



# Mental Health (Patients in the Community) Act 1995

## 1995 CHAPTER 52

### *Scotland*

#### **5 Absence without leave**

- (1) In section 28 of the Mental Health (Scotland) Act 1984 (return of hospital patients absent without leave), for subsection (3) (which provides that a patient may not be taken into custody after the end of the period of 28 days beginning with the first day of his absence without leave) there shall be substituted the following subsection—

- “(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.”

- (2) In section 30(6) of that Act (right of appeal where authority for detention renewed), after the word “section” where it first occurs there shall be inserted “or section 31B of this Act”.
- (3) For section 31 of that Act (duration of authority for detention: special provisions as to patients absent without leave) there shall be substituted the following sections—

#### **“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.
- (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.

**31A 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.

**31B 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 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.”
- (4) In section 32 of that Act (special provisions as to patients sentenced to imprisonment etc: hospital)—
    - (a) in subsection (2) (detained person in whose case application for admission does not cease to have effect), for the words “and 31” there shall be substituted “, 31 and 31A”; and
    - (b) after that subsection there shall be inserted the following subsection—

“(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.”
  - (5) In section 44 of that Act (return of patients subject to guardianship absent without leave), for subsection (2) (which provides that a patient may not be taken into custody

after the end of the period of 28 days beginning with the first day of his absence without leave) there shall be substituted the following subsections—

- “(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.”

- (6) In section 47(6) of that Act (right of appeal where authority for guardianship renewed), after the word “section” where it first occurs there shall be inserted “or section 48B of this Act”.
- (7) For section 48 of that Act (duration of authority for guardianship: special provisions as to patients absent without leave) there shall be substituted the following sections—

**“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.

**48A 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.

#### **48B 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.”
- (8) In section 49 of that Act (special provisions as to patients sentenced to imprisonment etc: guardianship)—
  - (a) in subsection (2) (detained person in whose case guardianship application does not cease to have effect), for the words “and 48” there shall be substituted “, 48 and 48A”; and
  - (b) after that subsection there shall be inserted the following subsection—
    - “(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.”
- (9) In section 60 of that Act (effect of hospital orders), after subsection (4) there shall be inserted the following subsection—
  - “(5) Where—
    - (a) a patient admitted to a hospital in pursuance of a hospital order is absent without leave;
    - (b) a warrant to arrest him has been issued under section 13 of the Criminal Procedure (Scotland) Act 1975; and
    - (c) he is held pursuant to the warrant in any country or territory other than the United Kingdom, any of the Channel Islands and the Isle of Man,
 he shall be treated as having been taken into custody under section 28 of this Act on first being so held.”
- (10) In section 99 of that Act (review of treatment), in subsection (1) (report on treatment and patient’s condition to be given to Mental Welfare Commission), in paragraph (a) (report to be given when report furnished under section 30), for the words “in respect of the patient under section 30 of this Act” there shall be substituted “under section 30 or 31B of this Act renewing the authority for the detention of the patient”.
- (11) In Schedule 2 to that Act (application of Part V to patients subject to hospital or guardianship orders)—
  - (a) in paragraph 1 of Part I (provisions applying without modifications to patients subject to hospital order without restriction or transfer order without restriction), after “31” there shall be inserted “to 31B”; and
  - (b) in paragraph 1 of Part III (provisions applying without modifications to patients subject to guardianship), after “48” there shall be inserted “to 48B”.