D. Compulsory Admission To Hospital And Guardianship

A. Guardianship
Contents

A. GUARDIANSHIP 1-45

- 1. Summary Of Main Provisions 5

- 2. Summary Of Operational Policy 5

- 3. Reference Material 6

- 4. Philosophy Of And General Observations About Guardianship 7

  [Mental Health Act 1983, Code of Practice, Paragraph 13]

  - 13. Guardianship 7

    - Purpose of guardianship (Paras 13.1 – 13.2) 7

    - Assessment for guardianship Paras 13.3 – 13.4) 7

    - Components of effective guardianship (Paras 13.5 – 13.6) 7

    - Duties of social services departments (Para. 13.7) 8

    - The powers of the guardian (Para. 13.8) 9

    - Points to remember (Para. 13.9) 9

    - Particular practice issues (Para. 13.10) 9

    - Guardianship under section 37 (Para. 13.11) 10

    - Note 10

- 5. Action For Approved Social Workers In Guardianship 11

  - 6.1 Outline Of Main Provisions 11
- 6.2 List Of Forms And Letters Required

- 6.2.1 HMSO Forms

- 6.2.2 Departmental Letters/Memos

6. The Admission Process

- (a) The Medical Recommendations
- (b) Application By Nearest Relative
- (c) Application By ASW – Receipt Of Request
- (d) Grounds For An Order
- (e) Consultations
- (f) Objections By Nearest Relative
- (g) Naming Guardian
- (h) Timing
- (i) Legal Rights
- (j) Completion Of Admission Particulars
- (k) Checklist Of Tasks To Be Completed By ASW During And After Admission Process
- (l) Transfer Of Patient Detained In Hospital Under Section 2 Or 3 To Guardianship

7. Rights & Powers

- (a) Powers Of The Guardian
- (b) Duties Of The Guardian
- (c) Duties Of The Private Guardian
- (d) Rights Of The Patient To Challenge The Guardianship
- (e) Rights Of The Nearest Relative To Challenge The Guardianship

8. Administration Of The Guardianship Order

- (a) Action By ASW And Local Authority In Accepting A Guardianship Order
- (b) Transfer Of Guardianship
- (c) Transfer Of Patient From Devon County Council
To Another Local Authority
- (d) Transfer Of Patient From Guardianship To Hospital  29
- (e) Renewal Of Guardianship  30
- (f) Reclassification Of Patient Under Guardianship  31
- (g) Discharge  31
- (h) Discharge By Tribunal  31

9. Powers Of The Court To Order Guardianship  32
- (a) Guardianship Order As Alternative  32

B. COMPULSORY ADMISSION TO HOSPITAL AND GUARDIANSHIP – SUMMARY OF PROCEDURAL REQUIREMENTS UNDER MENTAL HEALTH ACT 1983, PART II

1. Admission For Assessment – Section 2  35
2. Admission For Assessment – Section 3  37
3. Admission For Assessment – Section 4  38
4. Patient Already In Hospital – Section 5  39
5. Admission For Assessment – Section 7  40

C. APPENDICES

1. Appendix 1: Flow Chart A – Guardianship Process For Admission & Renewal  42-45
2. Appendix 2: Flow Chart B – Medical Examination – Who Can Do It  46-46
3. Appendix 3: Standard Letters/Memos – Cover Sheet

- Letter A201 – Letter To Nearest Relative Re Admission To Guardianship
- Letter A202 – Letter To Patient Re Admission To Guardianship
- Letter A203(a) – Letter To Patient Re Transfer From Section 3 To Guardianship
- Letter A203(b) – Letter To Nearest Relative Re Transfer From Section 3 To Guardianship
- Letter A204(a) – Letter To Doctor Confirming Reception Into Guardianship
- Letter A204(b) – Letter To ASW Confirming Reception Into Guardianship
- Letter A205(a) – Letter To Patient Confirming Renewal of Guardianship
- Letter A205(b) – Letter To Nearest Relative Confirming Renewal Of Guardianship
- Letter A206 – Letter To ASW Confirming Renewal Of Guardianship
- Letter A207 – Letter To Nearest Relative Confirming Guardianship Status
- Letter A208 – Letter To Patient Confirming Guardianship Status
- Letter A209 – Authorisation To Convey A Person Subject To Section 7 Of The Mental Health Act

- Memo A240 – Memo Re Mid-term Reminder To ASW From Director Of Social Care
- Memo A241 – Memo Re Renewal Reminder To ASW From Director Of Social Care
1. **Summary Of Main Provisions**

The Guardianship powers in the Mental Health Act 1983 are largely based on recommendations made by the Royal Commission. The Commission argued that “care outside hospital should usually be on the basis of persuasion to accept help and advice and take advantage of arrangements for employment and training. However, the Commission recommended that where a person’s unwillingness to receive training or social help could not be overcome by persuasion, it would be appropriate to place him under Guardianship if this offered the prospect of success. The Commission suggested that care under Guardianship might be more appropriate for some people, particularly those with mild or chronic forms of mental illness, than compulsory admission to or continued detention in hospital. … The use of Guardianship powers has declined steadily since their introduction and practice varies considerably between local authorities. The Royal Commission expected that as community psychiatric services developed, Guardianship would become more frequent, but this hope has not been borne out.

The White Paper that preceded the Mental Health Act stated that Guardianship powers are needed for “a very small number of mentally disordered people who do not require treatment in hospital, either formally or informally, but who nevertheless need close supervision and some control in the community as a consequence of their mental disorder. These include people who are able to cope provided they take their medication regularly, but who fail to do so and those who neglect themselves to the point of seriously endangering their health”.

3. **Summary Of Operational Policy**

Approved Social Workers (A.S.W.s) are required to follow the processes outlined in the policy paper to ensure both best practice and strict compliance with the statutory requirements of the Mental Health Act 1983. It is essential that all the statutory requirements have been met and that a care plan has been agreed prior to its submission to the Director of Social Care for final consideration of “acceptance” of the proposal on behalf of the local authority. The same basic principles will apply in cases where a court is considering the use of a Guardianship Order under the provisions of Section 37 Mental Health Act 1983.
4. **Reference Material**

1. Mental Health Act 1983
2. Mental Health Act 1983 – Code of Practice
5. Commentary – Professional Journals
5. Philosophy Of And General Observations About Guardianship

Mental Health Act 1983, Code of Practice, Paragraph 13

13. Guardianship (section 7)

(Paras 38-42 of the Memorandum)

Purpose of guardianship

13.1 The purpose of guardianship is to enable patients to receive care in the community where it cannot be provided without the use of compulsory powers. It provides an authoritative framework for working with a patient, with a minimum of constraint, to achieve as independent a life as possible within the community. Where it is used it must be part of the patient's overall care and treatment plan.

13.2 After-care under supervision provides an alternative statutory framework for the after-care of patients who have been detained in hospital for treatment and meet the criteria set out in section 25A of the Act. Detailed guidance on after-care under supervision is given in Chapter 28.

Assessment for guardianship

13.3 ASW’s and doctors should consider guardianship as a possible alternative to admission to, or continuing care in, hospital.

13.4 An application for guardianship should be accompanied by a comprehensive care plan established on the basis of multi-disciplinary discussions. It is important that any procedures instituted by social services departments are no more than the minimum necessary to ensure the proper use of guardianship and that guardianship can be used in a positive and flexible manner.

Components of effective guardianship

13.5 A comprehensive care plan is required (under the Care Programme Approach (CPA) in England) which identifies the services needed by the patient and who will provide them. The care plan should include care arrangements, suitable accommodation, treatment and personal support. For those subject to guardianship the care plan should also indicate which of the powers under the Act are necessary to achieve the plan. If no powers are required guardianship should not be used.

---

1 See the following document for a full explanation of the Code of Practice:
http://www.doh.gov.uk/pub/docs/doh/mhcop.pdf
D. Compulsory Admission To Hospital And Guardianship
A. Guardianship

13.6 Key elements of the plan should include:

a. depending on the patient’s level of “capacity”, his or her recognition of the “authority” of, and willingness to work “with”, the guardian;

b. support from the local authority for the guardian;

c. suitable accommodation to help meet the patient’s needs;

d. access to day care, education and training facilities;

e. effective co-operation and communication between all persons concerned in implementing the care plan.

The guardian should be willing to ‘advocate’ on behalf of the patient in relation to those agencies whose services are needed to carry out the care plan.

Duties of social services departments

13.7 Each local authority should establish a policy setting out the arrangements for:

a. receiving, considering and scrutinising applications for guardianship. Such arrangements should ensure that applications are properly but speedily dealt with;

b. monitoring the progress of the guardianship including steps to be taken to fulfil the authority’s statutory obligations in relation to private guardians and to arrange visits to the patient;

c. ensuring the suitability of any proposed private guardian, and that he or she is able to understand and carry out the statutory duties, including the appointment of a nominated medical attendant;

d. ensuring that patients under guardianship receive, both orally and in writing, relevant aspects of the information that Hospital Managers are required to give to detained patients under section 132 (patient leaflets 10 and 11);

e. ensuring that the patient is aware of his or her right to apply to a Mental Health Review Tribunal and that a named officer of the local authority will give any necessary assistance to the patient in making such an application;

f. maintaining detailed records relating to the person under guardianship;

g. ensuring the review of the guardianship towards the end of each period of guardianship;

h. discharging the patient from guardianship as soon as it is no longer required.
The powers of the guardian

13.8 Section 8 of the Act sets out the three powers of the guardian as follows:

a. to require the patient to live at a place specified by the guardian. This does not provide the legal authority to detain a patient physically or remove the patient against his or her wishes. A patient who is absent without leave from the specified place may be returned within the statutory time limit [see paras 72-74 of the Memorandum] by those authorised to do so under the Act;

b. to require the patient to attend at specified places for medical treatment, occupation, education or training. If the patient refuses to attend, the guardian is not authorised to use force to secure such attendance, nor does the Act enable medical treatment to be administered in the absence of the patient's consent;

c. to require access to the patient to be given at the place where he or she is living to persons detailed in the Act. A refusal without reasonable cause to permit an authorised person to have access to the patient is an offence under section 129 but no force may be used to secure entry.

If the patient consistently resists the exercise of the guardian's powers it can be concluded that guardianship is not the most appropriate form of care for that person and the guardianship order should be discharged.

13.9 Points to remember:

a. guardianship does not restrict the patient's access to hospital services on an informal basis. A patient who requires treatment but does not need to be detained may be admitted informally;

b. guardianship can also remain in force if the patient is admitted to hospital under section 2 or section 4 but not under section 3;

c. it is possible in certain circumstances for a patient liable to be detained in hospital by virtue of an application under Part II of the Act to be transferred into guardianship and for a person subject to guardianship under Part II of the Act to be transferred into the guardianship of another local social services authority or person approved by such authority or to be transferred to hospital. (See section 19 and regulations 7-9 of the Mental Health (Hospital, Guardianship and Consent to Treatment) Regulations 1983.)

13.10 Particular practice issues:

a. guardianship must not be used to require a patient to reside in hospital except where it is necessary for a very short time in order to provide shelter whilst accommodation in the community is being arranged;
b. where an adult is assessed as requiring residential care, but owing to mental incapacity is unable to make a decision as to whether he or she wishes to be placed in residential care, those who are responsible for his or her care should consider the applicability and appropriateness of guardianship for providing the framework within which decisions about his or her current and future care can be planned.

Guardianship under section 37

13.11 Guardianship may be used as an alternative to hospital orders by courts where the prescribed criteria, which are similar to those of a hospital order, are met. The court should be satisfied that the local authority or named person is willing to act as guardian. The local authority should be satisfied with the arrangements. In considering the appropriateness of guardianship they should be guided by the same principles as apply under Part II of the Act. The powers and duties conferred on the local authority or private guardian and the provisions as to duration, renewal and discharge are the same as in guardianship applications except that the power to discharge is not available to the nearest relative.

**Note:** The role played by:

A  A comprehensive Care Plan;
B  Good Administrative Procedures;

are key factors in the management and administration of guardianship arrangements.
6. Action For Approved Social Workers In Guardianship

6.1 Outline Of Main Provisions

Statutory Authority: Sections 7 – 10 Mental Health Act 1983

Maximum Duration Of Detention: Six months, renewable for a further six months and then for periods of one year at a time.

Age Limit: Only a patient who has reached the age of 16 can be received into Guardianship.

Criteria: (a) The patient is suffering from mental illness, severe mental impairment, psychopathic disorder or mental impairment; and

his mental disorder is of a nature or degree which warrants his reception into Guardianship;

AND

(b) it is necessary in the interests of the welfare of the patient or for the protection of others that the patient should be so received.

Procedure: Recommendation by two registered medical practitioners and an application by an Approved Social Worker\(^2\) or the nearest relative. The Guardian must be either a Local (Social Services) Authority or any person accepted by the Authority for the area in which the Guardian lives.

Effect: The Guardian has the power to require the patient:

(a) to live in a specified place;

(b) to attend specified places for the purpose of medical treatment, occupation, education or training; and

(c) access to the patient to be given to any doctor, Approved Social Worker or other specified person;

(d) when a patient is received into Guardianship any previous detention order shall cease to have effect;

\(^2\) One ASW must be Section 12 approved.
NB: Medical treatment may not be imposed without the patient’s consent under this order.

Guardianship does not empower the Guardian to control the patient’s financial affairs.
6.2 List Of Forms And Letters Required

- (In numerical order)

6.2.1 HMSO Forms

15 Record Of receipt Of Medical Recommendations
17 Guardianship Application By Nearest Relative
18 Guardianship Application By ASW
19 Joint Medical Recommendation For Reception Into Guardianship
20 Medical Recommendation For Reception Into Guardianship
21 Record Of Acceptance Of Guardianship Application
23 Reclassification Of Patient Under Guardianship
25 Authority For Transfer From Hospital To Guardianship
26 Authority For Transfer Of Patient From Guardianship Of One Guardian To Another
27 Authority For Transfer From Guardianship To Hospital
28 Joint Medical Recommendation For Transfer From Guardianship To Hospital
29 Medical Recommendation For Transfer From Guardianship To Hospital
31 Renewal Of Authority Of Guardianship
31b Authority For Guardianship After Absence Without Leave For More Than 28 Days
33 Date Of Reception Of A Patient Removed To England & Wales
35 Discharge By Nearest Relative Of Patient Subject To Guardianship
6.2.2 Departmental Letters/Memos

SS648 Mental Health Act 1983 – Assessment Form
A201 Letter To Nearest Relative Re Admission to Guardianship
A202 Letter To Patient Re Admission To Guardianship
A203(a) Letter To Patient Re Transfer From Section 3 To Guardianship
A203(b) Letter To Nearest Relative Re Transfer From Section 3 To Guardianship
A204(a) Letter To Doctor Confirming Reception Into Guardianship
A204(b) Letter To ASW Confirming Reception Into Guardianship
A205(a) Letter To Patient Confirming Renewal Of Guardianship
A205(b) Letter To Nearest Relative Confirming Renewal Of Guardianship
A206 Letter To ASW Confirming Renewal Of Guardianship
A207 Letter To Nearest Relative Confirming Guardianship Status
A208 Letter To Patient Confirming Guardianship Status
A209 Authorisation To Convey A Person Subject To Section 7 Of The Mental Health Act
A240 Memo Re Mid-term Reminder To ASW From Director Of Social Care
A241 Memo Re Renewal Reminder To ASW From Director Of Social Care
7. The Admission Process

(A) Medical Recommendations

1. The Approved Social Worker must scrutinise two medical recommendations of the following points to ensure the patient’s rights are protected.

2. Two Medical Recommendations are required for the completion of a Guardianship, either

   (a) by examination of the patient jointly, using the prescribed forms; OR

   (ii) separately within 5 days

   Mental Health Act 1983 S7(3). For this form to be valid, the doctors must have examined the patient together.

   Mental Health Act 1983 S8(2). The process of completing Guardianship must be accomplished within 14 days commencing with the date of the last medical examination, before completing a medical recommendation.

3. At least one of the Medical Practitioners must be registered by the Secretary of State for Social Services as having special experience in the diagnosis or treatment of mental disorder, i.e. a Section 12 doctor.

   Mental Health Act 1983 S(12)(2).

4. Ideally both Doctors should have been acquainted with the patient prior to the recommendations being made.

   Every attempt should be made to ensure that the patient has the benefit of being assessed by a Doctor who knows him.

5. If neither was, this must be stated on the application form and reasons why the patient’s own Doctors were unavailable.

6. Medical recommendations can be given by both Doctors on the staff of the same hospital if:

   (i) Delay in obtaining a non-hospital doctor would involve serious risk to the health or safety of the patient.

   (ii) One of the practitioners works less than half of his time at that hospital.
(iii) Where one practitioner is a consultant and where the other does not work in a grade in which he is under that consultant’s directions.

Mental Health Act 1983 S12(4). In the case of Guardianship, there should be sufficient time to avoid recommendations from Doctors on the staff of the same hospital.

7. For Guardianship to be completed, the following grounds must be established:

   (i) That the patient is suffering from one of the four prescribed mental disorders.

   (ii) That the patient’s mental disorder is of a nature or degree, which warrants his reception into Guardianship. The Doctor is required to describe the nature and degree of the patient’s condition.

Mental Health Act 1983 S11(6). An application and medical recommendation may describe the patient as suffering from more than one form of mental disorder.

Mental Health Act 1983 S7(2a). Is Guardianship the “least restrictive” alternative?

It is important to check that the clinical descriptions given by each Doctor broadly agree.

8. The Doctors must state why the patient cannot be appropriately cared for without powers of Guardianship.

9. The Doctors must then state that it is necessary:

   (i) in the interests of the welfare of the patient and/or

   (ii) for the protection of other persons that the patient be received into Guardianship.

Mental Health Act 1983 S7(2b)

(B) Application By Nearest Relative

10. Application can be made by the Nearest Relative.

Mental health Act 1983 S11(1). Although the nearest relative has this right and should be informed of this, it is preferable for the ASW to exercise this function. The rationale is that the patient is entitled to an objective professional appraisal of his/her situation.
Ideally the nearest relative and doctors should have discussed the Guardianship application with the Local Authority prior to the Department receiving the completed forms. It is worthy of note that if no discussion has taken place and even thought the forms are completed correctly, the Local Authority may refuse to accept the patient. In particular, if there are insufficient resources to effectively assist the patient.

11. The nearest relative may ask a Social Services Department to direct an ASW to investigate whether a patient should be compulsorily received into Guardianship. If an ASW declines to make an application, he must as soon as practical inform the nearest relative of his reasons in writing.

Mental Health Act 1983 S13(4). The ASW may wish to consult with other ASW or mental health social worker.

Although not required to do so by law it is a matter of good practice to give the relative the details of The Mental Health Act Commission should they wish to challenge the ASW’s refusal to make an application.

(C) Application By ASW – Receipt Of Request

12. Upon receiving a request to make an application, the ASW must:

   (i) Discuss the merits of an application with the patient’s medical practitioners.

   (ii) Interview the patient in a suitable manner ….

   (iii) Satisfy himself that detention under Guardianship is in all the circumstances of the case the most appropriate way of providing the care and the medical treatment of which the patient stands in need.

Mental Health Act 1983 S11(1). If the patient is in hospital and subject to Section 2 or 3, the documentation ordering such a detention is valid for Guardianship. In this case, all that is required to admit a patient to Guardianship is the completion of Form 25 (see Section A, paras. 27-30).

---

3 The Mental Health Act Commission, Maid Marian House, 56 Hounds Gate, Nottingham. NG1 6BG. Tel: 0115 943 7100. Fax: 0115 943 7101. Email: ChiefExec@mhac.trent.nhs.uk Website: http://www.mhac.trent.nhs.uk/
Mental Health Act 1983 S13(2). “Suitable Manner”. These words were added to this section as a result of an amendment moved at the Special Standing Committee by Mr Tom Benyon who stressed the need for those who are involved in the management of deaf psychiatric patients having either the use of an interpreter or a fluency in British Sign Language. He also drew the Committee’s attention to a number of cases where patients had to be compulsorily detained under the 1959 Act in circumstances where a lack of speech had been mistakenly attributed to mental disorder. Other members were concerned that Approved Social Workers should be sensitive to the difficulties faced by members of ethnic minorities who might not speak English or who might not speak it well. The words “suitable manner” should direct the Approved Social Worker’s attention to the particular needs of all groups who might have difficulties in communicating effectively.

“Satisfy Himself”

The Approved Social Worker would need to consult with others who have been involved with the patient’s welfare. Speaking of the role that Approved Social Workers should take in compulsory admissions; the Under Secretary of State said that he would “expect the (Approved Social Worker), the doctor and others to discuss what should be done”.

“All the circumstances of the Case”

Such as the medical opinion of the patient’s condition, the patient’s wishes, the relationship between the patient’s condition and his social situation, whether the patient has a history of mental disorder and the attitude of relatives. The Approved Social Worker would also need to consider whether suitable alternatives to Guardianship exist for the patient. They might include outpatient or day hospital treatment, community psychiatric nursing, social work support accommodation in a hostel and support from the relatives and the primary health care team.

(D) Grounds For An Order

13. Establish the grounds for applying for Guardianship.

   (i) That the patient has attained the age of 16.

   (ii) and that he/she is suffering from mental illness, severe mental impairment, psychopathic disorder or mental impairment of a sufficiently serious nature as to warrant a Guardianship.

   (iii) and that it is necessary in the interest of the welfare of the patient or for the protection of others.
Mental Health Act 1983 S7(1-2)

**ALL THREE GROUNDS MUST BE ESTABLISHED**

ASW must always take account of the clinical aspects of a case. ASWs have an obligation to have an informed knowledge of mental disorders and their treatment.

**(E) Consultations**

14. Consult with Team Manager and Director of Social Care. Is the application acceptable to the Department? In particular, is there a suitable placement available? Are the staff in a particular establishment able to discharge the duties specified by the Guardian?

Mental Health Act 1983 S8(1). The use of Guardianship will necessarily be limited by the resources available to the Local Authority and in the community at large.

15. Consult nearest relative. The ASW making the application must take all practical steps to inform the nearest relative (if any) that the application is about to be made and of the relatives powers to effect the discharge of the patient (see later). In the case of Guardianship the ASW should consult the nearest relative before making an application.

Mental Health Act 1983 S11(3). The Act recognises that it is not always possible to contact the nearest relative, but every step should be taken to do so, particularly as 14 days are available from the last medical recommendation before the application needs to be submitted.

**(F) Objections By Nearest Relative**

16. If the nearest relative objects, then the ASW cannot proceed.

17. If ASW assesses the nearest relatives’ objection as ‘unreasonable’ then he may make application to the County Court for the transfer of the powers of the nearest relative to another person.

Mental Health Act 1983 S29 (1)
Mental Health Act 1983 S29 (3c)

18. The ASW should also ask the Court to appoint an “acting nearest relative” if:

(i) The patient has no known nearest relative and it is not reasonably practicable to find out whether or not he has such a relative or who he is.
(ii) That the nearest relative is incapable of acting as such due to mental disorder or other illness.

(iii) The nearest relative has sought to discharge the patient without due regard for the welfare of the patient or the interest of the public.

Mental Health Act S29(3b)

Mental Health Act 1983 S29(2). Others as well as ASW can apply to the County Court to act as nearest relative, i.e.,

(a) Any relative of the patient;
(b) Any person with whom the patient is living or was living when admitted.

(G) Naming Guardian

19. The applicant may name as Guardian either the local Social Services Authority or any other person, including the applicant himself. But if an individual is named as Guardian it will have no effect unless the local Social Services Authority or the area where the Guardian resides, accepts the application on his behalf and the person must state in writing that he is willing to act as Guardian.

Mental Health Act 1983 S7(5).

(H) Timing

20. ASW to ensure that patient has been interviewed within 14 days of the date of the last medical examination.

Mental Health Act S12(1)
Mental Health Act 1983 S11(5)
No application to be made before medical recommendation

21. Ensure full completion of all Forms (Nos. 17, 18, 19, 20).

(I) Legal Rights

22. Explain Powers of Guardian to both patient and nearest relative.

Mental Health Act 1983 S8(1). This is a statutory requirement.
See Section B “Itemising Powers”.
ACTION

23. Explain Rights of patient and nearest relative to both.

This is a statutory requirement. See Section B “Itemising Powers”.

(J) Completion Of Admission Particulars

24. ASW to complete Essential Admission Particulars Form SS648. Copies to:

   (1) Receiving Establishment*
   (2) File
   (3) ASW portfolio

*eg: Hostel
    Private Residential Home

25. An appointment must be made with the Director of Social Care for a formal meeting to accept the Guardianship on behalf of the Authority. All forms and signed care plan must be in place.

NB: The Guardianship must be “accepted” before any of the powers can be operated.

(K) Check List Of Tasks To Be Completed By ASW During And After Admission Process

26. (i) Discuss merits of application with medical practitioner.

   (ii) Is patient already known to the Department?

   (iii) Interview Patient.

   (iv) Establish Grounds for Guardianship.

   (v) Discuss the merits of Guardianship with the Director of Social Care and gain approval for such a step and an assurance that resources are available from Team Manager (Budget Holder).

   (vi) Consult Nearest Relative.

   (vii) Scrutinise all papers (Nos. 17, 18, 19, and 20)

   (viii) Explain Powers of Guardian to Patient.
ACTION

(ix) Explain Powers of Guardian to Nearest Relative.

(x) Explain Rights of Patient and Nearest Relative to both Patient and Nearest Relative

(xi) Explain Rights of Nearest Relative To Nearest Relative and Patient

(xii) Complete Mental Health Act 1983 – Assessment Form (SS648).

(xiii) Appointment with Director of Social Care.

(xiv) Director of Social Care signs Acceptance Forms (15 and 21).

(xv) Director of Social Care to advise patient/client in writing of terms of the order (A/202).

(xvi) Director of Social Care to advise Nearest Relative in writing of their rights (A/201).

(xvii) Take patient/client to place of residence.

(xviii) Ensure client’s property is protected.

(xiv) Visit client as soon as possible after order to further explain situation, and answer any queries.

(L) Transfer Of Patients Detained In Hospital Under Section 2 Or 3 To Guardianship

27. Transfers of patients detained in hospital under Section 2 or 3 of the Act to Guardianship can be authorised on Form 25 with the agreement of the County Council or some other Guardian.

Mental Health Act 1983 S19(1a)

Mental Health Act 1983 S19(2b). The documentation authorising detention under Sections 2 or 3 automatically becomes the documentation for the Guardianship on completion of Form 25. The authority of transfer on Form 25 is valid for 14 days.

28. Before enacting a transfer consult Director of Social Care to ensure that the transfer is acceptable to the Local Authority.

29. Inform Nearest Relative and Patient.
Hospital Managers will inform nearest relative of patient’s legal status. ASW should also consult with nearest relative to ensure that implications of this change are understood.

30. **ASW to ensure that Form 25 is completed as follows:**

   (a) Part 1 by Hospital Managers
   (b) Part 11 by Local Authority

31. **Director of Social Care to inform nearest relative and patient of rights and powers in writing on standard letters A203(a) and A203(b).**

   Transfer patient to place of residence.

   **Once transfer form completed, follow procedure outlined in Code of Practice from Chapter 3c onwards.**

   Mental Health Act 1983 S20(1).
9. Rights & Powers

(A) Powers Of The Guardian

1. Mental Health Act 1983 S8(1).

This Section confers specific powers on the Local Authority. The 1959 Act gave the Guardian the power a father has over a child of 14. These powers were therefore very wide as well as being somewhat ill defined, as it was felt that they were out of keeping in their paternalistic approach with modern attitudes to the care of the mentally disordered. Section 8(1) replaces these general powers with specific powers limited to restricting the liberty of the person under Guardianship only to the extent necessary to ensure that various forms of treatment, social support training, education or occupation are undertaken.

2. Powers open to the Guardian are as follows:

(i) The power to require a patient to reside at a place specified by the authority or person named as Guardian.

(ii) The power to require the patient to attend at places and times so specified for the purpose of medical treatment, occupation, education or training.

(iii) The power to require access to the patient to be given at any place where the patient is residing, to any registered medical practitioner Approved Social Worker or other person as specified.

(iv) The person may be detained for a period of up to six months beginning with the day on which the application was accepted.

Mental Health Act 1983 S8(1)(a) S18(3)(4).

There is no power to require that the patient resides with a particular person. If the patient leaves the place where he is required to live, without his Guardian’s consent, he can be taken into custody (by the Social Services Department, Police, etc or by any person authorised in writing by the Guardian or a local Social Services Department authority) and returned to that place. If the patient is absent for more than 28 days he must be reassessed by the RMO (see Jones, Para. 1-221, SS. 4, p. 119).

Mental Health Act 1983 S8(1)(c).
Mental Health Act 1983 S129.
A refusal to permit an authorised person to have access to the patient is an offence under this section. An authorised person is: RMO, ASW, Guardian if other than LA, or any other person specified by the LA in the shape of their nominated representative.

(B) Duties Of The Guardian

3. Having received someone into Guardianship the Local Authority by implication should be directed toward rehabilitation. This together with attention to the legal requirements should be the conversion of administering Guardianship. Thus:

   (i) There is a general rehabilitative duty.

   (ii) This rehabilitative duty has from time to time financial implication. These the County, after scrutiny, will honour, e.g.:

   (a) If a patient is directed to live at a specified address which has financial implications and DSS will not pay then DCC will, if appropriate, assume responsibility.

   (b) The County will assume financial responsibility for any rehabilitative work, e.g. Day Care, DRO interview, etc.

4. The Local Authority shall arrange for a patient to be visited at least once in every three months and by a Section 12 Doctor annually (The Mental Health Regulations 1983, Section 13).

   Mid term report required. Director of Social Care to send A240 to responsible social worker.

   Usually involves discussion with one responsible Medical Officer (Consultant Psychiatrist).

(C) Duties Of The Private Guardian

5. See Mental Health Regulations 1983 Section 12.

(D) Rights Of The Patient To Challenge The Guardianship

6. The Local Authority has a duty to advise the patient of his/her rights by using standard letter A/202.

7. If a patient under Guardianship elects to exercise this right the key worker must furnish the Tribunal with a report and attend where possible in person.
Mental Health Act 1983 S66(1)(c). A patient who is received into Guardianship under Section 7 of the Act has the right to appeal against his detention to a Mental Health Tribunal within:

(i) the first six months of his detention;
(ii) during the next six months;
(iii) during each subsequent period of 12 months.

Where a patient believes he is being detained illegally, he may apply to the High Court for a writ of Habeas Corpus.

Legal Aid is available in the above proceedings.

8. The Tribunal must direct the discharge of any patient under Guardianship if they are satisfied that:

(i) the patient is not suffering from one of the four disorders to a nature or degree which make it appropriate for him to be detained.

(ii) it is not necessary for the health or safety of the patient or for protection of others.

Mental Health Act 1983 S72(1)(b) The ruling of the tribunal should be fed back immediately to the Area Secretary by the ASW who presented the report to the Tribunal.

NB: Tribunals should be organised by the Personal Assistant to the Director of Social Care.

(E) Rights Of The Nearest Relative To Challenge The Guardianship

9. The nearest relative may present to the Local Authority a written order (Form 35 or letter) discharging the patient from Guardianship. The nearest relative may ask for an independent opinion from a registered medical practitioner before exercising the right to discharge a patient. The doctor must be given access to the patient and records relating to the detention and treatment of the patient. The relative wishing to exercise this right will usually discuss this with the LA Social Worker and/or responsible Medical Officer (Section 24(1) and (2)).
10. **Administration Of The Guardianship**

**(A) Action By ASW And Local Authority In Accepting Guardianship**

1. Director of Social Care and Area Secretary to scrutinise forms.

   Mental Health Act 1983 S8(4). Certain errors on the forms may be amended with the consent of the Local Authority within 14 days of the acceptance of the Guardianship by that Authority. Amendment may be made by an **“officer or class of officers authorised in writing”**.

2. Director of Social Care to sign “Record of Acceptance” of Guardianship.

   Application and receipt of medical recommendation forms. Directory of Social Care to notify Social Worker and Doctor of reception into Guardianship, using Letters A204(a) and A204(b).

   Mental Health Act 1983 S15.

3. Only after the Guardianship has been accepted by the Local Authority may the patient be escorted to his place of residence.

4. Always if possible escort the patient in person.

   The applicant or any other person authorised by the applicant will take the patient to their destination within 14 days of their last medical examination.

   Mental Health Act 1983 S6(1).

5. If the patient requires conveyance by ambulance, give the ambulance crew letter of authority to convey patient. Ensure patient’s property and pets have been secured. (Need only be used in appropriate circumstances).

   e.g. Who has house key? Consult Receivership and Patient’s Estate Section, Director of Social Care, if necessary.

6. Director of Social Care or nominated representative will inform patient in writing immediately.

   Mental Health Act 1983 SS.66(1)(c), 69. An application for discharge may be made to a tribunal where:
D. Compulsory Admission To Hospital And Guardianship
A. Guardianship

ACTION

(a) a patient is received into Guardianship;
(b) a patient transferred from Guardianship to hospital under the provision of Section 19 of the Act.

It is essential also to advise the nearest relative in person of their right to discharge the patient as explained on the standard letter.

7. **Director of Social Care** must also send standard letter A201 to nearest relative to explain his/her rights and the terms of Guardianship.

It is essential to advice the nearest relative in person of their right to discharge the patient as explained on the standard letter.

8. **Copies of letters explaining rights and powers which have been sent to patient and nearest relative to be retained by:**

(a) Director of Social Care.
(b) Social Worker on case file.

9. **PA to the Director of Social Care** will hold the following:

(i) 2 Medical Recommendations;
(ii) Application Form;
(iii) Copy Standard Letter to Patient;
(iv) Record of Acceptance Forms.

10. **The key worker (who may be an Approved Social Worker)** will ensure that a Consultant Psychiatrist is involved with care planning and reviews of case (RMO) and that the terms of the Guardianship are carried out.

(B) **Transfer Of Guardianship**

12. In cases of death, incapacity, negligence, etc., of Guardian who is not a Local Authority, the Guardianship will transfer automatically to the Local Authority, but it can transfer to another person with the assent of the Local Authority through the Area Secretary.

Mental Health Act 1983 S10 & S19. Key worker will advise Director of Social Care of brief circumstances and as to whether the Guardian should be another private person – report should be furnished recommending such a course of action.
(C) Transfer Of Patient From Devon County Council To Another Local Authority

13. When it is agreed that Guardian should be transferred, Director of Social Care to complete Part I of Form 26 and pass to receiving Authority for Part II to be completed.

Mental Health Act 1983 S19 Transfer takes place on date when receiving Authority signs Form 26 but DCC require copy signed Form 26 before patient is deemed ready to be transferred.

The receiving Authority must inform the nearest relative of the transfer in writing.

Where the person named in the Authority for transfer as proposed Guardian is a person other than a local Social Services Department the agreement of that person should be obtained and recorded in Part III of Form 26.

(D) Transfer Of Patient From Guardianship To Hospital

14. Authority [i.e. that of Director of Social Care] has to be sought and signature obtained on Form 27.

Mental Health Act 1983 S19.

15. The process of transfer is then effected by:

(i) an application for admission for treatment being made by an ASW on Form 9 and for the purposes of that application Sections 11(4) consultation with nearest relative and 13 (duty of ASW) shall apply. In other words the application should mirror that of an admission for treatment under S3.

(ii) the application being founded on Medical Recommendations given by two requested doctors one of whom should be registered as a specialist under S12 of the Act. These doctors should complete Forms 28 or 29.

(iii) the document being taken to the hospital managers for scrutiny.

(iv) the ASW taking steps as practicable to inform the person (if any) appearing to be the patient’s nearest relative of the proposed transfer.

(v) the Director of Social Care informed by the Hospital Managers of the acceptance of the transfer.
D. Compulsory Admission To Hospital And Guardianship
A. Guardianship

ACTION

Mental Health Act S11(4) and S13.

(E) Renewal Of Guardianship

16. Director of Social Care to send renewals reminder to ASW on A241. ASW must ascertain that:

(i) the patient is suffering from mental illness, severe mental impairment, psychopathic disorder and mental impairment and his mental disorder is of a nature or degree which warrants his reception into Guardianship.

(ii) it is necessary to the interests of the welfare of the patient or for the protection of other persons that the patient remains under Guardianship.

Mental Health Act 1983 S20(7). Mental Health Act 1983 S20(2). Guardianship may be renewed for a further six months and then for a further period of one year and so on for periods of one year at a time.

17. Upon receipt of A241, ASW to liaise with the RMO and furnish him/her with Form 31.

18. The RMO (or nominated medical attendant if Guardian is other than the Social Services Authority), must examine the patient two months before the end of the Guardianship and if there appears to be sufficient grounds for renewing the Guardianship he must send a report to that effect to the local Social Services Authority. The Social Services Department must then either discharge the patient, or inform him/her that the Guardianship will be renewed. If Guardianship is renewed Director of Social Care to send Letters A205(a) and A205(b) to patient and nearest relative and confirm renewal to ASW by Letter A206.

The RMO will consult with the key worker during his assessment regarding renewal of Guardianship.

Mental Health Act 1983 S20(6).

19. Mental Health Act 1983 S20(9). In the process of renewing Guardianship the RMO may wish to state that the patient is suffering from a different type of mental disorder to that stated in the original application. The completion of Form 31 has the effect of reclassifying the patient (see Para 20).
D. Compulsory Admission To Hospital And Guardianship

**A. Guardianship**

**(F) Reclassification Of Patient Under Guardianship**

20. Social Workers should, at regular intervals, assess such patients and make a report to the RMO when necessary.

Mental Health Act 1983 S(16)1.

If it appears to the RMO that a patient who is subject to Guardianship is suffering from a mental disorder other than that specified on the application form, he may inform the Guardian on Form 23 and the change will be recorded.

Mental Health Act 1983 S16(3).

The nearest relative or Guardian must be informed of the reclassification and either of them may then apply to a Review Tribunal within 28 days (Section 66(1)(d) and (2)(d)).

**(G) Discharge**

Mental Health Act 1983 S23(2)(b).

A written order discharging the patient may be made by the:

RMO; or
LA(DCC); or
Nearest Relative.

The above named people may seek an independent medical opinion before exercising the right to discharge a patient. The medical practitioner must be given access to the patient and records relating to the detention and treatment of the patient.

**(H) Discharge By Tribunal**

See Mental Health Act 1983, Section 72 or Code of Practice, Para. 14(b).
11. **Powers Of The Court To Order Guardianship**

**(A) Guardianship Order As Alternative**

1. Crown Court or Magistrates Court may make a Guardianship Order as an alternative to custody of offenders who are found to be suffering from a mental disorder, which warrants reception into Guardianship. 

   Mental Health Act S37; Code of Practice, Para. 13(11)).

2. A Guardianship Order will not be made however, unless the court is satisfied that the Authority or person is willing to receive the offender into Guardianship who gives authority, Director of Social Care through ASW. ASW to attend court and give evidence.

   N.B. ASW to consult Director of Social Care regarding report to court; in preparing report take into account resource implications.

Little use has been made of Guardianship orders by the courts even though in the view of the Butler Committee they “offer a useful form of control of some mentally disordered offenders who do not require hospital treatment and are particularly suited to the needs of subnormal offenders including those inadequate offenders who require help in managing their affairs”. The Committee felt that in some circumstances a Guardianship order is more effective than a probation order.

**Medical conditions on which the court has to be satisfied in making an Order**

Mental Health Act 1983 S37(2)(a)

3. One medical opinion should be provided by a doctor who will be attending the patient in the future. The two doctors could be on the staff of the same hospital.

N.B. There are no medical recommendation forms. The offender’s mental condition at the time of the offence is not an issue. On written or oral evidence of two doctors (one of whom must be registered as a specialist under Section 12 of the Act), that the offender is suffering from mental illness, psychopathic disorder, severe mental impairment or mental impairment and that the mental disorder from which the offender is suffering is of a nature or degree which warrants the reception into Guardianship, and the court is of the opinion that having regard to all the circumstances, including the nature of the offence, the character and antecedents of the offender, and to the available methods of dealing with him, that the most suitable methods of disposing of the case is by means of Guardianship (Section 37(2)(b)).
4. In trivial cases the magistrates may properly have recourse to the expedient of adjourning the cases sine die or simply not proceeding. But this only applies where the court is satisfied that the defendant did the act or made the admission charge.

**Duration of Order** = 6 months (may be renewed).

Mental Health Act 1983 S37(3).

An order under this Section can be made even though the Court has not proceeded to trial. It can therefore be made in cases where the dependent is unable, by virtue of mental disorder, to give his consent to the mode of the trial.

Section 40 of the Act provides that, with every few exceptions, a patient who is placed under Guardianship is treated the same as a patient who has been admitted under Part II Section 7 of the Act except that the power of the nearest relative to discharge the patient from Guardianship does not apply. But the relative may apply to a tribunal within the period of twelve months and in any subsequent period of twelve months.

Mental Health Act 1983 S40.

Mental Health Act 1983 S69(1)(b).