



Mental Health (Scotland) Act 1984

1984 CHAPTER 36

PART V

ADMISSION TO AND DETENTION IN HOSPITAL AND GUARDIANSHIP

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 staff of a local authority, by any constable, or by any person authorised in writing by the guardian or a local authority.
- [^{F1}(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;

Status: Point in time view as at 11/01/2000.

Changes to legislation: Mental Health (Scotland) Act 1984, Cross Heading: Care and treatment of patients: guardianship is up to date with all changes known to be in force on or before 07 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)

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

F1 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.
- (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.

Status:

Point in time view as at 11/01/2000.

Changes to legislation:

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