

learning disabilities. It housed 250 boys and girls ranging in age from seven to 14 years. About three quarters of these children have known no other home, many are suffering simply from social deprivation, deafness and eyesight problems but labelled as children with learning difficulties.

The poverty of the country was reflected everywhere I visited. The market stalls were usually empty and there were some traders trying to sell a small pile of vegetables which were either rotten or withered.

At least a proportion of Western aid in the form of clothes and food seemed to be siphoned off or eventually ends up in the thriving black market.

The aim should be to make permanent long-term changes in modifying the general attitude towards people with mental illness and learning disability and to impart practical skills. Romanians should be helped to help themselves.

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Mental Health (Detention) (Scotland) Act 1991

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This Act, effective from 9 March 1992, contains amendments to the Mental Health (Scotland) Act 1984. It provides an extension to 28-day short term detention, requires sheriffs to hear applications for full detention within five days of their submission and authorises detention of patients until the outcome of such an application is known.

Background

Civil detention under section 18 of the Mental Health (Scotland) Act 1984 requires judicial approval from a sheriff, a legally qualified judge. This requirement is unique in mental health legislation in the United Kingdom. Judicial approval is commonly determined at a hearing in court at which the patient and the applicant (almost always a social worker) are legally represented. The process may take time.

Most s.18 applications are made in respect of patients who are already in hospital under short term detention (s.26). The latter lapses after 28 days and may not be immediately re-applied. Problems

arise if the condition of a patient detained under s.26 deteriorates shortly before expiry giving insufficient time for an application under s.18 to be submitted and approved by a sheriff.

Early testing of this aspect of s.26 reached the House of Lords in *B v. Forsey (H.L.) 1988 Scots Law Times*, 572. This confirmed that there was no authority under s.26 to detain beyond 28 days; that detention under a fresh s.26 was not immediately permissible; and that doctors could not rely on common law to detain patients until an application under s.18 was approved by a sheriff. The Mental Health (Detention) (Scotland) Act 1991 fills the defect in the legislation which the House of Lords identified in *B v. Forsey*.

Extension to Section 26

Where a patient is detained under s.26 (no application for s.18 having yet been made) and his mental condition changes such that continued detention is deemed necessary, then s.26A authorises detention

for three further days on the basis of a report by a relevant doctor made with the approval of the nearest relative or a mental health officer. S.26A may be appealed by a patient. The relevant doctor (not the hospital manager) is required to inform the patient of his right of appeal under s.26A, and the Mental Welfare Commission for Scotland of the detention.

Duties of sheriff

Under s.21 (3A) sheriffs are obliged to hear all applications for detention under s.18 within five days of their submission. They may adjourn the hearing for any reason.

Detention pending sheriff's decision

S.21 provides for extension of s.26 or s.26A until an application under s.18 is determined. In particular:

- (i) submission of an application under s.18 for a patient already detained under s.26(A) provides authority for five days detention (s.21(3B)).
- (ii) if a sheriff's hearing is adjourned, authority to detain under s.26 or 26A is continued until the application is determined (s.21(3C)).
- (iii) an application is submitted when it is lodged with a sheriff clerk (s.21(6)).

Comment

The Mental Health (Scotland) Act 1984 received minimal parliamentary discussion, and it is not

surprising that defects have subsequently emerged. However, it may not have been anticipated that 80% of applications for s.18 would be in respect of patients already detained under short-term powers, and that 24% of applications would be determined by a court hearing (Mental Welfare Commission for Scotland, 1992). The 28-day limit under s.26, and the delays incurred by obtaining judicial approval, made changes in the law inevitable. Under the Mental Health (Detention) (Scotland) Act 1991 it is now possible for 'seamless' detention to proceed from s.26 to s.18, even where the 28-day limit is likely to be exceeded.

The new legislation is somewhat cumbersome and places additional responsibilities on the relevant doctor. The latter is defined as a doctor approved under s.20 of the Mental Health (Scotland) Act 1984 who has personally examined the patient.

Measures to avoid the use of s.26A are possible. First, consultants would consider lodging applications under s.18 for patients detained under s.26 by day 21 of the detention. If s.18 subsequently proves unnecessary, the application can be withdrawn. Second, consultants could consider discontinuing s.26 detention when it is no longer required, rather than allowing it to run for 28 days. In this way, if the patient's condition deteriorates and further detention is required, detention under s.24 and s.26 could be initiated, providing it did not "immediately" follow expiry of the original s.26.

Reference

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