



Mental Health (Amendment) Act 1982

1982 CHAPTER 51

PART II

COMPULSORY ADMISSION TO HOSPITAL AND GUARDIANSHIP

Admission to hospital

3 Admission for assessment

- (1) In section 25 of the principal Act (under which a person may be detained in a hospital under observation if an application for admission for observation is made in accordance with that section)—
 - (a) for the words " application for admission for observation ", wherever they occur, there shall be substituted the words " application for admission for assessment "; and
 - (b) in subsection (2)(a) for the words "detention of the patient in a hospital under observation (with or without other medical treatment) " there shall be substituted the words " detention of the patient in a hospital for assessment (or for assessment followed by medical treatment) ".
- (2) In section 27 of the principal Act (general provisions as to applications) after subsection (1) there shall be inserted—

“(1A) Before or within a reasonable time after an application for the admission of a patient for assessment is made by a mental welfare officer, that officer shall take such steps as are practicable to inform the person (if any) appearing to be the nearest relative of the patient that the application is to be or has been made and of the power of the nearest relative under section 47 of this Act to discharge the patient.”
- (3) In section 29 of the principal Act (emergency application for admission for assessment)—

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- (a) in subsection (2) (persons by whom emergency application may be made) for the words " any relative of the patient" there shall be substituted the words " the nearest relative of the patient ";
- (b) for subsection (4) there shall be substituted—

“(4) In relation to an emergency application, section 27 of this Act shall have effect as if in subsection (3) of that section for the words " the period of fourteen days ending with the date of the application " there were substituted the words "the previous twenty-four hours.”

(4) In section 31 of the principal Act—

- (a) for subsection (1)(b) (time limit for acting on emergency application for admission for assessment) there shall be substituted—

“(b) in the case of an emergency application, the period of twenty-four hours beginning at the time when the patient was examined by the practitioner giving the medical recommendation first referred to in subsection (3) of section 29 of this Act, or at the time when the application is made, whichever is the earlier”;

- (b) after subsection (3) there shall be inserted—

“(3A) A patient who is admitted to a hospital in pursuance of an application for admission for assessment may apply to a Mental Health Review Tribunal within the period of fourteen days beginning with the day on which he is so admitted.”

4 Admission for treatment

(1) Section 26 of the principal Act (admission for treatment) shall be amended as follows.

(2) For subsection (2) (a) and (b) (grounds for application for admission of patient) there shall be substituted—

“(a) that he is suffering from mental illness, severe mental impairment, psychopathic disorder or mental impairment, being a mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment in a hospital; and

(b) in the case of psychopathic disorder or mental impairment, that such treatment is likely to alleviate or prevent a deterioration of his condition ; and

(c) that it is necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment and that it cannot be provided unless he is detained under this section.”

(3) In subsection (3) (contents of medical recommendations) for the words " paragraphs (a) and (b)", " the said paragraph (a)" and "the said paragraph (b)" there shall be substituted respectively the words " paragraphs (a), (b) and (c) " , " the said paragraphs (a) and (b) " and " the said paragraph (c) " .

5 Medical recommendations

(1) Section 28 of the principal Act (general provisions as to medical recommendations) shall be amended as follows.

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- (2) In subsection (1) (which requires the two practitioners making the recommendations to have examined the patient either together or at an interval of not more than seven days) for the words from " either together " onwards there shall be substituted the words " either together or separately but where they have examined the patient separately not more than five days must have elapsed between the days on which the separate examinations took place. "
- (3) At the beginning of subsection (3) (which provides that only one of the recommendations may be given by a practitioner on the staff of the hospital to which the patient is to be admitted) there shall be inserted the words " Subject to subsection (3A) of this section " and after that subsection there shall be inserted—
- “(3A) Subsection (3) of this section shall not preclude both the medical recommendations being given by practitioners on the staff of the hospital in question if—
- (a) compliance with that subsection would result in delay involving serious risk to the health or safety of the patient; and
 - (b) one of the practitioners giving the recommendations works at the hospital for less than half of the time which he is bound by contract to devote to work in the health service; and
 - (c) where one of those 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.”
- (4) In subsection (4)(e) after the words " subsection (3)" there shall be inserted the words " or (3A) ".
- (5) After subsection (4) there shall be inserted—
- “(5) A general practitioner who is employed part-time in a hospital shall not for the purposes of this section be regarded as a practitioner on its staff.”

6 Patients already in hospital

- (1) Section 30 of the principal Act (applications in respect of patients already in hospital) shall be amended as follows.
- (2) In subsection (2) (detention for three days on report by medical practitioner in charge of the treatment of the patient) for the words " a period of three days beginning with the day on which the report is so furnished " there shall be substituted the words " a period of seventy-two hours from the time when the report is so furnished. "
- (3) After subsection (2) there shall be inserted—
- “(3) The medical practitioner in charge of the treatment of a patient in a hospital may nominate one (but not more than one) other medical practitioner on the staff of that hospital to act for him under subsection (2) of this section in his absence.
- (4) If, in the case of a patient who is receiving treatment for mental disorder as an in-patient in a hospital and who is not liable to be detained therein under this Part of this Act, it appears to a nurse of the prescribed class—

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- (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 others for him to be immediately restrained from leaving the hospital ; and
- (b) that it is not practicable to secure the immediate attendance of a practitioner for the purpose of furnishing a report under subsection (2) of this section,

the nurse may record that fact in writing; and in that event the patient may be detained in the hospital for a period of six hours from the time when that fact is so recorded or until the earlier arrival at the place where the patient is detained of a practitioner having power to furnish a report under that subsection.

- (5) A record made under subsection (4) of this section shall be delivered by the nurse (or by a person authorised by the nurse in that behalf) to the managers of the hospital as soon as possible after it is made; and where a record is made under that subsection the period mentioned in subsection (2) of this section shall begin at the time when it is made.
- (6) In subsection (4) of this section " prescribed " means prescribed by an order made by the Secretary of State."

Reception into guardianship

7 Guardianship applications

- (1) Section 33 of the principal Act (application for guardianship) shall be amended as follows.
- (2) In subsection (1) for the words " A patient may be received into guardianship" there shall be substituted the words " A patient who has attained the age of sixteen years may be received into guardianship ".
- (3) In subsection (2)(a) (guardianship application on grounds of mental disorder, being, in the case of a patient of any age, mental illness or severe subnormality or, in the case of a patient under the age of twenty-one years, psychopathic disorder or sub-normality) for sub-paragraphs (i) and (ii) there shall be substituted the words " mental illness, severe mental impairment, psychopathic disorder or mental impairment ".
- (4) In subsection (2)(b) (guardianship necessary in the interests of the patient) for the words " the interests of the patient" there shall be substituted the words " the interests of the welfare of the patient ".

8 Effect of guardianship applications

In section 34(1) of the principal Act (under which the effect of a guardianship application when duly accepted is to confer on the guardian all such powers as would be exercisable if the guardian were the father of the patient and the patient were under the age of fourteen years) for the words from " all such powers " onwards there shall be substituted the words " the following powers, that is to say—

- (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 ;

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- (c) power to require access to the patient to be given, at any place where the patient is residing, to any registered medical practitioner, mental welfare officer or other person so specified."

Care and treatment of detained patients

9 Visiting and examination of patients

- (1) Section 37 of the principal Act (visiting and examination of patients) shall be amended as follows.
- (2) After subsection (1) there shall be inserted—
 - “(1A) Any medical practitioner authorised for the purposes of subsection (1) of this section to visit and examine a patient may require the production of and inspect any records relating to the detention or treatment of the patient in any hospital.”
- (3) In subsection (2) (examination of patients in mental nursing homes) for the words "a registration authority" there shall be substituted the words " the Secretary of State " and for the words " that authority " there shall be substituted the words " the Secretary of State or, as the case may be, that authority " .
- (4) In subsection (3) (production and inspection of medical records of patients in mental nursing homes) for the words " medical records" there shall be substituted the word " records " .

10 Re-classification of patients

After section 38(1) of the principal Act (re-classification of patients) there shall be inserted—

- “(1A) Where a report under subsection (1) of this section in respect of a patient detained in a hospital is to the effect that he is suffering from psychopathic disorder or mental impairment but not from mental illness or severe mental impairment the responsible medical officer shall include in the report a statement of his opinion whether further medical treatment in hospital is likely to alleviate or prevent a deterioration of the patient's condition; and if he states that in his opinion such treatment is not likely to have that effect the authority of the managers to detain the patient shall cease.
- (1B) Before furnishing a report under subsection (1) of this section the responsible medical officer shall consult one or more other persons who have been professionally concerned with the patient's medical treatment.”

11 Leave of absence and patients absent without leave

- (1) Sections 39 and 40 of the principal Act (leave of absence and patients absent without leave) shall be amended as follows.
- (2) At the end of subsection (3) of section 39 (persons who may have custody of patient during leave of absence) there shall be inserted the words " or, if the patient is required in accordance with conditions imposed on the grant of leave of absence to reside in another hospital, of any officer on the staff of that other hospital. "

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- (3) After subsection (1) of section 40 (persons who may take into custody and return a patient absent without leave) there shall be inserted—

“(1A) Where the place referred to in paragraph (c) of subsection (1) of this section is a hospital other than the one in which the patient is for the time being liable to be detained, the references in that subsection to an officer on the staff of the hospital and the managers of the hospital shall respectively include references to an officer on the staff of the first-mentioned hospital and the managers of that hospital.”

- (4) In subsection (3) of section 40 (period within which patient may be taken into custody) for the words from " after the expiration of the following period " to " twenty-eight days " there shall be substituted the words " after the expiration of the period of twenty-eight days beginning with the first day of his absence without leave ".

- (5) After subsection (3) of section 40 there shall be inserted—

“(3A) A patient shall not be taken into custody under this section if the period for which he is liable to be detained is that specified in section 25(4), 29(3) or 30(2) or (4) of this Act and that period has expired.”

Duration of detention or guardianship and discharge of patients

12 Duration of authority for detention and guardianship

- (1) Section 43 of the principal Act (duration of authority for detention and guardianship) shall be amended as follows.
- (2) In subsections (1) and (2)(a) (initial period of detention or guardianship and period of first renewal) for the words "one year " there shall be substituted the words " six months ".
- (3) In subsection (2) (subsequent periods of renewal) for the words " two years", in both places where they occur, there shall be substituted the words " one year ".
- (4) In subsection (3) (renewal report by responsible medical officer) for the words from " if it appears to him " onwards there shall be substituted the words " if it appears to him that the conditions set out in subsection (3A) of this section are satisfied he shall furnish to the managers of the hospital where the patient is detained a report to that effect in the prescribed form. "
- (5) After subsection (3) there shall be inserted—

“(3A) The conditions referred to in subsection (3) of this section are—

- (a) that the patient is suffering from mental illness, severe mental impairment, psychopathic disorder or mental impairment, being a mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment in a hospital; and
- (b) that such treatment is likely to alleviate or prevent a deterioration of his condition ; and
- (c) that it is necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment and that it cannot be provided unless he continues to be detained ;

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but, in the case of mental illness or severe mental impairment, it shall be an alternative to the condition specified in paragraph (b) of this subsection that the patient, if discharged, is unlikely to be able to care for himself, to obtain the care which he needs or to guard himself against serious exploitation.

(3B) Before furnishing a report under subsection (3) of this section the responsible medical officer shall consult one or more other persons who have been professionally concerned with the patient's medical treatment.”

(6) In subsection (4) (renewal report in case of guardianship) for the words from " if it appears to him" onwards there shall be substituted the words

“if it appears to him—

- (i) that the patient is suffering from mental illness, severe mental impairment, psychopathic disorder or mental impairment, being a mental disorder of a nature or degree which warrants his reception into guardianship, and
- (ii) that it is necessary in the interests of the welfare of the patient or for the protection of other persons that the patient should remain under guardianship,

he shall furnish to the guardian and, where the guardian is a person other than a local social services authority, the responsible local social services authority a report to that effect in the prescribed form.”

(7) After subsection (5) there shall be inserted—

“(5A) Where the form of mental disorder specified in a report furnished under subsection (3) or (4) of this section is a form of disorder other than that specified in the application for admission for treatment or, as the case may be, in the guardianship application, that application shall have effect as if that other form of mental disorder were specified in it; and where on any occasion a report specifying such a form of mental disorder is furnished under either of those subsections by the responsible medical officer or the patient's nominated medical attendant he need not on that occasion furnish a report under section 38 of this Act.”

13 Discharge of patients

(1) For paragraphs (a) and (b) of section 47(2) of the principal Act (under which the patient's nearest relative may make an order of discharge if the patient is liable to be detained in pursuance of an application for admission for treatment but not if he is liable to be detained in pursuance of an application for admission for assessment) there shall be substituted—

“(a) where the patient is liable to be detained in a hospital in pursuance of an application for admission for assessment or for treatment, by the responsible medical officer, by the managers or by the nearest relative of the patient;”.

(2) In subsection (3) of section 48 of the principal Act (right of nearest relative to apply to Mental Health Review Tribunal if his order for discharge is nullified under subsection (2) of that section) after the words " in respect of a patient " there shall be inserted the words " who is liable to be detained in pursuance of an application for admission for treatment ".

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Functions of relatives of patients

14 Definition of relative and nearest relative

- (1) Section 49 of the principal Act (definition of relative and nearest relative) shall be amended as follows.
- (2) In subsection (1) for paragraphs (c) and (d) there shall be substituted—
“ (c) father or mother ;”.
- (3) After subsection (3) there shall be inserted—
“(3A) Subject to the provisions of this section and to the following provisions of this Part of this Act, where the patient ordinarily resides with or is cared for by one or more of his relatives (or, if he is for the time being an inpatient in a hospital, he last ordinarily resided with or was cared for by one or more of his relatives) his nearest relative shall be determined—
 - (a) by giving preference to that relative or those relatives over the other or others ; and
 - (b) as between two or more such relatives, in accordance with subsection (3) of this section.”
- (4) In subsection (4) after the words " subsection (3)" there shall be inserted the words " or (3A) " and for paragraph (a) there shall be substituted—
“(a) in the case of a patient ordinarily resident in the United Kingdom, the Channel Islands or the Isle of Man, is not so resident; or”.
- (5) After subsection (6) there shall be inserted—
“(7) A person, other than a relative, with whom the patient ordinarily resides (or, if the patient is for the time being an in-patient in a hospital, last ordinarily resided before he was admitted), and with whom he has or had been ordinarily residing for a period of not less than five years, shall be treated for the purposes of this Part of this Act as if he were a relative but—
 - (a) shall be treated for the purposes of subsection (3) of this section as if mentioned last in subsection (1) of this section ; and
 - (b) shall not be treated by virtue of this subsection as the nearest relative of a married patient unless the husband or wife of the patient is disregarded by virtue of paragraph (b) of subsection (4) of this section.”

15 Appointment by court of acting nearest relative

- (1) Sections 52 and 53 of the principal Act (appointment by court of acting nearest relative) shall be amended as follows.
- (2) After section 52(4) there shall be inserted—
“(4A) An order made on the ground specified in subsection (3) (a) or (b) of this section may specify a period for which it is to continue in force unless previously discharged under section 53 of this Act.”

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- (3) In section 53(4) after the words " cease to have effect" there shall be inserted the words " at the expiration of the period, if any, specified under subsection (4A) of that section or, where no period is so specified " .

Applications and references

16 Applications by mental welfare officers

- (1) Section 54 of the principal Act (duty of mental welfare officer to make applications) shall be amended as follows.
- (2) In subsection (1) for the words " the local authority " there shall be substituted the words " the local social services authority " .
- (3) After subsection (1) there shall be inserted—
- “(1A) Before making an application for the admission of a patient to hospital a mental welfare officer shall interview the patient in a suitable manner 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 of which the patient stands in need.
- (1B) An application under this section by a mental welfare officer may be made outside the area of the local social services authority by whom he is appointed.
- (1C) It shall be the duty of a local social services authority, if so required by the nearest relative of a patient residing in their area, to direct a mental welfare officer as soon as practicable to take the patient's case into consideration under subsection (1) of this section with a view to making an application for his admission to hospital; 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.”

17 Social reports

Where a patient is admitted to a hospital in pursuance of an application (other than an emergency application) made under Part IV of the principal Act by his nearest relative, the managers of the hospital shall as soon as practicable give notice of that fact to the local social services authority for the area in which the patient resided immediately before his admission; and that authority shall as soon as practicable arrange for a social worker of their social services department to interview the patient and provide the managers with a report on his social circumstances.

18 Power of Secretary of State to refer cases to tribunal

The existing provisions of section 57 of the principal Act (power of Secretary of State to refer cases to tribunal) shall become subsection (1) and after those provisions there shall be inserted—

- “(2) For the purpose of furnishing information for the purposes of such a reference any medical practitioner authorised by or on behalf of the patient may, at any reasonable time, visit the patient and examine him in private and require the production of and inspect any records relating to the detention or treatment of the patient in any hospital.”