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Mental Health Act 1983

1983 CHAPTER 20

PART II

COMPULSORY ADMISSION TO HOSPITAL AND GUARDIANSHIP

General provisions as to applications and recommendations

11 General provisions as to applications.

- (1) Subject to the provisions of this section, an application for admission for assessment, an application for admission for treatment and a guardianship application may be made either by the nearest relative of the patient or by an approved social worker; and every such application shall specify the qualification of the applicant to make the application.
- (2) Every application for admission shall be addressed to the managers of the hospital to which admission is sought and every guardianship application shall be forwarded to the local social services authority named in the application as guardian, or, as the case may be, to the local social services authority for the area in which the person so named resides.
- (3) Before or within a reasonable time after an application for the admission of a patient for assessment is made by an approved social worker, that social worker shall take such steps as are practicable to inform the person (if any) appearing to be the nearest relative of the patient that the application is to be or has been made and of the power of the nearest relative under section 23(2)(a) below.
- (4) Neither an application for admission for treatment nor a guardianship application shall be made by an approved social worker if the nearest relative of the patient has notified that social worker, or the local social services authority by whom that social worker is appointed, that he objects to the application being made and, without prejudice to the foregoing provision, no such application shall be made by such a social worker except after consultation with the person (if any) appearing to be the nearest relative of the patient unless it appears to that social worker that in the circumstances such consultation is not reasonably practicable or would involve unreasonable delay.

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- (5) None of the applications mentioned in subsection (1) above shall be made by any person in respect of a patient unless that person has personally seen the patient within the period of 14 days ending with the date of the application.
- (6) An application for admission for treatment or a guardianship application, and any recommendation given for the purposes of such an application, may describe the patient as suffering from more than one of the following forms of mental disorder, namely mental illness, severe mental impairment, psychopathic disorder or mental impairment; but the application shall be of no effect unless the patient is described in each of the recommendations as suffering from the same form of mental disorder, whether or not he is also described in either of those recommendations as suffering from another form.
- (7) Each of the applications mentioned in subsection (1) above shall be sufficient if the recommendations on which it is founded are given either as separate recommendations, each signed by a registered medical practitioner, or as a joint recommendation signed by two such practitioners.

12 General provisions as to medical recommendations.

- (1) The recommendations required for the purposes of an application for the admission of a patient under this Part of this Act (in this Act referred to as “medical recommendations”) shall be signed on or before the date of the application, and shall be given by practitioners who have personally examined the patient either together or separately, but where they have examined the patient separately not more than five days must have elapsed between the days on which the separate examinations took place.
- (2) Of the medical recommendations given for the purposes of any such application, one shall be given by a practitioner approved for the purposes of this section by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder; and unless that practitioner has previous acquaintance with the patient, the other such recommendation shall, if practicable, be given by a registered medical practitioner who has such previous acquaintance.
- (3) Subject to subsection (4) below, where the application is for the admission of the patient to a hospital which is not a [^{F1}registered establishment], one (but not more than one) of the medical recommendations may be given by a practitioner on the staff of that hospital, except where the patient is proposed to be accommodated under section [^{F2}18A(4), 65 or 66] of the ^{M1}National Health Service Act 1977 [^{F3}or paragraph 14 of Schedule 2 to the National Health Service and Community Care Act 1990] (which relate to accommodation for private patients) [^{F4}or otherwise to be accommodated, by virtue of an undertaking to pay in respect of the accommodation, in a hospital vested in an NHS foundation trust] .
- (4) Subsection (3) above shall not preclude both the medical recommendations being given by practitioners on the staff of the hospital in question if—
 - (a) compliance with that subsection would result in delay involving serious risk to the health or safety of the patient; and
 - (b) one of the practitioners giving the recommendations works at the hospital for less than half of the time which he is bound by contract to devote to work in the health service; and

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- (c) where one of those practitioners is a consultant, the other does not work (whether at the hospital or elsewhere) in a grade in which he is under that consultant's directions.
- (5) A medical recommendation for the purposes of an application for the admission of a patient under this Part of this Act shall not be given by—
- (a) the applicant;
 - (b) a partner of the applicant or of a practitioner by whom another medical recommendation is given for the purposes of the same application;
 - (c) a person employed as an assistant by the applicant or by any such practitioner;
 - (d) a person who receives or has an interest in the receipt of any payments made on account of the maintenance of the patient; or
 - (e) except as provided by subsection (3) or (4) above, a practitioner on the staff of the hospital to which the patient is to be admitted,
- or by the husband, wife, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister or sister-in-law of the patient, or of any person mentioned in paragraphs (a) to (e) above, or of a practitioner by whom another medical recommendation is given for the purposes of the same application.
- (6) A general practitioner who is employed part-time in a hospital shall not for the purposes of this section be regarded as a practitioner on its staff.
- (7) Subsections (1), (2) and (5) above shall apply to applications for guardianship as they apply to applications for admission but with the substitution for paragraph (e) of subsection (5) above of the following paragraph—
- “(e) the person named as guardian in the application.”.

Textual Amendments

- F1** Words in s. 12(3) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(2)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **art. 3(3)(d)** (subject to transitional provisions in Schs. 1-3 and with art. 3(4)-(10))
- F2** Words in s. 12(3) substituted (8.2.2000) by S.I. 2000/90, art. 3(1), **Sch. 1 para. 16(2)** (with art. 2(5))
- F3** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 24(1)**
- F4** Words in s. 12(3) inserted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 34, 199, **Sch. 4 para. 51**; S.I. 2004/759, **art. 2**

Modifications etc. (not altering text)

- C1** S. 12(2): certain functions not to be exercisable by a Primary Care Trust (E.) (1.4.2002) by virtue of 2000/695, reg. 4(1), Sch. 4 (as amended by S.I. 2002/555, **reg. 6(3)**)
- C2** S. 12(2): transfer of functions (E.) (1.4.2001) by S.I. 2001/747, regs. 2(1), 3, 4, **Sch. 1**

Marginal Citations

- M1** 1977 c. 49.

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VALID FROM 01/04/2008

[^{F5}12A Conflicts of interest

- (1) The appropriate national authority may make regulations as to the circumstances in which there would be a potential conflict of interest such that—
 - (a) an approved mental health professional shall not make an application mentioned in section 11(1) above;
 - (b) a registered medical practitioner shall not give a recommendation for the purposes of an application mentioned in section 12(1) above.
- (2) Regulations under subsection (1) above may make—
 - (a) provision for the prohibitions in paragraphs (a) and (b) of that subsection to be subject to specified exceptions;
 - (b) different provision for different cases; and
 - (c) transitional, consequential, incidental or supplemental provision.
- (3) In subsection (1) above, “the appropriate national authority” means—
 - (a) in relation to applications in which admission is sought to a hospital in England or to guardianship applications in respect of which the area of the relevant local social services authority is in England, the Secretary of State;
 - (b) in relation to applications in which admission is sought to a hospital in Wales or to guardianship applications in respect of which the area of the relevant local social services authority is in Wales, the Welsh Ministers.
- (4) References in this section to the relevant local social services authority, in relation to a guardianship application, are references to the local social services authority named in the application as guardian or (as the case may be) the local social services authority for the area in which the person so named resides.]

Textual Amendments

F5 S. 12A inserted (1.4.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 22(5)**, 56 (with [Sch. 10](#)); [S.I. 2008/745](#), **art. 3(c)**

13 Duty of approved social workers to make applications for admission or guardianship.

- (1) It shall be the duty of an approved social worker to make an application for admission to hospital or a guardianship application in respect of a patient within the area of the local social services authority by which that officer is appointed in any case where he is satisfied that such an application ought to be made and is of the opinion, having regard to any wishes expressed by relatives of the patient or any other relevant circumstances, that it is necessary or proper for the application to be made by him.
- (2) Before making an application for the admission of a patient to hospital an approved social worker shall interview the patient in a suitable manner and satisfy himself that detention in a hospital is in all the circumstances of the case the most appropriate way of providing the care and medical treatment of which the patient stands in need.

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- (3) An application under this section by an approved social worker may be made outside the area of the local social services authority by which he is appointed.
- (4) It shall be the duty of a local social services authority, if so required by the nearest relative of a patient residing in their area, to direct an approved social worker as soon as practicable to take the patient's case into consideration under subsection (1) above with a view to making an application for his admission to hospital; and if in any such case that approved social worker decides not to make an application he shall inform the nearest relative of his reasons in writing.
- (5) Nothing in this section shall be construed as authorising or requiring an application to be made by an approved social worker in contravention of the provisions of section 11(4) above, or as restricting the power of an approved social worker to make any application under this Act.

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Where a patient is admitted to a hospital in pursuance of an application (other than an emergency application) made under this Part of this Act by his nearest relative, the managers of the hospital shall as soon as practicable give notice of that fact to the local social services authority for the area in which the patient resided immediately before his admission; and that authority shall as soon as practicable arrange for a social worker of their social services department to interview the patient and provide the managers with a report on his social circumstances.

15 **Rectification of applications and recommendations.**

- (1) If within the period of 14 days beginning with the day on which a patient has been admitted to a hospital in pursuance of an application for admission for assessment or for treatment the application, or any medical recommendation given for the purposes of the application, is found to be in any respect incorrect or defective, the application or recommendation may, within that period and with the consent of the managers of the hospital, be amended by the person by whom it was signed; and upon such amendment being made the application or recommendation shall have effect and shall be deemed to have had effect as if it had been originally made as so amended.
- (2) Without prejudice to subsection (1) above, if within the period mentioned in that subsection it appears to the managers of the hospital that one of the two medical recommendations on which an application for the admission of a patient is founded is insufficient to warrant the detention of the patient in pursuance of the application, they may, within that period, give notice in writing to that effect to the applicant; and where any such notice is given in respect of a medical recommendation, that recommendation shall be disregarded, but the application shall be, and shall be deemed always to have been, sufficient if—
 - (a) a fresh medical recommendation complying with the relevant provisions of this Part of this Act (other than the provisions relating to the time of signature and the interval between examinations) is furnished to the managers within that period; and
 - (b) that recommendation, and the other recommendation on which the application is founded, together comply with those provisions.
- (3) Where the medical recommendations upon which an application for admission is founded are, taken together, insufficient to warrant the detention of the patient in pursuance of the application, a notice under subsection (2) above may be given in

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respect of either of those recommendations; but this subsection shall not apply in a case where the application is of no effect by virtue of section 11(6) above.

- (4) Nothing in this section shall be construed as authorising the giving of notice in respect of an application made as an emergency application, or the detention of a patient admitted in pursuance of such an application, after the period of 72 hours referred to in section 4(4) above, unless the conditions set out in paragraphs (a) and (b) of that section are complied with or would be complied with apart from any error or defect to which this section applies.

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