



Mental Health (Scotland) Act 1984

1984 CHAPTER 36

PART V **U.K.**

ADMISSION TO AND DETENTION IN HOSPITAL AND GUARDIANSHIP

Procedure for admission of patients: hospital

18 Admission and detention of patients: hospital. **S**

- (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 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.

19 General provisions as to applications: hospital. **S**

- (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.

Status: Point in time view as at 09/03/1992.

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- (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—
 - (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.** S

- (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;

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- (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 [^{F1}of, or paragraph 14 of Schedule 7A to,] the ^{M1}National Health Service (Scotland) Act 1978 (which [^{F2}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—
- (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

F1 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)

F2 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. **S**

- (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,

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-^{F3} 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 [^{F4}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.
- [^{F5}(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.
- [^{F6}(6) For the purposes of this section, an application is submitted to the sheriff when it is lodged with his sheriff clerk.]

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Textual Amendments

- F3** Words repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 39:1\)](#), [s. 51\(2\)\(a\)](#)
- F4** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 39:1\)](#), [s. 51\(2\)\(b\)](#)
- F5** [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](#)
- F6** [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. **S**

- (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—
- the Mental Welfare Commission; and
 - 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—
- to interview the patient whose admission has been notified to them; and
 - 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—
- within the period of 7 days ending on the 28th day after the patient's admission—
 - examine the patient or obtain from another medical practitioner a report on the condition of the patient; and
 - consult such other person or persons who appear to him to be principally concerned with the patient's medical treatment; and
 - if he is satisfied, as a result of the examination or report, that—
 - 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

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- (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.** S

- (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 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.** S

- (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

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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. S

- (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 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.

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- (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. **S**

- (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;
 - (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

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- (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) ^{F7} 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

F7 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] ^{F8} **Interim detention.** **S**

- (1) This section applies where—
- a patient is detained in a hospital under section 26 of this Act;
 - 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
 - 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—
- is approved for the purposes of section 20(1)(b) of this Act; and
 - 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 statement by the relevant medical practitioner that in his opinion—
 - 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

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

Textual Amendments

F8 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

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