



Mental Health (Scotland) Act 1984

1984 CHAPTER 36

PART V

ADMISSION TO AND DETENTION IN HOSPITAL AND GUARDIANSHIP

Grounds for hospital admission

17 Patients liable to be detained in hospital

- (1) A person may, in pursuance of an application for admission under section 18(1) of this Act, be admitted to a hospital and there detained on the grounds that—
 - (a) he is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment in a hospital; and
 - (i) in the case where the mental disorder from which he suffers is a persistent one manifested only by abnormally aggressive or seriously irresponsible conduct, such treatment is likely to alleviate or prevent a deterioration of his condition; or
 - (ii) in the case where the mental disorder from which he suffers is a mental handicap, the handicap comprises mental impairment (where such treatment is likely to alleviate or prevent a deterioration of his condition) or severe mental impairment; and
 - (b) it is necessary for the health or safety of that person or for the protection of other persons that he should receive such treatment and it cannot be provided unless he is detained under this Part of this Act
- (2) Nothing in this Act shall be construed as preventing a patient who requires treatment for mental disorder from being admitted to any hospital or nursing home for that treatment in pursuance of arrangements made in that behalf without any application, recommendation or order rendering him liable to be detained under this Act, or from remaining in any hospital in pursuance of such arrangements if he has ceased to be so liable to be detained.

Procedure for admission of patients: hospital

18 Admission and detention of patients: hospital

- (1) A patient may be admitted to a hospital and there detained 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 " an application for admission ") approved by the sheriff and made in accordance with this Part of this Act.
- (2) An application for admission shall be founded on and accompanied by 2 medical recommendations which shall be in the prescribed form and each such recommendation shall include the following statements, being statements of opinion, and the grounds on which each statement is based—
 - (a) a statement of the form of mental disorder from which the patient is suffering, being mental illness or mental handicap or both ; and
 - (b) a statement as to which of the grounds set out in section 17(1) of this Act apply in relation to the patient.
- (3) An application for admission 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.

19 General provisions as to applications: hospital

- (1) Subject to the provisions of this section, an application for admission 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 managers of the hospital to which admission is sought.
- (2) The nearest relative of the patient shall not make an application for admission 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 an application for admission 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 an application for admission 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 an application for admission 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 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 which the patient needs; and

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- (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 21 of this Act.
- (6) A mental health officer shall make an application for admission in respect of a patient where—
- (a) he has received the 2 medical recommendations required for the purposes of such an application ; and
 - (b) he has been requested to do so by a medical practitioner who gave one of the medical recommendations,
and the application shall include—
 - (i) a statement of the mental health officer's opinion as to whether or not the application should be granted; and
 - (ii) a statement of the grounds on which that opinion is based.
- (7) 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.

20 Medical recommendations: hospital

- (1) The medical recommendations required for the purposes of an application for admission 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) neither recommendation shall be given by a practitioner on the staff of the hospital named in the application where the patient is to be accommodated under section 57 or 58 of the National Health Service (Scotland) Act 1978 (which relates to accommodation for private patients) or in a private hospital and, subject to subsection (2) of this section, where the patient is to be accommodated otherwise one only of the recommendations may be given by such a practitioner ;
 - (d) 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 admission of the patient to hospital.
- (2) Notwithstanding the provisions of paragraph (c) of subsection (1) of this section, both medical recommendations may be given by practitioners on the staff of the hospital named in the application where—
- (a) compliance with the said paragraph (c) would result in a delay involving serious risk to the health or safety of the patient or to the safety of other persons;

- (b) one of the practitioners giving the recommendations works at the hospital for less than half the time which he is bound by contract to devote to work in the health service; and
 - (c) if one of the 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.
- (3) For the purposes of this section a general practitioner who is employed part-time in a hospital shall not be regarded as a practitioner on its staff.

21 Approval of applications by the sheriff: hospital

- (1) An application for admission 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.
- (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—
- (a) may make such inquiries and hear such persons (including the patient) as he think fit; and
 - (b) 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 ; and
 - (c) shall, where a mental health officer makes an application for admission in respect of a patient under section 19(6) of this Act and such application includes a statement of the mental health officer's opinion that the application should not be granted, afford the mental health officer an opportunity of being heard.
- (3) The sheriff shall not withhold approval to an application submitted under this section 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) 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.

22 Effect of applications: hospital

- (1) Where an application for admission has been approved by the sheriff, that application shall be sufficient authority for the removal of the patient to the hospital named in the application and, when the application has been forwarded to the managers of the hospital, for the admission of the patient to that hospital at any time within a period of 7 days from the date on which the sheriff approved the application and for his detention there in accordance with the provisions of this Act.

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- (2) Where a patient has been admitted to a hospital in pursuance of an application under this Part of this Act, it shall be the duty of the managers of the hospital to notify—
- (a) the Mental Welfare Commission ; and
 - (b) the local authority for the area in which the hospital is situated (except where the admission is in pursuance of an application made by a mental health officer appointed by that authority),
- of that admission together with a copy of the application and recommendations relating to the patient's admission within 7 days of its taking place.
- (3) A local authority shall, on being notified under subsection (2) of this section, arrange for a mental health officer as soon as practicable and, in any event, not later than 7 days before the expiry of the period of 28 days beginning with the day on which the patient was admitted to a hospital—
- (a) to interview the patient whose admission has been notified to them ; and
 - (b) to provide the responsible medical officer and the Mental Welfare Commission with a report on the patient's social circumstances,
- unless the mental health officer has done so under section 26(5) of this Act within the previous 28 days.
- (4) Where a patient has been admitted as aforesaid the responsible medical officer shall—
- (a) within the period of 7 days ending on the 28th day after the patient's admission—
 - (i) examine the patient or obtain from another medical practitioner a report on the condition of the patient; and
 - (ii) consult such other person or persons who appear to him to be principally concerned with the patient's medical treatment; and
 - (b) if he is satisfied, as a result of the examination or report, that—
 - (i) the patient is not suffering from mental disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment; or
 - (ii) it is not necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment, order the discharge of the patient; or
 - (c) if he does not order the discharge of the patient, so inform the Mental Welfare Commission, the nearest relative of the patient, the local authority and the managers concerned.

23 Rectification of application and recommendations: hospital

- (1) If within the period of 14 days beginning with the day on which a patient has been admitted to a hospital in pursuance of an application for admission, 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 always 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 managers of the hospital, that one of the 2 medical recommendations on which the application for admission is founded is

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insufficient to warrant the detention of the patient in pursuance of the application, they may within that period give notice in writing to that effect to the applicant and to the sheriff; and where any such notice is given in respect of a medical recommendation that recommendation shall be disregarded, but the application shall be, and shall be deemed always to have been, sufficient if—

- (a) a fresh medical 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 examinations) is furnished to the managers and to the sheriff; and
 - (b) the sheriff is satisfied that that recommendation and the other recommendation on which the application is founded together comply with those provisions.
- (3) Where the medical recommendations upon which an application for admission is founded are, taken together, insufficient to warrant the detention of the patient 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 18(3) of this Act.

24 Emergency admission: hospital

- (1) In any case of urgent necessity a recommendation (in this Act referred to as " an emergency recommendation ") may be made by a medical practitioner in respect of a patient stating that by reason of mental disorder it is urgently necessary for his health or safety or for the protection of other persons, that he should be admitted to a hospital, but that compliance with the provisions of this Part of this Act relating to an application for admission before the admission of the patient to a hospital would involve undesirable delay.
- (2) An emergency recommendation shall not be made unless, where practicable, the consent of a relative or of a mental health officer has been obtained ; and the recommendation shall be accompanied by a statement that such a consent as aforesaid has been obtained or, as the case may be, by a statement of the reasons for the failure to obtain that consent.
- (3) An emergency recommendation shall be sufficient authority for the removal of the patient to a hospital at any time within a period of 3 days from the date on which it was made and for his detention therein for a period not exceeding 72 hours from the time of his admission.
- (4) An emergency recommendation shall be made only by a medical practitioner who has personally examined the patient on the day on which he signed the recommendation.
- (5) Where a patient is admitted to a hospital in pursuance of this section, it shall, where practicable, be the duty of the managers without delay to inform the nearest relative of the patient, the Mental Welfare Commission and, except in the case of a patient referred to in section 25 of this Act, some responsible person residing with the patient.
- (6) A patient who has been detained in a hospital under this section shall not be further detained under this section immediately after the expiry of the period of detention.

25 Detention of patients already in hospital

- (1) An application for admission or an emergency recommendation may be made under this Part of this Act notwithstanding that the patient is already in a hospital; and where

the application or recommendation is made in such a case the patient shall be treated for the purposes of this Part of this Act as if he had been admitted to the hospital on the date on which the application was forwarded to the managers of the hospital, or, as the case may be, the recommendation was made.

- (2) If, in the case of a patient who is already in a hospital receiving treatment for mental disorder and who is not liable to be detained therein under this Part of this Act, it appears to a nurse of the prescribed class—
 - (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 other persons for him to be immediately restrained from leaving the hospital; and
 - (b) that it is not practicable to secure the immediate attendance of a medical practitioner for the purpose of making an emergency recommendation,the patient may be detained in the hospital for a period of 2 hours from the time when he was first so detained or until the earlier arrival at the place where the patient is detained of a medical practitioner having power to make an emergency recommendation.
- (3) Where a patient is detained under subsection (2) of this section the nurse shall as soon as possible record in writing—
 - (a) the facts mentioned in paragraphs (a) and (b) of the said subsection (2);
 - (b) the fact that the patient has been detained; and
 - (c) the time at which the patient was first so detained.
- (4) A record made by a nurse under subsection (3) of this section shall, as soon as possible after it is made, be delivered by the nurse, or by a person authorised by the nurse in that behalf, to the managers of the hospital; and a copy of the record shall, within 14 days of the date on which the managers received it, be sent to the Mental Welfare Commission.
- (5) A patient who has been detained in a hospital under subsection (2) of this section shall not be further detained thereunder immediately after the expiry of that period of detention.
- (6) In subsection (2) of this section " prescribed " means prescribed by an order made by the Secretary of State.

26 Short term detention

- (1) Where a patient is admitted to a hospital in pursuance of section 24 of this Act, he may be detained in that hospital after the expiry of the period of 72 hours referred to in subsection (3) of that section if—
 - (a) a report on the condition of the patient has been furnished to the managers of the hospital; and
 - (b) where practicable, consent to the continued detention has been given by the nearest relative of the patient or by a mental health officer.
- (2) The report referred to in subsection (1)(a) of this section shall—
 - (a) be given by a medical practitioner approved for the purposes of section 20(1) (b) of this Act who has personally examined the patient and shall include a statement that in the opinion of the medical practitioner—
 - (i) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to be detained in a hospital for at least a limited period; and

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- (ii) the patient ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons ;
 - (b) include, where consent to the continued detention has not been obtained, a statement of the reasons for not obtaining such consent; and
 - (c) contain a statement as to whether the person signing the report is related to the patient and of any pecuniary interest that that person may have in the admission of the patient to hospital.
- (3) Subject to subsection (6) of this section, where a report is duly furnished under subsection (1) of this section the authority for the detention of the patient shall be thereby renewed for a further period of 28 days from the expiry of the period of 72 hours referred to in the said subsection (1).
- (4) Where a patient is detained in a hospital in pursuance of this section, the managers of the hospital shall so inform—
- (a) the Mental Welfare Commission ;
 - (b) where practicable, the nearest relative of the patient (except where the nearest relative has consented under subsection (1)(b) of this section); and
 - (c) the local authority (except in a case where a mental health officer appointed by that local authority has consented under subsection (1)(b) of this section), not later than 7 days after the patient was detained.
- (5) A local authority, on being informed under subsection (4) of this section of the admission of a patient, shall arrange for a mental health officer as soon as practicable and in any event not later than 7 days before the expiry of the period of 28 days referred to in subsection (3) of this section—
- (a) to interview the patient; and
 - (b) to provide the responsible medical officer and the Mental Welfare Commission with a report on the patient's social circumstances.
- (6) Any patient may, within the period for which the authority for his detention is renewed by virtue of a report furnished in respect of him under this section, appeal to the sheriff to order his discharge and the provisions of section 33(2) and (4) of this Act shall apply in relation to such an appeal.
- (7) A patient who has been detained in a hospital under this section shall not be further detained under this section nor detained under section 24 of this Act immediately after the ex-expiry of the period of detention under this section.

Care and treatment of patients: hospital

27 Leave of absence from hospital

- (1) The responsible medical officer may grant to any patient who is for the time being liable to be detained in a hospital under this Part of this Act leave to be absent from the hospital.
- (2) Leave of absence may be granted to a patient under this section either on specified occasions or for any specified period of not more than 6 months; and where leave is so granted for a specified period it may be extended for further such periods as aforesaid.
- (3) Where it appears to the responsible medical officer that it is necessary so to do in the interests of the patient or for the protection of other persons, he may, upon granting

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leave of absence under this section, direct that the patient remain in custody during his absence; and where leave of absence is so granted the patient may be kept in the custody of any officer on the staff of the hospital, or of any other person authorised in writing by the managers of the hospital, 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.

- (4) Where leave of absence is granted to a patient under this section or where a period of leave is extended by further leave and the leave or the extension is for a period of more than 28 days, it shall be the duty of the responsible medical officer to inform the Mental Welfare Commission within 14 days of the granting of leave or of the extension, as the case may be, of the address at which the patient is residing and, on the return of the patient, to notify the Commission thereof within 14 days.
- (5) In any case where a patient is absent from a hospital in pursuance of leave of absence granted under this section, and it appears to the responsible medical officer that it is necessary so to do in the interests of the health or safety of the patient or for the protection of other persons, that officer may, subject to subsection (6) of this section, by notice in writing given to the patient or to the person for the time being in charge of the patient, revoke the leave of absence and recall the patient to the hospital.
- (6) A patient to whom leave of absence is granted under this section shall not be recalled under subsection (5) of this section after he has ceased to be liable to be detained under this Part of this Act.

28 Return and re-admission of patients absent without leave: hospital

- (1) Where a patient who is for the time being liable to be detained under this Part of this Act in a hospital—
 - (a) absents himself from the hospital without leave granted under section 27 of this Act; or
 - (b) fails to return to the hospital on any occasion on which, or at the expiration of any period for which, leave of absence was granted to him under that section, or upon being recalled thereunder; or
 - (c) absents himself without permission from any place where he is required to reside in accordance with conditions imposed on the grant of leave of absence under that section,

he may, subject to the provisions of this section, be taken into custody and returned to the hospital or place by any mental health officer, by any officer on the staff of the hospital, by any constable, or by any person authorised in writing by the managers of the hospital.

- (2) Where the place referred to in subsection 1(c) 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 to the managers of the hospital shall respectively include references to an officer on the staff of the first-mentioned hospital and to the managers of that hospital.
- (3) A patient shall not be taken into custody under this section after the expiration of the period of 28 days beginning with the first day of his absence without leave and a patient who has not returned or been taken into custody under this section within the said period shall cease to be liable to be detained at the expiration of that period.

- (4) 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 24(3), 25(2) or 26(3) of this Act and that period has expired.

29 Transfer of patients: hospital

- (1) A patient who is for the time being liable to be detained in a hospital by virtue of an application for admission under this Part of this Act may be transferred by the managers of that hospital, as follows—
- (a) to another hospital with the consent of the managers of that hospital; or
 - (b) into the guardianship of a local authority with the consent of that authority ; or
 - (c) into the guardianship of any person approved by a local authority with the consent of that person.
- (2) Any transfer of a patient under the last foregoing subsection shall be intimated to his nearest relative and to the Mental Welfare Commission by the managers of the hospital to which the patient is transferred or, as the case may be, by the local authority concerned within 7 days of the date of transfer.
- (3) Where a patient is transferred in pursuance of this section, the provisions of this Part of this Act (including this subsection) shall apply to him as follows, that is to say—
- (a) where the patient, being liable to be detained in a hospital by virtue of an application for admission, is transferred to another hospital, as if the application were an application for admission to that other hospital, and as if the patient had been admitted to that other hospital at the time when he was originally admitted in pursuance of the application ;
 - (b) where the patient, being liable to be detained as afore said, is transferred into guardianship, as if the application were a guardianship application duly forwarded to the local authority at the time aforesaid.
- (4) Where a patient is transferred to a State hospital under subsection (1)(a) of this section he or his nearest relative may, within 28 days of the date of the transfer, appeal by way of summary application to a sheriff of the sheriffdom within which the hospital from which the patient was transferred is situated against the decision of the managers of that hospital to transfer the patient; and on any such appeal the sheriff shall order the return of the patient to the hospital from which he was transferred unless he is satisfied that the patient, on account of his dangerous, violent or criminal propensities, requires treatment under conditions of special security, and cannot suitably be cared for in a hospital other than a State hospital.

Duration of authority for detention and discharge of patients :hospital

30 Duration of authority: hospital

- (1) Subject to the provisions of this Part of this Act, a patient admitted to a hospital in pursuance of an application for admission may be detained in a hospital for a period not exceeding 6 months beginning with the day on which he was so admitted, but shall not be so detained for any longer period unless the authority for his detention is renewed under the following provisions of this section.
- (2) Authority for the detention of a patient may, unless the patient has previously been discharged, be renewed under this section—

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- (a) from the expiration of the period referred to in subsection (1) of this section, for a further period of 6 months;
 - (b) from the expiration of any period of renewal under paragraph (a) of this subsection, for a further period of one year, and so on for periods of one year at a time.
- (3) The responsible medical officer shall within the period of 2 months ending on the day when a patient who is liable to be detained in a hospital under this Part of this Act would cease to be so liable under this section in default of the renewal of the authority for his detention—
- (a) examine the patient or obtain from another medical practitioner a report on the condition of the patient; and
 - (b) consult such other person or persons who appear to him to be principally concerned with the patient's medical treatment,
- and thereafter assess the need for the detention of the patient to be continued; and if it appears to him that the grounds set out in section 17(1) of this Act apply to the patient he shall furnish to the managers of the hospital where the patient is liable to be detained and to the Mental Welfare Commission a report to that effect in the prescribed form, along with the report first mentioned if such a report has been obtained.
- (4) Subject to subsection (6) of this section and section 33(2) and (4) of this Act, where a report is duly furnished to the managers of a hospital under subsection (3) of this section, the authority for the detention of the patient shall be thereby renewed for the period prescribed in that case by subsection (2) of this section.
- (5) Where a report under this section is furnished to them in respect of a patient, the managers of the hospital shall, unless they discharge the patient, cause him and his nearest relative to be informed.
- (6) Any patient may within the period for which the authority for his detention is renewed by virtue of a report furnished in respect of him under this section appeal to the sheriff to order his discharge and the provisions of section 33(2) and (4) of this Act shall apply in relation to such an appeal.

31 Special provisions as to patients absent without leave: hospital

- (1) If on the day on which, apart from this section, a patient would cease to be liable to be detained under this Part of this Act or within the period of one week ending with that day, the patient is absent without leave, he shall not cease to be so liable or so subject—
- (a) in any case, until the expiration of the period during which he can be taken into custody under section 28 of this Act, or the day on which he returns or is returned to the hospital or place where he ought to be, whichever is the earlier ; and
 - (b) if he returns or is returned as aforesaid within the period first mentioned in the foregoing paragraph, until the expiration of the period of one week beginning with the day on which he is returned or returns as aforesaid.
- (2) Where the period for which a patient is liable to be detained is extended by virtue of this section, any examination and report to be made and furnished under subsection (3) of section 30 of this Act may be made and furnished within that period as so extended.

- (3) Where the authority for the detention of a patient is renewed by virtue of this section after the day on which, apart from this section, that authority would have expired under section 30 of this Act, the renewal shall take effect as from that day.

32 Special provisions as to patients sentenced to imprisonment etc.: hospital

- (1) Where a patient who is liable to be detained in a hospital under this Part of this Act is detained in custody in pursuance of any sentence or order passed or made by a court in the United Kingdom (including an order committing or remanding him in custody) and is so detained for a period exceeding 6 months, he shall, at the end of that period, cease to be so liable.
- (2) Where any such patient is detained in custody as aforesaid for a period not exceeding 6 months, or for successive periods that do not in the aggregate exceed 6 months, then—
- (a) if apart from this subsection the patient would have ceased to be liable to be detained as aforesaid on or before the day he is discharged from custody, he shall not cease to be so liable until the end of that day ; and
 - (b) in any case, sections 28 and 31 of this Act shall apply in relation to the patient as if he had absented himself without leave on that day.

33 Discharge of patients: hospital

- (1) Subject to the provisions of this and the next following section, a patient who is liable to be detained in a hospital under this Part of this Act shall cease to be so liable if an order in writing discharging him from detention (in this Act referred to as " an order for discharge ") is made in accordance with the following provisions of this section.
- (2) An order for discharge may be made in respect of a patient by the responsible medical officer, the Mental Welfare Commission or, where an appeal has been taken under sections 26, 30 or 34 of this Act, by the sheriff:

Provided that such an order shall not be made by the responsible medical officer in respect of a patient detained in a State hospital without the consent of the managers of the hospital.

- (3) The responsible medical officer or the Mental Welfare Commission shall make an order for discharge in respect of a patient where he is or they are satisfied that—
- (a) he is not suffering from mental disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment; or
 - (b) it is not necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment.
- (4) Where an appeal is made to the sheriff by a patient under sections 26, 30 or 34 of this Act, the sheriff shall order the discharge of the patient if he is satisfied that—
- (a) the patient is not at the time of the hearing of the appeal suffering from mental disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment; or
 - (b) it is not necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment.

- (5) Subject to the provisions of this section and section 34 of this Act, an order for discharge in respect of a patient may also be made by the managers of the hospital or by the nearest relative of the patient.
- (6) An order for discharge made in respect of a patient by the managers of a hospital shall, with the consent of the responsible medical officer, take effect on the expiration of a period of 7 days from the date on which the order was made, and where the responsible medical officer does not so consent he shall furnish to the managers a report certifying that in his opinion the grounds set out in section 17(1) of this Act apply in relation to the patient.

34 Restrictions on discharge by nearest relative: hospital

- (1) An order for the discharge of a patient who is liable to be detained in a hospital shall not be made by his nearest relative except after giving not less than 7 days' notice in writing to the managers of the hospital; and if within that period the responsible medical officer furnishes to the managers a report certifying that, in his opinion, the grounds set out in section 17(1) of this Act apply in relation to the patient—
 - (a) any order for the discharge of the patient made by that relative in pursuance of the notice shall be of no effect; and
 - (b) no further order for the discharge of the patient shall be made by that relative during the period of 6 months beginning with the date of the report.
- (2) In any case where a report under subsection (1) of this section is furnished in respect of a patient, the managers shall cause the nearest relative of the patient to be informed and that relative may, within the period of 28 days beginning with the day on which he is so informed, appeal to the sheriff to order the discharge of the patient and the provisions of section 33(2) and (4) of this Act shall apply in relation to such an appeal.
- (3) An order for discharge in respect of a patient detained in a State hospital shall not be made by his nearest relative.

Appeals: hospital

35 Appeals to the sheriff: hospital

- (1) Where an appeal lies to the sheriff in respect of a report on a patient under any of sections 26, 30 or 34 of this Act, the managers of the hospital where the patient is liable to be detained shall, when intimating that a report has been furnished in pursuance of any of the said sections, inform any person having a right so to appeal, whether the patient or his nearest relative or both, of that right and of the period within which it may be exercised.
- (2) An appeal under any of the said sections shall be made by way of summary application to a sheriff of the sheriffdom—
 - (a) within which the patient is resident at the time when the appeal is made ; or
 - (b) where the patient is a resident patient in a hospital at the time when the appeal is made, within which the hospital is situated.
- (3) For the purpose of advising whether any appeal to the sheriff under any of the said sections should be made by or in respect of a patient who is liable to be detained under this Part of this Act, or of furnishing information as to the condition of a patient for the

purposes of such an appeal or of advising the nearest relative of any such patient as to the exercise of any power to order the discharge of the patient, any medical practitioner authorised by or on behalf of the patient or by the nearest relative of the patient, as the case may be, may, at any reasonable time, visit the patient and may examine him in private.

- (4) Any medical practitioner authorised for the purposes of subsection (3) 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.

Grounds for reception into guardianship

36 Patients liable to be received into guardianship

A person may, in pursuance of an application for reception into guardianship under section 37(1) of this Act, be received into guardianship on the grounds that—

- (a) he is suffering from mental disorder of a nature or degree which warrants his reception into guardianship; and
- (b) it is necessary in the interests of the welfare of the patient that he should be so received.

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—

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- (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

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.

Care and treatment of patients: guardianship

43 Regulations as to guardianship

- (1) Subject to the provisions of this Part of this Act, the Secretary of State may make regulations for regulating the exercise by the guardians of patients received into guardianship under this Part of this Act of their powers as such, and for imposing on such guardians, and upon any local authority concerned, such duties as he considers necessary or expedient in the interests of the patients.
- (2) Regulations under this section may in particular make provision for requiring the patients to be visited, on such occasions or at such intervals as may be prescribed by the regulations, on behalf of such local authorities as may be so prescribed.

44 Return of patients absent without leave: guardianship

- (1) Where a patient who is for the time being subject to guardianship under this Part of this Act absents himself without the leave of the guardian from the place at which he is required by the guardian to reside, he may, subject to the provisions of this section, be taken into custody and returned to that place by the guardian, by any officer on the staff of a local authority, by any constable, or by any person authorised in writing by the guardian or a local authority.
- (2) A patient shall not be taken into custody under this section after the expiration of the period of 28 days beginning with the first day of his absence without leave and a patient who has not returned or been taken into custody under this section within the said period shall cease to be subject to guardianship at the expiration of that period.

45 Transfer of patients: guardianship

- (1) A patient who is for the time being subject to the guardianship of any person, including a local authority, by virtue of a guardianship application may be transferred by the local authority concerned into the guardianship of another such person with the consent of that other person; but no patient shall be so transferred except with the consent of his guardian, or, if that consent is refused, with the approval of the sheriff to the transfer.
- (2) Any transfer of a patient under the last foregoing subsection shall be intimated to his nearest relative and to the Mental Welfare Commission by the local authority concerned within 7 days of the date of transfer.
- (3) Where a patient is transferred under this section, the provisions of this Part of this Act (including this subsection) shall apply to him as if the person into whose guardianship he is transferred had been the person named in the guardianship application.

46 Transfer of guardianship in case of death, incapacity etc of guardian

- (1) If any person (other than a local authority) having the guardianship of a patient received into guardianship under this Part of this Act—
 - (a) dies; or
 - (b) gives notice in writing to the local authority concerned that he desires to relinquish the functions of guardian,

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the guardianship of the patient shall thereupon vest in the local authority concerned, but without prejudice to any power to transfer the patient into the guardianship of another person under section 45 of this Act.

- (2) If any such person, not having given notice under subsection (1)(b) of this section, is incapacitated by illness or any other cause from performing the functions of guardian of the patient, those functions may, during his incapacity, be performed on his behalf by the local authority concerned, or by any other person approved for the purpose by that authority.
- (3) Where the guardianship of a patient is transferred to a local authority or other person by or under subsection (1) of this section, section 45(3) of this Act shall apply as if the patient had been transferred into the guardianship of that authority or person in pursuance of that section.

Duration of authority for guardianship and discharge of patients

47 Duration of authority: guardianship

- (1) Subject to the provisions of this Part of this Act, a patient received into guardianship in pursuance of a guardianship application, may be kept under guardianship for a period not exceeding 6 months beginning with the day on which he was so received, but shall not be so kept for any longer period unless the authority for his guardianship is renewed under the following provisions of this section.
- (2) Authority for the guardianship of a patient may, unless the patient has previously been discharged, be renewed under this section—
 - (a) from the expiration of the period referred to in subsection (1) of this section, for a further period of 6 months;
 - (b) from the expiration of any period of renewal under paragraph (a) of this subsection, for a further period of one year, and so on for periods of one year at a time.
- (3) Within the period of 2 months ending with the day on which a patient who is subject to guardianship under this Part of this Act would cease under this section to be so liable in default of the renewal of the authority for his guardianship—
 - (a) the responsible medical officer shall examine the patient or obtain from another medical practitioner a report on the condition of the patient; and, if it appears to him that the ground set out in section 36(a) of this Act continues to apply in relation to the patient, he shall furnish to such mental health officer as the local authority concerned may direct a report to that effect in the prescribed form along with the report first mentioned if such a report has been obtained; and
 - (b) that mental health officer shall consider whether the ground set out in section 36(b) of this Act continues to apply in relation to the patient; and, if it appears to him that it does continue so to apply, he shall furnish to the local authority concerned and to the Mental Welfare Commission a report to that effect in the prescribed form along with the report or reports furnished to him under paragraph (a) of this subsection.
- (4) Subject to subsection (6) of this section and section 50(2) and (5) of this Act, where a report is duly furnished to a local authority under subsection (3) of this section, the

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authority for the guardianship of the patient shall be thereby renewed for the period prescribed in that case by subsection (2) of this section.

- (5) Where a report under this section is furnished to them in respect of a patient, the local authority shall, unless they discharge the patient, cause him, his nearest relative and his guardian, to be informed.
- (6) Any patient may within the period for which the authority for his guardianship is renewed by virtue of a report furnished in respect of him under this section appeal to the sheriff to order his discharge and the provisions of section 50(2) and (5) of this Act shall apply in relation to such an appeal.

48 Special provisions as to patients absent without leave: guardianship

- (1) If on the day on which, under this Part of this Act apart from this section, a patient would cease to be subject to guardianship, or within the period of one week ending with that day, the patient is absent without leave, he shall not cease to be so subject—
 - (a) in any case, until the expiration of the period during which he can be taken into custody under section 44 of this Act, or the day on which he returns or is returned to the place where he ought to be, whichever is the earlier; and
 - (b) if he returns or is returned as aforesaid within the period first mentioned in the foregoing paragraph, until the expiration of the period of one week beginning with the day on which he is returned or returns as aforesaid.
- (2) Where the period for which a patient is subject to guardianship is extended by virtue of this section, any examination and report to be made and furnished under section 47(3) of this Act may be made and furnished within that period as so extended.
- (3) Where the authority for the guardianship of a patient is renewed by virtue of this section after the day on which, apart from this section, that authority would have expired under section 47 of this Act, the renewal shall take effect as from that day.

49 Special provisions as to patients sentenced to imprisonment, etc.: guardianship

- (1) Where a patient who is subject to guardianship under this Part of this Act is detained in custody in pursuance of any sentence or order passed or made by a court in the United Kingdom (including an order committing or remanding him in custody) and is so detained for a period exceeding 6 months, he shall, at the end of that period, cease to be so subject.
- (2) Where any such patient is detained in custody as aforesaid for a period not exceeding 6 months, or for successive periods that do not in the aggregate exceed 6 months, then—
 - (a) if apart from this subsection the patient would have ceased to be subject as aforesaid on or before the day he is discharged from custody, he shall not cease to be so subject until the end of that day; and
 - (b) in any case, sections 44 and 48 of this Act shall apply in relation to the patient as if he had absented himself without leave on that day.

50 Discharge of patients: guardianship

- (1) Subject to the provisions of this section and section 51 of this Act, a patient who is for the time being subject to guardianship under this Part of this Act shall cease to be so subject if an order in writing discharging him from guardianship (in this Act referred

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to as " an order for discharge ") is made in accordance with the following provisions of this section.

- (2) An order for discharge may be made in respect of a patient by the responsible medical officer, the Mental Welfare Commission or, where an appeal has been taken under sections 47 or 51 of this Act, by the sheriff.
- (3) The responsible medical officer or the Mental Welfare Commission shall make an order for discharge in respect of a patient where he is or they are satisfied that he is not suffering from mental disorder of a nature or degree which warrants his remaining under guardianship.
- (4) The local authority concerned or the Mental Welfare Commission shall make an order for discharge where they are satisfied that it is not necessary in the interests of the welfare of the patient that he should remain under guardianship.
- (5) Where an appeal is made to the sheriff by a patient under sections 47 or 51 of this Act, the sheriff shall order the discharge of the patient if he is satisfied that—
 - (a) the patient is not at the time of the hearing of the appeal suffering from mental disorder of a nature or degree which warrants his remaining under guardianship ; or
 - (b) it is not necessary in the interests of the welfare of the patient that he should remain under guardianship.
- (6) Subject to the provisions of this section and section 51 of this Act, an order for discharge in respect of a patient may also be made by the nearest relative of the patient.
- (7) A patient subject to guardianship shall cease to be so subject where the sheriff has approved under section 21 of this Act an application for his admission to a hospital.

51 Restrictions on discharge by nearest relative: guardianship

- (1) An order for the discharge of a patient who is subject to guardianship shall not be made by his nearest relative except after giving not less than 14 days' notice in writing to the local authority concerned ; and within that period—
 - (a) if it appears to the local authority that the ground set out in section 36(b) of this Act continues to apply in relation to the patient they shall inform the responsible medical officer of the notice given by the nearest relative; and
 - (b) if it appears to the responsible medical officer that the ground set out in section 36(a) of this Act continues to apply in relation to the patient he shall inform the local authority; and
 - (c) the local authority shall inform the nearest relative of the views taken by them and by the responsible medical officer, and in that event—
 - (i) any order for the discharge of the patient made by that relative in pursuance of the notice shall cease to have effect; and
 - (ii) no further order for the discharge of the patient shall be made by that relative during the period of 6 months beginning with the date on which that relative is so informed.
- (2) In any case where the local authority informs the nearest relative under subsection (1) of this section that relative may, within the period of 28 days beginning with the day on which he is so informed, appeal to the sheriff to order the discharge of the patient,

and the provisions of section 50(2) and (5) of this Act shall apply in relation to such an appeal.

Appeals: guardianship

52 Appeals to the sheriff: guardianship

- (1) Where an appeal lies to the sheriff under either of sections 47 or 51 of this Act, the local authority concerned shall when intimating that a report has been furnished in pursuance of the said section 47, or when informing the nearest relative under the said section 51, inform any person having a right so to appeal, whether the patient or his nearest relative, or both, of that right, and of the period within which it may be exercised.
- (2) An appeal under either of the said sections shall be made by way of summary application to a sheriff of the sheriffdom within which the patient is resident at the time when the appeal is made.
- (3) For the purpose of advising whether any appeal to the sheriff under either of the said sections should be made by or in respect of a patient who is subject to guardianship under this Part of this Act, or of furnishing information as to the condition of a patient for the purposes of such an appeal or of advising the nearest relative of any such patient as to the exercise of any power to order the discharge of the patient, any medical practitioner authorised by or on behalf of the patient or by the nearest relative of the patient, as the case may be, may, at any reasonable time, visit the patient and may examine him in private.

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

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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—
- (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;

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- (b) that the nearest relative of the patient is incapable of acting as such by reason of mental disorder or other illness ;
 - (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.

Supplementary

58 Regulations for purposes of Part V

The Secretary of State may make regulations for prescribing anything which, under this Part of this Act, is required or authorised to be prescribed.

59 Interpretation of Part V

- (1) In this Part of this Act the expression "responsible medical officer" means—
 - (a) in relation to a patient who is liable to be detained in a hospital, any medical practitioner employed on the staff of that hospital who may be authorised by the managers to act (either generally or in any particular case or class of case or for any particular purpose) as the responsible medical officer;
 - (b) in relation to a patient subject to guardianship, any medical practitioner authorised by the local authority to act (either generally or in any particular case or class of case or for any particular purpose) as the responsible medical officer.
- (2) In relation to a patient who is subject to guardianship under this Part of this Act, any reference in this Act to the local authority concerned is a reference—
 - (a) where a guardianship application is effective, to the local authority to whom that application is addressed;
 - (b) where the patient has been transferred to guardianship by the managers of a hospital under section 29(1) of this Act, to the local authority who received him into guardianship or approved his guardian.
- (3) In this Act the expression "absent without leave" means absent from any hospital or other place and liable to be taken into custody and returned under section 28 or 44 of this Act, and kindred expressions shall be construed accordingly.