



Mental Health (Scotland) Act 1984

1984 CHAPTER 36

PART V

ADMISSION TO AND DETENTION IN HOSPITAL AND GUARDIANSHIP

Grounds for hospital admission

17 Patients liable to be detained in hospital.

- (1) A person may, in pursuance of an application for admission under section 18(1) of this Act, be admitted to a hospital and there detained on the grounds that—
 - (a) he is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment in a hospital; and
 - (i) in the case where the mental disorder from which he suffers is a persistent one manifested only by abnormally aggressive or seriously irresponsible conduct, such treatment is likely to alleviate or prevent a deterioration of his condition; or
 - (ii) in the case where the mental disorder from which he suffers is a mental handicap, the handicap comprises mental impairment (where such treatment is likely to alleviate or prevent a deterioration of his condition) or severe mental impairment; and
 - (b) it is necessary for the health or safety of that person or for the protection of other persons that he should receive such treatment and it cannot be provided unless he is detained under this Part of this Act.
- (2) Nothing in this Act shall be construed as preventing a patient who requires treatment for mental disorder from being admitted to any hospital or nursing home for that treatment in pursuance of arrangements made in that behalf without any application, recommendation or order rendering him liable to be detained under this Act, or from remaining in any hospital in pursuance of such arrangements if he has ceased to be so liable to be detained.

Status: Point in time view as at 11/01/2000.

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Procedure for admission of patients: hospital

18 Admission and detention of patients: hospital.

- (1) A patient may be admitted to a hospital and there detained for the period allowed by this Part of this Act in pursuance of an application in the prescribed form (in this Act referred to as “an application for admission”) approved by the sheriff and made in accordance with this Part of this Act.
- (2) An application for admission shall be founded on and accompanied by 2 medical recommendations which shall be in the prescribed form and each such recommendation shall include the following statements, being statements of opinion, and the grounds on which each statement is based—
 - (a) a statement of the form of mental disorder from which the patient is suffering, being mental illness [^{F1}(including personality disorder)] or mental handicap or both; and
 - (b) a statement as to which of the grounds set out in section 17(1) of this Act apply in relation to the patient.
- (3) An application for admission shall be of no effect unless the patient is described in each of the medical recommendations as suffering from the same form of mental disorder, whether or not he is described in either of those recommendations as suffering also from the other form.

Textual Amendments

F1 Words in s. 18(2)(a) inserted (13.9.1999) by 1999 asp 1, s. 3(1)(b)

19 General provisions as to applications: hospital.

- (1) Subject to the provisions of this section, an application for admission may be made either by the nearest relative of the patient or by a mental health officer; and every such application shall be addressed to the managers of the hospital to which admission is sought.
- (2) The nearest relative of the patient shall not make an application for admission unless he has personally seen the patient within the period of 14 days ending with the date on which the proposed application is submitted to the sheriff for his approval.
- (3) A local authority shall, if so required by the nearest relative of a patient residing in their area, direct a mental health officer as soon as practicable to take the patient’s case into consideration with a view to making an application for admission in respect of the patient; and if in any such case that officer decides not to make an application he shall inform the nearest relative of his reasons in writing.
- (4) A mental health officer shall make an application for admission in respect of a patient within the area of the local authority by whom that officer was 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 and to any other relevant circumstances, that it is necessary or proper for the application to be made by him.
- (5) A mental health officer who proposes to make an application for admission shall—

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- (a) interview the patient within the period of 14 days ending with the date on which the proposed application is submitted to the sheriff for his approval 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 which the patient needs; and
 - (b) take such steps as are reasonably practicable to inform the nearest relative of the patient of the proposed application, and of his right to object thereto in accordance with the provisions of section 21 of this Act.
- (6) A mental health officer shall make an application for admission in respect of a patient where—
- (a) he has received the 2 medical recommendations required for the purposes of such an application; and
 - (b) he has been requested to do so by a medical practitioner who gave one of the medical recommendations,
- and the application shall include—
- (i) a statement of the mental health officer’s opinion as to whether or not the application should be granted; and
 - (ii) a statement of the grounds on which that opinion is based.
- (7) An application under this section by a mental health officer may be made outside the area of the local authority by whom he is appointed.

20 Medical recommendations: hospital.

- (1) The medical recommendations required for the purposes of an application for admission shall satisfy the following requirements—
- (a) such recommendations shall be signed on or before the date of the application and shall be given by medical practitioners (neither being the applicant) who have personally examined the patient separately, in which case not more than 5 days must have elapsed between the days on which the separate examinations took place, or, where no objection has been made by the patient or his nearest relative, together;
 - (b) one of the recommendations shall be given by a practitioner approved for the purposes of this section by a Health Board as having special experience in the diagnosis or treatment of mental disorder and the other recommendation shall, if practicable, be given by the patient’s general medical practitioner or another medical practitioner who has previous acquaintance with him;
 - (c) neither recommendation shall be given by a practitioner on the staff of the hospital named in the application where the patient is to be accommodated under section 57 [^{F2}of, or paragraph 14 of Schedule 7A to,] the ^{M1}National Health Service (Scotland) Act 1978 (which [^{F3}relate] to accommodation for private patients) or in a private hospital and, subject to subsection (2) of this section, where the patient is to be accommodated otherwise one only of the recommendations may be given by such a practitioner;
 - (d) such recommendations shall contain a statement as to whether the person signing the recommendation is related to the patient and of any pecuniary interest that that person may have in the admission of the patient to hospital.
- (2) Notwithstanding the provisions of paragraph (c) of subsection (1) of this section, both medical recommendations may be given by practitioners on the staff of the hospital named in the application where—

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- (a) compliance with the said paragraph (c) would result in a delay involving serious risk to the health or safety of the patient or to the safety of other persons;
 - (b) one of the practitioners giving the recommendations works at the hospital for less than half the time which he is bound by contract to devote to work in the health service; and
 - (c) if one of the 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.
- (3) For the purposes of this section a general practitioner who is employed part-time in a hospital shall not be regarded as a practitioner on its staff.

Textual Amendments

- F2** Words substituted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 28\(3\)\(a\)](#)
- F3** Word substituted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 28\(3\)\(b\)](#)

Marginal Citations

- M1** 1978 c. 29.

21 Approval of applications by the sheriff: hospital.

- (1) An application for admission shall be submitted to a sheriff of the sheriffdom—
- (a) within which the patient is resident at the time when the application is submitted; or
 - (b) where the patient is a resident patient in a hospital at the time when the application is submitted, within which the hospital is situated,
.....^{F4} within 7 days of the last date on which the patient was examined for the purposes of any medical recommendation accompanying the application.
- (2) Subject to the following provisions of this section and to section 113 of this Act, the sheriff, in considering [^{F5}whether to approve] an application submitted to him under this section—
- (a) may make such inquiries and hear such persons (including the patient) as he thinks fit; and
 - (b) where an application is the subject of objection by the nearest relative of the patient, shall afford that relative and any witness that relative may call an opportunity of being heard; and
 - (c) shall, where a mental health officer makes an application for admission in respect of a patient under section 19(6) of this Act and such application includes a statement of the mental health officer's opinion that the application should not be granted, afford the mental health officer an opportunity of being heard.
- (3) The sheriff shall not withhold approval to an application submitted under this section without affording to the applicant and any witness the applicant may call an opportunity of being heard.

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- [^{F6}(3A) Within five days (excluding Saturdays, Sundays and court holidays) of an application for admission being submitted, the sheriff shall—
- (a) approve the application; or
 - (b) where he decides to hold a hearing before determining the application, hold such hearing.
- (3B) An application for admission in respect of a patient who is detained in hospital under section 26 or 26A of this Act shall, when submitted to the sheriff, be sufficient authority for the continued detention of the patient under that section until the expiry of a period of five days (excluding Saturdays, Sundays and court holidays) from the date when the application was submitted.
- (3C) Where a hearing in relation to an application for admission in respect of a patient who is detained in hospital under section 26 or 26A of this Act is, for whatever reason, adjourned, the authority for the detention of the patient under that section by virtue of subsection (3B) of this section shall continue until the application for admission is finally determined.]
- (4) Any proceedings under this section shall, where the patient or applicant so desires or the sheriff thinks fit, be conducted in private.
- (5) The sheriff in the exercise of the functions conferred on him by this section shall have the like jurisdiction, and the like powers as regards the summoning and examination of witnesses, the administration of oaths, the awarding of expenses, and otherwise, as if he were acting in the exercise of his civil jurisdiction.
- [^{F7}(6) For the purposes of this section, an application is submitted to the sheriff when it is lodged with his sheriff clerk.]

Textual Amendments

- F4** Words repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 39:1\)](#), [s. 51\(2\)\(a\)](#)
- F5** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 39:1\)](#), [s. 51\(2\)\(b\)](#)
- F6** [S. 21\(3A\)-\(3C\)](#) inserted (9.3.1992) by [Mental Health \(Detention\) \(Scotland\) Act 1991 \(c. 47, SIF 85\)](#), [s. 2\(2\)](#); [S.I. 1992/357](#), [art.2](#)
- F7** [S. 21\(6\)](#) inserted (9.3.1992) by [Mental Health \(Detention\) \(Scotland\) Act 1991 \(c. 47, SIF 85\)](#), [s. 2\(3\)](#); [S.I. 1992/357](#), [art.2](#)

22 Effect of applications: hospital.

- (1) Where an application for admission has been approved by the sheriff, that application shall be sufficient authority for the removal of the patient to the hospital named in the application and, when the application has been forwarded to the managers of the hospital, for the admission of the patient to that hospital at any time within a period of 7 days from the date on which the sheriff approved the application and for his detention there in accordance with the provisions of this Act.
- (2) Where a patient has been admitted to a hospital in pursuance of an application under this Part of this Act, it shall be the duty of the managers of the hospital to notify—
 - (a) the Mental Welfare Commission; and

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- (b) the local authority for the area in which the hospital is situated (except where the admission is in pursuance of an application made by a mental health officer appointed by that authority),
of that admission together with a copy of the application and recommendations relating to the patient's admission within 7 days of its taking place.
- (3) A local authority shall, on being notified under subsection (2) of this section, arrange for a mental health officer as soon as practicable and, in any event, not later than 7 days before the expiry of the period of 28 days beginning with the day on which the patient was admitted to a hospital—
 - (a) to interview the patient whose admission has been notified to them; and
 - (b) to provide the responsible medical officer and the Mental Welfare Commission with a report on the patient's social circumstances,
 unless the mental health officer has done so under section 26(5) of this Act within the previous 28 days.
- (4) Where a patient has been admitted as aforesaid the responsible medical officer shall—
 - (a) within the period of 7 days ending on the 28th day after the patient's admission—
 - (i) examine the patient or obtain from another medical practitioner a report on the condition of the patient; and
 - (ii) consult such other person or persons who appear to him to be principally concerned with the patient's medical treatment; and
 - (b) if he is satisfied, as a result of the examination or report, that—
 - (i) the patient is not suffering from mental disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment; or
 - (ii) it is not necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment,
 order the discharge of the patient; or
 - (c) if he does not order the discharge of the patient, so inform the Mental Welfare Commission, the nearest relative of the patient, the local authority and the managers concerned.

23 Rectification of application and recommendations: hospital.

- (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, 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, not later than 7 days after the expiration of the said period, with the approval of the sheriff, 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 always to have had effect, as if it had been originally made as so amended.
- (2) Without prejudice to the provisions of subsection (1) of this section, if within the period first mentioned therein it appears to the managers of the hospital, that one of the 2 medical recommendations on which the application for admission 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 to the sheriff; and where any such notice is given in respect of a medical recommendation

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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 and to the sheriff; and
 - (b) the sheriff is satisfied that 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) of this section may be given in 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 18(3) of this Act.

24 Emergency admission: hospital.

- (1) In any case of urgent necessity a recommendation (in this Act referred to as “an emergency recommendation”) may be made by a medical practitioner in respect of a patient stating that by reason of mental disorder it is urgently necessary for his health or safety or for the protection of other persons, that he should be admitted to a hospital, but that compliance with the provisions of this Part of this Act relating to an application for admission before the admission of the patient to a hospital would involve undesirable delay.
- (2) An emergency recommendation shall not be made unless, where practicable, the consent of a relative or of a mental health officer has been obtained; and the recommendation shall be accompanied by a statement that such a consent as aforesaid has been obtained or, as the case may be, by a statement of the reasons for the failure to obtain that consent.
- (3) An emergency recommendation shall be sufficient authority for the removal of the patient to a hospital at any time within a period of 3 days from the date on which it was made and for his detention therein for a period not exceeding 72 hours from the time of his admission.
- (4) An emergency recommendation shall be made only by a medical practitioner who has personally examined the patient on the day on which he signed the recommendation.
- (5) Where a patient is admitted to a hospital in pursuance of this section, it shall, where practicable, be the duty of the managers without delay to inform the nearest relative of the patient, the Mental Welfare Commission and, except in the case of a patient referred to in section 25 of this Act, some responsible person residing with the patient.
- (6) A patient who has been detained in a hospital under this section shall not be further detained under this section immediately after the expiry of the period of detention.

25 Detention of patients already in hospital.

- (1) An application for admission or an emergency recommendation may be made under this Part of this Act notwithstanding that the patient is already in a hospital; and where the application or recommendation is made in such a case the patient shall be treated for the purposes of this Part of this Act as if he had been admitted to the hospital on

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the date on which the application was forwarded to the managers of the hospital, or, as the case may be, the recommendation was made.

- (2) If, in the case of a patient who is already in a hospital receiving treatment for mental disorder and who is not liable to be detained therein under this Part of this Act, it appears to a nurse of the prescribed class—
- (a) that the patient is suffering from mental disorder to such a degree that it is necessary for his health or safety or for the protection of other persons for him to be immediately restrained from leaving the hospital; and
 - (b) that it is not practicable to secure the immediate attendance of a medical practitioner for the purpose of making an emergency recommendation,
- the patient may be detained in the hospital for a period of 2 hours from the time when he was first so detained or until the earlier arrival at the place where the patient is detained of a medical practitioner having power to make an emergency recommendation.
- (3) Where a patient is detained under subsection (2) of this section the nurse shall as soon as possible record in writing—
- (a) the facts mentioned in paragraphs (a) and (b) of the said subsection (2);
 - (b) the fact that the patient has been detained; and
 - (c) the time at which the patient was first so detained.
- (4) A record made by a nurse under subsection (3) of this section shall, as soon as possible after it is made, be delivered by the nurse, or by a person authorised by the nurse in that behalf, to the managers of the hospital; and a copy of the record shall, within 14 days of the date on which the managers received it, be sent to the Mental Welfare Commission.
- (5) A patient who has been detained in a hospital under subsection (2) of this section shall not be further detained thereunder immediately after the expiry of that period of detention.
- (6) In subsection (2) of this section “prescribed” means prescribed by an order made by the Secretary of State.

26 Short term detention.

- (1) Where a patient is admitted to a hospital in pursuance of section 24 of this Act, he may be detained in that hospital after the expiry of the period of 72 hours referred to in subsection (3) of that section if—
- (a) a report on the condition of the patient has been furnished to the managers of the hospital; and
 - (b) where practicable, consent to the continued detention has been given by the nearest relative of the patient or by a mental health officer.
- (2) The report referred to in subsection (1)(a) of this section shall—
- (a) be given by a medical practitioner approved for the purposes of section 20(1) (b) of this Act who has personally examined the patient and shall include a statement that in the opinion of the medical practitioner—
 - (i) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to be detained in a hospital for at least a limited period; and
 - (ii) the patient ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons;

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- (b) include, where consent to the continued detention has not been obtained, a statement of the reasons for not obtaining such consent; and
 - (c) contain a statement as to whether the person signing the report is related to the patient and of any pecuniary interest that that person may have in the admission of the patient to hospital.
- (3) Subject to subsection (6) of this section, where a report is duly furnished under subsection (1) of this section the authority for the detention of the patient shall be thereby renewed for a further period of 28 days from the expiry of the period of 72 hours referred to in the said subsection (1).
- (4) Where a patient is detained in a hospital in pursuance of this section, the managers of the hospital shall so inform—
- (a) The Mental Welfare Commission;
 - (b) where practicable, the nearest relative of the patient (except where the nearest relative has consented under subsection (1)(b) of this section); and
 - (c) the local authority (except in a case where a mental health officer appointed by that local authority has consented under subsection (1)(b) of this section), not later than 7 days after the patient was detained.
- (5) A local authority, on being informed under subsection (4) of this section of the admission of a patient, shall arrange for a mental health officer as soon as practicable and in any event not later than 7 days before the expiry of the period of 28 days referred to in subsection (3) of this section—
- (a) to interview the patient; and
 - (b) to provide the responsible medical officer and the Mental Welfare Commission with a report on the patient’s social circumstances.
- (6) Any patient may, within the period for which the authority for his detention 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 33(2) and (4) of this Act shall apply in relation to such an appeal.
- (7) ^{F8}Subject to section 21(3B) and (3C) of this Act,]a patient who has been detained in a hospital under this section shall not be further detained under this section nor detained under section 24 of this Act immediately after the expiry of the period of detention under this section.

Textual Amendments

- F8** Words in s. 26(7) inserted (9.3.1992) by [Mental Health \(Detention\) \(Scotland\) Act 1991 \(c. 47, SIF 85\), s. 3\(1\)](#); S.I. 1992/357, [art.2](#)

[26A ^{F9}Interim detention.

- (1) This section applies where—
- (a) a patient is detained in a hospital under section 26 of this Act;
 - (b) a change in the condition of the patient makes it necessary in the interests of his own health or safety or with a view to the protection of other persons that the patient continue to be detained after the expiry of the period of 28 days referred to in subsection (3) of that section; and

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- (c) no application for admission has been submitted to the sheriff in respect of the patient and it is not reasonably practicable to submit such an application before the expiry of that period.
- (2) Where this section applies, a relevant medical practitioner may lodge with the sheriff clerk for a sheriff of the sheriffdom within which the hospital is situated a report on the condition of the patient complying with the following provisions of this section and such report shall, when so lodged, be sufficient authority for the continued detention of the patient in the hospital where he is until the expiry of a period of three days (excluding Saturdays, Sundays and court holidays) from the date when the report was lodged.
- (3) In this section “relevant medical practitioner” means a medical practitioner who—
- (a) is approved for the purposes of section 20(1)(b) of this Act; and
 - (b) has personally examined the patient.
- (4) A report referred to in subsection (2) of this section shall not be lodged unless, where practicable, the consent of the nearest relative of the patient or of a mental health officer has been obtained.
- (5) A report referred to in subsection (2) of this section shall include—
- (a) a statement by the relevant medical practitioner that in his opinion—
 - (i) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to be detained in a hospital for at least a limited period; and
 - (ii) the patient ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons;
 - (b) a statement that such a consent as is mentioned in subsection (4) of this section has been obtained or, as the case may be, a statement of the reasons for the failure to obtain that consent; and
 - (c) a statement as to whether the relevant medical practitioner is related to the patient and of any pecuniary interest that the relevant medical practitioner may have in the continued detention of the patient in hospital.
- (6) Where a patient is detained in a hospital under this section, the relevant medical practitioner shall forthwith so inform—
- (a) the Mental Welfare Commission;
 - (b) where practicable, the nearest relative of the patient (except where the nearest relative has consented under subsection (4) of this section); and
 - (c) the local authority (except where a mental health officer appointed by that authority has consented under subsection (4) of this section),
- and shall inform the patient of his right of appeal under subsection (7) of this section and of the period within which it may be exercised.
- (7) A patient who is detained in hospital under this section may, within the period referred to in subsection (2) of this section, appeal to the sheriff to order his discharge and the provisions of section 33(2) and (4) of this Act shall apply in relation to such an appeal.
- (8) Where a patient is detained in hospital under this section the authority for his detention under section 26 of this Act shall cease.
- (9) Subject to section 21(3B) and (3C) of this Act, a patient who has been detained in a hospital under this section shall not be further detained under this section nor

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detained under section 24 or 26 of this Act immediately after the expiry of the period of detention under this section.]

Textual Amendments

F9 S. 26A inserted (9.3.1992) by [Mental Health \(Detention\) \(Scotland\) Act 1991 \(c. 47, SIF 85\)](#), [s.1](#); [S.I. 1992/357](#), [art.2](#)

Care and treatment of patients: hospital

27 Leave of absence from hospital.

- (1) The responsible medical officer may grant to any patient who is for the time being liable to be detained in a hospital under this Part of this Act leave to be absent from the hospital.
- (2) Leave of absence may be granted to a patient under this section either on specified occasions or for any specified period of not more than 6 months; and where leave is so granted for a specified period it may [^{F10}, subject to subsection (2A) below,] be extended for further such periods as aforesaid.

[^{F11}(2A) Subject to subsections (2B) and (2C) below, the total period of leave of absence for specified consecutive periods under this section shall not exceed 12 months.

(2B) If, on the date of expiry of leave of absence granted to a patient under this section, a community care application has been made in respect of him but has not been determined, the leave of absence shall continue until the community care order comes into force or, as the case may be, the application is refused by the sheriff.

(2C) If, on the date of expiry of leave of absence granted to a patient under this section, a community care order has been made in respect of him but has not come into force, the leave of absence shall continue until the order comes into force.]

- (3) Where it appears to the responsible medical officer that it is necessary so to do in the interests of the patient or for the protection of other persons, he may, upon granting leave of absence under this section, direct that the patient remain in custody during his absence; and where leave of absence is so granted the patient may be kept in the custody of any officer on the staff of the hospital, or of any other person authorised in writing by the managers of the hospital, or, if the patient is required in accordance with conditions imposed on the grant of leave of absence to reside in another hospital, of any officer on the staff of that other hospital.
- (4) Where leave of absence is granted to a patient under this section or where a period of leave is extended by further leave and the leave or the extension is for a period of more than 28 days, it shall be the duty of the responsible medical officer to inform the Mental Welfare Commission within 14 days of the granting of leave or of the extension, as the case may be, of the address at which the patient is residing and, on the return of the patient, to notify the Commission thereof within 14 days.
- (5) In any case where a patient is absent from a hospital in pursuance of leave of absence granted under this section, and it appears to the responsible medical officer that it is necessary so to do in the interests of the health or safety of the patient or for the protection of other persons, that officer may, subject to subsection (6) of this section,

Status: Point in time view as at 11/01/2000.

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by notice in writing given to the patient or to the person for the time being in charge of the patient, revoke the leave of absence and recall the patient to the hospital.

- (6) A patient to whom leave of absence is granted under this section shall not be recalled under subsection (5) of this section after he has ceased to be liable to be detained under this Part of this Act.

Textual Amendments

F10 Words in s. 27(2) inserted (1.4.1996) by 1995 c. 52, ss. 6(2), 7(2) (with s. 6(5))

F11 S. 27(2A)-(2C) inserted (1.4.1996) by 1995 c. 52, ss. 6(3), 7(2) (with s. 6(5))

28 Return and re-admission of patients absent without leave: hospital.

- (1) Where a patient who is for the time being liable to be detained under this Part of this Act in a hospital—

- (a) absents himself from the hospital without leave granted under section 27 of this Act; or
- (b) fails to return to the hospital on any occasion on which, or at the expiration of any period for which, leave of absence was granted to him under that section, or upon being recalled thereunder; or
- (c) absents himself without permission from any place where he is required to reside in accordance with conditions imposed on the grant of leave of absence under that section,

he may, subject to the provisions of this section, be taken into custody and returned to the hospital or place by any mental health officer, by any officer on the staff of the hospital, by any constable, or by any person authorised in writing by the managers of the hospital.

- (2) Where the place referred to in subsection 1(c) of this section is a hospital other than the one in which the patient is for the time being liable to be detained, the references in that subsection to an officer on the staff of the hospital and to the managers of the hospital shall respectively include references to an officer on the staff of the first-mentioned hospital and to the managers of that hospital.

- [^{F12}(3) A patient shall not be taken into custody under this section after the later of—

- (a) the end of the period of six months beginning with the first day of his absence without leave; and
- (b) the end of the period for which (apart from section 31 of this Act) he is liable to be detained;

and, in determining for the purposes of paragraph (b) above or any other provision of this Act whether a person who is or has been absent without leave is at any time liable to be detained, a report furnished under section 30 or 31B of this Act before the first day of his absence shall not be taken to have renewed the authority for his detention unless the period of renewal began before that day.]

- (4) A patient shall not be taken into custody under this section if the period for which he is liable to be detained is that specified in section [^{F13}21(3B) (subject, where applicable, to section 21(3C)), 24(3), 25(2), 26(3) or 26A(2)] of this Act and that period has expired.

Status: Point in time view as at 11/01/2000.

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Extent Information

E1 For extent of s. 28, see [ss. 128, 129](#)

Textual Amendments

F12 [S. 28\(3\)](#) substituted (1.4.1996) by [1995 c. 52, ss. 5\(1\), 7\(2\)](#)

F13 Words in [s. 28\(4\)](#) substituted (S.) (9.3.1992) by [Mental Health \(Detention\) \(Scotland\) Act 1991 \(c. 47, SIF 85\), s. 3\(2\)](#); [S.I. 1992/357, art. 2](#)

29 **Transfer of patients: hospital.**

- (1) A patient who is for the time being liable to be detained in a hospital by virtue of an application for admission under this Part of this Act may be transferred by the managers of that hospital, as follows—
 - (a) to another hospital with the consent of the managers of that hospital; or
 - (b) into the guardianship of a local authority with the consent of that authority; or
 - (c) into the guardianship of any person approved by a local authority with the consent of that person.
- (2) Any transfer of a patient under the last foregoing subsection shall be intimated to his nearest relative and to the Mental Welfare Commission by the managers of the hospital to which the patient is transferred or, as the case may be, by the local authority concerned within 7 days of the date of transfer.
- (3) Where a patient is transferred in pursuance of this section, the provisions of this Part of this Act (including this subsection) shall apply to him as follows, that is to say—
 - (a) where the patient, being liable to be detained in a hospital by virtue of an application for admission, is transferred to another hospital, as if the application were an application for admission to that other hospital, and as if the patient had been admitted to that other hospital at the time when he was originally admitted in pursuance of the application;
 - (b) where the patient, being liable to be detained as aforesaid, is transferred into guardianship, as if the application were a guardianship application duly forwarded to the local authority at the time aforesaid.
- (4) Where a patient is transferred to a State hospital under subsection (1)(a) of this section he or his nearest relative may, within 28 days of the date of the transfer, appeal by way of summary application to a sheriff of the sheriffdom within which the hospital from which the patient was transferred is situated against the decision of the managers of that hospital to transfer the patient; and on any such appeal the sheriff shall order the return of the patient to the hospital from which he was transferred unless he is satisfied that the patient, on account of his dangerous, violent or criminal propensities, requires treatment under conditions of special security, and cannot suitably be cared for in a hospital other than a State hospital.

Duration of authority for detention and discharge of patients: hospital

30 **Duration of authority: hospital.**

- (1) Subject to the provisions of this Part of this Act, a patient admitted to a hospital in pursuance of an application for admission may be detained in a hospital for a period

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not exceeding 6 months beginning with the day on which he was so admitted, but shall not be so detained for any longer period unless the authority for his detention is renewed under the following provisions of this section.

- (2) Authority for the detention 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) The responsible medical officer shall within the period of 2 months ending on the day when a patient who is liable to be detained in a hospital under this Part of this Act would cease to be so liable under this section in default of the renewal of the authority for his detention—
 - (a) examine the patient or obtain from another medical practitioner a report on the condition of the patient; and
 - (b) consult such other person or persons who appear to him to be principally concerned with the patient's medical treatment,

and thereafter assess the need for the detention of the patient to be continued; and if it appears to him that the grounds set out in section 17(1) of this Act apply to the patient he shall furnish to the managers of the hospital where the patient is liable to be detained and to the Mental Welfare Commission a report to that effect in the prescribed form, along with the report first mentioned if such a report has been obtained.
- (4) Subject to subsection (6) of this section and section 33(2) and (4) of this Act, where a report is duly furnished to the managers of a hospital under subsection (3) of this section, the authority for the detention 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 managers of the hospital shall, unless they discharge the patient, cause him and his nearest relative to be informed.
- (6) Any patient may within the period for which the authority for his detention is renewed by virtue of a report furnished in respect of him under this section [F14 or section 31B of this Act] appeal to the sheriff to order his discharge and the provisions of section 33(2) and (4) of this Act shall apply in relation to such an appeal.

Textual Amendments

F14 Words in s. 30(6) inserted (1.4.1996) by 1995 c. 52, ss. 5(2), 7(2)

[F15] 31 Special provisions as to patients absent without leave: hospital.

- (1) Where a patient is absent without leave—
 - (a) on the day on which (apart from this section) he would cease to be liable to be detained under this Part of this Act; or
 - (b) within the period of one week ending with that day,

he shall not cease to be so liable until the relevant time.

Status: Point in time view as at 11/01/2000.

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- (2) For the purposes of subsection (1) above the relevant time—
- (a) where the patient is taken into custody under section 28 of this Act, is the end of the period of one week beginning with the day on which he is returned to the hospital;
 - (b) where the patient returns to the hospital within the period during which he can be taken into custody under section 28 of this Act, is the end of the period of one week beginning with the day on which he so returns; and
 - (c) otherwise, is the end of the period during which he can be taken into custody under section 28 of this Act.]

Textual Amendments

F15 Ss. 31-31B substituted (1.4.1996) for s. 31 by 1995 c. 52, ss. 5(3), 7(2)

31A ^{F16}**Patients who are taken into custody or return within 28 days: hospital.**

- (1) This section applies where a patient who is absent without leave is taken into custody under section 28 of this Act, or returns to the hospital, 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 liable to be detained is extended by section 31 of this Act, any examination and report to be made and furnished in respect of the patient under section 30(3) of this Act may be made and furnished within the period as so extended.
- (3) Where the authority for the detention of a patient is renewed by virtue of subsection (2) above after the day on which (apart from section 31 of this Act) that authority would have expired, the renewal shall take effect as from that day.

Textual Amendments

F16 Ss. 31-31B substituted (1.4.1996) for s. 31 by 1995 c. 52, ss. 5(3), 7(2)

31B ^{F17}**Patients who are taken into custody or return after more than 28 days: hospital.**

- (1) This section applies where a patient who is absent without leave is taken into custody under section 28 of this Act, or returns to the hospital, later than the end of the period of 28 days beginning with the first day of his absence without leave.
- (2) The responsible medical officer shall, within the period of one week beginning with the day on which the patient returns, or is returned, to the hospital—
 - (a) examine the patient or obtain from another medical practitioner a report on the condition of the patient; and
 - (b) consult—
 - (i) such other person or persons who appear to him to be principally concerned with the patient's medical treatment; and
 - (ii) a mental health officer,and thereafter assess the need for the detention of the patient to be continued; and if it appears to him that the grounds set out in section 17(1) of this Act

Status: Point in time view as at 11/01/2000.

Changes to legislation: Mental Health (Scotland) Act 1984, Part V is up to date with all changes known to be in force on or before 06 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

apply to the patient he shall furnish to the managers of the hospital where the patient is liable to be detained and to the Mental Welfare Commission a report to that effect in the prescribed form, along with the report first mentioned if such a report has been obtained.

- (3) Where a report under this section is furnished to them in respect of a patient, the managers of a hospital shall, unless they discharge the patient, cause him and his nearest relative to be informed.
- (4) Where the patient would (apart from any renewal of the authority for his detention on or after the day on which he is returned or returns to the hospital) be liable to be detained after the end of the period of one week beginning with that day, he shall cease to be so liable 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 31 of this Act) have ceased to be liable to be detained 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 detention for the period prescribed in that case by section 30(2) of this Act.
- (6) Where the authority for the detention 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 31 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 30(2) of this Act.
- (7) Where the authority for the detention 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 30(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

F17 Ss. 31-31B substituted (1.4.1996) for s. 31 by 1995 c. 52, ss. 5(3), 7(2)

32 Special provisions as to patients sentenced to imprisonment etc.: hospital.

- (1) Where a patient who is liable to be detained in a hospital 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 liable.
- (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 liable to be detained as aforesaid on or before the day he is discharged from custody, he shall not cease to be so liable until the end of that day; and

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- (b) in any case, sections 28 [F18, 31 and 31A] of this Act shall apply in relation to the patient as if he had absented himself without leave on that day.

[F19](3) In its application by virtue of subsection (2) above section 28(3) of this Act shall have effect with the substitution of the words “end of the period of 28 days beginning with the first day of his absence without leave.” for the words from “later of” onwards.]

Extent Information

E2 For extent of s. 32, see ss. 128, 129

Textual Amendments

F18 Words in s. 32(2)(b) substituted (1.4.1996) by 1995 c. 52, ss. 5(4)(a), 7(2)

F19 S. 32(3) inserted (1.4.1996) by 1995 c. 52, ss. 5(4)(b), 7(2)

33 Discharge of patients: hospital.

- (1) Subject to the provisions of this and the next following section, a patient who is liable to be detained in a hospital under this Part of this Act shall cease to be so liable if an order in writing discharging him from detention (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 26, [F20 26A,]30 or 34 of this Act, by the sheriff:

Provided that such an order shall not be made by the responsible medical officer in respect of a patient detained in a State hospital without the consent of the managers of the hospital.

- (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—
- (a) he is not suffering from mental disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment; or
- (b) it is not necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment.
- (4) Where an appeal is made to the sheriff by a patient under sections 26, [F20 26A,]30 or 34 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 makes it appropriate for him to be liable to be detained in a hospital for medical treatment; or
- (b) it is not necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment.
- (5) Subject to the provisions of this section and section 34 of this Act, an order for discharge in respect of a patient may also be made by the managers of the hospital or by the nearest relative of the patient.
- (6) An order for discharge made in respect of a patient by the managers of a hospital shall, with the consent of the responsible medical officer, take effect on the expiration of a period of 7 days from the date on which the order was made, and where the responsible

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medical officer does not so consent he shall furnish to the managers a report certifying that in his opinion the grounds set out in section 17(1) of this Act apply in relation to the patient.

[^{F21}(7) Where an order for discharge is made in respect of a patient in relation to whom an application for admission has been submitted but has not been finally determined, the managers of the hospital shall notify the sheriff to whom the application has been submitted of the making of the order for discharge.]

Textual Amendments

- F20** In s. 33(2)(4) "26A," inserted (9.3.1992) by [Mental Health \(Detention\) \(Scotland\) Act 1991 \(c. 47, SIF 85\), s. 3\(3\)\(a\); S.I. 1992/357, art.2](#)
- F21** S. 33(7) inserted (9.3.1992) by [Mental Health \(Detention\) \(Scotland\) Act 1991 \(c. 47, SIF 85\), s. 3\(3\)\(b\); S.I. 1992/357, art.2](#)

34 Restrictions on discharge by nearest relative: hospital.

- (1) An order for the discharge of a patient who is liable to be detained in a hospital shall not be made by his nearest relative except after giving not less than 7 days' notice in writing to the managers of the hospital; and if within that period the responsible medical officer furnishes to the managers a report certifying that, in his opinion, the grounds set out in section 17(1) of this Act apply in relation to the patient—
 - (a) any order for the discharge of the patient made by that relative in pursuance of the notice shall be of no effect; and
 - (b) 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 of the report.
- (2) In any case where a report under subsection (1) of this section is furnished in respect of a patient, the managers shall cause the nearest relative of the patient to be informed and 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 33(2) and (4) of this Act shall apply in relation to such an appeal.
- (3) An order for discharge in respect of a patient detained in a State hospital shall not be made by his nearest relative.

Appeals: hospital

35 Appeals to the sheriff: hospital.

- (1) Where an appeal lies to the sheriff in respect of a report on a patient under any of sections 26, 30 or 34 of this Act, the managers of the hospital where the patient is liable to be detained shall, when intimating that a report has been furnished in pursuance of any of the said sections, inform any person having a right so to appeal, whether the patient or his nearest relative or both, of that right and of the period within which it may be exercised.
- (2) An appeal under any of the said sections [^{F22}or under section 26A of this Act] shall be made by way of summary application to a sheriff of the sheriffdom—
 - (a) within which the patient is resident at the time when the appeal is made; or

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- (b) where the patient is a resident patient in a hospital at the time when the appeal is made, within which the hospital is situated.
- (3) For the purpose of advising whether any appeal to the sheriff under any of the said sections [^{F22}or under section 26A of this Act] should be made by or in respect of a patient who is liable to be detained under this Part of this Act, or of furnishing information as to the condition of a patient for the purposes of such an appeal or of advising the nearest relative of any such patient as to the exercise of any power to order the discharge of the patient, any medical practitioner authorised by or on behalf of the patient or by the nearest relative of the patient, as the case may be, may, at any reasonable time, visit the patient and may examine him in private.
- (4) Any medical practitioner authorised for the purposes of subsection (3) of this section to visit and examine a patient may require the production of and inspect any records relating to the detention or treatment of the patient in any hospital.

Textual Amendments

F22 Words in s. 35(2)(3) inserted (9.3.1992) by [Mental Health \(Detention\) \(Scotland\) Act 1991 \(c. 47, SIF 85\)](#), s. 3(4); S.I. 1992/357, art.2

^{F23} Community care orders

Textual Amendments

F23 Ss. 35A-35K inserted (1.4.1996) by [1995 c. 52](#), ss. 4(1), 7(2)

^{F24}35A Community care orders.

- (1) As respects a patient who is liable to be detained in a hospital in pursuance of an application for admission the responsible medical officer may, in accordance with section 35B of this Act, make an application (in this Act referred to as a “community care application”) to the sheriff for an order (in this Act referred to as a “community care order”) providing that the patient shall, instead of continuing to be liable to be so detained, be subject to the conditions specified in the order, being conditions imposed with a view to ensuring that he receives—
- medical treatment; and
 - after-care services provided for him under section 8 of this Act.
- (2) Sections 21(1), (2)(a) and (b), (3), (4) and (5) and 113 of this Act shall apply with respect to a community care application as they apply with respect to an application for admission.
- (3) The sheriff shall, as respects a community care application—
- make a community care order in respect of the patient, subject to the conditions set out in the application or to such other conditions as the sheriff considers appropriate; or
 - refuse the application.
- (4) A community care order shall specify—
- the conditions to which the patient is to be subject;

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- (b) the name of the medical practitioner (the “special medical officer”) who is to be principally concerned with the patient’s medical treatment while the order is in force, who shall be a practitioner approved for the purposes of section 20 of this Act by a Health Board as having special experience in the diagnosis or treatment of mental disorder; and
 - (c) the name of the person (the “after-care officer”) who is to be responsible for co-ordinating the provision of the after-care services to be provided for the patient under section 8 of this Act while the order is in force, who shall be a mental health officer of the local authority which is to provide the after-care services to be so provided.
- (5) The sheriff may defer the making of a community care order until such arrangements as appear to him to be necessary for the provision of medical treatment and after-care services to the patient following the making of the order have been made to the sheriff’s satisfaction.
- (6) If, on the date when a patient ceases to be liable to be detained in a hospital in pursuance of an application for admission, a community care application has been made in respect of him but has not been determined, his liability to be so detained shall continue until the community care order comes into force or, as the case may be, the application is refused by the sheriff.
- (7) If, on the date when a patient ceases to be liable to be detained in a hospital in pursuance of an application for admission, a community care order has been made in respect of him but has not come into force, his liability to be so detained shall continue until the order comes into force.
- (8) On the coming into force of a community care order in respect of a patient, he shall cease to be liable to be detained in a hospital under this Part of this Act.
- (9) The responsible medical officer shall, within 7 days of the making of a community care order, send a copy of the order to—
- (a) the patient and any other person who has been consulted under subsection (3) (a) or (f) or (4) of section 35B of this Act;
 - (b) the Mental Welfare Commission;
 - (c) the patient’s special medical officer; and
 - (d) the patient’s after-care officer.
- (10) The patient’s after-care officer shall, on receiving a copy of the community care order, take such steps as are practicable to explain to the patient, both orally and in writing—
- (a) the purpose and effect of the order and of the conditions specified in it;
 - (b) the patient’s right of appeal to the sheriff under section 35F of this Act; and
 - (c) that the patient may make representations to the Mental Welfare Commission, and shall send a copy of any written explanation to any other person who has been consulted under subsection (3)(a) or (4) of section 35B of this Act.

Textual Amendments

F24 S. 35A inserted (1.4.1996) by 1995 c. 52, ss. 4(1), 7(2)

Modifications etc. (not altering text)

C1 S. 35A modified (1.4.1996) by S.I. 1996/742, arts. 1, 3, Sch. para. 1

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^{F25}**35B Community care applications.**

- (1) A community care application may be made at any time after the expiry of the period of 28 days beginning with the day on which the patient was admitted to a hospital in pursuance of an application for admission.
- (2) Before making a community care application the responsible medical officer shall—
 - (a) consult the persons specified in subsection (3) below; and
 - (b) consider the matters specified in subsection (5) below.
- (3) The persons referred to in subsection (2)(a) above are—
 - (a) the patient and, if practicable and the patient does not object, his nearest relative;
 - (b) the persons who have been principally concerned with the patient's medical treatment in hospital;
 - (c) the medical practitioner who is to be the patient's special medical officer and the other persons who are to be concerned with the patient's medical treatment after the community care order comes into force;
 - (d) the person who is to be the patient's after-care officer;
 - (e) each other person who the responsible medical officer believes is to have a continuing professional involvement in any aspect of the after-care services which are to be provided for the patient under section 8 of this Act after the order comes into force; and
 - (f) any person who the responsible medical officer believes will play a substantial part in the care of the patient after the order comes into force but will not be professionally concerned with the after-care services to be so provided.
- (4) If the patient has a propensity to violent or dangerous behaviour the responsible medical officer may consult the patient's nearest relative notwithstanding any objection by the patient to such consultation under subsection (3)(a) above.
- (5) The matters referred to in subsection (2)(b) above are—
 - (a) the after-care services mentioned in subsection (3)(e) above; and
 - (b) the conditions which should be specified in the order with a view to ensuring that the patient receives medical treatment and such after-care services.
- (6) A community care application shall be in the prescribed form and shall include—
 - (a) the conditions which the responsible medical officer considers should be specified in the community care order for the purpose mentioned in subsection (5)(b) above;
 - (b) the name of the medical practitioner who is to be the patient's special medical officer after the order comes into force;
 - (c) the name of the person who is to be the patient's after-care officer after the order comes into force; and
 - (d) subject to section 35C(1) of this Act, the period for which the responsible medical officer considers the order should have effect.
- (7) A community care application shall be accompanied by—
 - (a) two medical recommendations, in the prescribed form and complying with subsection (8) below, one of which shall be given by a medical practitioner approved for the purposes of section 20 of this Act by a Health Board as having special experience in the diagnosis or treatment of mental disorder and the

Status: Point in time view as at 11/01/2000.

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- other of which shall, if practicable, be given by another medical practitioner who has previous acquaintance with the patient; and
- (b) a report in the prescribed form from the person who is to be the patient's after-care officer after the order comes into force, and complying with subsection (9) below.
- (8) The medical recommendations referred to in subsection (7)(a) above shall consist of statements of opinion that both the following conditions are satisfied, namely—
- (a) that the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment, but that the grounds set out in section 17(1) of this Act for admission to and detention in a hospital do not apply to the patient; and
- (b) that the patient requires to be subject to a community care order—
- (i) with a view to ensuring that he receives medical treatment and the after-care services to be provided for him under section 8 of this Act; and
- (ii) in the interests of his health or safety or with a view to the protection of other persons;
- and for the purposes of subsection (7)(a) above the recommendations do not comply with this subsection unless the patient is described in each of them as suffering from the same form of mental disorder (that is to say, mental illness [^{F26}(including personality disorder)] or mental handicap), whether or not he is described in either recommendation as suffering also from the other form.
- (9) The report referred to in subsection (7)(b) above shall include—
- (a) information as to—
- (i) the patient's social circumstances;
- (ii) the after-care services which are to be provided for the patient under section 8 of this Act after the order comes into force;
- (iii) the care, other than medical treatment and the after-care services so provided, which is to be provided for the patient after the order comes into force; and
- (b) a statement that in the opinion of the person making the report the patient requires to be subject to a community care order—
- (i) with a view to ensuring that he receives medical treatment and the after-care services to be so provided; and
- (ii) in the interests of his health or safety or with a view to the protection of other persons.
- (10) Before making a community care application the responsible medical officer shall take such steps as are reasonably practicable to inform any person, other than the patient, who has been consulted under subsection (3)(a) or (4) above of his right, by virtue of section 35A(2) of this Act, to be heard by the sheriff regarding the proposed community care order.

Textual Amendments

F25 S. 35B inserted (1.4.1996) by 1995 c. 52, ss. 4(1), 7(2)

F26 Words in s. 35B(8) inserted (13.9.1999) by 1999 asp 1, s. 3(1)(b)

Status: Point in time view as at 11/01/2000.

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Modifications etc. (not altering text)

C2 S. 35B modified (1.4.1996) by S.I. 1996/742, arts. 1, 3, Sch. para. 2

^{F27}**35C Duration and renewal of community care order.**

- (1) Subject to section 35J of this Act and the following provisions of this section, a community care order shall have effect for such period, not exceeding 6 months, as may be specified in the order.
- (2) A community care order may be renewed under this section—
 - (a) from the expiry of the period referred to in subsection (1) above, for a further period not exceeding 6 months;
 - (b) from the expiry of any period of renewal under paragraph (a) above, for a further period not exceeding one year, and so on for periods not exceeding one year at a time.
- (3) The special medical officer shall, within the period of two months ending with the day on which the community care order, if not renewed, would expire—
 - (a) examine the patient; and
 - (b) consult—
 - (i) the patient and, if practicable and the patient does not object, his nearest relative;
 - (ii) the patient's after-care officer;
 - (iii) the other persons concerned with the patient's medical treatment or professionally concerned with any aspect of the after-care services provided for him under section 8 of this Act; and
 - (iv) any person who the special medical officer believes plays a substantial part in the care of the patient but is not professionally concerned with the after-care services so provided.
- (4) If the patient has a propensity to violent or dangerous behaviour the responsible medical officer may consult the patient's nearest relative notwithstanding any objection by the patient to such consultation under subsection (3)(b)(i) above.
- (5) If, after the examination and consultation required by subsection (3) above and any consultation under subsection (4) above, the special medical officer considers that the conditions set out in section 35B(8)(a) and (b) of this Act continue to apply to the patient, he shall send to the Mental Welfare Commission a report to that effect in the prescribed form, and the community care order shall thereby be renewed for such period as is, subject to subsection (2) above, specified in the report.
- (6) The special medical officer shall notify—
 - (a) the patient and any other person who has been consulted under subsection (3)(b)(i) or (iv) or (4) above; and
 - (b) the patient's after-care officer,of any renewal of the community care order and of the period of such renewal.
- (7) Subsection (10) of section 35A of this Act shall apply in relation to a renewal of a community care order under this section as it applies in relation to a community care order made under that section, but with the substitution of references to subsections (3)(b)(i) and (4) of this section for the references to subsections (3)(a) and (4) of section 35B.

Status: Point in time view as at 11/01/2000.

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Textual Amendments

F27 S. 35C inserted (1.4.1996) by 1995 c. 52, ss. 4(1), 7(2)

Modifications etc. (not altering text)

C3 S. 35C modified (1.4.1996) by S.I. 1996/742, arts. 1, 3, Sch. para. 3

^{F28}35D Variation of conditions in community care order.

- (1) This section applies where the special medical officer, after consulting—
 - (a) the patient and, if practicable and the patient does not object, his nearest relative;
 - (b) the other persons concerned with the patient's medical treatment;
 - (c) the patient's after-care officer;
 - (d) the other persons professionally concerned with any aspect of the after-care services provided for the patient under section 8 of this Act; and
 - (e) any person who the special medical officer believes plays a substantial part in the care of the patient but is not professionally concerned with the after-care services so provided,
 considers that the conditions specified in the order should be varied (whether by adding further conditions or deleting or amending existing conditions).
- (2) If the patient has a propensity to violent or dangerous behaviour the special medical officer may consult the patient's nearest relative notwithstanding any objection by the patient to such consultation under subsection (1)(a) above.
- (3) Where this section applies the special medical officer shall prepare a note, in the prescribed form, of the proposed variation of the conditions and shall send a copy of the note to—
 - (a) the patient and any other person who has been consulted under subsection (1) (a) or (2) above;
 - (b) the patient's after-care officer; and
 - (c) the sheriff clerk for the sheriff of the sheriffdom within which the patient is resident.
- (4) If the patient wishes to object to or make representations concerning the proposed variation of the conditions he shall, within 7 days of receiving the copy of the note under subsection (3) above, so advise the sheriff clerk; and in that event the sheriff shall not approve the variation without holding a hearing.
- (5) If the patient does not indicate, in accordance with subsection (4) above, that he wishes to be heard concerning the proposed variation of the conditions the sheriff shall, if he thinks fit, approve the variation without a hearing.
- (6) Where a variation of conditions is approved under this section the special medical officer shall send a copy of the variation as so approved to—
 - (a) the patient and any other person who has been consulted under subsection (1) (a) or (e) or (2) above;
 - (b) the Mental Welfare Commission; and
 - (c) the patient's after-care officer.

Status: Point in time view as at 11/01/2000.

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- (7) Subsection (10) of section 35A of this Act shall apply in relation to a variation of conditions approved under this section as it applies in relation to a community care order made under that section, but with the substitution of references to subsections (1) (a) and (2) of this section for the references to subsections (3)(a) and (4) of section 35B.

Textual Amendments

F28 S. 35D inserted (1.4.1996) by 1995 c. 52, ss. 4(1), 7(2)

^{F29}35E Change of special medical officer or after-care officer.

- (1) This subsection applies where a patient's special medical officer, after consulting the persons mentioned in subsection (3) below, agrees with another medical practitioner ("the new special medical officer"), who shall be a practitioner approved for the purposes of section 20 of this Act by a Health Board as having special experience in the diagnosis or treatment of mental disorder, that the new special medical officer should, from a date so agreed, assume principal responsibility for the patient's medical treatment while the community care order is in force.
- (2) This subsection applies where a patient's after-care officer, after consulting the persons mentioned in subsection (4) below, agrees with another person ("the new after-care officer"), who shall be a mental health officer of the local authority which is providing (or, if different, the local authority which is to provide) the after-care services to be provided for the patient under section 8 of this Act while the community care order is in force, that the new after-care officer should, from a date so agreed, assume responsibility for co-ordinating the provision of the after-care services to be so provided.
- (3) The persons referred to in subsection (1) above are—
- the patient and, if practicable and the patient does not object, his nearest relative;
 - the other persons concerned or to be concerned with the patient's medical treatment (including the new special medical officer);
 - the patient's after-care officer;
 - the other persons professionally concerned or to be so concerned with any aspect of the after-care services provided or to be provided for the patient under section 8 of this Act; and
 - any person who the special medical officer believes plays or is to play a substantial part in the care of the patient but is not, and will not be, professionally concerned with the after-care services so provided or to be so provided.
- (4) The persons referred to in subsection (2) above are—
- the patient and, if practicable and the patient does not object, his nearest relative;
 - the patient's special medical officer;
 - the other persons concerned or to be concerned with the patient's medical treatment;
 - the other persons professionally concerned or to be so concerned with any aspect of the after-care services provided or to be provided for the patient under section 8 of this Act (including the new after-care officer); and

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- (e) any person who the after-care officer believes plays or is to play a substantial part in the care of the patient but is not, and will not be, professionally concerned with the after-care services so provided or to be so provided.
- (5) If the patient has a propensity to violent or dangerous behaviour the special medical officer or, as the case may be, the after-care officer may consult the patient's nearest relative notwithstanding any objection by the patient to such consultation under subsection (3)(a) or, as the case may be, (4)(a) above.
- (6) Where subsection (1) or (2) above applies the new special medical officer or, as the case may be, the new after-care officer shall, from the agreed date, assume responsibility as mentioned in that subsection and shall within seven days of that date intimate the change, in the prescribed form, to—
- (a) the patient and any other person who has been consulted under paragraph (a) or (e) of subsection (3) or, as the case may be, (4) above or subsection (5) above;
 - (b) the Mental Welfare Commission; and
 - (c) the patient's after-care officer or, as the case may be, special medical officer.
- (7) On a change of special medical officer or after-care officer by virtue of this section, the community care order shall have effect in respect of the patient as if the new special medical officer or, as the case may be, the new after-care officer had been the special medical officer or after-care officer specified in the community care order by virtue of section 35A(4) of this Act.

Textual Amendments

F29 S. 35E inserted (1.4.1996) by 1995 c. 52, ss. 4(1), 7(2)

^{F30}35F Appeal against community care order.

- (1) Any patient subject to a community care order may, at any time when the order is in force following renewal under section 35C(5) of this Act, appeal to the sheriff for revocation of the order.
- (2) An appeal under subsection (1) above shall be by way of summary application and shall be made to the sheriff of the sheriffdom within which the patient is resident.
- (3) On an appeal under subsection (1) above—
- (a) if the sheriff is satisfied that the patient—
 - (i) does not require to be subject to a community care order with a view to ensuring that he receives medical treatment and after-care services provided for him under section 8 of this Act; and
 - (ii) does not require to be subject to such an order in the interests of his health or safety or with a view to the protection of other persons, he shall revoke the order; and
 - (b) in any other case, the sheriff shall refuse the appeal and affirm the order, either without amendment or subject to such variation as he considers appropriate.
- (4) Where, under subsection (3)(a) above, the sheriff revokes a community care order he may order that the revocation shall have effect either immediately or from such date, not later than 28 days after the date of his decision, as he may specify.

Status: Point in time view as at 11/01/2000.

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- (5) The special medical officer shall notify the patient's after-care officer of any revocation or variation of a community care order under this section.

Textual Amendments

F30 S. 35F inserted (1.4.1996) by 1995 c. 52, ss. 4(1), 7(2)

^{F31}35G Admission to hospital for reassessment.

- (1) This section applies where, as respects a patient in respect of whom a community care order is in force, the special medical officer, after consulting the persons mentioned in subsection (2) below, considers that the patient's mental condition—
- has, since the making of the order or, where the order has been renewed under section 35C(5) of this Act, the most recent renewal, deteriorated; and
 - is, or is likely to become, such as to give grounds for serious concern regarding his health or safety or the protection of other persons.
- (2) The persons referred to in subsection (1) above are—
- if practicable and the patient does not object, his nearest relative;
 - the other persons concerned with the patient's medical treatment;
 - the patient's after-care officer;
 - the other persons professionally concerned with any aspect of the after-care services provided for the patient under section 8 of this Act; and
 - any person who the special medical officer believes plays a substantial part in the care of the patient but is not professionally concerned with the after-care services so provided.
- (3) If the patient has a propensity to violent or dangerous behaviour the special medical officer may consult the patient's nearest relative notwithstanding any objection by the patient to such consultation under subsection (2)(a) above.
- (4) Where this section applies, the special medical officer shall—
- examine the patient and prepare a report on his condition; and
 - arrange for another medical practitioner to carry out such an examination and provide such a report.
- (5) Where both reports conclude that—
- the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to be admitted to and detained in a hospital for assessment, or for assessment followed by medical treatment, for at least a limited period; and
 - he ought to be so admitted and detained in the interests of his own health or safety or with a view to the protection of other persons,
- the special medical officer may, with the consent of the patient's after-care officer, direct the patient to attend a hospital specified in the direction to be admitted and detained there by virtue of this section, and the direction shall be sufficient authority for the patient's removal to the hospital so specified and for his admission to and detention in that hospital in accordance with this section.
- (6) Reports under subsection (4) above and directions under subsection (5) above shall be in the prescribed form.

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- (7) The special medical officer shall send a copy of the reports under subsection (4) above and of the direction under subsection (5) above to—
- (a) any person who has been consulted under subsection (2)(a) or (e) or (3) above;
 - (b) the Mental Welfare Commission;
 - (c) the managers of the hospital specified in the direction; and
 - (d) the patient’s after-care officer.
- (8) Subject to section 35H(4)(b) of this Act, a patient admitted to a hospital by virtue of this section may be detained there for a period not exceeding 7 days beginning with the day on which he is admitted and shall not be further detained in a hospital by virtue of this section immediately after the expiry of the period of detention.
- (9) While a patient is detained in a hospital by virtue of this section the period for which, under section 35C of this Act, the community care order has effect shall continue to run but the conditions to which he is subject under the order shall not apply in relation to him.

Textual Amendments

F31 S. 35G inserted (1.4.1996) by 1995 c. 52, ss. 4(1), 7(2)

^{F32}35H Reassessment: further provisions.

- (1) Where a patient is detained in a hospital by virtue of section 35G of this Act, the responsible medical officer shall—
- (a) examine the patient and prepare a report, in the prescribed form, on his condition; and
 - (b) arrange for another medical practitioner to carry out such an examination and provide such a report.
- (2) If the responsible medical officer is not a practitioner approved for the purposes of section 20 of this Act by a Health Board as having special experience in the diagnosis or treatment of mental disorder, the medical practitioner referred to in subsection (1) (b) above shall require to be such a practitioner.
- (3) Where both reports conclude that the conditions set out in section 35B(8)(a) and (b) of this Act apply in relation to the patient, the patient shall, as soon as is practicable, be discharged from hospital and the conditions to which he is subject under the community care order shall again apply in relation to him.
- (4) Where both reports conclude that the grounds set out in section 17(1)(a) and (b) of this Act apply in relation to the patient and, within the period specified in section 35G(8) of this Act, an application for admission is made in respect of the patient—
- (a) the community care order in respect of the patient shall cease to have effect; and
 - (b) the submission to the sheriff, in accordance with section 21(1) of this Act, of the application for admission shall be sufficient authority for the detention of the patient in a hospital until the expiry of a further period of 21 days immediately following the expiry of the period specified in section 35G(8).
- (5) The responsible medical officer shall send to the Mental Welfare Commission copies of the reports prepared under subsection (1) above.

Status: Point in time view as at 11/01/2000.

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- (6) A patient detained in a hospital by virtue of section 35G of this Act shall cease to be liable to be so detained, and the community care order in respect of him shall cease to have effect—
- (a) if the period mentioned in subsection (8) of that section expires without the patient having been discharged from hospital or an application for his admission having been submitted to the sheriff; or
 - (b) where an application for his admission has been submitted to the sheriff within that period, if the period of 21 days mentioned in subsection (4)(b) above expires without the sheriff having approved the application.
- (7) For the purposes of this section, an application for admission is submitted to the sheriff when it is lodged with his sheriff clerk.

Textual Amendments

F32 S. 35H inserted (1.4.1996) by 1995 c. 52, ss. 4(1), 7(2)

^{F33}35I Revocation of community care order.

- (1) Where the special medical officer, after consulting the persons mentioned in subsection (2) below, considers that the patient—
- (a) does not require to be subject to a community care order with a view to ensuring that he receives medical treatment and after-care services provided for him under section 8 of this Act; and
 - (b) does not require to be subject to such an order in the interests of his health or safety or with a view to the protection of other persons,
- he shall revoke the order and shall notify the patient, his nearest relative (if practicable), his after-care officer, any person falling within subsection (2)(e) below and the Mental Welfare Commission of the revocation.
- (2) The persons to be consulted under subsection (1) above are—
- (a) the patient and, if practicable and the patient does not object, his nearest relative;
 - (b) the other persons concerned with the patient's medical treatment;
 - (c) the patient's after-care officer;
 - (d) the other persons professionally concerned with any aspect of the after-care services provided for the patient under section 8 of this Act; and
 - (e) any person who the special medical officer believes plays a substantial part in the care of the patient but is not professionally concerned with the after-care services so provided.
- (3) If the patient has a propensity to violent or dangerous behaviour the special medical officer may consult the patient's nearest relative notwithstanding any objection by the patient to such consultation under subsection (2)(a) above.
- (4) Where the Mental Welfare Commission consider that the patient—
- (a) does not require to be subject to a community care order with a view to ensuring that he receives medical treatment and after-care services provided for him under section 8 of this Act; and

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- (b) does not require to be subject to such an order in the interests of his health or safety or with a view to the protection of other persons,
 they shall revoke the order and shall notify the persons mentioned in subsection (5) below of the revocation.
- (5) The persons to be notified under subsection (4) above are—
- (a) the patient and (if practicable) his nearest relative;
 - (b) the patient's special medical officer;
 - (c) the patient's after-care officer; and
 - (d) any person who the Mental Welfare Commission believes plays a substantial part in the care of the patient but is not professionally concerned with the after-care services provided for the patient under section 8 of this Act.

Textual Amendments

F33 S. 35I inserted (1.4.1996) by 1995 c. 52, ss. 4(1), 7(2)

^{F34}**35J Patients in custody or admitted to hospital in pursuance of emergency recommendations.**

- (1) This section applies where a patient who is subject to a community care order—
 - (a) 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); or
 - (b) is detained in a hospital under section 24, 26 or 26A of this Act.
- (2) For so long as the patient is detained as mentioned in subsection (1)(a) or (b) above the period for which, under section 35C of this Act, the community care order has effect shall continue to run but the conditions to which he is subject under that order shall not apply in relation to him.
- (3) If the patient is detained as mentioned in paragraph (a) of subsection (1) above for a period of, or successive periods amounting in the aggregate to, 6 months or less, or is detained as mentioned in paragraph (b) of that subsection, and, apart from this subsection, the community care order—
 - (a) would have ceased to have effect during the period for which he is so detained; or
 - (b) would cease to have effect during the period of 28 days beginning with the day on which he ceases to be so detained,
 the order shall be deemed not to have ceased, and shall not cease, to have effect until the end of that period of 28 days.
- (4) Where the period for which the patient is subject to a community care order is extended by subsection (3) above, any examination and report to be made and furnished in respect of the patient under section 35C(3) and (5) of this Act may be made and furnished within the period as so extended.
- (5) Where, by virtue of subsection (4) above, a community care order is renewed for a further period after the day on which (apart from subsection (3) above) the order would have ceased to have effect, the further period shall be deemed to have commenced with that day.

Status: Point in time view as at 11/01/2000.

Changes to legislation: Mental Health (Scotland) Act 1984, Part V is up to date with all changes known to be in force on or before 06 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

F34 S. 35J inserted (1.4.1996) by 1996 c. 52, ss. 4(1), 7(2)

^{F35}**35K Patients moving from England and Wales to Scotland.**

- (1) A community care application may be made in respect of a patient who is subject to after-care under supervision under the ^{M2}Mental Health Act 1983 and who intends to leave England and Wales in order to reside in Scotland.
- (2) Sections 35A to 35J of this Act shall apply in relation to a patient in respect of whom a community care application is or is to be made by virtue of this section subject to such modifications as may be prescribed.]

Textual Amendments

F35 S. 35K inserted (1.4.1996) by 1995 c. 52, ss. 4(1), 7(2)

Marginal Citations

M2 1983 c. 20.

Grounds for reception into guardianship

36 Patients liable to be received into guardianship.

A person may, in pursuance of an application for reception into guardianship under section 37(1) of this Act, be received into guardianship on the grounds that—

- (a) he is suffering from mental disorder of a nature or degree which warrants his reception into guardianship; and
- (b) it is necessary in the interests of the welfare of the patient that he should be so received.

Procedure for reception of patients: guardianship

37 Reception of patients into guardianship.

- (1) A patient who has attained the age of 16 years may be received into guardianship for the period allowed by this Part of this Act, in pursuance of an application in the prescribed form (in this Act referred to as “a guardianship application”) approved by the sheriff and made in accordance with the provisions of this Part of this Act.
- (2) The person named as guardian in a guardianship application may be—
 - (a) the local authority to whom the application is addressed; or
 - (b) a person chosen by that authority; or
 - (c) any other person who has been accepted as a suitable person to act in that behalf by that authority,and any person chosen or accepted as aforesaid may be a local authority or any other person including the applicant.

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- (3) A guardianship application shall be founded on and accompanied by 2 medical recommendations in the prescribed form and a recommendation by a mental health officer in such form; and
- (a) each medical recommendation shall include—
 - (i) a statement of the form of mental disorder from which the patient is suffering being mental illness [^{F36}(including personality disorder)] or mental handicap or both; and
 - (ii) a statement that the ground set out in section 36(a) of this Act applies in relation to the patient,
 being statements of opinion, together with the grounds on which those statements are based;
 - (b) the recommendation by the mental health officer shall include—
 - (i) a statement, being a statement of opinion, that the ground set out in section 36(b) of this Act applies in relation to the patient, together with the grounds on which the statement is based; and
 - (ii) a statement as to whether he is related to the patient and of any pecuniary interest that he may have in the reception of the patient into guardianship.
- (4) A guardianship application shall be of no effect unless the patient is described in each of the medical recommendations as suffering from the same form of mental disorder, whether or not he is described in either of those recommendations as suffering also from the other form.

Textual Amendments

F36 Words in s. 37(3)(a)(i) inserted (13.9.1999) by 1999 asp. 1, s. 3(1)(b)

38 General provisions as to applications: guardianship.

- (1) Subject to the provisions of this section, a guardianship application may be made either by the nearest relative of the patient or by a mental health officer; and every such application shall be addressed to the local authority for the area in which the patient resides.
- (2) The nearest relative of the patient shall not make a guardianship application unless he has personally seen the patient within the period of 14 days ending with the date on which the proposed application is submitted to the sheriff for his approval.
- (3) A local authority shall, if so required by the nearest relative of a patient residing in their area, direct a mental health officer as soon as practicable to take the patient's case into consideration with a view to making a guardianship application in respect of the patient; and if in any such case that officer decides not to make an application he shall inform the nearest relative of his reasons in writing.
- (4) A mental health officer shall make a guardianship application in respect of a patient within the area of the local authority by whom that officer was 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 and to any other relevant circumstances, that it is necessary or proper for the application to be made by him.

Status: Point in time view as at 11/01/2000.

Changes to legislation: Mental Health (Scotland) Act 1984, Part V is up to date with all changes known to be in force on or before 06 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (5) A mental health officer who proposes to make a guardianship application shall—
 - (a) interview the patient within the period of 14 days ending with the date on which the proposed application is submitted to the sheriff for his approval; and
 - (b) take such steps as are reasonably practicable to inform the nearest relative of the patient of the proposed application, and of his right to object thereto in accordance with the provisions of section 40 of this Act.
- (6) An application under this section by a mental health officer may be made outside the area of the local authority by whom he is appointed.

39 Medical recommendations: guardianship.

The medical recommendations required for the purposes of a guardianship application shall satisfy the following requirements—

- (a) such recommendations shall be signed on or before the date of the application and shall be given by medical practitioners (neither being the applicant) who have personally examined the patient separately, in which case not more than 5 days must have elapsed between the days on which the separate examinations took place, or, where no objection has been made by the patient or his nearest relative, together;
- (b) one of the recommendations shall be given by a practitioner approved for the purposes of this section by a Health Board as having special experience in the diagnosis or treatment of mental disorder and the other recommendation shall, if practicable, be given by the patient’s general medical practitioner or another medical practitioner who has previous acquaintance with him;
- (c) such recommendations shall contain a statement as to whether the person signing the recommendation is related to the patient and of any pecuniary interest that that person may have in the reception of the patient into guardianship.

40 Approval of applications by the sheriff: guardianship.

- (1) A guardianship application shall be submitted to a sheriff of the sheriffdom—
 - (a) within which the patient is resident at the time when the application is submitted; or
 - (b) where the patient is a resident patient in a hospital at the time when the application is submitted, within which the hospital is situated,
.....^{F37} within 7 days of the last date on which the patient was examined for the purposes of any medical recommendation accompanying the application, together with a statement of the willingness to act of the guardian named in the application.
- (2) Subject to the following provisions of this section and to section 113 of this Act, the sheriff, in considering [^{F38}whether to approve] an application submitted to him under this section may make such inquiries and hear such persons (including the patient) as he thinks fit, and, where an application is the subject of objection by the nearest relative of the patient, shall afford that relative and any witness that relative may call an opportunity of being heard.

Status: Point in time view as at 11/01/2000.

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- (3) The sheriff shall not withhold approval to an application so submitted without affording to the applicant and any witness the applicant may call an opportunity of being heard.
- (4) Any proceedings under this section shall, where the patient or applicant so desires or the sheriff thinks fit, be conducted in private.
- (5) Every such application shall, after it is approved by the sheriff, be forwarded to the local authority for the area in which the patient resides.
- (6) The sheriff in the exercise of the functions conferred on him by this section shall have the like jurisdiction, and the like powers as regards the summoning and examination of witnesses, the administration of oaths, the awarding of expenses, and otherwise, as if he were acting in the exercise of his civil jurisdiction.

Textual Amendments

- F37** Words repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 39:1\)](#), [s. 51\(2\)\(a\)](#)
- F38** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 39:1\)](#), [s. 51\(2\)\(b\)](#)

41 Effect of applications: guardianship.

- (1) Where a patient has been received into guardianship in pursuance of an application under this Part of this Act, the local authority concerned shall notify the Mental Welfare Commission of that reception together with a copy of the application and recommendations relating to the patient's reception within 7 days of its taking place.
- (2) Where a guardianship application has been approved by the sheriff and forwarded to the local authority concerned within a period of 7 days from the date on which the sheriff approved the application, the application shall, subject to the following provisions of this section and to regulations made by the Secretary of State, confer on the authority or person named in the application as guardian, to the exclusion of any other person, the following powers—
 - (a) power to require the patient to reside at a place specified by the authority or person named as guardian;
 - (b) power to require the patient to attend at places and times so specified for the purpose of medical treatment, occupation, education or training;
 - (c) power to require access to the patient to be given, at any place where the patient is residing, to any medical practitioner, mental health officer or other person so specified.
- (3) Nothing in the provisions of subsection (2) of this section or of regulations made thereunder shall confer any power on a guardian in respect of a patient received into his guardianship to intromit with any property of that patient.
- (4) No person who is appointed as a guardian of a patient under this Act shall administer corporal punishment to that patient, and any person who contravenes the provisions of this subsection shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale and the court shall intimate the conviction to the Mental Welfare Commission.

Status: Point in time view as at 11/01/2000.

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42 Rectification of application and recommendations: guardianship.

- (1) If within the period of 14 days beginning with the day on which a patient has been received into guardianship in pursuance of a guardianship application, 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, not later than 7 days after the expiration of the said period, with the approval of the sheriff, 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 the provisions of subsection (1) of this section, if within the period first mentioned therein it appears to the designated medical officer that one of the medical recommendations on which the guardianship application is founded is insufficient to warrant reception into guardianship in pursuance of the application, he may give notice in writing to that effect within that period to the applicant and to the sheriff; and where any such notice is given in respect of a recommendation that recommendation shall be disregarded, but the application shall be, and shall be deemed always to have been, sufficient if—
 - (a) a fresh 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 medical examinations) is furnished to the local authority concerned and to the sheriff; and
 - (b) the sheriff is satisfied that that recommendation and the other recommendations on which the application is founded together comply with those provisions.
- (3) Where the medical recommendations upon which an application under this Part of this Act is founded are, taken together, insufficient to warrant reception into guardianship in pursuance of the application, a notice under subsection (2) of this section may be given in 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 37(4) of this Act.

Care and treatment of patients: guardianship

43 Regulations as to guardianship.

- (1) Subject to the provisions of this Part of this Act, the Secretary of State may make regulations for regulating the exercise by the guardians of patients received into guardianship under this Part of this Act of their powers as such, and for imposing on such guardians, and upon any local authority concerned, such duties as he considers necessary or expedient in the interests of the patients.
- (2) Regulations under this section may in particular make provision for requiring the patients to be visited, on such occasions or at such intervals as may be prescribed by the regulations, on behalf of such local authorities as may be so prescribed.

44 Return of patients absent without leave: guardianship.

- (1) Where a patient who is for the time being subject to guardianship under this Part of this Act absents himself without the leave of the guardian from the place at which he is required by the guardian to reside, he may, subject to the provisions of this section, be taken into custody and returned to that place by the guardian, by any officer on the

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staff of a local authority, by any constable, or by any person authorised in writing by the guardian or a local authority.

- [^{F39}(2) A patient shall not be taken into custody under this section after the later of—
- (a) the end of the period of six months beginning with the first day of his absence without leave; and
 - (b) the end of the period for which (apart from section 48 of this Act) he is subject to guardianship;

and, in determining for the purposes of paragraph (b) above or any other provision of this Act whether a person who is or has been absent without leave is at any time subject to guardianship, a report furnished under section 47 or 48B of this Act before the first day of his absence shall not be taken to have renewed the authority for his guardianship unless the period of renewal began before that day.]

Textual Amendments

F39 S. 44(2) substituted (1.4.1996) by 1995 c. 52, ss. 5(5), 7(2)

45 Transfer of patients: guardianship.

- (1) A patient who is for the time being subject to the guardianship of any person, including a local authority, by virtue of a guardianship application may be transferred by the local authority concerned into the guardianship of another such person with the consent of that other person; but no patient shall be so transferred except with the consent of his guardian, or, if that consent is refused, with the approval of the sheriff to the transfer.
- (2) Any transfer of a patient under the last foregoing subsection shall be intimated to his nearest relative and to the Mental Welfare Commission by the local authority concerned within 7 days of the date of transfer.
- (3) Where a patient is transferred under this section, the provisions of this Part of this Act (including this subsection) shall apply to him as if the person into whose guardianship he is transferred had been the person named in the guardianship application.

46 Transfer of guardianship in case of death, incapacity etc. of guardian.

- (1) If any person (other than a local authority) having the guardianship of a patient received into guardianship under this Part of this Act—
 - (a) dies; or
 - (b) gives notice in writing to the local authority concerned that he desires to relinquish the functions of guardian,
 the guardianship of the patient shall thereupon vest in the local authority concerned, but without prejudice to any power to transfer the patient into the guardianship of another person under section 45 of this Act.
- (2) If any such person, not having given notice under subsection (1)(b) of this section, is incapacitated by illness or any other cause from performing the functions of guardian of the patient, those functions may, during his incapacity, be performed on his behalf by the local authority concerned, or by any other person approved for the purpose by that authority.

Status: Point in time view as at 11/01/2000.

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- (3) Where the guardianship of a patient is transferred to a local authority or other person by or under subsection (1) of this section, section 45(3) of this Act shall apply as if the patient had been transferred into the guardianship of that authority or person in pursuance of that section.

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
 - (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 [F40] or

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section 48B of this Act] 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.

Textual Amendments

F40 Words in s. 47(6) inserted (1.4.1996) by 1995 c. 52, ss. 5(6), 7(2)

[^{F41}48 Special provisions as to patients absent without leave: guardianship.

- (1) Where a patient is absent without leave—
 - (a) on the day on which (apart from this section) he would cease to be subject to guardianship under this Part of this Act; or
 - (b) within the period of one week ending with that day, he shall not cease to be so subject until the relevant time.
- (2) For the purposes of subsection (1) above the relevant time—
 - (a) where the patient is taken into custody under section 44 of this Act, is the end of the period of one week beginning with the day on which he is returned to the place where he ought to be;
 - (b) where the patient returns to the place where he ought to be within the period during which he can be taken into custody under section 44 of this Act, is the end of the period of one week beginning with the day on which he so returns; and
 - (c) otherwise, is the end of the period during which he can be taken into custody under section 44 of this Act.]

Textual Amendments

F41 Ss. 48, 48A, 48B substituted for s. 48 (1.4.1996) by 1995 c. 52, ss. 5(7), 7(2)

48A ^{F42}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 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

F42 S. 48, 48A, 48B substituted for s. 48 (1.4.1996) by 1995 c. 52, ss. 5(7), 7(2)

Status: Point in time view as at 11/01/2000.

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48B ^{F43}**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.
- (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.

Status: Point in time view as at 11/01/2000.

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Textual Amendments

F43 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 ^{F44}, 48 and 48A] of this Act shall apply in relation to the patient as if he had absented himself without leave on that day.
- ^{F45}(3) In its application by virtue of subsection (2) above section 44(2) of this Act shall have effect with the substitution of the words “end of the period of 28 days beginning with the first day of his absence without leave.” for the words from “later of” onwards.]

Textual Amendments

F44 Words in s. 49(2) substituted (1.4.1996) by 1995 c. 52, ss. 5(8)(a), 7(2)

F45 S. 49(3) inserted (1.4.1996) by 1995 c. 52, ss. 5(8)(b), 7(2)

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 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—

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- (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.

Appeals: guardianship

52 Appeals to the sheriff: guardianship.

- (1) Where an appeal lies to the sheriff under either of sections 47 or 51 of this Act, the local authority concerned shall when intimating that a report has been furnished in pursuance of the said section 47, or when informing the nearest relative under the said section 51, inform any person having a right so to appeal, whether the patient or his nearest relative, or both, of that right, and of the period within which it may be exercised.
- (2) An appeal under either of the said sections shall be made by way of summary application to a sheriff of the sheriffdom within which the patient is resident at the time when the appeal is made.

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- (3) For the purpose of advising whether any appeal to the sheriff under either of the said sections should be made by or in respect of a patient who is subject to guardianship under this Part of this Act, or of furnishing information as to the condition of a patient for the purposes of such an appeal or of advising the nearest relative of any such patient as to the exercise of any power to order the discharge of the patient, any medical practitioner authorised by or on behalf of the patient or by the nearest relative of the patient, as the case may be, may, at any reasonable time, visit the patient and may examine him in private.

Functions of relatives of patients

53 Definition of relative and nearest relative.

- (1) For the purposes of this section, “relative” means any of the following, that is to say—
- (a) spouse;
 - (b) child;
 - (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, an illegitimate person shall be treated as the legitimate child of his mother.
- (3) In 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 listed in subsection (1) of this section who is caring for the patient, or was so caring immediately before the admission of the patient to a hospital or his reception into guardianship, failing whom the person first so listed, brothers and sisters of the whole blood being preferred to brothers and sisters of the half-blood, and the elder or eldest of two or more relatives listed in any paragraph of that subsection being preferred to the other or others of those relatives, regardless of sex.
- (4) Where the person who, under subsection (3) of this section, 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) being the husband or wife of the patient, 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 and the spouse concerned is still in desertion; or
 - (c) not being the husband, wife, father, or mother of the patient, is for the time being under 18 years of age,
- the nearest relative of the patient shall be ascertained without regard to that person.
- (5) In this section “spouse” includes a person who is living with the patient as if he or she were the husband or wife of the patient, 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 6 months; but a person shall

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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 (4) of this section.

- (6) A person, other than a relative, with whom the patient ordinarily resides (or, if the patient is for the time being an in-patient 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) of this section as if mentioned last in subsection (1) of this section; 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 (4) of this section.

[^{F46}54 Children and young persons in care of local authority.

Where—

- [^{F47}(a) the parental rights and responsibilities in relation to a patient who is a child or young person have been transferred to a local authority by virtue of section 86(1) of the Children (Scotland) Act 1995;]
- (b) a patient who is a child or young person is in the care of a local authority by virtue of a care order made under the Children Act 1989,

the authority shall be deemed to be the nearest relative of the patient in preference to any person except the patient's husband or wife (if any).

Textual Amendments

F46 S. 54 substituted by Children Act 1989 (c. 41, SIF 20), s. 108(5), Sch. 13 para. 50: S.I. 1991/828, art. 3(2) (with Schedule 14 para. 1(1))

F47 S. 54(a) substituted (1.4.1997) by 1995 c. 36, s. 105(4), Sch. 4, para. 33(3) (with s. 103(1)); S.I. 1996/3201, art. 3(7) (as substituted (7.3.1997) by S.I. 1997/744, art. 2)

55 Nearest relative of child under guardianship etc.

[^{F48}(1) Where—

- (a) a guardian has been appointed for a child who has not attained the age of eighteen years; or
- (b) there is in force a residence order, or a custody order, granted by a court in the United Kingdom, or an analogous order granted by a court outwith the United Kingdom (being an order which is entitled to recognition in Scotland), identifying a person as the person with whom a child under the age of sixteen years is to live,

that guardian or person shall, to the exclusion of any other person, be deemed to be the child's nearest relative.]

- (2) Section 53(4) of this Act shall apply in relation to a person who is, or who is one of the persons, deemed to be the nearest relative of a patient by virtue of this section as it applies in relation to a person who would be the nearest relative under subsection (3) of that section.

Status: Point in time view as at 11/01/2000.

Changes to legislation: Mental Health (Scotland) Act 1984, Part V is up to date with all changes known to be in force on or before 06 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

[^{F49}(3) In this section “guardian” does not include a guardian under this Part of this Act or, in relation to a child, a guardian whose appointment takes effect under section 7, or on an order under section 11(1), of the Children (Scotland) Act 1995 where there is a parent who has parental responsibilities and parental rights in relation to the child.]

^{F50}(4)

Textual Amendments

F48 S. 55(1) substituted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4**, para. 33(4)(a) (with s. 103(1)); S.I. 1996/2203, art. 3, **Sch.**

F49 S. 55(3) substituted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4**, para. 33(4)(b) (with s. 103(1)); S.I. 1996/2203, art. 3, **Sch.**

F50 S. 55(4) repealed (1.11.1996) by 1995 c. 36, s. 105(4)(5), **Sch. 4**, para. 33(4)(c), **Sch. 5** (with s. 103(1)); S.I. 1996/2203, art. 3, **Sch**

56 Appointment by sheriff of acting nearest relative.

- (1) The sheriff may, upon application made in accordance with the provisions of this section in respect of a patient, by order direct that the functions under this Act of the nearest relative of the patient shall, during the continuance in force of the order, be exercisable by the applicant, or by any other person specified in the application, being a person who, in the opinion of the sheriff, is a proper person to act as the nearest relative of the patient, and who is willing to do so.
- (2) An order under this section may be made on the application of—
 - (a) any relative (including the nearest relative) of the patient;
 - (b) any other person with whom the patient is residing (or, if the patient is then an in-patient in a hospital, was last residing before he was admitted); or
 - (c) a mental health officer,
 but in relation to an application made by such an officer subsection (1) of this section shall have effect as if for the words “the applicant” there were substituted the words “the local authority”.
- (3) An application for an order under this section may be made upon any of the following grounds, that is to say—
 - (a) that the patient has no nearest relative within the meaning of this Act, or that it is not reasonably practicable to ascertain whether he has such a relative or who that relative is;
 - (b) that the nearest relative of the patient is incapable of acting as such by reason of mental disorder or other illness;
 - (c) where the application is made by the nearest relative of the patient, that he is unwilling or considers it undesirable to continue to act as such.
- (4) While an order made under this section is in force, the provisions of this Part of this Act (other than this section and section 57 of this Act) shall apply in relation to the patient as if for any reference to the nearest relative of the patient there were substituted a reference to the person having the functions of that relative and (without prejudice to section 57 of this Act) shall so apply notwithstanding that the person who was the nearest relative of the patient when the order was made is no longer his nearest relative.

Status: Point in time view as at 11/01/2000.

Changes to legislation: Mental Health (Scotland) Act 1984, Part V is up to date with all changes known to be in force on or before 06 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

57 Discharge and variation of orders under s. 56.

- (1) An order made under section 56 of this Act in respect of a patient may be discharged by the sheriff upon application made—
 - (a) by the person having the functions of the nearest relative of the patient by virtue of the order;
 - (b) by the nearest relative of the patient.
- (2) An order made under the said section 56 in respect of a patient may be varied by the sheriff, on the application of the person having the functions of the nearest relative by virtue of the order or on the application of a mental health officer, by substituting for the first-mentioned person a local authority or any other person who, in the opinion of the sheriff, is a proper person to exercise those functions, being an authority or person who is willing to do so.
- (3) If the person having the functions of the nearest relative of a patient by virtue of an order under the said section 56 dies, the foregoing provisions of this section shall apply as if for any reference to that person there were substituted a reference to any relative of the patient, and until the order is discharged or varied under those provisions the functions of the nearest relative under this Part of this Act shall not be exercisable by any person.
- (4) An order under the said section 56 shall, unless previously discharged under subsection (1) of this section, cease to have effect—
 - (a) if the patient was on the date of the order liable to be detained in pursuance of an application for admission or subject to guardianship under this Part of this Act, or becomes so liable or so subject within the period of 3 months beginning with that date, when he ceases to be so liable or so subject (otherwise than on being transferred in pursuance of sections 29 or 45 of this Act);
 - (b) if the patient was not on the date of the order and has not within the said period become so liable or so subject, at the expiration of that period.
- (5) The discharge or variation under this section of an order made under the said section 56 shall not affect the validity of anything previously done in pursuance of the order.

Supplementary

58 Regulations for purposes of Part V.

The Secretary of State may make regulations for prescribing anything which, under this Part of this Act, is required or authorised to be prescribed.

59 Interpretation of Part V.

- (1) In this Part of this Act the expression “responsible medical officer” means—
 - (a) in relation to a patient who is liable to be detained in a hospital, any medical practitioner employed on the staff of that hospital who may be authorised by the managers to act (either generally or in any particular case or class of case or for any particular purpose) as the responsible medical officer;
 - (b) in relation to a patient subject to guardianship, any medical practitioner authorised by the local authority to act (either generally or in any particular case or class of case or for any particular purpose) as the responsible medical officer.

Status: Point in time view as at 11/01/2000.

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- (2) In relation to a patient who is subject to guardianship under this Part of this Act, any reference in this Act to the local authority concerned is a reference—
- (a) where a guardianship application is effective, to the local authority to whom that application is addressed;
 - (b) where the patient has been transferred to guardianship by the managers of a hospital under section 29(1) of this Act, to the local authority who received him into guardianship or approved his guardian.
- (3) In this Act the expression “absent without leave” means absent from any hospital or other place and liable to be taken into custody and returned under section 28 or 44 of this Act, and kindred expressions shall be construed accordingly.
- [^{F51}(4) In this Part of this Act, “court holidays” means any day which is a court holiday by virtue of section 10(2) of the Bail Etc (Scotland) Act 1980.]

Textual Amendments

- F51** S. 59(4) added (9.3.1992) by [Mental Health \(Detention\) \(Scotland\) Act 1991 \(c. 47, SIF 85\), s. 3\(5\)](#); [S.I. 1992/357, art.2](#)

Status:

Point in time view as at 11/01/2000.

Changes to legislation:

Mental Health (Scotland) Act 1984, Part V is up to date with all changes known to be in force on or before 06 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.