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## SCHEDULE 5 MINOR AND CONSEQUENTIAL AMENDMENTS

### *Mental Health (Scotland) Act 1984 (c.36)*

- 17 (1) In section 3 of the Mental Health (Scotland) Act 1984—
- (a) in subsection (1) “guardianship or” shall be repealed;
  - (b) in subsection (2) in paragraph (b) “or who are subject to guardianship” shall be repealed.
- (2) In section 5(2) of that Act “and the guardian of any person subject to guardianship under this Act” shall be repealed.
- (3) In section of that Act—
- (a) in subsection (1) for “either by the nearest relative of the patient or by a mental health officer” there shall be substituted “ by the nearest relative of the patient, by a mental health officer, or by a guardian or welfare attorney of the patient who has powers to do so ”;
  - (b) in subsection (2) after “relative” there shall be inserted “ , guardian or welfare attorney, as the case may be, ”;
  - (c) in subsection (3) after “relative” in both places there shall be inserted “ , guardian or welfare attorney, as the case may be, ”;
  - (d) in subsection (4) after “patient” where second occurring there shall be inserted “ or by a guardian or welfare attorney of the patient ”;
  - (e) in subsection (5)(b) after “relative” there shall be inserted “ and any guardian or welfare attorney . ”.
- (4) In section 20(1)(a) of that Act for or his nearest “relative” there shall be substituted “ , his nearest relative, guardian or welfare attorney, as the case may be ”.
- (5) In section 21(2)(b) of that Act—
- (a) after “relative” where first occurring there shall be inserted “ , guardian or welfare attorney, as the case may be ”;
  - (b) after “relative” where second and third occurring there shall be inserted “ guardian or welfare attorney ”.
- (6) In section 22(4)(c) of that Act after “relative” there shall be inserted “ and any guardian or welfare attorney ”.
- (7) In section 24 of that Act—
- (a) in subsection (2) after “relative” there shall be inserted “ , of any guardian or welfare attorney who has powers to do so, ”;
  - (b) in subsection (5) after “relative” there shall be inserted “ and any guardian or welfare attorney ”.
- (8) In section 26 of that Act—
- (a) in subsection (1)(b) after “patient” there shall be inserted “ by any guardian or welfare attorney of the patient who has power so to consent, ”;
  - (b) in subsection (4)(b) after “relative” where first occurring there shall be inserted “ and any guardian or welfare attorney ” and after “relative” where second occurring there shall be inserted “ , guardian or welfare attorney, as the case may be ”.

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- (9) In section 26A of that Act—
- (a) in subsection (4) after “relative” there shall be inserted “ or any guardian or welfare attorney who has powers to do so ”;
  - (b) in subsection (6)(b) after “relative” where first occurring there shall be inserted “ and any guardian or welfare attorney ” and after “relative” where second occurring there shall be inserted “ , guardian or welfare attorney, as the case may be ”.
- (10) In section 29 of that Act—
- (a) in subsection (2) after “relative” there shall be inserted “ , to any guardian or welfare attorney ”;
  - (b) in subsection (4) after “relative” there shall be inserted “ , guardian or welfare attorney ”;
- (11) In section 30(5) of that Act after “relative” there shall be inserted “ and any guardian or welfare attorney of his ”.
- (12) In section 31B(3) of that Act after “relative” there shall be inserted “ , and any welfare attorney, ”.
- (13) In section 33(5) of that Act for “or by the nearest relative” there shall be substituted “ , by the nearest relative or by any guardian or welfare attorney who has powers to do so ”.
- (14) In section 34 of that Act—
- (a) in subsection (1) after “relative” wherever occurring there shall be inserted “ , or guardian or welfare attorney with powers to do so ”
  - (b) in subsection (2) after “relative” where first occurring there shall be inserted “ , guardian or welfare attorney, as the case may be ” and after “relative” where second occurring there shall be inserted “ , guardian or welfare attorney ”
  - (c) in subsection (2) after “relative” there shall be inserted “ or by any guardian or welfare attorney ”.
- (15) In section 35 of that Act—
- (a) in subsection (1) for “or his nearest relative or both” there shall be substituted “ , his nearest relative, his guardian or his welfare attorney or all of them ”;
  - (b) in subsection (3) after “relative” there shall be inserted “ or by any guardian or welfare attorney ”.
- (16) In section 35B of that Act—
- (a) in subsection (3)(a) after “patient” where first occurring there shall be inserted “ or any guardian of the patient ” and after “relative” there shall be inserted “ and any welfare attorney of the patient ”;
  - (b) in subsection (4) after “relative” there shall be inserted “ and any welfare attorney of the patient, ”.
- (17) In section 35C of that Act—
- (a) in subsection (3)(b)(i) after “patient” where first occurring there shall be inserted “ or any guardian of the patient ” and after “relative” there shall be inserted “ and any welfare attorney of the patient ”;
  - (b) in subsection (4) after “relative” there shall be inserted “ and any welfare attorney of the patient ”.

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- (18) In section 35D of that Act—
- (a) in subsection (1)(a) after “patient” where first occurring there shall be inserted “ or any guardian of the patient ” and after “relative” there shall be inserted “ and any welfare attorney of the patient ”;
  - (b) in subsection (2) after “relative” there shall be inserted “and any welfare attorney of the patient ”.
- (19) In section 35E of that Act—
- (a) in subsection (3)(a) after “patient” where first occurring there shall be inserted “ or any guardian of the patient ” and after “relative” there shall be inserted “ and any welfare attorney of the patient ”;
  - (b) in subsection (4)(a) after “patient” where first occurring there shall be inserted “ or any guardian of the patient ” and after “relative” there shall be inserted “ and any welfare attorney of the patient ”;
  - (c) in subsection (5) after “relative” there shall be inserted “and any welfare attorney of the patient ”.
- (20) In section 35G of that Act—
- (a) in subsection (2)(a) at the beginning there shall be inserted “ any guardian of the patient, and ” and after “relative” there shall be inserted “ and any welfare attorney of the patient ”;
  - (b) in subsection (3) after “relative” there shall be inserted “ and any welfare attorney of the patient ”
- (21) In section 35I of that Act—
- (a) in subsection (2)(a) after “patient” where first occurring there shall be inserted “ or any guardian of the patient ” and after “relative” there shall be inserted “ and any welfare attorney of the patient ”;
  - (b) in subsection (3) after “relative” there shall be inserted “ and any welfare attorney of the patient ”;
  - (c) in subsection (5)(a) at the beginning there shall be inserted “ any guardian of the patient, and ” and after “relative” there shall be inserted “and any welfare attorney of the patient”
- (22) In section 55(3) of that Act for “apart from section 41(2) of this Act” there shall be substituted “but for the appointment of a guardian under the Adults with Incapacity (Scotland) Act 2000 (asp 4)”.
- (23) In section 95 of that Act—
- (a) in subsection (1) after “tutor” there shall be inserted “, guardian”;
  - (b) in subsection (2) after “tutor” there shall be inserted “, guardian”.
- (24) In section 125(1) of that Act—
- (a) for the definition of “application for admission” and “guardianship application” there shall be substituted—
    - “application for admission has the meaning assigned to it by section 18 of this Act”;
  - (b) in the appropriate place, there shall be inserted—

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“guardian includes a guardian (however called) appointed under the law of any country to, or entitled under the law of any country to act for an adult during his incapacity, if the guardianship is recognised by the law of Scotland;”;

“welfare attorney includes a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed) relating to the granter’s personal welfare and having effect during the granter’s incapacity;”.

#### **Commencement Information**

- II** Sch. 5 para. 17 partly in force; Sch. 5 para. 17 not in force at Royal Assent see s. 89(2); Sch. 5 para. 17(3)-(21)(24)(b) in force for specified purposes at 2.4.2001; Sch. 5 para. 17(1)(2) in force and Sch. 5 para. 17(3)-(21)(24) in force in so far as not already in force at 1.4.2002 by S.S.I. 2001/81, arts. 2, 3, Schs. 1, 2; Sch. 5 para. 17(23) in force at 1.10.2003 by S.S.I. 2003/267, art. 2(2)(d)

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