1939,
s. 3 (3).

148. The said person may be detained in the home for any period not exceeding six months: Provided that the period of detention may be extended for any further period or periods by the authority in writing of the Director-General.

Duties of
superinten-
dent.

1306, 1917,
s. 6.

Amended by
31, 1939,
s. 3 (3).

149. The superintendent of any home shall forthwith after the admission to the home of any person admitted for treatment under this Part make or cause to be made an entry with respect to the said person in a book to be kept for such entries and to be called the “Register of Patients,” according to the

form and containing the particulars indicated in the twenty-fifth schedule, or such other form, and containing such other particulars, as are prescribed, and shall within twenty-four hours of the same occurring forward to the Director-General a notice of every admission according to the form No. 1 in the twenty-sixth schedule, and of every death, discharge, removal, escape, or re-capture according to form No. 2 in the said schedule.

150. (1) The Director-General may at any time order, or on the receipt of a certificate in the form No. 1 in the twenty-seventh schedule approve of, the discharge of any person admitted to any home for treatment under this Part, or the transfer of the person to any other home.

Discharge or removal of patients.
1306, 1917, s. 7.
Amended by 31, 1939, s. 3 (3).

(2) The order or approval shall be in the form No. 2 in the said schedule.

(3) Any person under treatment under the provisions of this Part may, upon compliance with the provisions of this Act with respect to the reception of patients into institutions and with the approval of the Director-General, be received into and detained in an institution under this Act.

150a. If after being received into any home pursuant to this Part, any person ceases to belong to any naval, military or air unit, the provisions of this Part shall nevertheless continue to apply to that person.

Application of Part to persons ceasing to belong to naval, military, or air unit.
Inserted by 42, 1941, s. 5.

151. Every home shall be open at all times to visitation and inspection by the Director-General and by any medical practitioner authorized for the purpose by the Director-General.

Inspection of homes.
1306, 1917, s. 8.
Amended by 31, 1939, s. 3 (3) and by 42, 1941, s. 6.

152. The Director-General, with the approval of the Minister, may withdraw the approval given to any home to receive patients under this Part, and all persons under treatment in the home shall be removed therefrom within fourteen days of the superintendent of the home having been notified that the approval has been withdrawn.

Withdrawal of approval of home.
1306, 1917, s. 9.
Amended by 31, 1939, s. 3 (3).

153. (1) The Governor may from time to time make all such regulations as may be necessary or convenient for carrying into effect the objects and purposes expressed in or implied by this Part, including, though without in any way limiting the effect of this section, regulations as to the following matters:

Regulations.
1306, 1917, s. 10.

- i. The conduct of persons detained in homes for treatment under this Part;
- ii. The care and treatment of such patients;
- iii. The forms to be used for the purposes of this Part in cases where forms are not set out in the schedules to this Act, or in substitution for any form so set out; and
- iv. Penalties for breaches of regulations, not exceeding in any case the sum of twenty pounds.

(2) Any regulations made under this section may be made to apply to or in respect of all homes or any specified homes or home.

LICENSING OF PRIVATE MENTAL HOMES.

Prohibition
of treatment.

Inserted by
31, 1939,
s. 14 (1).

153a. (1) Any person (other than a person licensed under this Part or a committee or person appointed by the Court or a person otherwise authorized by this Act) who receives to board or lodge in any house or place or has under his care or charge therein any person, who, by the exercise of oversight, care, or control, he treats (whether by medical treatment or in any other manner whatsoever) as mentally defective, shall be guilty of a misdemeanour.

(2) For the purpose of this section a patient absent from an institution under the provisions of section 76 or lawfully boarded out under the provisions of Division V. of Part IV. shall not be deemed to be a mentally defective person so long as the conditions (if any) on which he was permitted to be absent or the regulations as to boarding out (according to the nature of the case) are complied with.

(3) This section shall not apply to the residence in any house or place of a mentally defective person who is a member of the family of the occupier thereof, nor to the residence in any place of a mentally defective person pursuant to the direction of a justice or justices made under section 34, if in either case no payment is made in respect of the residence or maintenance of the mentally defective person.

(4) In any proceedings under this section, if it is proved that any person resident in any house or place is mentally

defective, the burden of proving that the defendant did not treat him as such shall lie upon the defendant.

153b. (1) The Minister may, upon the recommendation of the Director-General, issue to any fit and proper person a licence under this Part.

Grant of licence.
Cf. U.K. 53
Vict. c. 5,
s. 210.

(2) Every licence—

Inserted by
31, 1939,
s. 14 (1).

- (a) shall be for a period of twelve months:
- (b) shall be issued to the person licensed thereunder in respect of the premises specified in the licence:
- (c) shall be issued in accordance with any prescribed conditions and with any other conditions thought fit by the Minister:
- (d) may from time to time be renewed by the Minister on the recommendation of the Director-General:
- (e) may be revoked by the Minister on the recommendation of the Director-General.

153c. (1) Any person who is desirous of voluntarily submitting himself to treatment for mental illness, and who makes a written application for the purpose to the person in charge of any premises licensed under this Part, may be received in the premises for treatment.

Reception of persons into licensed premises.
Cf. U.K. 53
Vict. c. 5,
s. 229.
Cf. U.K. 20 &
21, Geo. 5
c. 23, s. 1.

(2) Any person under the age of sixteen years whose parent or guardian is desirous of submitting him to treatment for mental illness may if the parent or guardian makes to the person in charge of any premises licensed under this Part a written application for the purpose accompanied by a medical recommendation, be received in the premises for treatment.

Inserted by
31, 1939,
s. 14 (1).

(3) The medical recommendation referred to in subsection (2) shall—

- (a) be signed by a medical practitioner who is the usual medical practitioner of the person to whom the application relates; and
- (b) state the qualifications of the medical practitioner, the date or dates on which he examined the said person, and that the said person is likely to be benefited by being received for treatment.

(4) No medical practitioner who is the licensee or who is employed by the licensee of any licensed premises or who is a partner of such licensee or employee, shall sign any medical recommendation for treatment of any person in those premises.

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(5) A medical recommendation shall cease to have effect for the purposes of this section on the expiration of fourteen days from the last date on which the person to whom the recommendation relates was examined by the medical practitioner for the purpose of making the recommendation.

(6) Any person received for treatment under this section may leave the licensed premises upon giving to the person in charge seventy-two hours' notice in writing of the intention to do so or if he is a person under the age of sixteen years upon such notice being given by his parent or guardian.

(7) For the purposes of this section, "guardian" in relation to a person under the age of sixteen years means any person who pursuant to any order of any court or pursuant to any Act or law is the guardian of the person under the age of sixteen years.

Regulations.
Inserted by
31, 1939,
n. 14 (1).

153d. The Governor may make regulations as to all or any of the following matters:—

- i. The conditions upon which licences may be issued under this Part:
- ii. Prescribing requirements as to the construction, furnishing and equipment of premises licensed under this Part:
- iii. The qualifications of persons licensed under this Part and of persons employed in premises licensed under this Part:
- iv. Requiring the residence or attendance of medical practitioners in or at premises licensed under this Part:
- v. The functions, powers, and duties of person licensed under this Part and of persons employed in premises licensed under this Part:
- vi. The government and management of premises licensed under this Part:
- vii. The inspection of premises licensed under this Part:
- viii. The reception and treatment of persons boarded or lodged in premises licensed under this Part:
- ix. The keeping, inspection, and supply to the Director-General of records and forms in respect of persons boarded or lodged in premises licensed under this Part:
- x. The transfer, renewal and revocation of licenses under this Part:

- XI. Prescribing fees to be paid for the issue, renewal, or transfer of licences under this Part:
- XII. Generally for the conduct of premises licensed under this Part and for the well being and treatment of persons boarded or lodged therein:
- XIII. Penalties for breaches of regulations, not exceeding in any case fifty pounds.

PART VIII.

OFFENCES.

154. Any superintendent of any institution who receives or detains in the institution, or permits to remain therein, any person as a mentally defective person, except under the authority and in pursuance of this Act or except under the authority and in pursuance of section 77a of the Criminal Law Consolidation Act, 1935-1940, shall be guilty of a misdemeanour.

Illegal reception or detention in an institution.
1122, 1913, s. 144.
Cf. U.K. 53 Vict. c. 5, s. 315.
Amended by 14, 1945, s. 7.

* * * * *

s. 155, repealed by 31, 1939, s. 14 (2).

156. Any medical practitioner who signs any certificate under or for the purposes of this Act without having seen and personally examined the person to whom it relates, at the time and in the manner specified in the certificate, for the purpose of ascertaining the condition of the person to the best of his knowledge and power, shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

Signing medical certificate without examination.
1122, 1913, s. 146.

157. Any medical practitioner who wilfully certifies in writing that any person is mentally defective not believing him so to be, or wilfully makes any false or misleading statement in any certificate under or for the purposes of this Act, shall be guilty of a misdemeanour.

False certificates by medical practitioners.
1122, 1913, s. 147.

158. Any person who, not being a medical practitioner within the meaning of this Act, signs any certificate under or for the purposes of this Act in which he describes himself as or pretends to be a medical practitioner, or otherwise purports to act under this Act in the capacity of a medical practitioner, shall be guilty of a misdemeanour.

Falsely pretending to be medical practitioner.
1122, 1913, s. 148.

PART VIII.

Fraudulently procuring confinement of sane person.

1122, 1913, s. 149.
Cf. U.K. 3 & 4 Geo. 5, c. 28, s. 58.

159. Any person who, by the production of a false certificate or other fraudulent means, procures or attempts to procure any person who is not mentally defective to be received into or detained in an institution, shall be guilty of a misdemeanour.

Neglect or ill-treatment of mentally defective persons.

1122, 1913, s. 150.
Cf. U.K. 25 & 24 Vict. c. 75, s. 13.
Cf. U.K. 53 Vict. c. 5, s. 322.
Cf. U.K. 3 & 4 Geo. 5 c. 28, s. 55.

160. Any superintendent of an institution or any householder or other person having the oversight, care, or control of a mentally defective person, or any officer of or person employed in any institution, house, or place in which a mentally defective person resides, who strikes, wounds, or illtreats, or wilfully neglects the mentally defective person, shall be guilty of a misdemeanour: Provided that nothing in this section shall prejudice or affect the civil or criminal responsibility (if any) of the offender under any other Act or at common law.

Carnal knowledge of mentally defective female.

1122, 1913, s. 151.
Cf. U.K. 3 & 4 Geo. 5 c. 28, s. 56.

161. (1) Any person who has, or attempts to have, carnal knowledge of any female who is detained in any institution, house, or other place, under the provisions of this Act, or is otherwise under oversight, care, or control as mentally defective, shall be guilty of a misdemeanour.

(2) For the purposes of this section any female shall be deemed to be detained in an institution, house or other place, although absent on leave or otherwise therefrom or escaped therefrom, until she is duly discharged therefrom in due course of law, or ceases to be under oversight, care, or control as mentally defective.

(3) It shall be a good defence in any prosecution for an offence against this section if the defendant proves that at the time of the act committed he did not know and had no reasonable cause to believe or suspect that the female was so detained or was under oversight, care, or control as mentally defective.

(4) The consent of the female shall not be a defence in any prosecution under this section.

(5) Nothing in this section shall prejudice or affect the civil or criminal responsibility (if any) of the offender under any other Act or at common law.

Penalty for misdemeanour.

1122, 1913, s. 152.

162. Any person who is guilty of any misdemeanour under this Act shall on conviction be liable to a penalty not exceeding one hundred pounds, or to imprisonment for any term not exceeding two years.

163. Any person who in any way, whether by act or omission, contravenes any provision of this Act shall be guilty of an offence against this Act, and shall, unless the offence is constituted a felony or misdemeanour or some other penalty is expressly provided by this Act, be liable to a penalty not exceeding twenty pounds.

Penalty for contravention of the Act.
1122, 1913, s. 153.

PART IX.

PART IX.

MISCELLANEOUS.

164. (1) Any reference in any other Act to a person who is idiot, lunatic, insane, or of unsound mind, or the like, shall be deemed to include a reference to a mentally defective person within the meaning of this Act.

References to lunatics, etc., to include persons mentally defective.
1122, 1913, s. 154.
Cf. U.K. 20 & 21 Geo. 5 c. 23, s. 20.

(2) Any reference in this Act to a mentally defective person shall be deemed to include a reference to a person who is idiot, lunatic, insane, or of unsound mind, or the like, within the meaning of any other Act.

165. All powers, rights, privileges, duties, and functions which immediately before the twelfth day of August, nineteen hundred and fourteen, were vested in or exercisable or to be discharged by the Colonial Surgeon, by virtue of any Act, or otherwise, shall, from the said date, be vested in and exercised and discharged by the Director-General.

Colonial surgeon.
1122, 1913, s. 155.
Amended by 31, 1939, s. 3 (3).

166. (1) The cost of the maintenance of any person (other than a person detained under Division II. of Part III., or during the Governor's pleasure, and liable to be continued in custody on some ground other than mental defect) detained as mentally defective in any institution shall be a debt due to the Crown for which the following persons shall be jointly and severally liable:—

Maintenance of patients.
1122, 1913, s. 156.
1532, 1922, s. 22.
2125, 1933, s. 4.
Cf. U.K. 53 Vict. c. 5, s. 296.
Cf. U.K. 20 Geo. 5 c. 17, s. 19.

I. The person so detained:

II. The husband of the said person:

III. The father (or if the father is dead, the mother), of such person if and so long as the said person is under the age of twenty-one years:

IV. The children of the said person being of the age of twenty-one years or upwards.

Amended by 31, 1939, s. 3 (3).

(2) The cost of maintenance shall, for the purposes of this section, be such weekly sum as the Director-General

Mental Defectives Act, 1935-1953.

determines from time to time in respect of the particular case, either before or after the cost has been incurred, not exceeding—

- (a) in the case of a person detained in a mental hospital the sum of forty-two shillings per week; or
- (b) in the case of a person detained in a receiving house, the sum of eighty-four shillings per week.

Inserted by
31, 1939,
s. 15.

The Director-General may from time to time vary any weekly sum fixed as aforesaid and may declare that the weekly sum so varied shall be payable from any time (whether before or after the time the variation was made) fixed by the Director-General.

(3) When any person detained as aforesaid is permitted to be absent from the institution on trial leave or parole or otherwise, all sums expended by the Crown in respect of his maintenance, care, and control during the period of his absence (not exceeding twenty-one shillings a week), or in respect of his conveyance from place to place during such period, shall be recoverable in the same manner as the cost of his maintenance while detained in the institution.

(4) When any person detained as aforesaid dies, the funeral expenses incurred in respect of the person by the Crown shall be recoverable in the same manner as the cost of his maintenance in the institution.

(5) All moneys payable for the maintenance of any person under this section shall accrue due from week to week, and may be recovered by the Director-General in the same manner as penalties imposed by a special magistrate or justices under this Act are recoverable, or in any court of competent jurisdiction by action at the suit of the Director-General or of any other person authorized by him in writing in that behalf signed by the Director-General, and shall be payable to the Director-General or any person authorized by him in manner aforesaid to receive the same.

(6) When two or more persons are jointly and severally liable under this section for the same sum, they shall be entitled as against each other to such indemnity or contribution as is directed by the court.

(7) Nothing in this section shall take away or restrict the liability of any person for the maintenance of any other person under any other Act or law for the time being in force, or the power of any court to make any order under that Act or law in respect of the maintenance of any person, or affect

the liability of any person under any agreement as to the charges for accommodation of any special payment patient.

(8) The Director-General may at any time make an agreement with any person that he will pay a fixed sum towards the maintenance of any patient, and any sum so agreed to be paid shall constitute a debt payable to the Crown and recoverable in accordance with the foregoing provisions of this section; and any such person is hereby empowered to reimburse himself for all moneys paid by him in pursuance of such agreement out of any property of the patient coming into his hands, or otherwise to recover the same in accordance with the said provisions of this section.

(9) No such agreement shall take away or restrict any liability that would otherwise lie on the person making the same or on any other person in respect of the maintenance of the patient.

167. Subject to anything prescribed, whenever by this Act it is required that a book be kept in an institution for any purpose, records kept according to what is known as the "card system," or in any other system, may be used in the institution for that purpose, instead of a book: Provided that the system to be used, and its use in the particular institution, have been approved by the Minister on the recommendation of the Director-General.

"Card system" or similar system may be used instead of books.
1122, 1913, s. 157.

Amended by 31, 1939, s. 3 (3).

168. (1) Rules of court may, from time to time, be made under the Supreme Court Act, 1935—

Rules of Supreme Court.

1122, 1913, s. 158.

Amended by S.L.R. Act 1936.

- (a) for regulating the practice and procedure of the Court in matters under Part V., and for carrying into effect the several objects of this Act so far as the same relate to the judicial powers or duties of the Court under any part of this Act or of a special magistrate under Part V.;
- (b) for the protection, care, and management of the persons and estates of mentally defective persons and for carrying out the functions, powers, and duties of the Public Trustee and committees in connection with the management of the estates of such persons; and
- (c) prescribing forms and scales of fees, costs, and expenses to be used and paid in connection with the matters dealt with in rules so made for the hereinbefore mentioned purposes.

(2) The provisions of section 72 of the Supreme Court Act, 1935, so far as applicable, shall apply to all rules made by virtue of the powers conferred by this section.

(3) All general orders made by the Court under any Act hereby repealed or any Act repealed by any such Act which are in force at the commencement of this Act, shall, except in so far as inconsistent with this Act, continue in force until repealed by rules of court made under this Act. Any such order, though not expressly repealed, shall be deemed to be repealed in so far as it is inconsistent with this Act or any rule of court made under this Act.

No liability in respect of act done in good faith in pursuance of this Act.
1122, 1913, s. 159.
Cf. U.K. 53, Vict. c. 5, s. 330.
Cf. U.K. 20 & 21, Geo. 5, c. 23, s. 16.

169. (1) A person who does any act in pursuance or intended pursuance of any of the provisions of this Act, or omits to exercise any power conferred by this Act, shall not be under any civil or criminal liability in respect thereof, whether on the ground of want of jurisdiction or of mistake of law or of fact, or on any other ground, if he has acted, or omitted to act, in good faith and with reasonable care.

(2) In any proceedings taken against any such person for any such act, or omission, the burden of proving that he acted, or omitted to act, without good faith or without reasonable care shall lie upon the plaintiff.

(3) No such proceedings shall be commenced except within the period of six months next after the act or omission complained of, or, in the case of a continuance of injury or damage, during the continuance or within six months after the ceasing thereof: Provided that, in estimating the said period of six months, no account shall be taken of any time or times during which the person injured was in confinement, lawfully or unlawfully, as a mentally defective person, or was ignorant of the facts which constitute the cause of action, or during which the defendant was out of the State.

(4) Any proceedings taken against any such person for any such act or omission may, upon summary application to the court, in which or before whom they are taken, be stayed if the court is satisfied that there is no reasonable ground for alleging want of good faith or reasonable care, or that the proceedings are frivolous or vexatious, or have not been commenced within the period limited by subsection (3) hereof.

(5) Nothing in this section shall be so construed as to deprive any person of any defence which he would have independently of this section.

169a. (1) If any person applies to the Director-General in order to be informed whether any particular person—

Particulars
as to confinement.
Cf. U.K. 53
Vict. c. 5,
s. 51.

Inserted by
31, 1939,
s. 16.

- (a) is confined in any institution or in any premises licensed under Part VIIA.;
- (b) has been removed or discharged from any such institution or premises; or
- (c) has died whilst confined in any such institution or premises,

and the Director-General is satisfied that the person seeking the information has a proper reason for seeking the information, the Director-General may cause search to be made of the records of the Director-General whether during the preceding twelve months the person inquired after is or has been confined as aforesaid, or is or has been removed or discharged as aforesaid, or has died as aforesaid.

(2) If it appears that such person is or has been so confined, the Director-General shall, on payment of such reasonable fee as the Director-General requires, deliver to the applicant a statement in writing specifying the situation of the institution or premises in which the said person appears to be or to have been confined, the date of his admission, and (in the case of his removal or discharge or death) the date of his removal or discharge or death.

169b. The Director-General shall, upon the discharge from any institution of a person who considers himself to have been unjustly confined as a mental defective, furnish to him upon his request, free of expense, a copy of the order or request and certificate or certificates upon which he was received into the institution.

Copies of documents.
Cf. U.K. 53
Vict. c. 5,
s. 81.

Inserted by
31, 1939,
s. 16.

170. The production of a copy of the *Government Gazette* purporting to contain a proclamation made under this Act, or a notification of any appointment or dismissal or other matter or thing made or done under this Act, shall be sufficient evidence of the matters therein contained in all actions, suits, and proceedings and in all courts and other tribunals, and before all persons.

Gazette sufficient evidence of matters under the Act.
1122, 1913,
s. 160.

171. Proceedings in respect of offences against this Act not being constituted felonies or misdemeanours, and not being otherwise indictable offences, shall be disposed of summarily.

Summary procedure for other than indictable offences.
1122, 1913,
s. 161

PART IX.

Regulations.

1122, 1913,
s. 164.
2125, 1933,
s. 4 (a).
Cf. U.K.
3 & 4 Geo. 5
c. 28, s. 41.

Amended by
31, 1939,
s. 3 (3).

172. (1) The Governor may, from time to time (subject, as regards the matters mentioned in subsection (2) of section 15 to the recommendation therein mentioned), make all such regulations as are by this Act required, permitted, or contemplated to be made and all such regulations as may be necessary or convenient for carrying into effect the objects and purposes expressed in or implied by this Act, in all respects other than those mentioned in section 168, including, though without in any way limiting the effect of this section, regulations as to the following matters:—

- i. The functions, powers, and duties of the Director-General;
- ii. The functions, powers, and duties of superintendents and other officers of and servants in institutions and of other officers and persons under this Act;
- iii. The government and management of institutions;
- iv. The classification of patients;
- v. The care and treatment of patients or of the different classes of patients;
- vi. The forms and modes of proceedings under this Act;
- vii. The forms to be used for the purposes of this Act in cases where forms are not set out in the schedules to this Act, or in substitution for any forms so set out; and
- viii. Penalties for breaches of regulations, not exceeding in any case the sum of twenty pounds.

(2) Any regulations made under this section may be made to apply to or in respect of all institutions or any specified institutions or institution.

(3) All regulations made under this section shall be made in manner provided by section 38 of the Acts Interpretation Act, 1915, and shall (subject as by subsection (2) of the said section provided) be of the same effect as if they were contained in this Act.

(4) All rules made by the Governor under section 106 of the Lunatics Act, 1864, which are in force at the commencement of this Act shall, except so far as inconsistent with this Act, continue in force until repealed by regulation made under this Act. Any such rule, though not expressly repealed, shall be deemed to be repealed in so far as it is inconsistent with this Act or any regulation made under this Act.

173. The moneys required for the purposes of this Act shall be provided by the Treasurer out of moneys provided by Parliament for the purposes of this Act.

How expenses
to be
provided.
1122, 1913,
s. 165.

SCHEDULES.

THE FIRST SCHEDULE.

Mental Defectives Act, 1935.

Section 24,
1122, 1913,
First
Schedule.

ORDER OF JUSTICE FOR THE APPREHENSION OF A PERSON BELIEVED TO BE MENTALLY DEFECTIVE AND WITHOUT SUFFICIENT MEANS OF SUPPORT, OR, ETC., ETC.

To _____, a member of the Police Force of South Australia, and to all other members of the said force.

Whereas it has been made to appear to me the undersigned [full name], a justice of the peace for the State of South Australia, by complaint on oath that _____ of [residence and occupation, if any], a person believed to be mentally defective is without sufficient means of support (or is wandering at large), (or has been discovered under circumstances that denote a purpose of committing some offence against the law). Now I hereby require you to apprehend the said _____ and take him before any justice of the peace to be dealt with under the Mental Defectives Act, 1935.

Given under my hand this _____ day of _____, 19____, at _____, in the said State. _____, J.P.

THE SECOND SCHEDULE.

Mental Defectives Act, 1935.

Sections 25,
28, 31, 32, 33,
35,
1122, 1913,
Second
Schedule.

FORM OF MEDICAL CERTIFICATE FOR RECEPTION INTO A MENTAL HOSPITAL.

I, the undersigned [full name], of _____, in the State of South Australia, a duly qualified and registered medical practitioner of the said State, hereby certify that I, on the _____ day of _____, 19____, at [name of street, and number of house, or other like particulars, and name of town or other locality] in the said State [in a case where more than one medical certificate is required by the Act, here insert separately from any other medical practitioner] personally examined _____, of [residence and occupation, if any], and that the said _____ is mentally defective within the meaning of the Mental Defectives Act, 1935, and a proper person to be taken charge of and detained under care and treatment, and that I have formed this opinion on the following grounds, viz.:-

- 1. Facts observed by myself [here state the facts].
2. Other facts [if any] communicated to me by others [here state the information and by whom communicated].

Dated this _____ day of _____, 19____.

Signature
Qualifications
Place of abode.....

Mental Defectives Act, 1935-1953.

THE THIRD SCHEDULE.

Mental Defectives Act, 1935.

ORDER BY ONE JUSTICE FOR THE RECEPTION OF A PATIENT IN A MENTAL HOSPITAL.

Section 25, 1122, 1913, Third Schedule.

Amended by regulation Gazette 27th May, 1937, p. 1206, and by 31, 1939, s. 17.

I, the undersigned [full name], a justice of the peace for the State of South Australia, [before whom a complaint was laid pursuant to section 24 of the Mental Defectives Act, 1935] having called to my assistance of [residence and occupation], a duly qualified medical practitioner of the said State, and having personally examined [residence and occupation] of [residence and occupation, if any] and made such inquiry as to the said [residence and occupation] as I have deemed necessary, am satisfied that the said [residence and occupation] is mentally defective and is without sufficient means of support (or was found wandering at large) (or was found under circumstances denoting a purpose of committing some offence against the law) and is a proper person to be taken charge of and detained under care and treatment: Now I do therefore hereby direct that you, the Superintendent of the mental hospital at [residence and occupation], do receive and detain the said [residence and occupation] as a patient therein. And I do hereby authorize and appoint you [full name] of [address and occupation] [or you (full name) of (address) a member of the Police Force of South Australia and all other members of the said force] to remove the said [residence and occupation] forthwith to the said mental hospital and deliver him [or her] to the Superintendent thereof, together with this order and such other documents as are required by the Mental Defectives Act, 1935, to accompany this order.

Given under my hand this [day of month] day of [month] 19 [year], at [place], in the State of South Australia. [Signature], J.P.

THE FOURTH SCHEDULE.

Mental Defectives Act, 1935.

STATEMENT OF PARTICULARS.

Sections 25, 28, 30, 31, 32, 35, 1122, 1913, Fourth Schedule.

[If any particulars are not known, it is to be so stated.]

- Name of patient, and Christian name at length.....
Sex and age.....
Married, single, or widowed.....
Number of children.....
Age of youngest child.....
Previous occupation (if any).....
Habits of life.....
Native place.....
The religious persuasion, as far as known.....
Previous place of abode.....
Whether first attack.....
Age on first attack.....
When and where previously under care and treatment.....
Duration of existing attack.....
Supposed cause.....
Whether subject to epilepsy.....
Whether suicidal.....
Whether dangerous to others.....
Whether, destructive.....
Name and Christian name and place of abode of the nearest known relative of the patient, and degree of relationship.....
Names of mentally defective relatives (if any).....

I (or we) certify that to the best of my (or our) knowledge the above particulars are correctly stated.

[Signatures.]

THE FIFTH SCHEDULE.

Mental Defectives Act, 1935.

Section 27.
1122, 1913,
Fifth
Schedule.

ORDER OF JUSTICE FOR THE EXAMINATION OF A PERSON BELIEVED TO BE MENTALLY DEFECTIVE AND NOT UNDER PROPER CARE AND CONTROL, OR, ETC.

Whereas it has been made to appear to me the undersigned [*full name*], a justice of the peace for the State of South Australia, upon complaint on oath that of [*residence and occupation, if any*] a person believed to be mentally defective is not under proper care and control (*or is cruelly treated or neglected by a person having or assuming the care or charge of him or her*). Now I hereby direct and authorize you , a duly qualified medical practitioner to visit and examine the said and make inquiry and report to me in writing your opinion thereon.

Given under my hand this day of , 19 ,
at , in the said State. , J.P.

THE SIXTH SCHEDULE.

Mental Defectives Act, 1935.

Section 27.
1122, 1913,
Sixth
Schedule.

ORDER OF JUSTICE FOR THE APPREHENSION OF A PERSON BELIEVED TO BE MENTALLY DEFECTIVE AND NOT UNDER PROPER CARE AND CONTROL, OR, ETC.

To a member of the Police Force of South Australia and to all other members of the said force.

Whereas it has been made to appear to me the undersigned [*full name*] a justice of the peace for the State of South Australia, upon complaint on oath that of [*residence and occupation, if any*], a person believed to be mentally defective is not under proper care and control (*or is cruelly treated or neglected by a person having or assuming the care or charge of him or her*). And whereas it appears to me upon a personal visit to and examination of the said and inquiry by me into the matter so appearing upon such information (*or upon the report of a duly qualified medical practitioner directed and authorized by me by an order under my hand to visit and examine the said , and to inquire into the matter so appearing upon such information and to report to me in writing his opinion thereupon*) that the said is a mentally defective person, and is not under proper care and control (*or is cruelly treated or neglected by the person having or assuming the care or charge of him or her*). Now I require you to apprehend the said and take him before any two justices of the peace to be dealt with under the Mental Defectives Act, 1935.

Given under my hand this day of , 19 ,
at , in the said State. , J.P.

THE SEVENTH SCHEDULE.

Mental Defectives Act, 1935.

Section 28.
1122, 1913,
Seventh
Schedule.

ORDER BY TWO JUSTICES FOR RECEPTION OF PATIENT IN A MENTAL HOSPITAL.

We, the undersigned [*full names*], justices of the peace for the State of South Australia, having called to our assistance , of , a duly qualified medical practitioner of the said State, and having personally examined , of [*residence and occupation, if any*], who has pursuant to complaint laid pursuant to section 27 of the Mental Defectives Act, 1935, been brought before us as being believed to be mentally defective, and made such inquiry as to the said as we have deemed necessary, are satisfied that the said is mentally defective and is not under proper care and control (*or is cruelly treated or neglected by the person having or assuming the care or charge of him or her*), and is a proper person to be taken charge of and detained under care and treatment: Now we do therefore hereby direct that you, the superintendent of the mental hospital at do receive and detain the said

Amended by
regulation
Gazette 27th
May, 1937,
p. 1206, and
by 31, 1939,
s. 18.

Mental Defectives Act, 1935-1953.

as a patient therein. And we do hereby authorize and appoint you [full name] of [address and occupation] [or you (full name) of (address) a member of the Police Force of South Australia and all other members of the said force] to remove the said [full name] forthwith to the said mental hospital and deliver him (or her) to the superintendent thereof, together with this order, and such other documents as are required by the Mental Defectives Act, 1935, to accompany this order.

Given under our hands this _____ day of _____, 19____,
at _____, in the said State.

, J.P.
, J.P.

Section 30,
1122, 1913,
Eighth
Schedule.

THE EIGHTH SCHEDULE.

Mental Defectives Act, 1935.

Amended by
31, 1939,
s. 19.

REQUEST BY COMMITTEE FOR RECEPTION OF PERSON INTO A MENTAL HOSPITAL.

I, the undersigned [full name] of [address and occupation] being the committee appointed by the Supreme Court of the State of South Australia of [full name], a person found by inquisition (or by the Supreme Court of South Australia) to be a mental defective within the meaning of the Mental Defectives Act, 1935, hereby request you to receive the said [full name] into the mental hospital at _____ of which you are the superintendent.

Dated this _____ day of _____, 19____.
[Signature].

To
Superintendent of the Mental Hospital at _____

Section 31,
1122, 1913,
Ninth
Schedule.

THE NINTH SCHEDULE.

Mental Defectives Act, 1935.

REQUEST FOR RECEPTION OF PERSON INTO MENTAL HOSPITAL.

I, the undersigned, hereby request you to receive _____, of [address and occupation, if any] a person certified to be mentally defective, as a patient into the mental hospital of which you are the superintendent. [If the request is accompanied by the certificate of only one medical practitioner, here set forth the special and urgent circumstances relied on.]

Full name of person signing the request.....
Occupation of that person.....
Abode of that person.....
Degree of relationship or other connection (if any) of that person with the proposed patient.....

Dated this _____ day of _____, 19____.
[Signature].

To
Superintendent of the Mental Hospital at _____

THE TENTH SCHEDULE.

Mental Defectives Act, 1935.

Sections 32,
35, 47,
1122, 1913,
Tenth
Schedule.

FORM OF MEDICAL CERTIFICATE FOR RECEPTION INTO A RECEIVING HOUSE OR RECEIVING WARD.

I, the undersigned [*full name*], of _____, in the State of South Australia, a duly qualified and registered medical practitioner of the said State, hereby certify that I, on the _____ day of _____, 19____, at [*name of street, number of house or other like particulars, and name of town or other locality*] in the said State, personally examined _____ of [*residence and occupation, if any*], and that the said _____ is apparently mentally defective within the meaning of the Mental Defectives Act, 1935, but as the symptoms of mental defect are not sufficiently marked to enable me to certify that the said _____ is mentally defective as aforesaid the said _____ is in my opinion a proper person to be received into a receiving house or receiving ward. And I further certify that I have formed my opinions on the following grounds, viz.:—

1. Facts observed by myself [*here state the facts*].
2. Other facts [*if any*] communicated to me by others [*here state the information and by whom communicated*].

Dated this _____ day of _____, 19____.

Signature
Qualifications
Place of abode.....

THE ELEVENTH SCHEDULE.

FORM No. 1.

Mental Defectives Act, 1935.

Section 32,
1122, 1913,
Eleventh
Schedule.

ORDER BY ONE JUSTICE FOR THE RECEPTION OF A PATIENT IN A RECEIVING HOUSE OR RECEIVING WARD.

Amended by
S.L.R. Act,
1936, by
regulation,
Gazette 27th
May, 1937,
p. 1206, by
31, 1939,
s. 20 (a),
and by 53,
1953, s. 5 (1).

I, the undersigned [*name*], a justice of the peace for the State of South Australia, having called to my assistance _____ of _____, a duly qualified medical practitioner of the said State, and having personally examined _____ of [*residence and occupation, if any*] and made such inquiry as to the said _____ as I have deemed necessary, am satisfied that the said _____ is without sufficient means of support [*or was wandering at large*] [*or was found under circumstances denoting a purpose of committing some offence against the law*] and the said [*name of medical practitioner*] having signed the attached certificate as to the said _____ in the form of the tenth schedule [*or the second schedule*] to the Mental Defectives Act, 1935, (*or* and I being of opinion that it is advisable to remand the said _____) I do hereby direct that you, the superintendent of the receiving house (*or* receiving ward) at _____, do receive and detain the said _____ as a patient therein for the period of thirty days [*or such period not exceeding thirty days as is ordered*] from the date of his reception therein under this order; and I further direct you, the said superintendent, to bring the said _____ before a justice of the peace as required by the said Act to be dealt with thereunder. And I do hereby authorize and direct you [*full name*] of [*address and occupation*] [*or you (full name) of (address)*] a member of the Police Force of South Australia and all other members of the said force] to remove the said _____ forthwith to the said receiving house (*or* receiving ward), and deliver him (*or* her) to the superintendent thereof, together with this order and such other documents as are required by the said Act to accompany this order.

Given under my hand this _____ day of _____, 19____,
at _____, in the State of South Australia.

, J.P.

Mental Defectives Act, 1935-1953.

Section 32.

FORM No. 2.

Amended by
S.L.E. Act,
1936, by
regulation,
Gazette 27th
May, 1937,
p. 1206, by
31, 1939,
s. 20 (b), by
14, 1945, s. 8,
and by 53,
1953, s. 5
(2).

Mental Defectives Act, 1935.

ORDER BY TWO JUSTICES FOR THE RECEPTION OF A PATIENT IN
A RECEIVING HOUSE OR RECEIVING WARD.

We, the undersigned [names], justices of the peace for the State of South Australia, having called to our assistance _____, of _____, a duly qualified medical practitioner of the said State, and having personally examined _____ of [residence and occupation, if any] and made such inquiry as to the said _____ as we have deemed necessary, are satisfied that the said _____ is not under proper care and control [or is cruelly treated or neglected by the person having or assuming the care or charge of him or her], and the said [name of medical practitioner] having signed the attached certificate as to the said _____ in the form of the tenth schedule [or the second schedule] to the Mental Defectives Act, 1935, (or and we being of opinion that it is advisable to remand the said _____). We do hereby direct that you, the superintendent of the receiving house (or receiving ward) at _____, do receive and detain the said _____ as a patient therein for a period of thirty days [or such period not exceeding thirty days as is ordered] from the date of his reception therein under this order; and we further direct you, the said superintendent, to bring the said _____ before a justice of the peace as required by the said Act to be dealt with thereunder. And we do hereby authorize and direct you [full name] of [address and occupation] [or you (full name) of (address) a member of the Police Force of South Australia and all other members of the said force] to remove the said _____ forthwith to the said receiving house (or receiving ward) and deliver him (or her) to the superintendent thereof, together with this order and such other documents as are required by the said Act to accompany this order.

Given under our hands the _____ day of _____, 19____, at _____, in the State of South Australia.

_____, J.P.
_____, J.P.

Section 33.
1122, 1913,
Twelfth
Schedule.

Amended by
regulation,
Gazette 27th
May, 1937,
p. 1206.

THE TWELFTH SCHEDULE.

Mental Defectives Act, 1935.

ORDER BY A JUSTICE FOR REMOVAL OF PATIENT FROM A RECEIVING
HOUSE OR RECEIVING WARD TO A MENTAL HOSPITAL.

I, the undersigned [name], a justice of the peace for the State of South Australia, having called to my assistance _____, of _____, a duly qualified medical practitioner of the said State, and having personally examined _____ of [residence and occupation, if any], a person received into the receiving house (or receiving ward) at _____ under the Mental Defectives Act, 1935, and made such inquiry as to the said _____ as I have deemed necessary, am satisfied that the said _____ is a proper person to be taken charge of and detained under care and treatment in a mental hospital: Now I do therefore hereby direct that you, the superintendent of the mental hospital at _____, do receive and detain the said _____ as a patient therein. And I do hereby authorize and appoint you [full name] of [address and occupation] [or you (full name) of (address) a member of the Police Force of South Australia and all other members of the said force] to remove the said _____ forthwith and deliver him (or her) to the superintendent of the said mental hospital, together with this order.

Given under my hand this _____ day of _____, 19____, at _____ in the said State.

_____, J.P.

THE THIRTEENTH SCHEDULE.

Mental Defectives Act, 1935.

Section 33.
1122, 1913,
Thirteenth
Schedule.

Amended by
53, 1953, s. 5
(3).

ORDER BY A JUSTICE FOR FURTHER DETENTION OF PATIENT IN A RECEIVING HOUSE OR RECEIVING WARD.

I, the undersigned [*name*], a justice of the peace for the State of South Australia, having called to my assistance _____, of _____, a duly qualified medical practitioner of the said State, and having personally examined _____, of [*residence and occupation, if any*], a person received into the receiving house (*or* receiving ward) at _____, under the Mental Defectives Act, 1935, and made such inquiry as to the said _____ as I have deemed necessary, am of opinion that it is advisable that the said _____ be further detained in the said receiving house (*or* receiving ward): Now I do therefore hereby direct that the said _____ be detained in the said receiving house (*or* receiving ward) as a patient for a further period of thirty days [*or such period not exceeding thirty days as is ordered*] from the date hereof, and I direct you, the superintendent of the said receiving house (*or* receiving ward) to again bring the said _____ before a justice of the peace as required by the said Act to be dealt with thereunder.

Given under my hand this _____ day of _____, 19 _____, at _____, in the said State. _____, J.P.

THE FOURTEENTH SCHEDULE.

Mental Defectives Act, 1935.

Section 34.
1122, 1913,
Fourteenth
Schedule.
2125, 1933,
s. 5.

Amended by
regulation,
Gazette 27th
May, 1937,
p. 1206.

ORDER WHERE THERE IS NOT ACCOMMODATION IN A RECEIVING HOUSE OR RECEIVING WARD FOR A PATIENT.

Whereas I (*or* we) [*name or names*] a justice (*or* justices) of the peace for the State of South Australia, have given an order under my hand (*or* our hands) in the Form No. 1 (*or* No. 2) of the eleventh schedule to the Mental Defectives Act, 1935, directing that _____, of [*address and occupation, if any*] be removed to and received in the receiving house [*or* receiving ward] at _____: And whereas it has been made to appear to me (*or* us) that there is not proper accommodation in such house (*or* ward) for the said _____: And whereas arrangements have been made at _____ for the proper care and control of the said _____: Now I (*or* we) do hereby authorize and direct you [*full name*] of [*address and occupation*] [*or* you (*full name*) of (*address*) a member of the Police Force of South Australia and all other members of the said force] to remove the said _____ forthwith to the lastmentioned place, and that he (*or* she) be kept there until he (*or* she) can be received into the said receiving house (*or* receiving ward), and that when there is proper accommodation in such receiving house (*or* receiving ward) for the said _____ he be removed thereto and be received and detained therein by the superintendent thereof.

Given under my hand [*or* our hands] this _____ day of _____, 19 _____, at _____ in the said State. _____, J.P.
[J.P.]

Mental Defectives Act, 1935-1953.

Section 35.
1122, 1913,
Fifteenth
Schedule.

Amended by
31, 1939,
s. 21.

THE FIFTEENTH SCHEDULE.

Mental Defectives Act, 1935.

REQUEST FOR RECEPTION OF PERSON INTO RECEIVING HOUSE OR RECEIVING WARD.

I, the undersigned, hereby request you to receive of [address and occupation, if any], as a patient into the receiving house (or receiving ward) of which you are the superintendent, for a period of two calendar months, subject to the provisions of the Mental Defectives Act, 1935.

Full name of person signing the request.....

Occupation of that person.....

Abode of that person.....

Degree of relationship or other connection (if any) of that person with the proposed patient.....

Dated this day of , 19 .

[Signature.]

To Superintendent of the Receiving House (or Receiving Ward) at

Section 35.
1122, 1913,
Sixteenth
Schedule.

THE SIXTEENTH SCHEDULE.

Mental Defectives Act, 1935.

FORM OF RECOMMENDATION FOR RECEPTION INTO A RECEIVING WARD.

I, the undersigned [full name], of , in the State of South Australia, a duly qualified and registered medical practitioner of the said State, hereby certify that I, on the day of , 19 , at [name of street, number of house or other like particulars, and name of town or other locality] in the said State, personally examined , of [residence and occupation, if any], and I recommend that the said be received into the receiving ward at a public hospital.

Dated this day of , 19 .

Signature

Qualifications

Place of abode.....

Section 36.
1122, 1913,
Seventeenth
Schedule.

THE SEVENTEENTH SCHEDULE.

Mental Defectives Act, 1935.

ORDER BY MEDICAL SUPERINTENDENT FOR RECEPTION OF PERSON INTO RECEIVING WARD.

I, the undersigned medical superintendent [or as the case may be], of the public hospital at , being of opinion that of [address and occupation, if any], a patient now under treatment in the said hospital should be removed to the receiving ward therein, hereby order that the said be received and detained in the said receiving ward for a period of one calendar month, subject to the provisions of the Mental Defectives Act, 1935.

Dated this day of , 19 .

[Signature.]

Date of last previous reception (if any).	
No. in order of reception.	
Date of reception.	
Christian names and surnames at length.	
Male	Sex.
Female.	
Age.	
Married.	Condition as to Marriage.
Single.	
Widowed or Divorced.	
Condition of life and previous occupation.	
Previous place of abode.	
Native place.	
By whose authority sent.	
Dates of medical certificates, and by whom signed.	
Bodily condition.	
Name of bodily disorder (if any).	
Form of mental disorder.	
Supposed cause of mental defect.	
Epileptics.	
Religion.	
Years.	Duration of existing Attacks.
Months.	
Days.	
Number of previous attacks.	
Age on first attacks.	
Date commenced.	Trial Leave.
Date returned.	
Date.	Discharged.
Recovered.	
Relieved.	
Not improved.	
Date (outwards).	Transferred or Removed.
Relieved.	
Not improved.	
Date (inwards).	
Died. Date.	
Observations.	

THE TWENTIETH SCHEDULE.
MENTAL DEFECTIVES ACT, 1935.—REGISTER OF PATIENTS.

THE TWENTY-FIRST SCHEDULE.

Mental Defectives Act, 1935.

MEDICAL JOURNAL.

Section 58.
1122, 1913,
Twenty-first
Schedule.

Date.	Number of Patients.		Patients who are, or since the last entry have been under restraint, or in seclusion, when and for what period and reasons, and in case of restraint by what means.		Patients under Medical Treatment, and for what (if any) bodily disorder.		Condition of the Institution.	Deaths, Injuries, and Violence to Patients since last entry.
	Males.	Females.	Males.	Females.	Males.	Females.		

THE TWENTY-SECOND SCHEDULE.

Mental Defectives Act, 1935.

SUMMONS.

I, the undersigned, being the Director-General of Medical Services (or an Official Visitor of the Mental Hospital or receiving house or receiving ward or hospital for criminal mental defectives at _____) appointed under and by virtue of the Mental Defectives Act, 1935, do hereby summon and require you personally to appear before me at _____ on next the _____ day of _____ at the hour of _____ in the _____ noon, then and there to be examined and to testify the truth concerning certain matters relating to the execution of the said Act.

Given under my hand this _____ day of _____, 19 _____
Director-General (or Official Visitor).

Section 66.
1122, 1913,
Twenty-first
Schedule as
altered by
Order in
Council,
Government
Gazette,
2/12/15.
Amended by
31, 1939, s. 3
(2), (3).

Mental Defectives Act, 1935-1953.

THE TWENTY-THIRD SCHEDULE.

Mental Defectives Act, 1935.

CERTIFICATE OF DIRECTOR-GENERAL OR SUPERINTENDENT THAT PATIENT FIT TO BE BOARDED OUT.

Section 86.
1122, 1913,
Twenty-third
Schedule as
altered by
Order in
Council,
Government
Gazette,
2/12/15.

Amended by
31, 1939, s. 3,
(2), (3).

I, the undersigned, the Director-General of Medical Services (or Superintendent of the Mental Hospital hereinafter mentioned), hereby certify that a patient detained in the Mental Hospital at _____, is harmless and is free from any symptoms indicating any tendency of a character dangerous either to the patient himself or to others.

Dated this _____ day of _____, 19____
Director-General (or Superintendent of the said Mental Hospital).

THE TWENTY-FOURTH SCHEDULE.

Mental Defectives Act, 1935.

REQUEST TO RECEIVE A PATIENT.

Section 147.
1306, 1917,
First
Schedule.

Amended by
42, 1941, s. 7.

To, _____, Superintendent of the Home at _____
I, the undersigned, hereby request you to receive a person to whom Part VII. of the Mental Defectives Act, 1935, applies, into the home of which you are the superintendent.

Annexed is a statement regarding the said

Dated this _____ day of _____ one thousand nine
hundred and _____ at _____ in the State of South Australia.
[Signed] _____

_____, Commanding Officer.

STATEMENT.

(If any particulars are not known, it is to be so stated.)

Name of patient, with Christian name at length.....
Sex and age.....
Married, single, or widowed.....
Number of children.....
Age of youngest child.....
Previous occupation (if any).....
Habits of life.....
Native place.....
Religious persuasion, as far as known.....
Previous place of abode.....
Whether first attack.....
Age (if known) on first attack.....
When and where previously under care and treatment.....
Probable duration of existing attack.....
Supposed cause.....
Whether subject to epilepsy.....
Whether suicidal.....
Whether dangerous to others.....
Whether destructive.....
Name and Christian names and places of abode and degree of relationship of one or more of the relatives of the patient (if possible).....
Names of mentally defective relatives (if any).....
Particulars of naval, military, or air service.....

[Signed]

_____, Commanding Officer.

THE TWENTY-FIFTH SCHEDULE.
Mental Defectives Act, 1935.
REGISTER OF PATIENTS.

Date of Reception.	Name in full.		Sex.		Age.	Condition as to Marriage.			Occupation (Rank and Unit or Ship).	Address of Relatives.	Form of Mental Disorder.	Causation.	Physical Condition.	Discharged.				Remarks.	
	Male.	Female.	M.	S.		W.	Cured.	Not Improved.						Committed to Mental Hospital.	Death. (cause and date of).				

Section 149.
1906, 1917,
Second
Schedule.

Mental Defectives Act, 1935-1953.

Section 149.
1306, 1917,
Third
Schedule.

Amended by
31, 1939, s. 3
(2) and 42,
1941, s. 8.

THE TWENTY-SIXTH SCHEDULE.

FORM No. 1.

Mental Defectives Act, 1935.

NOTICE OF ADMISSION.

.....Home.

I, the undersigned, hereby give you notice that _____ was admitted into this home pursuant to Part VII. of the Mental Defectives Act, 1935, as a patient at the hour of _____ o'clock in the _____ noon on the _____ day of _____ one thousand nine hundred and _____

Dated this _____ day of _____ one thousand nine hundred and _____

[Signed]

_____, Superintendent of the Home.

To the Director-General of Medical Services, South Australia.

Section 149.

FORM No. 2.

Mental Defectives Act, 1935.

NOTICE OF DEATH, DISCHARGE, REMOVAL, ETC.

.....Home.

I hereby give you notice that _____ a patient received into this home pursuant to Part VII. of the Mental Defectives Act, 1935, on the _____ day of _____ nineteen hundred and _____ (a) on the _____ day of _____ nineteen hundred and _____

Dated the _____ day of _____ one thousand nine hundred and _____ and _____

[Signed]

_____, Superintendent of the Home.

To the Director-General of Medical Services, South Australia.

(a) State if died, discharged therefrom, or was removed to (mentioning the place to which removed), or escaped, or was recaptured.

Section 150.
1306, 1917,
Fourth
Schedule.

Amended by
31, 1939,
s. 3 (2) and
by 42, 1941,
s. 9.

THE TWENTY-SEVENTH SCHEDULE.

FORM No. 1.

Mental Defectives Act, 1935.

RECOMMENDATION FOR DISCHARGE.

.....Home.

Having personally examined _____ as well as the several persons under whose immediate care _____ has been since admission into this home pursuant to Part VII. of the Mental Defectives Act, 1935, I hereby certify that there is no longer sufficient cause for _____ detention, and I hereby recommend that the said _____ be forthwith discharged.

Dated the _____ day of _____ nineteen hundred and _____

[Signed]

_____, Superintendent or Visiting Medical Practitioner.

To the Director-General of Medical Services, South Australia.

FORM No. 2.

Mental Defectives Act, 1935.

ORDER FOR DISCHARGE

.....*Home.*

Section 150.

Amended by
31, 1939, s. 3
(3) and by
42, 1941, s. 9.

To the Superintendent of the home at

Whereas it has been duly certified to me that there is no longer sufficient cause for patient being detained pursuant to Part VII. of the Mental Defectives Act, 1935, at the home at I hereby, in pursuance of the powers in me vested, order the discharge of the said forthwith.

Given under my hand, at Adelaide, this
nineteen hundred and

day of

, Director-General.

THE TWENTY-EIGHTH SCHEDULE.

ACTS REPEALED.

Number and Year.	Short Title.
No. 1122 of 1913	The Mental Defectives Act, 1913.
No. 1159 of 1914	The Mental Defectives Act Amendment Act, 1914.
No. 1306 of 1917	Mental Treatment (War) Act, 1917.
No. 1532 of 1922	Mental Defectives Act Amendment Act, 1922.
No. 2125 of 1933	Mental Defectives Act Amendment Act, 1933.



OFFENDERS PROBATION ACT, 1913-1953.

BEING

THE OFFENDERS PROBATION ACT, 1913, No 1121 OF 1913
[ASSENTED TO 11TH DECEMBER, 1913.]

AS AMENDED BY

STATUTE LAW REVISION ACT, 1934, No. 2168 OF 1934
[ASSENTED TO 15TH NOVEMBER, 1934.]

OFFENDERS PROBATION ACT AMENDMENT ACT, 1945, No. 25 OF 1945
[ASSENTED TO 20TH DECEMBER, 1945.]

OFFENDERS PROBATION ACT AMENDMENT ACT, 1951, No. 29 OF 1951
[ASSENTED TO 22ND NOVEMBER, 1951.]

AND

OFFENDERS PROBATION ACT AMENDMENT ACT, 1953, No. 15 OF 1953
[ASSENTED TO 5TH NOVEMBER, 1953.]

An Act to permit the release on probation of offenders in certain cases, and for other matters incidental thereto.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short title.

1. This Act may be cited as the "Offenders Probation Act, 1913-1953."

Interpretation

2. In this Act, unless a contrary intention clearly appears,—

"court" means—

- (a) the Supreme Court or Judge thereof, or
- (b) the justice or justices,

before which or before whom a person is charged with any offence:

"court of summary jurisdiction" means a court constituted of one or more justices having jurisdiction to try persons charged with offences punishable on summary conviction, including (though without limiting the meaning of this definition) cases where such jurisdiction exists only with the consent of the person charged:

“justice” means justice of the peace for the State of South Australia, and includes a special magistrate:

“Minister” means the Minister of the Crown to whom, for the time being, the administration of this Act is committed by the Governor:

“offence” includes—

(a) any indictable offence;

(b) any offence punishable on summary conviction:

“probationer” means any person with respect to whom a probation order is made:

“probation order” means an order made under section 4 for the conditional discharge of an offender:

“probative court” means the court before which a probationer is bound by his recognizance under this Act to appear for sentence, or for conviction and sentence, as the case may be:

“this Act” includes any regulations made under this Act.

3. (1) “The Offenders Probation Act of 1887” is hereby Repeal. repealed.

(2) Such repeal shall not affect any right, privilege, interest, obligation, liability, or penalty created, existing, incurred, imposed, or liable to be imposed, before the passing of this Act, nor alter the effect of the doing or omission of anything before such passing.

4. (1) Where any person is charged before a court of summary jurisdiction with an offence punishable by such court, and the court thinks that the charge is proved, but is of opinion that, having regard to—

(a) the character, antecedents, age, health, or mental condition of the person charged, or

(b) the trivial nature of the offence, or

(c) the extenuating circumstances under which the offence was committed,

it is expedient to exercise any of the powers conferred by this subsection, the court may—

Power of courts to permit conditional discharge of offenders.

U.K. 7 Edw. 7 c. 17, s. 1

Subsection (1) substituted by 15, 1953, s. 3 (1).

s. 4. O’SULLIVAN v. WILKINSON (1952) S.A.S.R. 213. Extenuating circumstances means circumstances which excuse, in an appreciable degree, the commission of the offence charged.

- i. without convicting the person charged dismiss the information or complaint:
- ii. having convicted the said person discharge him without penalty;
- iii. without convicting or having convicted the said person discharge him conditionally on his entering into a recognizance, with or without sureties—
 - (i.) to be of good behaviour, and
 - (ii.) to appear before a court of summary jurisdiction for conviction and sentence, or for sentence, when called upon at any time during such period, not exceeding three years, as is specified in the order.

U.K. 7 Edw. 7
c. 17, s. 1.
(2).

(2) When any person has been convicted, otherwise than by a court of summary jurisdiction, of any offence punishable by imprisonment, and the court is of opinion that, having regard to—

- (a) the character, antecedents, age, health, or mental condition of the person convicted, or
- (b) the trivial nature of the offence, or
- (c) the extenuating circumstances under which the offence was committed,

it is inexpedient to inflict any punishment, or any other than a nominal punishment, or it is expedient to release the person convicted on probation, the court may, in lieu of imposing a sentence of imprisonment, make an order discharging such person conditionally on his entering into a recognizance, with or without sureties—

- (i.) to be of good behaviour, and
- (ii.) to appear before the Supreme Court or a Judge thereof for sentence when called upon at any time during such period, not exceeding three years, as is specified in the order.

(3) The court may, in addition to any order made under subsection (1) or subsection (2) hereof—

(a) order the probationer—

- i. to pay such damages for injury or compensation for loss (not exceeding in the case of a court of summary jurisdiction twenty-five pounds, or, if a higher limit is fixed by any enactment relating to the offence, that higher limit), and

Cf. 401,
1887, s. 4.
Cf. U.K.
16 & 17
Geo. 5 c. 13,
s. 1 (1).

ii. such costs of the proceedings as the court thinks reasonable; and

- (b) if the probationer is under the age of sixteen years, and it appears to the court that any parent or guardian of the probationer has by his conduct or neglect or otherwise conduced to the commission of the offence, order subject to paragraph i. of subdivision (a) of this subsection, payment of such damages and costs by such parent or guardian; and the court may direct when and to whom and in what instalments the amount ordered to be paid shall be paid.

(4) Any order under subsection (3) hereof may be enforced by any justice in the same manner as orders for the payment of money made by justices upon summary conviction are enforceable; and the court may, if it thinks fit, require the probationer, or, if he is under the age of sixteen years, his parent or guardian, to give security for the observance of such order, and may make the discharge of the probationer conditional upon such security being given.

Cf. 401, 1887, s. 4 (2), (3).

(5) Where any order is made under subsection (1) hereof without conviction of the person charged, such order shall, for the purpose of revesting or restoring stolen property, or of enabling the court to make orders for the restitution or delivery of property to the owner and for the payment of money upon or in connection with such restitution or delivery, have the same effect as a conviction.

U.K. 7 Edw. 7 c. 17, s. 1 (4).
Amended by 15, 1953, s. 3 (2).

5. (1) A recognizance to be entered into under section 4 shall, if the court so orders, contain—

Probation orders and conditions of recognizances.

- (a) a condition that the probationer shall be under the supervision of a probation officer during the period specified in the order, and

Cf. U.K. 7 Edw. 7 c. 17, s. 2.
Cf. U.K. 4 & 5 Geo. 5 c. 58, s. 8.

- (b) such other conditions for securing such supervision as are specified in the order, and

- (c) such additional conditions with respect to residence, abstention from intoxicating liquor, and any other matters, as the court may, having regard to the particular circumstances of the case, consider necessary or desirable for preventing a repetition of the same offence or the commission of other offences.

Substituted by 25, 1945, s. 3.

(2) The court by which a probation order is made shall furnish the probationer with a notice in writing stating in simple language the conditions he is required to observe.

(3) Any court upon making a probation order shall forthwith furnish the Minister with a copy thereof.

Probation officers.
Cf. 15 & 16
Geo. 5 c. 86,
s. 1.

6. (1) The Governor may appoint any persons of either sex to be probation officers for the purposes of this Act.

(2) All persons so appointed shall, for the purposes of this Act, be under the control of the Minister.

(3) The Minister shall, upon receipt of a copy of a probation order, assign the probationer named therein to a probation officer for supervision; and the Minister shall cause notice in writing to be given to such probationer stating to what probation officer he is assigned.

Duties of probation officers.
Cf. U.K.
7 Edw. 7
c. 17, s. 4.

7. It shall be the duty of every probation officer, subject to the regulations and to the directions of the Minister,—

- (a) to visit or receive reports from all probationers under his supervision at such reasonable intervals as are specified in their respective probation orders, or, subject thereto, as the probation officer thinks fit;
- (b) to see that every such probationer observes the conditions of his recognizance;
- (c) to diligently observe the behaviour of every such probationer;
- (d) to advise, assist, and befriend every such probationer, and when necessary, to endeavour to find him suitable employment;
- (e) to do all other matters and things prescribed;
- (f) to forward the prescribed reports to the Minister.

Duties of members of the police force.
Inserted by
29, 1951, s. 3.

7a. If a member of the police force has observed, or has received a report that any probationer has broken or failed to observe any condition of his recognizance, that member shall forthwith take such action as is proper, having regard to his rank and the rules of the police force, to ensure that the facts so observed or reported are reported to the probation officer or other person under whose supervision the probationer has been placed. The fact that a report has not been made under the preceding provisions of this section shall in no way affect any liability of any person under any recognizance.

8. The probative court may—

- (a) upon the application of the Minister or any person authorized by him in that behalf, and after notice to a probationer, vary the conditions of such probationer's recognizance;
- (b) on being satisfied that a probationer's conduct has been such as to make it unnecessary that he should remain longer under supervision, discharge his recognizance.

Power to vary conditions of discharge.
Cf. 4 & 5 Geo. 5 c. 58, s. 9.

9. (1) If the probative court, or any court of summary jurisdiction, is satisfied by information on oath that a probationer has failed to observe any of the conditions of his recognizance, such court may—

- (a) issue a warrant for such probationers' apprehension, or
- (b) if it thinks fit, issue a summons to such probationer and his sureties (if any) requiring him, or requiring him and them, to attend at such place and at such time as is specified in the summons.

Provision in case of probationer's failing to observe conditions of discharge.
Cf. 401, 1887, s. 6.
Cf. U.K. 7 Edw. 7 c. 17, s. 6.
Cf. U.K. 22 & 23 Geo. 5 c. 46, s. 78.

(2) The probationer, when apprehended, shall, if not brought forthwith before the probative court, be brought before a court of summary jurisdiction.

(3) The court before which a probationer is brought on apprehension, or before which he appears in answer to such summons as aforesaid, may, if it is not the probative court, remand him to custody or on bail until he can be brought before the probative court.

(4) The probative court on being satisfied that the probationer has failed to observe any condition of his recognizance, may forthwith, without further proof of his guilt, sentence him for the original offence, or, if he has not already been convicted thereof, convict and sentence him for the original offence.

10. (1) The Governor may make any regulations which may be necessary or convenient for carrying out or giving effect to the provisions or objects of this Act, including regulations prescribing such matters as are incidental to—

- (a) the appointment, resignation, and removal of probation officers;
- (b) the duties of probation officers;

Regulations.
U.K. 7 Edw. 7 c. 17, s. 17.

(c) the reports of probation officers to the Minister.

(2) All regulations made under this Act—

(a) shall be published in the *Government Gazette*;

(b) from the date of such publication, or from a later date fixed by the order making the same, shall (subject to subsection (3) hereof) be of the same effect as if they were contained in this Act, and

(c) shall be laid before both Houses of Parliament within fourteen days after publication, if Parliament is in session, and if not, then within fourteen days after the commencement of the next session.

(3) If either House of Parliament passes a resolution disallowing any such regulation, of which resolution notice has been given at any time within fourteen sitting days of such House after such regulation has been laid before it, such regulation shall thereupon cease to have effect, but without affecting the validity or curing the invalidity of anything done, or of the omission of anything, in the meantime.

This subsection shall apply notwithstanding that the said fourteen sitting days, or some of them, do not occur in the same session of Parliament as that in which the regulation is laid before such House.

(4) When a resolution has been passed as mentioned in subsection (3) hereof, notice of such resolution shall forthwith be published in the *Government Gazette*.

11. Nothing in this Act contained shall affect the Maintenance Act, 1926, or any amendment thereof.

Act not
to affect
Maintenance
Act, 1926.

Amended by
S.L.R. Act,
1934.

Preservation
of powers
conferred by
other Acts or
law.

12. Nothing in this Act shall be construed as taking away or in any way derogating from or diminishing any power or jurisdiction conferred by any Act or otherwise by law upon any court or any person acting judicially.