



Mental Health Act 1983

1983 CHAPTER 20

PART II

COMPULSORY ADMISSION TO HOSPITAL AND GUARDIANSHIP

Functions of relatives of patients

26 Definition of " relative " and " nearest relative "

- (1) In this Part of this Act " relative " means any of the following persons:—
 - (a) husband or wife;
 - (b) son or daughter;
 - (c) father or mother;
 - (d) brother or sister;
 - (e) grandparent;
 - (f) grandchild;
 - (g) uncle or aunt;
 - (h) nephew or niece.
- (2) In deducing relationships for the purposes of this section, any relationship of the half-blood shall be treated as a relationship of the whole blood, and an illegitimate person shall be treated as the legitimate child of his mother.
- (3) In this Part of this Act, subject to the provisions of this section and to the following provisions of this Part of this Act, the " nearest relative " means the person first described in subsection (1) above who is for the time being surviving, relatives of the whole blood being preferred to relatives of the same description of the half-blood and the elder or eldest of two or more relatives described in any paragraph of that subsection being preferred to the other or others of those relatives, regardless of sex.
- (4) Subject to the provisions of this section and to the following provisions of this Part of this Act, where the patient ordinarily resides with or is cared for by one or more of his relatives (or, if he is for the time being an in-patient in a hospital, he last ordinarily

Status: This is the original version (as it was originally enacted).

resided with or was cared for by one or more of his relatives) his nearest relative shall be determined—

- (a) by giving preference to that relative or those relatives over the other or others ;
and
 - (b) as between two or more such relatives, in accordance with subsection (3) above.
- (5) Where the person who, under subsection (3) or (4) above, would be the nearest relative of a patient—
- (a) in the case of a patient ordinarily resident in the United Kingdom, the Channel Islands or the Isle of Man, is not so resident; or
 - (b) is the husband or wife of the patient, but is permanently separated from the patient, either by agreement or under an order of a court, or has deserted or has been deserted by the patient for a period which has not come to an end ; or
 - (c) is a person other than the husband, wife, father or mother of the patient, and is for the time being under 18 years of age ; or
 - (d) is a person against whom an order divesting him of authority over the patient has been made under section 38 of the Sexual Offences Act 1956 (which relates to incest with a person under eighteen) and has not been rescinded,
- the nearest relative of the patient shall be ascertained as if that person were dead.
- (6) In this section " husband " and " wife " include a person who is living with the patient as the patient's husband or wife, as the case may be (or, if the patient is for the time being an in-patient in a hospital, was so living until the patient was admitted), and has been or had been so living for a period of not less than six months; but a person shall not be treated by virtue of this subsection as the nearest relative of a married patient unless the husband or wife of the patient is disregarded by virtue of paragraph (b) of subsection (5) above.
- (7) A person, other than a relative, with whom the patient ordinarily resides (or, if the patient is for the time being an inpatient in a hospital, last ordinarily resided before he was admitted), and with whom he has or had been ordinarily residing for a period of not less than five years, shall be treated for the purposes of this Part of this Act as if he were a relative but—
- (a) shall be treated for the purposes of subsection (3) above as if mentioned last in subsection (1) above; and
 - (b) shall not be treated by virtue of this subsection as the nearest relative of a married patient unless the husband or wife of the patient is disregarded by virtue of paragraph (b) of subsection (5) above.