



Mental Health (Scotland) Act 1984

1984 CHAPTER 36

PART V

ADMISSION TO AND DETENTION IN HOSPITAL AND GUARDIANSHIP

^{F1} Community care orders

Textual Amendments

F1 Ss. 35A-35K inserted (1.4.1996) by 1995 c. 52, ss. 4(1), 7(2)

^{F2}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—
 - (a) medical treatment; and
 - (b) 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—
 - (a) 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
 - (b) refuse the application.

Status: Point in time view as at 01/04/2002.

Changes to legislation: Mental Health (Scotland) Act 1984, Cross Heading: Community care orders is up to date with all changes known to be in force on or before 15 June 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)

- (4) A community care order shall specify—
- (a) the conditions to which the patient is to be subject;
 - (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

F2 S. 35A inserted (1.4.1996) by 1995 c. 52, ss. 4(1), 7(2)

Status: Point in time view as at 01/04/2002.

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Modifications etc. (not altering text)

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

^{F3}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 [^{F4}or any guardian of the patient] and, if practicable and the patient does not object, his nearest relative [^{F4}and any welfare attorney of the patient];
 - (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 [^{F5}and any welfare attorney of the patient,] 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.

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- (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 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 [^{F6}(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.

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Textual Amendments

- F3** S. 35B inserted (1.4.1996) by 1995 c. 52, ss. 4(1), 7(2)
- F4** Words in s. 35B(3)(a) inserted (1.4.2002) by 2000 asp 4, s. 88(2), Sch. 5 para. 17(16)(a); S.S.I. 2001/81, art. 3, Sch. 2
- F5** Words in s. 35B(4) inserted (1.4.2002) by 2000 asp 4, s. 88(2), Sch. 5 para. 17(16)(b); S.S.I. 2001/81, art. 3, Sch. 2
- F6** Words in s. 35B(8) inserted (13.9.1999) by 1999 asp 1, s. 3(1)(b)

Modifications etc. (not altering text)

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

^{F7}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 [^{F8}or any guardian of the patient] and, if practicable and the patient does not object, his nearest relative [^{F8}and any welfare attorney of the patient];
 - (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 [^{F9}and any welfare attorney of the patient,] 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.

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- (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.

Textual Amendments

- F7** S. 35C inserted (1.4.1996) by 1995 c. 52, ss. 4(1), 7(2)
- F8** Words in s. 35C(3)(b)(i) inserted (1.4.2002) by 2000 asp 4, s. 88(2), **Sch. 5 para. 17(17)(a)**; S.S.I. 2001/81, art. 3, **Sch. 2**
- F9** Words in s. 35C(4) inserted (1.4.2002) by 2000 asp 4, s. 88(2), **Sch. 5 para. 17(17)(b)**; S.S.I. 2001/81, art. 3, **Sch. 2**

Modifications etc. (not altering text)

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

^{F10}**35D Variation of conditions in community care order.**

- (1) This section applies where the special medical officer, after consulting—
- (a) the patient [^{F11}or any guardian of the patient] and, if practicable and the patient does not object, his nearest relative [^{F11}and any welfare attorney of the patient];
 - (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 [^{F12}and any welfare attorney of the patient,] 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

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- (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.
- (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

F10 S. 35D inserted (1.4.1996) by 1995 c. 52, ss. 4(1), 7(2)

F11 Words in s. 35D(1)(a) inserted (1.4.2002) by 2000 asp 4, s. 88(2), Sch. 5 para. 17(18)(a); S.S.I. 2001/81, art. 3, Sch. 2

F12 Words in s. 35D(2) inserted (1.4.2002) by 2000 asp 4, s. 88(2), Sch. 5 para. 17(18)(b); S.S.I. 2001/81, art. 3, Sch. 2

^{F13}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—

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- (a) the patient [^{F14}or any guardian of the patient] and, if practicable and the patient does not object, his nearest relative [^{F14}and any welfare attorney of the patient];
 - (b) the other persons concerned or to be concerned with the patient's medical treatment (including the new special medical officer);
 - (c) the patient's after-care officer;
 - (d) 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
 - (e) 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—
- (a) the patient [^{F15}or any guardian of the patient] and, if practicable and the patient does not object, his nearest relative [^{F15}and any welfare attorney of the patient];
 - (b) the patient's special medical officer;
 - (c) the other persons concerned or to be concerned with the patient's medical treatment;
 - (d) 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
 - (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 [^{F16}and any welfare attorney of the patient,] 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

F13 S. 35E inserted (1.4.1996) by 1995 c. 52, ss. 4(1), 7(2)

Status: Point in time view as at 01/04/2002.

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- F14** Words in s. 35E(3)(a) inserted (1.4.2002) by 2000 asp 4, s. 88(2), **Sch. 5 para. 17(19)(a)**; S.S.I. 2001/81, art. 3, **Sch. 2**
- F15** Words in s. 35E(4)(a) inserted (1.4.2002) by 2000 asp 4, s. 88(2), **Sch. 5 para. 17(19)(b)**; S.S.I. 2001/81, art. 3, **Sch. 2**
- F16** Words in s. 35E(5) inserted (1.4.2002) by 2000 asp 4, s. 88(2), **Sch. 5 para. 17(19)(c)**; S.S.I. 2001/81, art. 3, **Sch. 2**

^{F17}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.
- (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

- F17** S. 35F inserted (1.4.1996) by 1995 c. 52, **ss. 4(1), 7(2)**

^{F18}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—
 - (a) 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
 - (b) 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—
 - (a) [^{F19}any guardian of the patient, and]if practicable and the patient does not object, his nearest relative [^{F19}and any welfare attorney of the patient];

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- (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 [^{F20}and any welfare attorney of the patient,] notwithstanding any objection by the patient to such consultation under subsection (2)(a) above.
- (4) Where this section applies, the special medical officer shall—
- (a) examine the patient and prepare a report on his condition; and
 - (b) arrange for another medical practitioner to carry out such an examination and provide such a report.
- (5) Where both reports conclude that—
- (a) 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
 - (b) 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.
- (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.

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Textual Amendments

- F18** S. 35G inserted (1.4.1996) by 1995 c. 52, ss. 4(1), 7(2)
- F19** Words in s. 35G(2)(a) inserted (1.4.2002) by 2000 asp 4, s. 88(2), Sch. 5 para. 17(20)(a); S.S.I. 2001/81, art. 3, Sch. 2
- F20** Words in s. 35G(3) inserted (1.4.2002) by 2000 asp 4, s. 88(2), Sch. 5 para. 17(20)(b); S.S.I. 2001/81, art. 3, Sch. 2

^{F21}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.
- (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.

Status: Point in time view as at 01/04/2002.

Changes to legislation: Mental Health (Scotland) Act 1984, Cross Heading: Community care orders is up to date with all changes known to be in force on or before 15 June 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

F21 S. 35H inserted (1.4.1996) by 1995 c. 52, ss. 4(1), 7(2)

^{F22}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 [^{F23}or any guardian of the patient] and, if practicable and the patient does not object, his nearest relative [^{F23}and any welfare attorney of the patient];
 - (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 [^{F24}and any welfare attorney of the patient,] 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
 - (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) [^{F25}any guardian of the patient, and] the patient and (if practicable) his nearest relative [^{F25}and any welfare attorney of the patient];
 - (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.

Status: Point in time view as at 01/04/2002.

Changes to legislation: Mental Health (Scotland) Act 1984, Cross Heading: Community care orders is up to date with all changes known to be in force on or before 15 June 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

- F22** S. 35I inserted (1.4.1996) by 1995 c. 52, ss. 4(1), 7(2)
- F23** Words in s. 35I(2)(a) inserted (1.4.2002) by 2000 asp 4, s. 88(2), Sch. 5 para. 17(21)(a); S.S.I. 2001/81, art. 3, Sch. 2
- F24** Words in s. 35I(3) inserted (1.4.2002) by 2000 asp 4, s. 88(2), Sch. 5 para. 17(21)(b); S.S.I. 2001/81, art. 3, Sch. 2
- F25** Words in s. 35I(5)(a) inserted (1.4.2002) by 2000 asp 4, s. 88(2), Sch. 5 para. 17(21)(c); S.S.I. 2001/81, art. 3, Sch. 2

^{F26}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.

Textual Amendments

- F26** S. 35J inserted (1.4.1996) by 1996 c. 52, ss. 4(1), 7(2)

Status: Point in time view as at 01/04/2002.

Changes to legislation: Mental Health (Scotland) Act 1984, Cross Heading: Community care orders is up to date with all changes known to be in force on or before 15 June 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)

^{F27} **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 ^{M1}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

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

Marginal Citations

M1 1983 c. 20.

Status:

Point in time view as at 01/04/2002.

Changes to legislation:

Mental Health (Scotland) Act 1984, Cross Heading: Community care orders is up to date with all changes known to be in force on or before 15 June 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.