



# Mental Health Act 1983

## 1983 CHAPTER 20

### PART II

#### COMPULSORY ADMISSION TO HOSPITAL AND GUARDIANSHIP

##### *Functions of relatives of patients*

#### **26 Definition of “relative” and “nearest relative”.**

- (1) In this Part of this Act “relative” means any of the following persons:—
  - (a) husband or wife;
  - (b) son or daughter;
  - (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, any relationship of the half-blood shall be treated as a relationship of the whole blood, and an illegitimate person shall be treated as the legitimate child of his mother.
- (3) In this Part of 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 described in subsection (1) above who is for the time being surviving, relatives of the whole blood being preferred to relatives of the same description of the half-blood and the elder or eldest of two or more relatives described in any paragraph of that subsection being preferred to the other or others of those relatives, regardless of sex.
- (4) Subject to the provisions of this section and to the following provisions of this Part of this Act, where the patient ordinarily resides with or is cared for by one or more of his relatives (or, if he is for the time being an in-patient in a hospital, he last ordinarily

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resided with or was cared for by one or more of his relatives) his nearest relative shall be determined—

- (a) by giving preference to that relative or those relatives over the other or others; and
  - (b) as between two or more such relatives, in accordance with subsection (3) above.
- (5) Where the person who, under subsection (3) or (4) above, 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) is the husband or wife of the patient, but 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 which has not come to an end; or
  - (c) is a person other than the husband, wife, father or mother of the patient, and is for the time being under 18 years of age; <sup>[F1]</sup>or
  - <sup>[F1]</sup>(d) is a person against whom an order divesting him of authority over the patient has been made under section 38 of the <sup>M1</sup>Sexual Offences Act 1956 (which relates to incest with a person under eighteen) and has not been rescinded,
- the nearest relative of the patient shall be ascertained as if that person were dead.
- (6) In this section “husband” and “wife” include a person who is living with the patient as the patient’s husband or wife, 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 six 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 (5) above.
- (7) A person, other than a relative, with whom the patient ordinarily resides (or, if the patient is for the time being an in-patient 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) above as if mentioned last in subsection (1) above; 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 (5) above.

#### Textual Amendments

**F1** The word “or” and paragraph (d) repealed (*prosp.*) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(2)(7), [Sch. 15](#)

#### Marginal Citations

**M1** [1956 c. 69](#).

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## [<sup>X1</sup>27 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 3 of the <sup>M2</sup>Child Care Act 1980 (which relates to the assumption by a local authority of parental rights and duties in relation to a child in their care);
- (b) section 10 of that Act (which relates to the powers and duties of local authorities with respect to persons committed to their care under the <sup>M3</sup>Children and Young Persons Act 1969); or
- (c) section 17 of the <sup>M4</sup>Social Work (Scotland) Act 1968 (which makes corresponding provision for Scotland),

that authority or person shall be deemed to be the nearest relative of the patient in preference to any person except the patient's husband or wife (if any) and except, in a case where the said rights and powers are vested in a local authority by virtue of 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.]

### Editorial Information

- X1** S. 27 beginning "Where - (a) a patient who is a child" substituted (14.10.1991) for s. 27 beginning "In any case where the rights and powers of a parent" by [Children Act 1989 \(c. 41, SIF 20\), s. 108\(2\)\(5\), Sch. 13 para. 48\(1\)](#)

### Marginal Citations

- M2** 1980 c. 5.  
**M3** 1969 c. 54.  
**M4** 1968 c. 49.

## [<sup>F2</sup>27 Children and young persons in care.

Where—

- (a) a patient who is a child or young person is in the care of a local authority by virtue of a care order within the meaning of the Children Act 1989; or
- (b) the rights and powers of a parent of a patient who is a child or young person are vested in a local authority by virtue of section 16 of the Social Work (Scotland) Act 1968,

the authority shall be deemed to be the nearest relative of the patient in preference to any person except the patient's husband or wife (if any).]

### Textual Amendments

- F2** S. 27 beginning "Where— (a) a patient who is a child" substituted (*prosp.*) for S. 27 beginning "In any case where the rights and powers of a parent" by [Children Act 1989 \(c. 41, SIF 20\), s. 108\(2\)\(5\), Sch. 13 para. 48\(1\)](#)

## 28 Nearest relative of minor under guardianship, etc.

[<sup>X2</sup>(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 minors

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[<sup>F3</sup>(including an order under section 38 of the <sup>M5</sup>Sexual Offences Act 1956)], or by virtue of a deed or will executed by his father or mother, under the guardianship of a person who is not 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; or

- (b) is, by virtue of an order made by a court in the exercise of such jurisdiction 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.]

[<sup>F4</sup>(1) Where—

- (a) a guardian has been appointed for a person who has not attained the age of eighteen years; or  
(b) a residence order (as defined by section 8 of the Children Act 1989) is in force with respect to such a person,

the guardian (or guardians, where there is more than one) or the person named in the residence order shall, to the exclusion of any other person, be deemed to be his nearest relative.]

- (2) Subsection (5) of section 26 above 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.

[<sup>X3</sup>(3) A patient shall be treated for the purposes of this section as being in the custody of another person if he would be in that other person’s custody apart from section 8 above.]

[<sup>F5</sup>(3) In this section “guardian” does not include a guardian under this Part of this Act.]

- (4) In this section “court” includes a court in Scotland 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 of the <sup>M6</sup>Northern Ireland Act 1974.

#### Editorial Information

- X2** S. 28(1) beginning “Where— (a) a guardian has been appointed” substituted (*prosp.*) for s.28(1) beginning “Where a person who has not attained the age of 18” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(2)(5), [Sch. 13 para. 48\(3\)](#)
- X3** S. 28(3) beginning “In this section “guardian” does not include” substituted (*prosp.* for s.28(3) beginning “a patient shall be treated for the purposes of this section” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(2)(5), [Sch. 13 para. 48\(4\)](#)

#### Textual Amendments

- F3** Words repealed (*prosp.*) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(2)(7), [Sch. 15](#)
- F4** S. 28(1) beginning “Where— (a) a guardian has been appointed” substituted (*prosp.*) for s.28(1) beginning “Where a person who has not attained the age of 18” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(2)(5), [Sch. 13 para. 48\(3\)](#)
- F5** S. 28(3) beginning “In this section “guardian” does not include” substituted (*prosp.* for s.28(3) beginning “a patient shall be treated for the purposes of this section” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(2)(5), [Sch. 13 para. 48\(4\)](#)

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#### **Marginal Citations**

**M5** 1956 c. 69.

**M6** 1974 c. 28.

## **29 Appointment by court of acting nearest relative.**

- (1) The county court may, upon application made in accordance with the provisions of this section in respect of a patient, by order direct that the functions of the nearest relative of the patient under this Part of this Act and sections 66 and 69 below 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 court, is a proper person to act as the patient's nearest relative and is willing to do so.
- (2) An order under this section may be made on the application of—
  - (a) any 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) an approved social worker;but in relation to an application made by such a social worker, subsection (1) above shall have effect as if for the words “the applicant” there were substituted the words “the local social services 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;
  - (b) that the nearest relative of the patient is incapable of acting as such by reason of mental disorder or other illness;
  - (c) that the nearest relative of the patient unreasonably objects to the making of an application for admission for treatment or a guardianship application in respect of the patient; or
  - (d) that the nearest relative of the patient has exercised without due regard to the welfare of the patient or the interests of the public his power to discharge the patient from hospital or guardianship under this Part of this Act, or is likely to do so.
- (4) If, immediately before the expiration of the period for which a patient is liable to be detained by virtue of an application for admission for assessment, an application under this section, which is an application made on the ground specified in subsection (3)(c) or (d) above, is pending in respect of the patient, that period shall be extended—
  - (a) in any case, until the application under this section has been finally disposed of; and
  - (b) if an order is made in pursuance of the application under this section, for a further period of seven days;

and for the purposes of this subsection an application under this section shall be deemed to have been finally disposed of at the expiration of the time allowed for appealing from the decision of the court or, if notice of appeal has been given within that time, when the appeal has been heard or withdrawn, and “pending” shall be construed accordingly.

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- (5) An order made on the ground specified in subsection (3)(a) or (b) above may specify a period for which it is to continue in force unless previously discharged under section 30 below.
- (6) While an order made under this section is in force, the provisions of this Part of this Act (other than this section and section 30 below) and sections 66, 69, 132(4) and 133 below 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 30 below) shall so apply notwithstanding that the person who was the patient's nearest relative when the order was made is no longer his nearest relative; but this subsection shall not apply to section 66 below in the case mentioned in paragraph (h) of subsection (1) of that section.

### **30 Discharge and variation of orders under s. 29.**

- (1) An order made under section 29 above in respect of a patient may be discharged by the county court upon application made—
  - (a) in any case, by the person having the functions of the nearest relative of the patient by virtue of the order;
  - (b) where the order was made on the ground specified in paragraph (a) or paragraph (b) of section 29(3) above, or where the person who was the nearest relative of the patient when the order was made has ceased to be his nearest relative, on the application of the nearest relative of the patient.
- (2) An order made under section 29 above in respect of a patient may be varied by the county court, on the application of the person having the functions of the nearest relative by virtue of the order or on the application of an approved social worker, by substituting for the first-mentioned person a local social services authority or any other person who in the opinion of the court 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 section 29 above dies—
  - (a) subsections (1) and (2) above shall apply as if for any reference to that person there were substituted a reference to any relative of the patient, and
  - (b) until the order is discharged or varied under those provisions the functions of the nearest relative under this Part of this Act and sections 66 and 69 below shall not be exercisable by any person.
- (4) An order under section 29 above shall, unless previously discharged under subsection (1) above, cease to have effect at the expiration of the period, if any, specified under subsection (5) of that section or, where no such period is specified—
  - (a) if the patient was on the date of the order liable to be detained in pursuance of an application for admission for treatment or by virtue of an order or direction under Part III of this Act (otherwise than under section 35, 36 or 38) or was subject to guardianship under this Part of this Act or by virtue of such an order or direction, or becomes so liable or subject within the period of three months beginning with that date, when he ceases to be so liable or subject (otherwise than on being transferred in pursuance of regulations under section 19 above);
  - (b) if the patient was not on the date of the order, and has not within the said period become, so liable or subject, at the expiration of that period.

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- (5) The discharge or variation under this section of an order made under section 29 above shall not affect the validity of anything previously done in pursuance of the order.

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