



# Mental Health Act 1983

## 1983 CHAPTER 20

### PART II

#### COMPULSORY ADMISSION TO HOSPITAL AND GUARDIANSHIP

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

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

[<sup>F1</sup>(1) Where—

- (a) a guardian has been appointed for a person who has not attained the age of eighteen years; or
- (b) a [<sup>F2</sup>person is named in a child arrangements] order (as defined by section 8 of the Children Act 1989) [<sup>F3</sup>as a person with whom a person who has not attained the age of eighteen years is to live],

the guardian (or guardians, where there is more than one) or the person [<sup>F4</sup>so named (or the persons so named, where there is more than one)] 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>F5</sup>(3) In this section “guardian” [<sup>F6</sup>includes a special guardian (within the meaning of the Children Act 1989), but ] 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>M1</sup>Northern Ireland Act 1974.

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**Changes to legislation:** *Mental Health Act 1983, Section 28 is up to date with all changes known to be in force on or before 24 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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### Textual Amendments

- F1** S. 28(1) substituted (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(5), [Sch. 13 para. 48\(3\)](#) (with [Sch. 14 para. 1\(1\)](#)); S.I. 1991/828, [art. 3\(2\)](#)
- F2** Words in s. 28(1)(b) substituted (22.4.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), [Sch. 2 para. 46\(a\)\(i\)](#); S.I. 2014/889, [art. 4\(f\)](#) (with transitional provisions in S.I. 2014/1042, arts. 3, 4, 6-10)
- F3** Words in s. 28(1)(b) substituted (22.4.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), [Sch. 2 para. 46\(a\)\(ii\)](#); S.I. 2014/889, [art. 4\(f\)](#) (with transitional provisions in S.I. 2014/1042, arts. 3, 4, 6-10)
- F4** Words in s. 28(1) substituted (22.4.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), [Sch. 2 para. 46\(b\)](#); S.I. 2014/889, [art. 4\(f\)](#) (with transitional provisions in S.I. 2014/1042, arts. 3, 4, 6-10)
- F5** S. 28(3) substituted (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(5), [Sch. 13 para. 48\(4\)](#); S.I. 1991/828, [art. 3\(2\)](#)
- F6** Words in s. 28(3) inserted (30.12.2005) by [2002 c. 38](#), ss. 139, 148, [Sch. 3 para. 41](#) (with [Sch. 4 paras. 6-8](#)); S.I. 2005/2213, [art. 2\(o\)](#)

### Marginal Citations

- M1** [1974 c. 28](#).

**Changes to legislation:**

Mental Health Act 1983, Section 28 is up to date with all changes known to be in force on or before 24 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

View outstanding changes

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

- Act applied by [1996 c. 46 Sch. 2 para. 9](#)(replacing [1968 c 20 s. 23](#)) (Act applied (prosp.) by [1968 c. 20, s. 23\(4\)](#) (as substituted (prosp.) by [1996 c. 46, ss. 8, 36\(2\), Sch. 2, para. 9](#) which said amending provision was repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 58\(2\), 60, Sch. 11; S.I. 2005/579, art. 3\(h\)\(i\)\(ix\)\)](#))
- Act applied by [1996 c. 46 Sch. 2 para. 4](#)(replacing [1957 c 53 s. 63](#)) (Act applied (prosp.) by [1957 c. 53, s. 63C\(6\)](#) (as substituted (prosp.) by [1996 c. 46, ss. 8, 36\(2\), Sch. 2, para. 4](#) which said amending provision was repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 58\(2\), 60, Sch. 11; S.I. 2005/579, art. 3\(h\)\(i\)\(ix\)\)](#))
- Act applied by [1996 c. 46 Sch. 2 para. 1](#)(replacing [1955 c 19 s. 116](#)) (Act applied (prosp.) by [1955 c. 19, s. 116C\(6\)](#) (as substituted (prosp.) by [1996 c. 46, ss. 8, 36\(2\), Sch. 2 para. 1](#) which said amending provision was repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 58\(2\), 60, Sch. 11; S.I. 2005/579, art. 3\(h\)\(i\)\(ix\)](#))
- Act applied by [1996 c. 46 Sch. 2 para. 1](#)(replacing [1955 c 18 s 116](#)) (Act applied (prosp.) by [1955 c. 18, s. 116C\(6\)](#) (as substituted (prosp.) by [1996 c. 46, ss. 8, 36\(2\), Sch. 2 para. 1](#) which said amending provision was repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 58\(2\), 60, Sch. 11; S.I. 2005/579, art. 3\(h\)\(i\)\(ix\)\)](#))
- Act power to applied by [1996 c. 46 Sch. 2 para. 4](#)(replacing [1957 c 53 s. 63](#)) (Act: Power to apply conferred (prosp.) by [1957 c. 53, s. 63B\(4\)\(c\)](#) (as substituted (prosp.) by [1996 c. 46, ss. 8, 36\(2\), Sch. 2, para. 4](#) which said amending provision was repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 58\(2\), 60, Sch. 11; S.I. 2005/579, art. 3\(h\)\(i\)\(ix\)\)](#))
- Act power to applied by [1996 c. 46 Sch. 2 para. 1](#)(replacing [1955 c 19 s. 116](#)) (Act: Power to apply conferred (prosp.) by [1955 c. 19, s. 116B\(4\)\(c\)](#) (as substituted (prosp.) by [1996 c. 46, ss. 8, 36\(2\), Sch. 2, para. 1](#) which said amending provision was repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 58\(2\), 60, Sch. 11; S.I. 2005/579, art. 3\(h\)\(i\)\(ix\)\)](#))
- Act power to applied by [1996 c. 46 Sch. 2 para. 1](#)(replacing [1955 c 18 s 116](#)) (Act: Power to apply conferred (prosp.) by [1955 c. 18, s. 116B\(4\)\(c\)](#) (as substituted (prosp.) by [1996 c. 46, ss. 8, 36\(2\), Sch. 2 para. 1](#) which said amending provision was repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 58\(2\), 60, Sch. 11; S.I. 2005/579, art. 3\(h\)\(i\)\(ix\)\)](#))

**Whole provisions yet to be inserted into this Act (including any effects on those provisions):**

- s. 74(8) inserted by [2015 c. 2 Sch. 3 para. 3\(3\)](#)