



Mental Health (Scotland) Act 1984

1984 CHAPTER 36

PART XI

MISCELLANEOUS AND GENERAL

Miscellaneous provisions

110 Duty to give information to patients and nearest relatives

- (1) The managers of a hospital in which a patient is detained under the provisions of this Act, or in the case of a patient subject to guardianship, the local authority concerned shall take such steps as are practicable to ensure that the patient understands—
 - (a) under which of those provisions he is for the time being detained or subject to guardianship and the effect of that provision; and
 - (b) what rights of appeal to the sheriff are available to him in respect of his detention or guardianship under that provision; and
 - (c) that he may make representations to the Mental Welfare Commission,and those steps shall be taken as soon as practicable after the commencement of the patient's detention or his reception into guardianship, or any renewal of the authority for his detention or guardianship.
- (2) The managers of a hospital in which a patient is detained as aforesaid shall also take such steps as are practicable to ensure that the patient understands the effect, so far as relevant in his case, of—
 - (a) sections 33 and 34 of this Act; and
 - (b) Part X and sections 115, 116 and 119 of this Act;and those steps shall be taken as soon as practicable after the commencement of the patient's detention in the hospital.
- (3) The steps to be taken under this section shall include giving the requisite information both orally and in writing.

- (4) The managers of a hospital in which a patient is detained' as aforesaid or, as the case may be, the local authority concerned in relation to a patient subject to guardianship as aforesaid shall, except where the patient otherwise requests, take such steps as are practicable to furnish the person (if any) appearing to them to be his nearest relative with a copy of any information given to him in writing under subsection (1) and (2) above; and those steps shall be taken when the information is given to the patient or within a reasonable time thereafter.
- (5) Section 56(4) of this Act shall have effect as if subsection (4) of this section were contained in part V of this Act.

111 Duty of managers to inform nearest relative of discharge of detained patient

- (1) Where a patient liable to be detained in a hospital under this Act is to be discharged otherwise than by virtue of an order for discharge made by his nearest relative, the managers of the hospital shall, subject to subsection (2) of this section, take such steps as are practicable to inform the person (if any) appearing to them to be the nearest relative of the patient; and that information shall, if practicable, be given at least seven days before the date of discharge.
- (2) Subsection (1) of this section shall not apply if the patient or his nearest relative has requested that information about the patient's discharge should not be given under this section.
- (3) Section 56(4) of this Act shall have effect as if this section were contained in Part V of this Act.

112 Religious persuasion of patients

In any arrangements that may be made for the detention of a patient or his reception into guardianship in pursuance of this Act, regard shall be had to the religious persuasion to which the patient belongs or appears to belong.

113 Duty of sheriff to give patient opportunity to be heard

- (1) In any appeal to the sheriff under this Act, or in any proceedings relating to an application for admission to a hospital or for reception into guardianship, the sheriff shall give the patient an opportunity to be heard, either—
 - (a) in person (unless cause to the contrary has been shown); or
 - (b) by means of a representative.
- (2) Where it is established to the satisfaction of the sheriff that it would be prejudicial to the patient's health or treatment if he were present during any such appeal or proceedings, the sheriff may exclude the patient (but not his representative) from the whole or part of that appeal or those proceedings.

114 Provision for personal expenses of in-patients in hospital

- (1) The Secretary of State may pay to persons who are receiving treatment as in-patients (whether liable to be detained or not) in any hospital, other than a private hospital, being a hospital wholly or mainly used for the treatment of persons suffering from mental disorder, such amounts as he thinks fit in respect of their occasional personal

expenses where it appears to him that they would otherwise be without resources to meet those expenses.

- (2) For the purposes of the National Health Service (Scotland) Act 1978, the making of payments under this section to persons for whom services are provided under that Act shall be treated as included among those services.

115 Correspondence of patients

- (1) Any postal packet addressed to any person by a patient detained in a hospital under this Act and delivered by him for dispatch may be withheld from the Post Office—
- (a) if that person has requested that communications addressed to him by the patient should be withheld ; or
 - (b) subject to subsection (3) of this section, if the hospital is a State hospital and the managers of the hospital consider that the postal packet is likely—
 - (i) to cause distress to the person to whom it is addressed or to any other person (not being a person on the staff of the hospital); or
 - (ii) to cause danger to any person,and any request for the purposes of paragraph (a) of this subsection shall be made by a notice in writing given to the managers of the hospital, the responsible medical officer or the Secretary of State.
- (2) Subject to subsection (3) of this section a postal packet addressed to a patient detained in a State hospital under this Act may be withheld from the patient if, in the opinion of the managers of the hospital, it is necessary to do so in the interests of the safety of the patient or for the protection of other persons.
- (3) Subsections (1)(b) and (2) of this section do not apply to any postal packet addressed by a patient to, or sent to a patient by or on behalf of—
- (a) any Minister of the Crown or member of either House of Parliament;
 - (b) the Mental Welfare Commission, any Commissioner thereof or any person appointed by them under section 3(9)(b) of this Act;
 - (c) the Parliamentary Commissioner for Administration, the Health Service Commissioner for Scotland, or the Commissioner for Local Administration in Scotland ;
 - (d) any judge or clerk of court;
 - (e) a Health Board, the Common Services Agency for the Scottish Health Service or a local council established under section 7 of the National Health Service (Scotland) Act 1978;
 - (f) a local authority within the meaning of section 235 of the Local Government (Scotland) Act 1973 ;
 - (g) the managers of the hospital in which the patient is detained;
 - (h) any legally qualified person instructed by the patient to act as his legal advisor ; or
 - (i) the European Commission on Human Rights or the European Court of Human Rights.
- (4) The managers of the hospital may open and inspect any postal packet for the purpose of determining whether it is one to which subsection (1) or (2) of this section applies and, if so, whether or not it should be withheld under that subsection ; and the power to withhold a postal packet under either of those subsections includes power to withhold anything contained in it.

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- (5) Where a postal packet or anything contained in it is withheld under subsection (1) or (2) of this section the managers of the hospital shall record that fact in writing and shall, within 7 days of the date on which they withheld the postal packet or anything contained in it, notify the Mental Welfare Commission of—
 - (a) the name of the patient concerned; and
 - (b) the nature of the postal packet or contents withheld; and
 - (c) the reason for withholding the postal packet or contents.
- (6) Where a postal packet or anything contained in it is withheld under subsection (1)(b) or (2) of this section the managers of the hospital shall within 7 days give notice of that fact to the patient and, in a case under subsection (2) of this section, to the person (if known) by whom the postal packet was sent; and any such notice shall be in writing and shall contain a statement of the effect of section 116 of this Act.
- (7) The functions of the managers of a hospital under this section shall be discharged on their behalf by a person on the staff of the hospital appointed by them for that purpose, and different persons may be appointed to discharge different functions.
- (8) The Secretary of State may make regulations with respect to the exercise of the powers conferred by this section.
- (9) In this section and in section 116 of this Act "postal packet" has the same meaning as in the Post Office Act 1953 ; and the provisions of this section and section 116 of this Act shall have effect notwithstanding anything in section 56 of that Act.

116 Review of decision to withhold postal packet

- (1) The Mental Welfare Commission shall review any decision to withhold a postal packet or anything contained in it under subsection (1)(b) or (2) of section 115 of this Act if an application in that behalf is made—
 - (a) in a case under the said subsection (1)(b), by the patient; or
 - (b) in a case under the said subsection (2), either by the patient or by the person by whom the postal packet was sent;
 and any such application shall be made within 6 months of the receipt by the applicant of the notice referred to in subsection (6) of that section.
- (2) On an application under subsection (1) of this section the Commission may direct that the postal packet or anything contained in it which is the subject of the application shall not be withheld and the managers of the hospital in which the patient is detained shall comply with any such direction.
- (3) The Secretary of State may by regulations make provision with respect to the making and determination of applications under subsection (1) of this section, including provision for the production to the Mental Welfare Commission of any postal packet which is the subject of such an application.

117 Entry on premises and warrant to search for and remove patients

- (1) Where a mental health officer or a medical commissioner has reasonable cause to believe that a person suffering from mental disorder—
 - (a) has been or is being ill-treated, neglected or kept otherwise than under control, in any place ; or

- (b) being unable to care for himself, is living alone or uncared for in any place, he may, on production of some duly authenticated document showing that he is so authorised, demand admission at all reasonable times and, if admission is not refused, may enter and inspect that place.
- (2) If it appears to a justice of the peace on sworn information in writing by such officer or commissioner as aforesaid, that admission when demanded in pursuance of subsection (1) of this section has been refused or that a refusal of such admission is apprehended, he may issue a warrant authorising any constable named therein to enter, if need be by force, any premises specified in the warrant, and to remove, if it appears proper so to do, any person suffering from mental disorder to whom subsection (1) of this section applies to a place of safety with a view to the making of an application or emergency recommendation in respect of him under Part V of this Act, or of other arrangements for his treatment or care.
- (3) If it appears to a justice of the peace on sworn information in writing by any constable or other person who is authorised by or under this Act or under section 88 of the Mental Health Act 1983, to take a patient to any place, or to take into custody or retake a patient who is liable to be so taken or retaken—
- (a) that there is reasonable cause to believe that that patient is to be found on any premises ; and
- (b) that admission to the premises has been refused or that a refusal of such admission is apprehended,
- the justice may issue a warrant authorising any constable named therein to enter the premises, if need be by force, and to remove the patient.
- (4) A patient who is removed to a place of safety in the execution of a warrant issued under this section may be detained there for a period not exceeding 72 hours.
- (5) In the execution of a warrant issued under subsection (2) of this section, the constable to whom it is addressed shall be accompanied by a medical practitioner, and in the execution of a warrant issued under subsection (3) of this section the constable to whom it is addressed may be accompanied—
- (a) by a medical practitioner;
- (b) by any person authorised by or under this Act or section 88 of the Mental Health Act 1983, to take or retake the patient.
- (6) It shall not be necessary in any information or warrant under subsection (2) of this section to name the person concerned.
- (7) In this section—
- (a) any reference to a justice of the peace includes a reference to the sheriff and to a stipendiary magistrate; and
- (b) " place of safety " means a hospital as defined by this Act or residential home for persons suffering from mental disorder or any other suitable place the occupier of which is willing temporarily to receive the patient; but shall not include a police station unless by reason of emergency there is no place as aforesaid available for receiving the patient.

118 Mentally disordered persons found in public places

- (1) If a constable finds in a place to which the public have access a person who appears to him to be suffering from mental disorder and to be in immediate need of care or

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control, the constable may, if he thinks it necessary to do so in the interests of that person or for the protection of other persons, remove that person to a place of safety within the meaning of the last foregoing section.

- (2) A person removed to a place of safety under this section may be detained there for a period not exceeding 72 hours for the purpose of enabling him to be examined by a medical practitioner and of making any necessary arrangements for his treatment or care.
- (3) Where a patient is removed as aforesaid, it shall, where practicable, be the duty of the constable who has so removed him without delay to inform some responsible person residing with the patient and the nearest relative of the patient of that removal.

119 Code of practice

- (1) The Secretary of State shall prepare, and from time to time revise, a code of practice—
 - (a) for the guidance of medical practitioners, managers and staff of hospitals and mental health officers in relation to the detention and discharge of patients in and from hospitals under this Act; and
 - (b) for the guidance of medical practitioners and members of other professions in relation to the medical treatment of patients suffering from mental disorder.
- (2) Before preparing the code or making any alteration in it the Secretary of State shall consult such bodies as appear to him to be concerned.
- (3) The Secretary of State shall lay copies of the code and of any alteration in the code before Parliament; and if either House of Parliament passes a resolution requiring the code or any alteration in it to be withdrawn the Secretary of State shall withdraw the code or alteration and, where he withdraws the code, shall prepare a code in substitution for the one which is withdrawn.
- (4) No resolution shall be passed by either House of Parliament under subsection (3) of this section in respect of a code or alteration after the expiration of the period of 40 days beginning with the day on which a copy of the code or alteration was laid before that House; but for the purposes of this subsection no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (5) The Secretary of State shall publish the code as for the time being in force.