STATUTORY INSTRUMENTS

1962 No. 614 (S. 22)

MENTAL HEALTH

The Mental Health (Guardianship) (Scotland) Regulations, 1962

Made - - - -	*23rd March*, 1962
Laid before Parliament	*2nd April*, 1962
Coming into Operation	*1st June*, 1962

In exercise of the powers conferred on me by sections 29, 33, 52 and 110 of the Mental Health (Scotland) Act, 1960(a), and of all other powers enabling me in that behalf, I hereby make the following regulations:—

Citation and commencement

1. These regulations may be cited as the Mental Health (Guardianship) (Scotland) Regulations, 1962, and shall come into operation on the first day of June, 1962.

Interpretation

2.—(1) The Interpretation Act, 1889(b), applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

(2) In these regulations, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them:—

"the Act" means the Mental Health (Scotland) Act, 1960;

"guardian" in relation to a patient means the local health authority or other person named as the guardian in a guardianship application under Part IV of the Act having effect in respect of that patient, or such an authority or person having the like powers as if such an application were effective and "guardianship" shall be construed accordingly;

"local health authority concerned" in relation to a patient subject to guardianship means—

(*a*) in the case of a patient in respect of whom a guardianship application under Part IV of the Act is effective, the local health authority to whom the application is addressed;

(*b*) in the case of a patient who by virtue of Part III of the Third Schedule to the Act is treated as if he had been received into guardianship in pursuance of a guardianship application under Part IV of the Act, the local authority who were immediately before the commencement of the Act responsible for making arrangements for the visitation of the patient or, where no local authority were so responsible, the local authority of the area in which the guardian or other person in whose care the patient had been placed resided immediately before the commencement of the Act;

(*c*) in the case of a patient who has been received into guardianship in pursuance of arrangements under Part VI of the Act or Part VI of the Mental Health Act, 1959(c), the local health authority for the place where he was received into guardianship as aforesaid;

(*d*) in any other case the local health authority to whose guardianship the patient is subject or who approved his guardian;

(a) 8 & 9 Eliz. 2. c. 61. (b) 52 & 53 Vict. c. 63. (c) 7 & 8 Eliz. 2. c. 72.

"responsible medical officer" in relation to a patient subject to guardianship means the medical officer of health of the local health authority concerned or any other medical practitioner authorised by that authority to act (either generally or in any particular case or class of case or for any particular purpose) as the responsible medical officer.

(3) Other expressions which are given a meaning in section 111 of the Act shall, unless the context otherwise requires, have the same meaning in these regulations.

Application

3.—(1) Regulation 7 and paragraphs (1) and (3) of Regulation 8 of these regulations shall apply to all guardians.

(2) Paragraph (2) of Regulation 8 and Regulations 9 to 13 of these regulations shall also apply to a guardian who is a person other than the local health authority concerned.

Duty of local health authority concerned

4. It shall be the duty of the local health authority concerned generally to exercise supervision over patients subject to guardianship and to ensure that the guardians of such patients make adequate arrangements for carrying out their duties under Regulation 7 of these regulations.

Visits to patients on behalf of the local health authority concerned

5.—(1) Subject to the next following regulation, the local health authority concerned shall arrange for every patient who is subject to guardianship to be visited at such intervals as the authority may decide, but in any case at intervals of not more than three months, and at least one such visit in any year shall be made by the responsible medical officer.

(2) In the following cases and during the following periods, at least one of the visits referred to in paragraph (1) of this regulation shall be made by a medical practitioner, whether or not the responsible medical officer, approved for the purposes of section 27 of the Act:—

(*a*) in the case of a patient received into guardianship after the coming into operation of these regulations, during the period of one year beginning with the day on which he was so received;

(*b*) in the case of every patient subject to guardianship, during any period for which the authority for guardianship is renewed under section 39 of, or paragraph 8 of the Third Schedule to, the Act.

Provisions in respect of patients resident outside the area of the local health authority concerned

6. Where the place of residence of a patient subject to guardianship is within the area of a local health authority other than the local health authority concerned, the local health authority concerned shall notify the first mentioned local health authority, and may arrange for that local health authority to carry out such of the duties of the local health authority concerned under Regulation 5 of these regulations as may be agreed between the authorities.

General powers and duties of guardians

7.—(1) The guardian shall be responsible for the care, supervision, and general welfare of the patient and for the promotion of his physical and mental health.

(2) The guardian shall in particular ensure that the patient is provided with adequate and suitable food, clothing and accommodation.

(3) The guardian shall, so far as is reasonably practicable in the circumstances, make arrangements for the occupation, training or employment, and recreation of the patient.

(4) The guardian shall keep a visiting book provided by the local health authority concerned in which shall be recorded the date of each visit paid to the patient on behalf of that authority.

Restriction of visits to patients

8.—(1) Subject to the provisions of paragraph (3) of this regulation and to any directions given under Regulation 9 of these regulations, the guardian may restrict or prohibit to such extent as he thinks necessary the making of visits to the patient by any person whose visit the guardian has reason to believe may have an adverse effect on the patient.

(2) Where the guardian exercises his power under paragraph (1) of this regulation to restrict or prohibit visits to the patient by any person, he shall as soon as practicable notify in writing the local health authority concerned.

(3) Nothing in this regulation shall authorise the guardian to restrict or prohibit the visits of any person authorised in that behalf by the local health authority concerned, the Mental Welfare Commission for Scotland, or the Secretary of State.

Directions of, and reports to, the local health authority concerned

9. The guardian shall, in exercising the powers and duties conferred or imposed on him by the Act or these regulations, comply with such directions as the local health authority concerned may give, and the guardian shall furnish to that authority all such reports or other information with regard to the patient (in addition to the information mentioned in the four succeeding regulations) as the authority may from time to time require.

Notification of residence

10. On any permanent change in the place of residence of a guardian, or of a patient subject to guardianship, the guardian shall before the change of residence notify in writing to the local health authority concerned the new place of residence, and on any temporary change in the place of residence of the patient, if the probable period of absence from the permanent address is to be more than seven days, the guardian shall notify in writing the said authority the temporary place of residence before removal to that residence.

Notification of general medical practitioner

11. The guardian shall notify in writing to the local health authority concerned the name and address of the medical practitioner for the time being acting as the patient's general medical practitioner.

Notification of death

12. In the event of the death of a patient subject to guardianship, the guardian shall immediately inform the local health authority concerned.

Notification of absence without leave and return

13.—(1) When a patient subject to guardianship is absent without the leave of the guardian from the place at which he is required by the guardian to reside, the guardian shall immediately inform the local health authority concerned.

(2) If a patient absent without leave returns, or is taken into custody by the guardian or any person authorised by the guardian within the time limit during which the patient may be so taken under section 36 of the Act, the guardian shall immediately inform the local health authority concerned.

Notifications to the Mental Welfare Commission for Scotland

14.—(1) The local health authority concerned shall as soon as practicable cause the Mental Welfare Commission for Scotland to be notified in writing of any permanent or temporary change of place of residence notified to them under Regulation 10 of these regulations.

(2) In the event of the absence without leave, the return or retaking, or the death of the patient or the termination of guardianship by discharge or otherwise, the local health authority concerned shall as soon as practicable cause the Mental Welfare Commission for Scotland to be notified in writing.

Guardians convicted of offences

15.—(1) Where a person having the guardianship of a patient under the Act is convicted of an offence under subsection (6) of section 29 or under sections 94, 95, 96, 97, 98 or 99 of the Act, the local health authority concerned shall forthwith consider whether that patient should be removed from the guardianship of that person.

(2) If, after such consideration, the local health authority concerned decide that the patient shall remain under the guardianship of the person so convicted, they shall in writing inform the Mental Welfare Commission for Scotland of the reasons for that decision.

Dated this twenty-third day of March, 1962.

John S. Maclay,
One of Her Majesty's
Principal Secretaries of State.

St. Andrew's House,
Edinburgh, 1.

EXPLANATORY NOTE

(This Note is not part of the Regulations, but is intended to indicate their general purport.)

These regulations set out the powers and duties of guardians and local health authorities concerned in respect of persons subject to guardianship under the Mental Health (Scotland) Act, 1960. The local health authority concerned must arrange visits to patients under guardianship at intervals of not more than three months (Regulation 5). All guardians are responsible for the care, supervision and the general health and welfare of patients under their guardianship (Regulation 7). Guardians (where not the local health authority concerned) are required to exercise their functions subject to any directions of the local health authority concerned and to give the authority certain information in respect of the patient (Regulation 9). The local health authority concerned are also required to make notifications in certain circumstances to the Mental Welfare Commission for Scotland (Regulation 14).