



Mental Health (Scotland) Act 1984

1984 CHAPTER 36

PART V

ADMISSION TO AND DETENTION IN HOSPITAL AND GUARDIANSHIP

Functions of relatives of patients

53 Definition of " relative " and " nearest relative "

- (1) For the purposes of this section, " relative " means any of the following, that is to say—
 - (a) spouse;
 - (b) child;
 - (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, an illegitimate person shall be treated as the legitimate child of his mother.
- (3) In 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 listed in subsection (1) of this section who is caring for the patient, or was so caring immediately before the admission of the patient to a hospital or his reception into guardianship, failing whom the person first so listed, brothers and sisters of the whole blood being preferred to brothers and sisters of the half-blood, and the elder or eldest of two or more relatives listed in any paragraph of that subsection being preferred to the other or others of those relatives, regardless of sex.
- (4) Where the person who, under subsection (3) of this section, would be the nearest relative of a patient—

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- (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) being the husband or wife of the patient, 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 and the spouse concerned is still in desertion ; or
- (c) not being the husband, wife, father, or mother of the patient, is for the time being under 18 years of age,

the nearest relative of the patient shall be ascertained without regard to that person.

- (5) In this section " spouse " includes a person who is living with the patient as if he or she were the husband or wife of the patient, 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 6 months; but a person 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.
- (6) A person, other than a relative, with whom the patient ordinarily resides (or, if the patient is for the time being an inpatient 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.

54 Children and young persons in care of local authority

In any case where the rights and powers of a parent of a patient, being a child or young person, are vested in a local authority or other person by virtue of—

- (a) section 17 of the Social Work (Scotland) Act 1968 (which relates to children in respect of whom parental rights have been assumed under section 16 of that Act); or
- (b) section 3 of the Child Care Act 1980 (which makes corresponding provisions in England and Wales); or
- (c) section 10 of the said Act of 1980 (which relates to the powers and duties of local authorities in England and Wales with respect to persons committed to their care);

that authority or person shall be deemed to be the nearest relative of the patient in preference to any person except the husband or wife (if any) of the patient, and except, in a case where the said rights and powers are vested in a local authority by virtue of subsection (2) of the said section 17 or subsection (1) of the said section 3, any parent of the patient not being the person on whose account the resolution mentioned in that subsection was passed.

55 Nearest relative of child under guardianship etc.

- (1) Where a patient who has not attained the age of 18 years—

- (a) is, by virtue of an order made by a court in the exercise of jurisdiction (whether under any enactment or otherwise) in respect of the guardianship of children, or by virtue of a deed or will executed by his father or mother, under the guardianship of a person not being his nearest relative under the foregoing provisions of this Act, or is under the joint guardianship of two persons of whom one is such a person as aforesaid; or
 - (b) is, by virtue of an order made by a court in the exercise of such jurisdiction as aforesaid or in matrimonial proceedings, or by virtue of a separation agreement between his father and mother, in the custody of any such person, the person or persons having the guardianship or custody of the patient shall, to the exclusion of any other person, be deemed to be his nearest relative.
- (2) Section 53(4) of this Act shall apply in relation to a person who is, or who is one of the persons, deemed to be the nearest relative of a patient by virtue of this section as it applies in relation to a person who would be the nearest relative under subsection (3) of that section.
- (3) A patient shall be treated for the purposes of this section as being in the custody or guardianship of another person if he would be in the custody or guardianship of that other person apart from section 41(2) of this Act.
- (4) In this section " court" includes a court in England and Wales or Northern Ireland, and " enactment" includes an enactment of the Parliament of Northern Ireland, a measure of the Northern Ireland Assembly and an Order in Council under Schedule 1 to the Northern Ireland Act 1974.

56 Appointment by sheriff of acting nearest relative

- (1) The sheriff may, upon application made in accordance with the provisions of this section in respect of a patient, by order direct that the functions under this Act of the nearest relative of the patient shall, during the continuance in force of the order, be exercisable by the applicant, or by any other person specified in the application, being a person who, in the opinion of the sheriff, is a proper person to act as the nearest relative of the patient, and who is willing to do so.
- (2) An order under this section may be made on the application of—
- (a) any relative (including the nearest relative) of the patient;
 - (b) any other person with whom the patient is residing (or, if the patient is then an in-patient in a hospital, was last residing before he was admitted); or
 - (c) a mental health officer,
- but in relation to an application made by such an officer subsection (1) of this section shall have effect as if for the words "the applicant" there were substituted the words " the local authority ".
- (3) An application for an order under this section may be made upon any of the following grounds, that is to say—
- (a) that the patient has no nearest relative within the meaning of this Act, or that it is not reasonably practicable to ascertain whether he has such a relative or who that relative is;
 - (b) that the nearest relative of the patient is incapable of acting as such by reason of mental disorder or other illness ;

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- (c) where the application is made by the nearest relative of the patient, that he is unwilling or considers it undesirable to continue to act as such.
- (4) While an order made under this section is in force, the provisions of this Part of this Act (other than this section and section 57 of this Act) shall apply in relation to the patient as if for any reference to the nearest relative of the patient there were substituted a reference to the person having the functions of that relative and (without prejudice to section 57 of this Act) shall so apply notwithstanding that the person who was the nearest relative of the patient when the order was made is no longer his nearest relative.

57 Discharge and variation of orders under s. 56

- (1) An order made under section 56 of this Act in respect of a patient may be discharged by the sheriff upon application made—
- (a) by the person having the functions of the nearest relative of the patient by virtue of the order;
 - (b) by the nearest relative of the patient.
- (2) An order made under the said section 56 in respect of a patient may be varied by the sheriff, on the application of the person having the functions of the nearest relative by virtue of the order or on the application of a mental health officer, by substituting for the first-mentioned person a local authority or any other person who, in the opinion of the sheriff, is a proper person to exercise those functions, being an authority or person who is willing to do so.
- (3) If the person having the functions of the nearest relative of a patient by virtue of an order under the said section 56 dies, the foregoing provisions of this section shall apply as if for any reference to that person there were substituted a reference to any relative of the patient, and until the order is discharged or varied under those provisions the functions of the nearest relative under this Part of this Act shall not be exercisable by any person.
- (4) An order under the said section 56 shall, unless previously discharged under subsection (1) of this section, cease to have effect—
- (a) if the patient was on the date of the order liable to be detained in pursuance of an application for admission or subject to guardianship under this Part of this Act, or becomes so liable or so subject within the period of 3 months beginning with that date, when he ceases to be so liable or so subject (otherwise than on being transferred in pursuance of sections 29 or 45 of this Act);
 - (b) if the patient was not on the date of the order and has not within the said period become so liable or so subject, at the expiration of that period.
- (5) The discharge or variation under this section of an order made under the said section 56 shall not affect the validity of anything previously done in pursuance of the order.