



# Mental Health Act 1959

## 1959 CHAPTER 72

### PART IV

#### COMPULSORY ADMISSION TO HOSPITAL AND GUARDIANSHIP

##### *Care and treatment of patients*

#### **35 Regulations as to guardianship**

- (1) Subject to the provisions of this Part of this Act, the Minister 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 local health authorities in the case of patients under the guardianship of persons other than local health authorities, 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 health authorities as may be so prescribed, and shall provide for the appointment, in the case of every patient subject to the guardianship of a person other than a local health authority, of a medical practitioner to act as the nominated medical attendant of the patient.

#### **36 Correspondence of patients**

- (1) Any postal packet addressed to a patient detained in a hospital under this Part of this Act may be withheld from the patient if, in the opinion of the responsible medical officer, the receipt of the packet would be calculated to interfere with the treatment of the patient or to cause him unnecessary distress; and any packet so withheld shall, if the name and address of the sender are sufficiently identified therein, be returned to him by post.
- (2) Subject to the provisions of this section, any postal packet addressed by a patient so detained and delivered by him for dispatch may be withheld from the Post Office—

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- (a) if the addressee has given notice in writing to the managers of the hospital or to the responsible medical officer requesting that communications addressed to him by the patient should be withheld; or
- (b) if it appears to that officer that the packet would be unreasonably offensive to the addressee, or is defamatory of other persons (other than persons on the staff of the hospital) or would be likely to prejudice the interests of the patient:

Provided that this subsection does not apply to any postal packet addressed as follows, that is to say—

- (i) to the Minister;
- (ii) to any Member of the Commons House of Parliament;
- (iii) to the Master or Deputy Master or any other officer of the Court of Protection;
- (iv) to the managers of the hospital;
- (v) to any other authority or person having power to discharge the patient under this Part of this Act;
- (vi) at any time when the patient is entitled to make application to a Mental Health Review Tribunal, to that tribunal,

and regulations made by the Minister may except from this subsection, subject to such conditions or limitations (if any) as may be prescribed by the regulations, postal packets addressed to such other classes of person as may be so prescribed.

- (3) Nothing in paragraph (b) of subsection (2) of this section shall be construed as authorising a responsible medical officer to open or examine the contents of any postal packet unless he is of opinion that the patient is suffering from mental disorder of a kind calculated to lead him to send such communications as are referred to in that paragraph.
- (4) Except as provided by this section, it shall not be lawful to prevent or impede the delivery to a patient detained as aforesaid of any postal packet addressed to him and delivered by the Post Office, or the delivery to the Post Office of any postal packet addressed by such a patient and delivered by him for dispatch.
- (5) This section shall apply in relation to a patient who is subject to guardianship under this Part of this Act as it applies in relation to a patient who is detained in a hospital thereunder, and as if—
  - (a) for any reference to the managers of the hospital there were substituted a reference to the guardian ; and
  - (b) for any reference to the responsible medical officer there were substituted a reference to the guardian or any person authorised by the guardian to act for the purposes of this subsection.
- (6) In this section "postal packet" has the same meaning as in the Post Office Act, 1953; and the provisions of this section shall have effect notwithstanding anything in section fifty-six of that Act.

### **37 Visiting and examination of patients**

- (1) For the purpose of advising whether an application to a Mental Health Review Tribunal should be made by or in respect of a patient who is liable to be detained or 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 application, or of advising as to the exercise by the nearest relative of any such patient of any power to order his discharge, any

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medical practitioner authorised by or on behalf of the patient or other person who is entitled to make or has made the application, or by the nearest relative of the patient, as the case may be, may, at any reasonable time, visit the patient and examine him in private.

- (2) Where application is made to a registration authority or regional hospital board to exercise, in respect of a patient liable to be detained in a mental nursing home, any power to make an order for his discharge, the following persons, that is to say—
  - (a) any medical practitioner authorised by that authority or board; and
  - (b) any other person (whether a medical practitioner or not) authorised under Part III of this Act to inspect the home,may at any reasonable time visit the patient and interview him in private.
- (3) Any person authorised for the purposes of subsection (2) of this section to visit a patient may require the production of and inspect any documents constituting or alleged to constitute the authority for the detention of the patient under this Part of this Act; and any person so authorised, being a medical practitioner, may examine the patient in private, and may require the production of and inspect any other medical records relating to the treatment of the patient in the home.

### **38 Re-classification of patients**

- (1) If in the case of a patient who is for the time being detained in a hospital in pursuance of an application for admission for treatment, or subject to guardianship in pursuance of a guardianship application, it appears to the responsible medical officer that the patient is suffering from a form of mental disorder other than the form or forms specified in the application, he may furnish to the managers of the hospital, or to the guardian, as the case may be, a report to that effect; and where a report is so furnished, the application shall have effect as if that other form of mental disorder were specified therein.
- (2) Where a report is furnished under this section, in respect of a patient who has attained the age of sixteen years, the managers or guardian shall cause the patient and the nearest relative to be informed, and the patient or that relative may, within the period of twenty-eight days beginning with the day on which he is so informed, apply to a Mental Health Review Tribunal.
- (3) In relation to a patient who is subject to the guardianship of a person other than a local health authority, this section shall have effect as if for any reference to the responsible medical officer there were substituted a reference to the nominated medical attendant of the patient.

### **39 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 subject to such conditions (if any) as that officer considers necessary in the interests of the patient or for the protection of other persons.
- (2) Leave of absence may be granted to a patient under this section either indefinitely or on specified occasions or for any specified period; and where leave is so granted for a specified period, that period may be extended by further leave granted in the absence of the patient.

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- (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 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.
- (4) 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 patient's health or safety or for the protection of other persons, that officer may, subject to subsection (5) 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.
- (5) A patient to whom leave of absence is granted under this section shall not be recalled under subsection (4) of this section after he has ceased to be liable to be detained under this Part of this Act; and without prejudice to any other provision of this Part of this Act any such patient shall cease to be so liable at the expiration of the period of six months beginning with the first day of his absence on leave unless either—
  - (a) he has returned to the hospital, or has been transferred to another hospital under the following provisions of this Act, before the expiration of that period; or
  - (b) he is absent without leave at the expiration of that period.

#### **40 Return and re-admission of patients absent without leave**

- (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 thirty-nine 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 welfare 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 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 any officer on the staff of a local health authority, by any constable, or by any person authorised in writing by the guardian or a local health authority.
- (3) A patient shall not be taken into custody under this section after the expiration of the following period (beginning with the first day of his absence without leave), that is to say—
  - (a) in the case of a patient over the age of twenty-one years on that day who is liable to be detained by virtue of an application for admission for treatment

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or is subject to guardianship by virtue of a guardianship application, and is so liable or subject as a psychopathic or subnormal patient, six months ;

(b) in any other case, twenty-eight days ;

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 or subject to guardianship, as the case may be, at the expiration of that period.

(4) In this Act " absent without leave " means absent from any hospital or other place and liable to be taken into custody and returned under this section, and kindred expressions shall be construed accordingly.

#### **41 Regulations as to transfer of patients**

(1) In such circumstances and subject to such conditions as may be prescribed by regulations made by the Minister—

(a) a patient who is for the time being liable to be detained in a hospital by virtue of an application under this Part of this Act may be transferred to another hospital or into the guardianship of a local health authority or of any person approved by such an authority;

(b) a patient who is for the time being subject to the guardianship of a local health authority or other person by virtue of an application under this Part of this Act may be transferred into the guardianship of another local health authority or person, or be transferred to a hospital.

(2) Where a patient is transferred in pursuance of regulations under 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 for observation or for treatment, 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 aforesaid, is transferred into guardianship, as if the application were a guardianship application duly accepted at the time aforesaid;

(c) where the patient, being subject to guardianship by virtue of a guardianship application, is transferred into the guardianship of another authority or person, as if the application were for his reception into the guardianship of that authority or person and had been accepted at the time when it was originally accepted;

(d) where the patient, being subject to guardianship as aforesaid, is transferred to a hospital, as if the guardianship application were an application for admission to that hospital (being an application for admission for treatment) and as if the patient had been admitted to the hospital at the time when the application was originally accepted.

(3) Without prejudice to the foregoing provisions of this section, any patient who is for the time being liable to be detained under this Part of this Act in a hospital vested in the Minister under the National Health Service Act, 1946, or any accommodation used under Part II of that Act by the managers of such a hospital, may at any time be removed to any other such hospital or accommodation for which the managers of the first mentioned hospital are also the managers; and, paragraph (a) of subsection (2) of

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this section shall apply in relation to a patient so removed as it applies in relation to a patient transferred in pursuance of regulations made under this section.

- (4) Regulations made under this section may make provision for regulating the conveyance to their destination of patients authorised to be transferred or removed in pursuance of the regulations or under subsection (3) of this section.
- (5) A patient who, having attained the age of sixteen years, is transferred from guardianship to a hospital in pursuance of regulations made under this section may, within the period of six months beginning with the day on which he is so transferred, apply to a Mental Health Review Tribunal.

#### **42 Transfer of guardianship in case of death, incapacity, etc., of guardian**

- (1) If any person (other than a local health 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 health authority that he desires to relinquish the functions of guardian,  
the guardianship of the patient shall thereupon vest in the local health authority, but without prejudice to any power to transfer the patient into the guardianship of another person in pursuance of regulations under section forty-one of this Act.
- (2) If any such person, not having given notice under paragraph (b) of subsection (1) 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 health authority or by any other person approved for the purpose by that authority.
- (3) If it appears to the county court, upon application made by a mental welfare officer, that any person other than a local health authority having the guardianship of a patient received into guardianship under this Part of this Act has performed his functions negligently or in a manner contrary to the interests of the patient, the court may order that the guardianship of the patient be transferred to the local health authority or to any other person approved for the purpose by that authority.
- (4) Where the guardianship of a patient is transferred to a local health authority or other person by or under this section, paragraph (c) of subsection (2) of section forty-one of this Act shall apply as if the patient had been transferred into the guardianship of that authority or person in pursuance of regulations under that section.