



Mental Health Act 1959

1959 CHAPTER 72

PART IV

COMPULSORY ADMISSION TO HOSPITAL AND GUARDIANSHIP

Functions of relatives of patients

49 Definition of relative and nearest relative

- (1) In this Part of this Act "relative", means any of the following, that is to say—
- (a) husband or wife;
 - (b) son or daughter ;
 - (c) father;
 - (d) mother;
 - (e) brother or sister ;
 - (f) grandparent;
 - (g) grandchild;
 - (h) uncle or aunt;
 - (i) nephew or niece.
- (2) In deducing relationships for the purposes of this section, an adopted person shall be treated as the child of the person or persons by whom he was adopted and not as the child of any other person; and subject as aforesaid, 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) of this section 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.

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- (4) Where the person who, under subsection (3) of this section, would be the nearest relative of a patient—
- (a) is not ordinarily resident within the United Kingdom; or
 - (b) being the husband or wife of the patient, 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) not being the husband, wife, father or mother of the patient, is for the time being under twenty-one years of age; or
 - (d) is a man against whom an order divesting him of authority over the patient has been made under section thirty-eight of the Sexual Offences Act, 1956 (which relates to incest with a girl under twenty-one) and has not been rescinded,
- the nearest relative of the patient shall be ascertained as if that person were dead.
- (5) In this section " adoption order " means an order for the adoption of any person made under Part I of the Adoption Act, 1958, or any previous enactment relating to the adoption of children, or any corresponding enactment of the Parliament of Northern Ireland, and " court " includes a court in Scotland or Northern Ireland.
- (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 (4) of this section.

50 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 seventy-five of the Children and Young Persons Act, 1933 (which relates to children and young persons committed to the care of fit persons under that Act);
- (b) section seventy-nine of the Children and Young Persons (Scotland) Act, 1937 (which makes corresponding provision in Scotland); or
- (c) section three of the Children Act, 1948 (which relates to children in respect of whom parental rights have been assumed under section two of that Act),

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 (2) of the said section three, any parent of the patient not being the person on whose account the resolution mentioned in that subsection was passed.

51 Nearest relative of infant under guardianship, etc.

- (1) Where a patient who has not attained the age of twenty-one 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 infants (including an order under section thirty-eight of the Sexual Offences Act, 1956), or by virtue of a deed or will executed by his father or mother, under the guardianship of a person not being his nearest relative under the foregoing

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- provisions of this Act, or is under the joint guardianship of two persons of whom one is such a person as aforesaid ; or
- (b) is, by virtue of an order made by a court in the exercise of such jurisdiction as aforesaid 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.
- (2) Subsection (4) of section forty-nine of this Act 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.
- (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 thirty-four 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.

52 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 under this Part of this Act of the nearest relative of the patient 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) a mental welfare officer,
- but in relation to an application made by such an officer subsection (1) of this section shall have effect as if for the words " the applicant" there were substituted the words " the local health 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.

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- (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 observation, an application under this section, being an application made on the ground specified in paragraph (c) or paragraph (d) of the last foregoing subsection, 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.
- (5) While an order made under this section is in force, the provisions of this Part of this Act (other than this and the next following section) 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 the next following section) 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.
- (6) Where an order is made under this section in respect of a patient who is or subsequently becomes liable to be detained or subject to guardianship under this Part of this Act, the nearest relative of the patient may make an application to a Mental Health Review Tribunal in respect of the patient within the period of twelve months beginning with the date of the order, and in any subsequent period of twelve months during which the order continues in force.

53 Discharge and variation of orders under s. 52

- (1) An order made under section fifty-two of this Act 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 subsection (3) of the said section fifty-two, 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 the said section fifty-two 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 a mental welfare officer, by substituting for the first-mentioned person a local health 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 the said section fifty-two dies, the foregoing provisions of this section shall apply as if for any reference to that person there were substituted a reference to any relative of the patient, and until the order is discharged or varied under those

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provisions the functions of the nearest relative under this Part of this Act shall not be exercisable by any person.

- (4) An order under section fifty-two of this Act shall, unless previously discharged under subsection (1) of this section, cease to have effect—
- (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 subject to guardianship under this Part of this Act, 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 forty-one of this Act);
 - (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.
- (5) The discharge or variation under this section of an order made under the said section fifty-two shall not affect the validity of anything previously done in pursuance of the order.