



# Mental Health (Scotland) Act 1984

## 1984 CHAPTER 36

### PART V

#### ADMISSION TO AND DETENTION IN HOSPITAL AND GUARDIANSHIP

##### *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.
- (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 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—

---

*Status: This is the original version (as it was originally enacted).*

---

- (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.

### **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.
- (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,for his approval 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 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.
- (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.

#### **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

---

*Status: This is the original version (as it was originally enacted).*

---

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.

#### **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.