



# Mental Health Act 1983

## 1983 CHAPTER 20

### PART II

#### COMPULSORY ADMISSION TO HOSPITAL AND GUARDIANSHIP

##### *Functions of relatives of patients*

#### **26 Definition of “relative” and “nearest relative”.**

- (1) In this Part of this Act “relative” means any of the following persons:—
- (a) husband or wife [<sup>F1</sup>or civil partner] ;
  - (b) son or daughter;
  - (c) father or mother;
  - (d) brother or sister;
  - (e) grandparent;
  - (f) grandchild;
  - (g) uncle or aunt;
  - (h) nephew or niece.
- (2) In deducing relationships for the purposes of this section, any relationship of the half-blood shall be treated as a relationship of the whole blood, and an illegitimate person shall be treated as the legitimate child of
- [<sup>F2</sup>(a) his mother, and
  - (b) if his father has parental responsibility for him within the meaning of section 3 of the Children Act 1989, his father.]
- (3) In this Part of this Act, subject to the provisions of this section and to the following provisions of this Part of this Act, the “nearest relative” means the person first described in subsection (1) above who is for the time being surviving, relatives of the whole blood being preferred to relatives of the same description of the half-blood and the elder or eldest of two or more relatives described in any paragraph of that subsection being preferred to the other or others of those relatives, regardless of sex.

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**Changes to legislation:** *Mental Health Act 1983, Section 26 is up to date with all changes known to be in force on or before 02 November 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (4) 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 in-patient 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) above.
- (5) Where the person who, under subsection (3) or (4) above, would be the nearest relative of a patient—
- (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
  - (b) is the husband or wife [<sup>F3</sup>or civil partner] of the patient, but is permanently separated from the patient, either by agreement or under an order of a court, or has deserted or has been deserted by the patient for a period which has not come to an end; or
  - (c) is a person other than the husband, wife [<sup>F4</sup>civil partner,] , father or mother of the patient, and is for the time being under 18 years of age; <sup>F5</sup> . . .
  - <sup>F5</sup>(d) . . . . .
- the nearest relative of the patient shall be ascertained as if that person were dead.
- (6) In this section “husband” [<sup>F6</sup>“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”] , as the case may be (or, if the patient is for the time being an in-patient in a hospital, was so living until the patient was admitted), and has been or had been so living for a period of not less than six months; but a person shall not be treated by virtue of this subsection as the nearest relative of a married patient [<sup>F7</sup>or a patient in a civil partnership unless the husband, wife or civil partner] of the patient is disregarded by virtue of paragraph (b) of subsection (5) above.
- (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) above as if mentioned last in subsection (1) above; and
  - (b) shall not be treated by virtue of this subsection as the nearest relative of a married patient [<sup>F8</sup>or a patient in a civil partnership unless the husband, wife or civil partner] of the patient is disregarded by virtue of paragraph (b) of subsection (5) above.

#### Textual Amendments

- F1** Words in s. 26(1)(a) inserted (1.12.2007) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 26(2)**, 56 (with [Sch. 10](#)); [S.I. 2007/2798](#), **art. 3**
- F2** [S. 26\(2\)\(a\)\(b\)](#) substituted (14.10.1991) by [S.I. 1991/1881](#) art.3
- F3** Words in s. 26(5)(b) inserted (1.12.2007) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 26(3)(a)**, 56 (with [Sch. 10](#)); [S.I. 2007/2798](#), **art. 3**

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- F4** Words in s. 26(5)(c) inserted (1.12.2007) by Mental Health Act 2007 (c. 12), **ss. 26(3)(b)**, 56 (with Sch. 10); S.I. 2007/2798, **art. 3**
- F5** In s. 26(5) the word “or” and paragraph (d) repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(7), **Sch. 15** (with Sch. 14 paras. 1(1), 27(4)); S.I. 1991/828, **art. 3(2)**
- F6** Words in s. 26(6) substituted (1.12.2007) by Mental Health Act 2007 (c. 12), **ss. 26(4)(a)**, 56, (with Sch. 10); S.I. 2007/2798, **art. 3**
- F7** Words in s. 26(6) substituted (1.12.2007) by Mental Health Act 2007 (c. 12), {ss. 26(4(b))}, 56, (with Sch. 10); S.I. 2007/2798, **art. 3**
- F8** Words in s. 26(7)(b) substituted (1.12.2007) by Mental Health Act 2007 (c. 12), **ss. 26(5)**, 56, (with Sch. 10); S.I. 2007/2798, **art. 3**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act applied by [1996 c. 46 Sch. 2 para. 9](#)(replacing [1968 c 20 s. 23](#)) (Act applied (prosp.) by [1968 c. 20, s. 23\(4\)](#) (as substituted (prosp.) by [1996 c. 46, ss. 8, 36\(2\), Sch. 2, para. 9](#) which said amending provision was repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 58\(2\), 60, Sch. 11; S.I. 2005/579, art. 3\(h\)\(i\)\(ix\)\)](#))
- Act applied by [1996 c. 46 Sch. 2 para. 4](#)(replacing [1957 c 53 s. 63](#)) (Act applied (prosp.) by [1957 c. 53, s. 63C\(6\)](#) (as substituted (prosp.) by [1996 c. 46, ss. 8, 36\(2\), Sch. 2, para. 4](#) which said amending provision was repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 58\(2\), 60, Sch. 11; S.I. 2005/579, art. 3\(h\)\(i\)\(ix\)\)](#))
- Act applied by [1996 c. 46 Sch. 2 para. 1](#)(replacing [1955 c 19 s. 116](#)) (Act applied (prosp.) by [1955 c. 19, s. 116C\(6\)](#) (as substituted (prosp.) by [1996 c. 46, ss. 8, 36\(2\), Sch. 2 para. 1](#) which said amending provision was repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 58\(2\), 60, Sch. 11; S.I. 2005/579, art. 3\(h\)\(i\)\(ix\)](#))
- Act applied by [1996 c. 46 Sch. 2 para. 1](#)(replacing [1955 c 18 s 116](#)) (Act applied (prosp.) by [1955 c. 18, s. 116C\(6\)](#) (as substituted (prosp.) by [1996 c. 46, ss. 8, 36\(2\), Sch. 2 para. 1](#) which said amending provision was repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 58\(2\), 60, Sch. 11; S.I. 2005/579, art. 3\(h\)\(i\)\(ix\)\)](#))
- Act power to applied by [1996 c. 46 Sch. 2 para. 4](#)(replacing [1957 c 53 s. 63](#)) (Act: Power to apply conferred (prosp.) by [1957 c. 53, s. 63B\(4\)\(c\)](#) (as substituted (prosp.) by [1996 c. 46, ss. 8, 36\(2\), Sch. 2, para. 4](#) which said amending provision was repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 58\(2\), 60, Sch. 11; S.I. 2005/579, art. 3\(h\)\(i\)\(ix\)\)](#))
- Act power to applied by [1996 c. 46 Sch. 2 para. 1](#)(replacing [1955 c 19 s. 116](#)) (Act: Power to apply conferred (prosp.) by [1955 c. 19, s. 116B\(4\)\(c\)](#) (as substituted (prosp.) by [1996 c. 46, ss. 8, 36\(2\), Sch. 2, para. 1](#) which said amending provision was repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 58\(2\), 60, Sch. 11; S.I. 2005/579, art. 3\(h\)\(i\)\(ix\)\)](#))
- Act power to applied by [1996 c. 46 Sch. 2 para. 1](#)(replacing [1955 c 18 s 116](#)) (Act: Power to apply conferred (prosp.) by [1955 c. 18, s. 116B\(4\)\(c\)](#) (as substituted (prosp.) by [1996 c. 46, ss. 8, 36\(2\), Sch. 2 para. 1](#) which said amending provision was repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 58\(2\), 60, Sch. 11; S.I. 2005/579, art. 3\(h\)\(i\)\(ix\)\)](#))

**Whole provisions yet to be inserted into this Act (including any effects on those provisions):**

- s. 74(8) inserted by [2015 c. 2 Sch. 3 para. 3\(3\)](#)