



Mental Health (Detention) (Scotland) Act 1991

1991 CHAPTER 47

An Act to amend the Mental Health (Scotland) Act 1984 with respect to short-term detention of patients in hospital and the determination of applications for admission to hospital. [25th July 1991]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Annotations:

Commencement Information

II Act not in force at Royal Assent; wholly in force at 9.3.1992 see [s. 4\(2\)](#) and [S.I. 1992/357](#)

1 Interim detention under the Mental Health (Scotland) Act 1984.

After section 26 of the ^{M1}Mental Health (Scotland) Act 1984 there shall be inserted the following section—

“26A Interim detention.

(1) This section applies where—

- (a) a patient is detained in a hospital under section 26 of this Act;
- (b) a change in the condition of the patient makes it necessary in the interests of his own health or safety or with a view to the protection of other persons that the patient continue to be detained after the expiry of the period of 28 days referred to in subsection (3) of that section; and
- (c) no application for admission has been submitted to the sheriff in respect of the patient and it is not reasonably practicable to submit such an application before the expiry of that period.

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- (2) Where this section applies, a relevant medical practitioner may lodge with the sheriff clerk for a sheriff of the sheriffdom within which the hospital is situated a report on the condition of the patient complying with the following provisions of this section and such report shall, when so lodged, be sufficient authority for the continued detention of the patient in the hospital where he is until the expiry of a period of three days (excluding Saturdays, Sundays and court holidays) from the date when the report was lodged.
- (3) In this section “relevant medical practitioner” means a medical practitioner who
 - (a) is approved for the purposes of section 20(1)(b) of this Act; and
 - (b) has personally examined the patient.
- (4) A report referred to in subsection (2) of this section shall not be lodged unless, where practicable, the consent of the nearest relative of the patient or of a mental health officer has been obtained.
- (5) A report referred to in subsection (2) of this section shall include—
 - (a) a statement by the relevant medical practitioner that in his opinion—
 - (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
 - (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) a statement that such a consent as is mentioned in subsection (4) of this section has been obtained or, as the case may be, a statement of the reasons for the failure to obtain that consent; and
 - (c) a statement as to whether the relevant medical practitioner is related to the patient and of any pecuniary interest that the relevant medical practitioner may have in the continued detention of the patient in hospital.
- (6) Where a patient is detained in a hospital under this section, the relevant medical practitioner shall forthwith 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 (4) of this section); and
 - (c) the local authority (except where a mental health officer appointed by that authority has consented under subsection (4) of this section),and shall inform the patient of his right of appeal under subsection (7) of this section and of the period within which it may be exercised.
- (7) A patient who is detained in hospital under this section may, within the period referred to in subsection (2) of 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.
- (8) Where a patient is detained in hospital under this section the authority for his detention under section 26 of this Act shall cease.
- (9) Subject to section 21(3B) and (3C) of this Act, a patient who has been detained in a hospital under this section shall not be further detained under this section

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nor detained under section 24 or 26 of this Act immediately after the expiry of the period of detention under this section.”

Annotations:

Commencement Information

I2 [S. 1](#) wholly in force at 9.3.1992 by s. 4(2) and [S.I. 1992/357](#)

Marginal Citations

M1 [1984 c. 36.](#)

2 Determination of applications for admission to hospital.

(1) Section 21 of the ^{M2}Mental Health (Scotland) Act 1984 (approval by sheriff of applications for admission to hospital) shall be amended as follows.

(2) After subsection (3) there shall be inserted the following subsections—

“(3A) Within five days (excluding Saturdays, Sundays and court holidays) of an application for admission being submitted, the sheriff shall—

- (a) approve the application; or
- (b) where he decides to hold a hearing before determining the application, hold such hearing.

(3B) An application for admission in respect of a patient who is detained in hospital under section 26 or 26A of this Act shall, when submitted to the sheriff, be sufficient authority for the continued detention of the patient under that section until the expiry of a period of five days (excluding Saturdays, Sundays and court holidays) from the date when the application was submitted.

(3C) Where a hearing in relation to an application for admission in respect of a patient who is detained in hospital under section 26 or 26A of this Act is, for whatever reason, adjourned, the authority for the detention of the patient under that section by virtue of subsection (3B) of this section shall continue until the application for admission is finally determined.”

(3) After subsection (5) there shall be inserted the following subsection—

“(6) For the purposes of this section, an application is submitted to the sheriff when it is lodged with his sheriff clerk.”

Annotations:

Commencement Information

I3 [S. 2](#) wholly in force at 9.3.1992 by s. 4(2) and [S.I. 1992/357](#)

Marginal Citations

M2 [1984 c. 36.](#)

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3 Supplementary provisions.

- (1) In section 26(7) of the Mental Health (Scotland) Act 1984 (short term detention), at the beginning there shall be inserted the words “ Subject to section 21(3B) and (3C) of this Act, ”.
- (2) In section 28(4) of that Act (return and readmission of patients absent without leave: hospital), for the words “24(3), 25(2) or 26(3)” there shall be substituted “ 21(3B) (subject, where applicable, to section 21(3C)), 24(3), 25(2), 26(3) or 26A(2) ”.
- (3) In section 33 of that Act (discharge of patients: hospital)—
 - (a) in each of subsections (2) and (4), after the word “26,” there shall be inserted “ 26A, ”; and
 - (b) after subsection (6) there shall be inserted the following subsection—

“(7) Where an order for discharge is made in respect of a patient in relation to whom an application for admission has been submitted but has not been finally determined, the managers of the hospital shall notify the sheriff to whom the application has been submitted of the making of the order for discharge.”
- (4) In section 35 of that Act (appeals to the sheriff: hospital), in each of subsections (2) and (3), after the word “sections” there shall be inserted “ or under section 26A of this Act ”.
- (5) In section 59 of that Act (interpretation of Part V), at the end there shall be added the following subsection—

“(4) In this Part of this Act, “court holidays” means any day which is a court holiday by virtue of section 10(2) of the Bail Etc (Scotland) Act 1980.”
- (6) In Schedule 2 to that Act (application of provisions of Part V to patients subject to hospital or guardianship orders)—
 - (a) in Part I—
 - (i) in paragraph 7(b), after the word “26,” there shall be inserted “ 26A, ”;
 - (ii) at the end of paragraph 7(c) there shall be inserted—

“; and
 - (d) subsection (7) shall be omitted; and
 - (iii) in paragraph 10, for the words “and (2)” there shall be substituted “, (2) and (4)”;
 - (b) in Part II, in paragraph 9, for the words “and (2)” there shall be substituted “, (2) and (4) ”; and
 - (c) in Part III, at the end of paragraph 10(b) there shall be inserted—

“; and

 - (c) subsection (4) shall be omitted.”

Annotations:

Commencement Information

I4 [S. 3](#) wholly in force at 9.3.1992 by s. 4(2) and [S.I. 1992/357](#)

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4 Short title, commencement and extent.

- (1) This Act may be cited as the Mental Health (Detention) (Scotland) Act 1991.
- (2) This Act shall come into force on such date as the Secretary of State may appoint by order made by statutory instrument.
- (3) This Act extends to Scotland only.

Annotations:

Subordinate Legislation Made

P1 [S. 4\(2\)](#) power exercised (20.2.1992): 9.3.1992 appointed by [S.I. 1992/357](#), **art. 2**

Commencement Information

I5 [S. 4](#) wholly in force at 9.3.1992 by s. 4(2) and [S.I. 1992/357](#)

Changes to legislation:

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

- Act repealed by [2003 asp 13 Sch. 5 Pt. 1](#)

Commencement Orders yet to be applied to the Mental Health (Detention) (Scotland) Act 1991:

Commencement Orders bringing legislation that affects this Act into force:

- [S.S.I. 2005/161 art. 2-4](#) commences ([2003 asp 13](#))
- [S.S.I. 2005/375 art. 2](#) amendment to earlier commencing SSI [2005/161 art. 3](#)