



# Mental Health Act 2007

## 2007 CHAPTER 12

### PART 1

#### AMENDMENTS TO MENTAL HEALTH ACT 1983

### CHAPTER 3

#### SAFEGUARDS FOR PATIENTS

##### *Patient's nearest relative*

### **23 Extension of power to appoint acting nearest relative**

- (1) Section 29 of the 1983 Act (appointment by court of acting nearest relative) is amended as follows.
- (2) In subsection (1), for the words from “the applicant” to the end substitute “ the person specified in the order ”.
- (3) After subsection (1) insert—
  - “(1A) If the court decides to make an order on an application under subsection (1) above, the following rules have effect for the purposes of specifying a person in the order—
    - (a) if a person is nominated in the application to act as the patient's nearest relative and that person is, in the opinion of the court, a suitable person to act as such and is willing to do so, the court shall specify that person (or, if there are two or more such persons, such one of them as the court thinks fit);
    - (b) otherwise, the court shall specify such person as is, in its opinion, a suitable person to act as the patient's nearest relative and is willing to do so.”
- (4) In subsection (2)—

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- (a) after “on the application of—” insert—
    - “(za) the patient;”, and
  - (b) omit the words from “but in relation to” to the end.
- (5) In subsection (3)—
- (a) in paragraph (c) omit the word “or” at the end of the paragraph, and
  - (b) after paragraph (d) insert “; or
    - (e) that the nearest relative of the patient is otherwise not a suitable person to act as such.”
- (6) In subsection (5), for “(3)(a) or (b)” substitute “ (3)(a), (b) or (e) ”.

## **24 Discharge and variation of orders appointing nearest relative**

- (1) Section 30 of the 1983 Act (discharge and variation of orders under section 29) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a), after “in any case, by” insert “ the patient or ”, and
  - (b) in paragraph (b), for “or paragraph (b)” substitute “ , (b) or (e) ”.
- (3) After that subsection insert—
- “(1A) But, in the case of an order made on the ground specified in paragraph (e) of section 29(3) above, an application may not be made under subsection (1)(b) above by the person who was the nearest relative of the patient when the order was made except with leave of the county court.”
- (4) In subsection (2)—
- (a) after “or on the application of” insert “ the patient or of ”, and
  - (b) for the words from “for the first-mentioned person” to the end substitute “ another person for the person having those functions ”.
- (5) After that subsection insert—
- “(2A) If the court decides to vary an order on an application under subsection (2) above, the following rules have effect for the purposes of substituting another person—
- (a) if a person is nominated in the application to act as the patient's nearest relative and that person is, in the opinion of the court, a suitable person to act as such and is willing to do so, the court shall specify that person (or, if there are two or more such persons, such one of them as the court thinks fit);
  - (b) otherwise, the court shall specify such person as is, in its opinion, a suitable person to act as the patient's nearest relative and is willing to do so.”
- (6) In subsection (4), for the words from “An order under” to “period is specified” substitute “ An order made on the ground specified in paragraph (c) or (d) of section 29(3) above shall, unless previously discharged under subsection (1) above, cease to have effect as follows ”.
- (7) After subsection (4A) (inserted by Schedule 3 to this Act) insert—

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“(4B) An order made on the ground specified in paragraph (a), (b) or (e) of section 29(3) above shall—

- (a) if a period was specified under section 29(5) above, cease to have effect on expiry of that period, unless previously discharged under subsection (1) above;
- (b) if no such period was specified, remain in force until it is discharged under subsection (1) above.”

## **25 Restriction of nearest relative's right to apply to tribunal**

In section 66 of the 1983 Act (applications to tribunal), in subsection (1)(h) after “section 29 above” insert “ on the ground specified in paragraph (c) or (d) of subsection (3) of that section ”.

## **26 Civil partners**

- (1) Section 26 of the 1983 Act (definition of “relative” and “nearest relative”) is amended as set out in subsections (2) to (5).
- (2) In subsection (1)(a), after “wife” insert “ or civil partner ”.
- (3) In subsection (5)—
  - (a) in paragraph (b) after “wife” insert “ or civil partner ”, and
  - (b) in paragraph (c) after “wife,” insert “ civil partner, ”.
- (4) In subsection (6)—
  - (a) for “and “wife” include a person who is living with the patient as the patient's husband or wife” substitute “ “ , “wife”and “civil partner” include a person who is living with the patient as the patient's husband or wife or as if they were civil partners” , and
  - (b) for “unless the husband or wife” substitute “ or a patient in a civil partnership unless the husband, wife or civil partner ”.
- (5) In subsection (7)(b), for “unless the husband or wife” substitute “ or a patient in a civil partnership unless the husband, wife or civil partner ”.
- (6) In section 27 of the 1983 Act (children and young persons in care), after “wife” insert “ or civil partner ”.

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