



## **Adult Social Care and Health**

# **Displacement of Nearest Relative - Section 29 the Mental Health Act 1983**

**Version 3**

Version: 3 FOI Status: <b>Public</b>	Displacement of Nearest Relative – Section 29 the Mental Health Act 1983 Derbyshire County Council - Adult Social Care	Originally issued: August 2014 V3 issued: August 2023 Review due: August 2025 Author: Helen Platt
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**Contents**

1.Introduction .....2

2. Purpose.....3

3. Scope .....3

4. Procedure/Implementation .....4

Appendix 1 – Delegation of Performance of Functions of Nearest.....8

Author History .....9

If you would like to make any comments, amendments or additions please email [ASCH.AdultCare.Policy@derbyshire.gov.uk](mailto:ASCH.AdultCare.Policy@derbyshire.gov.uk)

**Please note: The Mental Health Act uses the term patient to refer to an individual or person receiving assessment or treatment. As a result, this guidance refers to patient to mean an individual or person receiving assessment or treatment.**

Version: 3 FOI Status: <b>Public</b>	Displacement of Nearest Relative – Section 29 the Mental Health Act 1983 Derbyshire County Council - Adult Social Care	Originally issued: August 2014 V3 issued: August 2023 Review due: August 2025 Author: Helen Platt
---	---	--

## 1. Introduction

- 1.1 Relatives have an important role to play in the care of individuals who may require assessment and treatment under the Mental Health Act 1983 (as amended by the Mental Health Act 2007). It is important to remember that the nearest relative for the purposes of the act may not be the same person as the next of kin and the identity of the nearest relative can also change with the passage of time for example, if an individual enters into a marriage or civil partnership.
- 1.2 The definition of a nearest relative is contained in Section 26 of the Mental Health Act 1983 (as amended) and defining who the nearest relative is, can be a complex process and should be undertaken by an approved mental health professional or someone who has significant experience of using the Mental Health Act.
- 1.3 Under the Mental Health Act the nearest relative has legal responsibilities to safeguard the service user's interests and to help ensure that the compulsory powers of the act are used appropriately. However, where it is thought that a nearest relative is exercising their powers unreasonably, or it is necessary to appoint a nearest relative where an individual has no such person, as defined by Section 26 of the Mental Health 1983; an application to the county court may be made to displace a nearest relative. **(Code of Practice 8.6)**

If the above grounds are met, then the county court can appoint a person to take on the functions of nearest relative for a particular patient.

**Note: For automatic changes of nearest relative and exceptions from normal rules for children and young people please see Reference Guide to the Mental Health Act 1983 (33.19-33.25).**

- 1.4 Application made by a patient

Approved mental health professionals should also bear in mind that some patients may wish to apply to displace their nearest relative but may be deterred from doing so by the need to apply to the county court. Where a patient wishes to make an application to displace their nearest relative an approved mental health professional should discuss with the patient their reasons for wanting to displace their nearest relative. Where the approved mental health professional agrees that it is in the best interests of the patient that the nearest relative should be displaced then the approved mental health professional should offer to make the application on behalf of the patient.

Where the approved mental health professional does not agree with the patient's decision to displace their nearest relative they should provide or arrange support for the patient to make the application themselves. This can include support from an independent mental health advocate.

- 1.5 Hospital managers should provide support to detained patients to enable them to attend court, if they wish, subject to the patient being granted leave under section 17 for this purpose. If the

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---	---	---

court decides to interview the patient (as the applicant), the court has the discretion to decide where and how this interview may take place.

***Note: The fact that a nearest relative is mentally disordered or detained under the Act does not automatically disqualify them from being a nearest relative, although there could be grounds for displacement.***

***Consideration of an application for displacement on the grounds of illness or incapacity of the NR should be preceded by consideration of whether it is practicable to consult the nearest relative under these circumstances.***

## 2. Purpose

2.1 Although an application to displace the nearest relative may be made by any of the following people:

- the patient
- any relative of the patient
- anyone with whom the patient is residing (or if the patient is an inpatient in hospital at the time of the application, the person with whom they were last residing with prior to admission); or
- approved mental health professional

The purpose of this policy is to provide clear practice guidance to help the approved mental health professional with an application to the county court and the decision as to who is the most appropriate person to nominate, when making an application to displace a nearest relative. ***(Code of Practice Chapter 8:19)***

This policy applies to all approved mental health professionals employed by Derbyshire County Council.

## 3. Scope

### 3.1 Local Social Services Authority's Responsibilities

The Local Social Services Authority is responsible for there being a structured approach to policy development and management.

### 3.2 Manager's Responsibilities

It is each relevant manager's responsibility to ensure their approved mental health professionals are informed of the nearest relative policy and receive sufficient training and support to undertake their role.

Version: 3 FOI Status: <b>Public</b>	Displacement of Nearest Relative – Section 29 the Mental Health Act 1983 Derbyshire County Council - Adult Social Care	Originally Issued: August 2014 V3 issued August 2023 Review due: August 2025 Author: Helen Platt
---	---	---

### 3.3 Individual Responsibility

It is each individual's responsibility to ensure they make themselves aware of this policy and receive sufficient training and information about section 29 of the Mental Health Act 1983 to undertake their role.

## 4. Procedure/Implementation

### 4.1 Legal Framework

Section 29 of the Mental Health Act 1983 as amended by the Mental Health Act 2007 provides that:

The patient, any relative of the patient, any other person with whom the patient is residing (or, if the patient is then an inpatient in a hospital, was last residing before he was admitted) or an approved mental health professional; can apply to the county court on the grounds that:

#### Section 29(3):

- a) The patient has no nearest relative within the meaning of the act, or that it is not reasonably practicable to ascertain whether he has such a relative, or who that relative is.
- b) The nearest relative of the patient is incapable of acting as such by reasons of mental disorder or other illness
- c) 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 a patient
- d) 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 under this part of the act, or is likely to do so; or that
- e) The nearest relative of the patient is otherwise not a suitable person to act as such.

**4.1.1 Where there is no Nearest Relative** the Code of Practice clearly states that where an Approved Mental Health Professional discovers, when assessing a patient for possible detention in hospital or under Guardianship (or at any other time), that the patient appears to have no nearest relative, the Approved Mental Health Professional should advise the patient of their right to apply to the county court for the appointment of a person to act as their nearest relative (chapter 8 point 8.5)

**4.1.2 Immediately before the expiration of detention under Section 2 of the Mental Health Act**, if an application to displace a nearest relative is being sought under Section 29 3 (c) or (d) of the Act; then the period of compulsory detention under Section 2 shall be extended:

- in any case until the application under this section has been finally disposed of; and
- if an order is made in pursuance of the application under this section, for a further period of 7 days

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4.1.3 Section 30 of the Mental Health Act (MHA) gives the county court the power to vary or discharge an Order made under S.29 MHA as well as specifying the duration of any such order.

#### 4.2 Procedure

Before making an application to displace the nearest relative the approved mental health professional should consider other ways of achieving the same ends, including:

- whether the nearest relative will agree to delegate their responsibility as nearest relative to someone else (Section 32(2)(e) MHA and regulation 24 of The Mental Health Act 1983); or
- providing or arranging support for the patient (or someone else) to make an application for themselves - this could include the support from an independent mental health advocate

#### 4.3 Delegations of the performance of functions by the nearest relative

The functions of the nearest relative can be delegated in writing to any other person except:

- the patient,
- a person who, under s26(5), is not eligible to be the patient's nearest relative,
- a person who would currently be the nearest relative, were it not for an order of the court for displacing them under s29 (unless that order was given on the grounds that, at the time, no nearest relative could be identified)

This authorisation can be revoked again, in writing, by the original Nearest Relative at any time.

For a sample letter that should be used when delegating the functions of the Nearest Relative to another person see **Appendix 1**.

***Note: The delegation of functions of nearest relative automatically ends on the death of the person who made it or if that person ceases to be the nearest relative for any other reason. It also lapses on the death of the person to whom the function has been delegated (33.6 Reference guide to the Mental Health Act 1983)***

#### 4.4 Displacing the Nearest Relative – Practical Guidance

Where a request is received and it appears to the Approved Mental Health Professional that there are grounds to displace a Nearest Relative, the case should be allocated within the appropriate team as a matter of urgency, as a request of this nature will require a response from an Approved Mental Health Professional which will extend over and above the period of time allocated to 'AMHP Duty'.

If a request for the displacement of a Nearest Relative is received for a patient already detained under Section 2 and the Nearest Relative objects to application being made under section 3 or a guardianship application.

Version: 3 FOI Status: <b>Public</b>	Displacement of Nearest Relative – Section 29 the Mental Health Act 1983 Derbyshire County Council - Adult Social Care	Originally Issued: August 2014 V3 issued August 2023 Review due: August 2025 Author: Helen Platt
---	---	---

The application to displace the Nearest Relative on the grounds of unreasonable objection or using power of discharge without due regard to the patient’s welfare or public interest.

An application under section 29 (4) will have the effect of extending the section 2 until the matter of displacement is resolved in Court.

#### 4.5 The Application

Where consideration is being given to making an application to the county court to displace a nearest relative, the approved mental health professional should make contact with the local authority legal department at the earliest opportunity to discuss the case. Following discussion and if appropriate an application will be made to the county court for an initial hearing, which will be heard and determined, by a judge normally in chambers, (i.e., not in open court). Although the approved mental health professional seeking to displace the nearest relative is acting in personal capacity s/he will be required to attend the county court in which the hearing takes place and will be legally represented by a member of staff from the local authority legal department.

When making an application to the court the following information will be required to support any application:

An up-to-date social circumstances report by the AMHP seeking S.29 MHA order providing the evidence to support the application, including:

- your name and professional qualifications
- short history of involvement with the patient
- the diagnosis of the mental disorder
- why the patient should be detained under the act or accepted into guardianship
- risk to/from the patient
- actions of the nearest relative, including a history of objection (if any)
- the proposed care plan for the patient
- a statement of agreement from the proposed nearest relative or a reference in the approved mental health professional report above, as to why none is proposed (**see 5.6 below nominated person**)
- a report by a medical practitioner - In usual circumstances, this report would be provided by a doctor approved under S.12 (2) MHA, as the court will seek to be satisfied that the medical examination has been undertaken by a practitioner experienced in the assessment of an ‘unsound mind’ (this is in order to be compliant with Human Rights Act requirements)

***Note: The existing nearest relative will usually be made a respondent to the application and will be told the substance of any part of the reports, which refers to his fitness to act as the nearest relative. The nearest relative should be advised to seek his/her own legal representation.***

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#### 4.6 Nominated Person

If the application is made by an approved mental health professional, s/he should nominate someone who is acquainted with the patient to be the acting nearest relative if the application is successful. Wherever possible the patient should be consulted with regard to their preference or any concerns they may have regarding the person the approved mental health professional is proposing to nominate (**Code of Practice 8.18**).

***Note: If the patient is concerned that any information given to the court on their views on the suitability of the nearest relative may have implications for their own safety, an application can be made to the court seeking its permission not to make the current Nearest Relative a party to the proceedings. The reasons for the patient's concerns should be set out clearly in the application. (Code of Practice 8.18)***

#### 4.7 Duration of Displacement

The county court can specify any length for the duration of an order. However, if clarification is not given then the order will expire at the point that the patient ceases to be liable to be detained under section 3 or subject to guardianship, or (if not subject to either of these) then after three months.

Only a county court (or another court on appeal) can legally vary or discharge an order appointing an acting nearest relative (**section 29 (5) and section 30 Mental Health Act 1983**).



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**Appendix 1 – Delegation of Performance of Functions of Nearest**

Addressee:

Date:

Individual/Patient Name:

I: .....being nearest relative of: .....

hereby authorise: .....of address: .....

.....

.....  
To perform the functions of the nearest relative with regard to the Mental Health Act 1983, as amended by the Mental Health Act 2007, in accordance with Regulation 24 of the Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008.

I wish this arrangement to remain in force until such time as it is revoked by me in written form.

Signed: ..... Date: .....

Name of Nearest Relative

To: Name and Address of Hospital Managers

.....  
.....  
.....

Name and Address of Approved Mental Health Professional

.....  
.....  
.....

Name and Address of Delegated Nearest Relative

.....  
.....  
.....

A copy to be retained by nearest relative.

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### Author History

#### Approval and Authorisation History

Authored by: Denyse Laking	August 2014
Approved by DMT	August 2023

#### Change History

Version 1	Denyse Laking	August 2014	New policy
Version 2	Denyse Laking	September 2017	Review
Version 3	Helen Platt	August 2023	Review