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Mental Health (Scotland) Act 1984

1984 CHAPTER 36

PART V

ADMISSION TO AND DETENTION IN HOSPITAL AND GUARDIANSHIP

Duration of authority for guardianship and discharge of patients

47 Duration of authority: guardianship.

- (1) Subject to the provisions of this Part of this Act, a patient received into guardianship in pursuance of a guardianship application, may be kept under guardianship for a period not exceeding 6 months beginning with the day on which he was so received, but shall not be so kept for any longer period unless the authority for his guardianship is renewed under the following provisions of this section.
- (2) Authority for the guardianship of a patient may, unless the patient has previously been discharged, be renewed under this section—
 - (a) from the expiration of the period referred to in subsection (1) of this section, for a further period of 6 months;
 - (b) from the expiration of any period of renewal under paragraph (a) of this subsection, for a further period of one year, and so on for periods of one year at a time.
- (3) Within the period of 2 months ending with the day on which a patient who is subject to guardianship under this Part of this Act would cease under this section to be so liable in default of the renewal of the authority for his guardianship—
 - (a) the responsible medical officer shall examine the patient or obtain from another medical practitioner a report on the condition of the patient; and, if it appears to him that the ground set out in section 36(a) of this Act continues to apply in relation to the patient, he shall furnish to such mental health officer as the local authority concerned may direct a report to that effect in the prescribed form along with the report first mentioned if such a report has been obtained; and

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- (b) that mental health officer shall consider whether the ground set out in section 36(b) of this Act continues to apply in relation to the patient; and, if it appears to him that it does continue so to apply, he shall furnish to the local authority concerned and to the Mental Welfare Commission a report to that effect in the prescribed form along with the report or reports furnished to him under paragraph (a) of this subsection.
- (4) Subject to subsection (6) of this section and section 50(2) and (5) of this Act, where a report is duly furnished to a local authority under subsection (3) of this section, the authority for the guardianship of the patient shall be thereby renewed for the period prescribed in that case by subsection (2) of this section.
- (5) Where a report under this section is furnished to them in respect of a patient, the local authority shall, unless they discharge the patient, cause him, his nearest relative and his guardian, to be informed.)
- (6) Any patient may within the period for which the authority for his guardianship is renewed by virtue of a report furnished in respect of him under this section appeal to the sheriff to order his discharge and the provisions of section 50(2) and (5) of this Act shall apply in relation to such an appeal.

48 Special provisions as to patients absent without leave: guardianship.

- (1) If on the day on which, under this Part of this Act apart from this section, a patient would cease to be subject to guardianship, or within the period of one week ending with that day, the patient is absent without leave, he shall not cease to be so subject—
- (a) in any case, until the expiration of the period during which he can be taken into custody under section 44 of this Act, or the day on which he returns or is returned to the place where he ought to be, whichever is the earlier; and
- (b) if he returns or is returned as aforesaid within the period first mentioned in the foregoing paragraph, until the expiration of the period of one week beginning with the day on which he is returned or returns as aforesaid.
- (2) Where the period for which a patient is subject to guardianship is extended by virtue of this section, any examination and report to be made and furnished under section 47(3) of this Act may be made and furnished within that period as so extended.
- (3) Where the authority for the guardianship of a patient is renewed by virtue of this section after the day on which, apart from this section, that authority would have expired under section 47 of this Act, the renewal shall take effect as from that day.

VALID FROM 01/04/1996

48A ^{F1}Patients who are taken into custody or return within 28 days: guardianship.

- (1) This section applies where a patient who is absent without leave is taken into custody under section 44 of this Act, or returns to the place where he ought to be, not later than the end of the period of 28 days beginning with the first day of his absence without leave.
- (2) Where the period for which the patient is subject to guardianship is extended by section 48 of this Act, any examination and report to be made and furnished in respect

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of the patient under section 47(3) of this Act may be made and furnished within the period as so extended.

- (3) Where the authority for the guardianship of a patient is renewed by virtue of subsection (2) above after the day on which (apart from section 44 of this Act) that authority would have expired, the renewal shall take effect as from that day.

Textual Amendments

F1 S. 48, 48A, 48B substituted for s. 48 (1.4.1996) by 1995 c. 52, ss. 5(7), 7(2)

VALID FROM 01/04/1996

48B ^{F2}Patients who are taken into custody or return after more than 28 days: guardianship.

- (1) This section applies where a patient who is absent without leave is taken into custody under section 44 of this Act, or returns to the place where he ought to be, later than the end of the period of 28 days beginning with the first day of his absence without leave.
- (2) Within the period of one week beginning with the day on which the patient returns, or is returned, to the place where he ought to be—
 - (a) the responsible medical officer shall examine the patient or obtain from another medical practitioner a report on the condition of the patient; and, if it appears to him that the ground set out in section 36(a) of this Act continues to apply in relation to the patient, he shall furnish to such mental health officer as the local authority concerned may direct a report to that effect in the prescribed form, along with the report first mentioned if such a report has been obtained; and
 - (b) the mental health officer shall consider whether the ground set out in section 36(a) of this Act continues to apply in relation to the patient; and, if it appears to him it does continue so to apply, he shall furnish to the local authority concerned and to the Mental Welfare Commission a report to that effect in the prescribed form along with the report or reports furnished to him under paragraph (a) of this subsection.
- (3) Where a report under this section is furnished to them in respect of a patient, the local authority shall, unless they discharge the patient, cause him, his nearest relative and his guardian to be informed.
- (4) Where the patient would (apart from any renewal of the authority for his guardianship on or after the day on which he is returned or returns to the place where he ought to be) be subject to guardianship after the end of the period of one week beginning with that day, he shall cease to be so subject at the end of that period unless a report is duly furnished in respect of him under subsection (2) above.
- (5) Where the patient would (apart from section 48 of this Act) have ceased to be subject to guardianship on or before the day on which a report is duly furnished in respect of him under subsection (2) above, the report shall renew the authority for his guardianship for the period prescribed in that case by section 47(2) of this Act.

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- (6) Where the authority for the guardianship of the patient is renewed by virtue of subsection (5) above—
- (a) the renewal shall take effect as from the day on which (apart from section 48 of this Act and subsection (5) above) the authority would have expired; and
 - (b) if (apart from this paragraph) the renewed authority would expire on or before the day on which the report is furnished, the report shall further renew the authority, as from the day on which it would expire, for the period prescribed in that case by section 47(2) of this Act.
- (7) Where the authority for the guardianship of the patient would expire within the period of two months beginning with the day on which a report is duly furnished in respect of him under subsection (2) above, the report shall, if it so provides, have effect also as a report duly furnished under section 47(3) of this Act; and the reference in this subsection to authority includes any authority renewed under subsection (5) above by the report.

Textual Amendments

F2 S. 48, 48A, 48B substituted for s. 48 (1.4.1996) by 1995 c. 52, ss. 5(7), 7(2)

49 Special provisions as to patients sentenced to imprisonment, etc.: guardianship.

- (1) Where a patient who is subject to guardianship under this Part of this Act is detained in custody in pursuance of any sentence or order passed or made by a court in the United Kingdom (including an order committing or remanding him in custody) and is so detained for a period exceeding 6 months, he shall, at the end of that period, cease to be so subject.
- (2) Where any such patient is detained in custody as aforesaid for a period not exceeding 6 months, or for successive periods that do not in the aggregate exceed 6 months, then—
 - (a) if apart from this subsection the patient would have ceased to be subject as aforesaid on or before the day he is discharged from custody, he shall not cease to be so subject until the end of that day; and
 - (b) in any case, sections 44 and 48 of this Act shall apply in relation to the patient as if he had absented himself without leave on that day.

50 Discharge of patients: guardianship.

- (1) Subject to the provisions of this section and section 51 of this Act, a patient who is for the time being subject to guardianship under this Part of this Act shall cease to be so subject if an order in writing discharging him from guardianship (in this Act referred to as “an order for discharge”) is made in accordance with the following provisions of this section.
- (2) An order for discharge may be made in respect of a patient by the responsible medical officer, the Mental Welfare Commission or, where an appeal has been taken under sections 47 or 51 of this Act, by the sheriff.
- (3) The responsible medical officer or the Mental Welfare Commission shall make an order for discharge in respect of a patient where he is or they are satisfied that he is

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not suffering from mental disorder of a nature or degree which warrants his remaining under guardianship.

- (4) The local authority concerned or the Mental Welfare Commission shall make an order for discharge where they are satisfied that it is not necessary in the interests of the welfare of the patient that he should remain under guardianship.
- (5) Where an appeal is made to the sheriff by a patient under sections 47 or 51 of this Act, the sheriff shall order the discharge of the patient if he is satisfied that—
 - (a) the patient is not at the time of the hearing of the appeal suffering from mental disorder of a nature or degree which warrants his remaining under guardianship; or
 - (b) it is not necessary in the interests of the welfare of the patient that he should remain under guardianship.
- (6) Subject to the provisions of this section and section 51 of this Act, an order for discharge in respect of a patient may also be made by the nearest relative of the patient.
- (7) A patient subject to guardianship shall cease to be so subject where the sheriff has approved under section 21 of this Act an application for his admission to a hospital.

51 Restrictions on discharge by nearest relative: guardianship.

- (1) An order for the discharge of a patient who is subject to guardianship shall not be made by his nearest relative except after giving not less than 14 days' notice in writing to the local authority concerned; and within that period—
 - (a) if it appears to the local authority that the ground set out in section 36(b) of this Act continues to apply in relation to the patient they shall inform the responsible medical officer of the notice given by the nearest relative; and
 - (b) if it appears to the responsible medical officer that the ground set out in section 36(a) of this Act continues to apply in relation to the patient he shall inform the local authority; and
 - (c) the local authority shall inform the nearest relative of the views taken by them and by the responsible medical officer,and in that event—
 - (i) any order for the discharge of the patient made by that relative in pursuance of the notice shall cease to have effect; and
 - (ii) no further order for the discharge of the patient shall be made by that relative during the period of 6 months beginning with the date on which that relative is so informed.
- (2) In any case where the local authority informs the nearest relative under subsection (1) of this section that relative may, within the period of 28 days beginning with the day on which he is so informed, appeal to the sheriff to order the discharge of the patient, and the provisions of section 50(2) and (5) of this Act shall apply in relation to such an appeal.

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