
STATUTORY INSTRUMENTS

2008 No. 1184

The Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008

PART 1

GENERAL

Citation and commencement

1.—(1) These Regulations may be cited as the Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008 and shall come into force on 3rd November 2008.

(2) These Regulations apply to England only.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Mental Health Act 1983;

“bank holiday” includes New Year’s Day, Good Friday, Easter Monday, Christmas Day and Boxing Day;

“business day” means any day except Saturday, Sunday or a bank holiday;

“the Commission” means the Mental Health Act Commission referred to in section 121(1);

“document” means any application, recommendation, record, report, order, notice or other document;

“electronic communication” has the same meaning as in section 15(1) of the Electronic Communications Act 2000(2);

“guardianship patient” means a person who is subject to guardianship under the Act;

“private guardian”, in relation to a patient, means a person, other than a local social services authority, who acts as guardian under the Act;

“responsible registered establishment” is a registered establishment which is a responsible hospital;

“served”, in relation to a document, includes addressed, delivered, given, forwarded, furnished or sent.

(2) Unless otherwise stated, any reference in these Regulations to—

(a) a numbered section is to the section of the Act bearing that number;

(b) an alphanumeric form is a reference to the form in Schedule 1 bearing that designation.

(1) The Mental Health Act Commission was established as a Special Health Authority under section 11 of the National Health Service Act 1977 (c.49), as consolidated by section 28 of the National Health Service Act 2006 (c.41). Section 121 of the Mental Health Act 1983 provides for the continuance of the Mental Health Act Commission as a Special Health Authority.

(2) 2000 c.7.

Documents

3.—(1) Except in a case to which paragraph (2), (3), (4) or (5) applies, or in a case to which regulation 6(3) (recall notices in respect of community patients) applies, any document required or authorised to be served upon any authority, body or person by or under Part 2 of the Act (compulsory admission to hospital, guardianship or community treatment orders) or these Regulations may be served by delivering it to—

- (a) the authority, body or person upon whom it is to be served;
- (b) any person authorised by that authority, body or person to receive it;
- (c) by sending it by pre-paid post addressed to—
 - (i) the authority or body at their registered or principal office; or
 - (ii) the person upon whom it is to be served at that person's usual or last known residence, or
- (d) by delivering it using an internal mail system operated by the authority, body or person upon whom it is to be served, if that authority, body or person agrees.

(2) Any application for the admission of a patient to a hospital under Part 2 of the Act shall be served by delivering the application to an officer of the managers of the hospital to which it is proposed that the patient shall be admitted, who is authorised by them to receive it.

(3) Where a patient is liable to be detained in a hospital under Part 2 of the Act—

- (a) any order by the nearest relative of the patient under section 23 for the patient's discharge, and
- (b) the notice of such order given under section 25(1), shall be served either by—
 - (i) delivery of the order or notice at that hospital to an officer of the managers authorised by the managers to receive it, or
 - (ii) sending it by pre-paid post to those managers at that hospital, or
 - (iii) delivering it using an internal mail system operated by the managers upon whom it is to be served, if those managers agree.

(4) Where a patient is a community patient—

- (a) any order by the nearest relative of the patient under section 23 for the patient's discharge, and
- (b) the notice of such order given under section 25(1A), shall be served by—
 - (i) delivery of the order or notice at the patient's responsible hospital to an officer of the managers authorised by the managers to receive it,
 - (ii) sending it by pre-paid post to those managers at that hospital, or
 - (iii) delivering it using an internal mail system operated by the managers upon whom it is to be served, if those managers agree.

(5) Any report made under subsection (2) of section 5 (detention of patient already in hospital for 72 hours) shall be served by—

- (a) delivery of the report to an officer of the managers of the hospital authorised by those managers to receive it, or
- (b) delivering it using an internal mail system operated by the managers upon whom it is to be served, if those managers agree.

(6) Where a document referred to in this regulation is sent by pre-paid—

- (a) first class post, service is deemed to have taken place on the second business day following the day of posting;

(b) second class post, service is deemed to have taken place on the fourth business day following posting,

unless the contrary is shown.

(7) Where a document under this regulation is delivered using an internal mail system, service is considered to have taken place immediately it is delivered into the internal mail system.

(8) Subject to sections 6(3) and 8(3) (proof of applications), any document—

(a) required or authorised by or under Part 2 of the Act or these Regulations, and

(b) purporting to be signed by a person required or authorised by or under that Part or these Regulations to do so,

shall be received in evidence and be deemed to be such a document without further proof.

(9) Where under Part 2 of the Act or these Regulations the managers of a hospital are required to make any record or report, that function may be performed by an officer authorised by those managers in that behalf.

(10) Where under these Regulations the decision to accept service by a particular method requires the agreement of the managers of a hospital, that agreement may be given by an officer authorised by those managers in that behalf.

PART 2

Procedures and Records Relating to Hospital Admissions, Guardianship and Community Treatment Orders

Procedure for and record of hospital admissions

4.—(1) Subject to paragraph (2), for the purposes of admission to hospital under Part 2 of the Act—

(a) any application for admission for assessment under section 2 shall be in the form set out—

(i) where made by the nearest relative, in Form A1,

(ii) where made by an approved mental health professional, in Form A2;

(b) any medical recommendation for the purposes of section 2 shall be in the form set out—

(i) in the case of joint recommendations, in Form A3,

(ii) in any other case, in Form A4;

(c) any application for admission for treatment under section 3 shall be in the form set out—

(i) where made by the nearest relative, in Form A5,

(ii) where made by an approved mental health professional, in Form A6;

(d) any medical recommendation for the purposes of section 3 shall be in the form set out—

(i) in the case of joint recommendations, in Form A7,

(ii) in any other case, in Form A8;

(e) any emergency application under section 4 shall be in the form set out—

(i) where made by the nearest relative, in Form A9,

(ii) where made by an approved mental health professional, in Form A10;

(f) any medical recommendation for the purposes of section 4 shall be in the form set out in Form A11;

- (g) any report made under subsection (2) of section 5 (detention of in-patient already in hospital for a maximum 72 hours) by—
- (i) the registered medical practitioner or approved clinician in charge of the treatment of the patient, or
 - (ii) any person nominated by the registered medical practitioner or approved clinician to act for them,
- shall be in the form set out in Part 1 of Form H1 and the hospital managers shall record receipt of that report in Part 2 of that Form;
- (h) any record made under subsection (4) of section 5 (power to detain an in-patient for a maximum of 6 hours) by a nurse of the class for the time being prescribed for the purposes of that subsection shall be in the form set out in Form H2.
- (2) For the purposes of any medical recommendation under sections 2, 3, 4 and 7 (admission for assessment, admission for treatment, admission for assessment in cases of emergency and application for guardianship respectively) in the case of—
- (a) a single recommendation made in respect of a patient whom a doctor has examined in Wales, the medical recommendation shall be in the form required by Regulations made by the Welsh Ministers to similar effect for Wales;
 - (b) joint recommendations made in respect of a patient whom both doctors have examined in Wales, the medical recommendation shall be in the form required by Regulations made by the Welsh Ministers to similar effect for Wales;
 - (c) joint recommendations made in respect of a patient whom one doctor has examined in Wales and one doctor has examined in England, the medical recommendation shall either be in the form required by these Regulations or in the form required by Regulations made by the Welsh Ministers to similar effect for Wales.
- (3) For the purposes of section 15 (rectification of applications and recommendations), the managers of the hospital to which a patient has been admitted in pursuance of an application for assessment or for treatment may authorise an officer on their behalf—
- (a) to consent under subsection (1) of that section to the amendment of the application or any medical recommendation given for the purposes of the application;
 - (b) to consider the sufficiency of a medical recommendation and, if the recommendation is considered insufficient, to give written notice as required by subsection (2) of that section.
- (4) Where a patient has been admitted to a hospital pursuant to an application under section 2, 3 or 4 (admission for assessment, admission for treatment and admission for assessment in cases of emergency respectively), a record of admission shall be made by the managers of that hospital in the form set out in Part 1 of Form H3 and shall be attached to the application.
- (5) Where a patient has been admitted to a hospital pursuant to an application under section 4 (admission for assessment in cases of emergency), a record of receipt of a second medical recommendation in support of the application for admission of the patient shall be made by the managers in the form set out in Part 2 of Form H3 and shall be attached to the application.

Procedure for and acceptance of guardianship applications

- 5.—(1) For the purposes of section 7 (application for guardianship)—
- (a) an application for guardianship shall be in the form set out—
 - (i) where made by the nearest relative, in Part 1 of Form G1,
 - (ii) where made by an approved mental health professional, in Part 1 of Form G2;

- (b) where a person other than a local social services authority is named as guardian, the statement of willingness of that person to act as guardian shall be in the form set out in Part 2 of Form G1 or, as the case may be, G2;
- (c) any medical recommendation shall be in the form set out—
 - (i) in the case of joint recommendations, in Form G3,
 - (ii) in any other case, in Form G4.

(2) Where an application for guardianship is accepted by the responsible local social services authority, it shall record its acceptance of the application in the form set out in Form G5 (which shall be attached to the application).

Procedure for and records relating to community treatment orders

- 6.—(1) For the purposes of section 17A (community treatment orders)—
- (a) an order made by the responsible clinician shall be in the form set out in Parts 1 and 3 of Form CTO1;
 - (b) the agreement of the approved mental health professional shall be in the form set out in Part 2 of Form CTO1;
 - (c) as soon as reasonably practicable, the responsible clinician shall furnish the managers of the responsible hospital with that order.
- (2) For the purposes of section 17B (conditions in community treatment orders)—
- (a) the conditions to which the patient is subject whilst the order remains in force shall be in the form set out in Form CTO1;
 - (b) a variation of any of those conditions by the responsible clinician shall be in the form set out in Form CTO2;
 - (c) as soon as reasonably practicable, the responsible clinician shall furnish the managers of the responsible hospital with Form CTO2.
- (3) For the purposes of section 17E (power to recall a community patient to hospital)—
- (a) a responsible clinician's notice recalling a patient to hospital shall be in the form set out in Form CTO3;
 - (b) as soon as reasonably practicable, the responsible clinician shall furnish the managers of the hospital to which the patient is recalled with a copy of the notice recalling the patient to hospital;
 - (c) where the patient is recalled to a hospital which is not the responsible hospital, the responsible clinician shall notify the managers of the hospital to which the patient is recalled in writing of the name and address of the responsible hospital;
 - (d) the managers of the hospital to which the patient is recalled shall record the time and date of the patient's detention pursuant to that notice in the form set out in Form CTO4.
- (4) Where the patient's responsible hospital is in Wales, the patient's recall shall be effected in accordance with Regulations made by the Welsh Ministers to similar effect for Wales.
- (5) A responsible clinician's notice recalling a patient to hospital for the purposes of section 17E (power to recall a community patient to hospital) in Form CTO3 shall be served by—
- (a) delivering it by hand to the patient,
 - (b) delivering it by hand to the patient's usual or last known address, or
 - (c) sending it by pre-paid first class post addressed to the patient at the patient's usual or last known address.
- (6) Notice of recall in Form CTO3 is considered served—

- (a) in the case of sub-paragraph 5(a), immediately on delivery of the notice to the patient;
 - (b) in the case of sub-paragraph 5(b), on the day (which does not have to be a business day) after it is delivered;
 - (c) in the case of sub-paragraph 5(c), on the second business day after it was posted.
- (7) As soon as practicable following the patient’s recall, the managers of the responsible hospital shall take such steps as are reasonably practicable to—
- (a) cause the patient to be informed, both orally and in writing, of the provisions of the Act under which the patient is for the time being detained and the effect of those provisions, and
 - (b) ensure that the patient understands the effect, so far as is relevant to the patient’s case, of sections 56 to 64 (consent to treatment).
- (8) For the purposes of section 17F (powers in respect of recalled patients)—
- (a) an order referred to in subsection (4) (responsible clinician’s order revoking a community treatment order) shall be in the form set out in Parts 1 and 3 of Form CTO5;
 - (b) a statement of an approved mental health professional referred to in that subsection (signifying agreement with the responsible clinician’s opinion and that it is appropriate to revoke the order) shall be in the form set out in Part 2 of Form CTO5;
 - (c) as soon as practicable, the responsible clinician shall furnish the managers of the hospital to which the patient is recalled with that Form;
 - (d) where the patient is recalled to a hospital which is not the responsible hospital, the managers of that hospital shall (as soon as reasonably practicable) furnish the managers of the hospital which was the patient’s responsible hospital prior to the revocation of the patient’s community treatment order, with a copy of Form CTO5.

Transfer from hospital to hospital or guardianship

7.—(1) This regulation shall apply in respect of any patient (“a hospital patient”) to whom section 19(1)(a) applies and who is not a patient transferred under—

- (a) section 19(3) (transfer between hospitals under the same managers), or
 - (b) section 123(1) and (2) (transfers between and from special hospitals).
- (2) A hospital patient may be transferred to another hospital where—
- (a) an authority for transfer is given by the managers of the hospital in which the patient is liable to be detained in the form set out in Part 1 of Form H4, and
 - (b) those managers are satisfied that arrangements have been made for the admission of the patient to the hospital to which the patient is being transferred within a period of 28 days beginning with the date of the authority for transfer.
- (3) Upon completion of the transfer of the patient, the managers of the hospital to which the patient is transferred shall record the patient’s admission in the form set out in Part 2 of Form H4.
- (4) A hospital patient may be transferred into the guardianship of a local social services authority, or a person approved by a local social services authority, where—
- (a) an authority for transfer is given by the managers of the hospital in which the patient is detained in the form set out in Part 1 of Form G6;
 - (b) the transfer has been agreed by the local social services authority, which will be the responsible local social services authority if the proposed transfer takes effect;
 - (c) that local social services authority has specified the date on which the transfer shall take place;

- (d) the managers of the transferring hospital have recorded the agreement of the local social services authority referred to in paragraph (b) and the date for transfer referred to in paragraph (c), in the form set out in Part 1 of that Form;
 - (e) in the case of a person other than a local social services authority being named as guardian, the agreement of that person to act as guardian is recorded in the form set out in Part 2 of that Form.
- (5) A hospital patient who is detained in a registered establishment—
- (a) may be transferred from that registered establishment to another registered establishment where both are under the same management, and paragraph (2) shall not apply, and
 - (b) where such a patient is maintained under a contract with a Strategic Health Authority, Local Health Board, Primary Care Trust, National Health Service trust, National Health Service foundation trust, a Special Health Authority or the Welsh Ministers, any authority for transfer required under paragraph (2)(a) or, as the case may be, (4)(a), and the record (where relevant) required under paragraph (4)(d), may be made or given by an officer of that authority, board or trust authorised by that authority, board or trust in that behalf, or by those Ministers, instead of by the managers.
- (6) The functions of the managers referred to in this regulation may be performed by an officer authorised by them in that behalf.

Transfer from guardianship to guardianship or hospital

- 8.—(1)** A guardianship patient may be transferred into the guardianship of another local social services authority or person where—
- (a) an authority for transfer is given by the guardian in the form set out in Part 1 of Form G7;
 - (b) that transfer has been agreed by the receiving local social services authority, which will be the responsible local social services authority if the proposed transfer takes effect;
 - (c) that local social services authority has specified the date on which the transfer shall take place;
 - (d) the guardian has recorded the agreement of the receiving local social services authority mentioned in paragraph (b) and the date for transfer mentioned in paragraph (c) in Part 1 of that Form;
 - (e) a person other than a local social services authority is named in the authority for transfer as proposed guardian, the statement of willingness of that person to act as guardian is recorded in the form set out in Part 2 of that Form.
- (2) An authority for transfer to hospital of a guardianship patient may be given by the responsible local social services authority in the form set out in Part 1 of Form G8 where—
- (a) an application for admission for treatment has been made by an approved mental health professional in the form set out in Form A6;
 - (b) that application is founded on medical recommendations given by two registered medical practitioners in accordance with section 12 in the form set out—
 - (i) in the case of joint recommendations, in Form A7;
 - (ii) in any other case, in Form A8;
 - (c) the responsible local social services authority is satisfied that arrangements have been made for the admission of the patient to that hospital within the period of 14 days beginning with the date on which the patient was last examined by a registered medical practitioner for the purposes of paragraph (b).

(3) Where paragraph (2)(a) applies, for the purposes of the application referred to in that paragraph, sections 11(4) (consultation with nearest relative) and 13 (duty of approved mental health professional) shall apply as if the proposed transfer were an application for admission for treatment.

(4) On the transfer of a guardianship patient referred to in paragraph (2), a record of admission shall be made by the managers of the hospital to which the patient is transferred in the form set out in Part 2 of Form G8 and shall be attached to the application referred to in paragraph (2)(a).

(5) Where the conditions of paragraph (2) are satisfied, the transfer of the patient must be effected within 14 days of the date on which the patient was last examined, failing which the patient will remain subject to guardianship.

(6) The functions of the managers referred to in this regulation may be performed by an officer authorised by them in that behalf.

Transfer of community patients recalled to hospital

9.—(1) The managers of a hospital in which a community patient is detained, having been recalled to hospital, may authorise the transfer of that patient to another hospital.

(2) Where the hospital to which the patient has been recalled and the hospital to which the patient is being transferred are not under the same management, a transfer may only take place if the requirements of paragraphs (3) to (5) are satisfied.

(3) Those requirements are that the managers of the hospital to which the patient was recalled—

- (a) authorise the transfer of the patient in the form set out in Part 1 of Form CTO6, and
- (b) are satisfied that arrangements have been made for the admission of the patient to the hospital to which the patient is being transferred.

(4) The managers of the hospital from which the patient is being transferred shall furnish the managers of the hospital to which the patient is being transferred with a copy of Form CTO4 (record of patient's detention in hospital after recall) before, or at the time of, the patient's transfer.

(5) On the transfer of the patient, the managers of the hospital to which the patient is transferred shall record the patient's admission in the form set out in Part 2 of Form CTO6.

(6) Where—

- (a) a patient has been recalled to a registered establishment, and
- (b) that patient is maintained under a contract with a Strategic Health Authority, Local Health Board, Primary Care Trust, National Health Service trust, National Health Service foundation trust, a Special Health Authority or the Welsh Ministers,

any authority for transfer required under paragraph (3)(a) may be given by an officer of that authority, board or trust authorised by that authority, board or trust in that behalf, or by those Ministers, instead of the managers.

(7) The functions of the managers referred to in this regulation may be performed by an officer authorised by them in that behalf.

Transfers from England to Wales and from Wales to England

10.—(1) Where a patient who is liable to be detained or is subject to guardianship under the Act is transferred from a hospital or guardianship in England to a hospital or guardianship in Wales, that transfer shall be subject to the conditions in these Regulations.

(2) Where a patient who is liable to be detained or is subject to guardianship under the Act is transferred from a hospital or guardianship in Wales to a hospital or guardianship in England, that transfer and the duty to record the admission of a patient so transferred shall be subject to such

conditions as may be prescribed in Regulations made by the Welsh Ministers to similar effect for Wales.

(3) Where paragraph (2) applies and any Regulations made by the Welsh Ministers to similar effect for Wales provide for authority to convey a patient in Wales, those Regulations shall provide authority to convey the patient whilst in England.

Conveyance to hospital on transfer from hospital or guardianship

11.—(1) Where the conditions of regulation 7(2) or 8(2) are satisfied, the authority for transfer given in accordance with those regulations shall be sufficient authority for the following persons to take the patient and convey the patient to the hospital to which the patient is being transferred within the periods specified—

- (a) in a case to which regulation 7(2) applies—
 - (i) an officer of the managers of either hospital, or
 - (ii) any person authorised by the managers of the hospital to which the patient is being transferred,

within the period of 28 days beginning with the date of the authority for transfer;

- (b) in a case to which regulation 8(2) applies—
 - (i) an officer of, or
 - (ii) any person authorised by,the responsible local social services authority, within the period of 14 days beginning with the date on which the patient was last examined by a medical practitioner for the purposes of regulation 8(2)(b).

(2) Paragraph (1) shall apply to a patient who—

- (a) is liable to be detained under the Act and is removed to another hospital in circumstances to which section 19(3) applies, as if the authority given by the managers for that transfer were an authority for transfer given in accordance with regulation 7(2);
- (b) is liable to be detained in a hospital at which high security psychiatric services are provided and who, pursuant to a direction given by the Secretary of State under section 123(1) or (2) (transfers to and from special hospitals), is removed or transferred to another hospital, as if that direction were an authority for transfer given in accordance with regulation 7(2).

(3) In a case to which regulation 7(5)(a) applies, an officer of or any other person authorised by the managers of the registered establishment may take and convey the patient to the registered establishment to which the patient is being transferred.

Conveyance from hospital to hospital following recall of community patients

12. Where the conditions of regulation 9(1) or (3) are satisfied, the authority for transfer given in accordance with that regulation shall be sufficient authority for the following persons to take the patient and convey him to the hospital to which he is being transferred—

- (a) an officer of the managers of either hospital, or
- (b) any person authorised by the managers of the hospital to which the patient is being transferred,

within the period of 72 hours beginning with the time of the patient's detention pursuant to the patient's recall under section 17E (power to recall to hospital).

Renewal of authority for detention or guardianship and extension of community treatment period

13.—(1) Any report for the purposes of section 20(3) (medical recommendation for renewal of authority to detain) shall be in the form set out in Parts 1 and 3 of Form H5.

(2) The statement for the purposes of section 20(5A) (agreement with medical recommendation for renewal of authority to detain) shall be in the form set out in Part 2 of Form H5.

(3) The receipt of Form H5 shall be recorded by the managers of the hospital in which the patient is liable to be detained in the form set out in Part 4 of that Form.

(4) Any report for the purposes of section 20(8) (medical recommendation for renewal of guardianship) shall be in the form set out in Part 1 of Form G9.

(5) The responsible social services authority shall record receipt of Form G9 in the form set out in Part 2 of that Form.

(6) For the purposes of section 20A (community treatment period)—

(a) a report for the purposes of subsection (4) of that section (responsible clinician’s report extending the community treatment period) shall be in the form set out in Parts 1 and 3 of Form CTO7;

(b) a statement for the purposes of subsection (8) of that section (approved mental health professional’s statement that it is appropriate to extend the order) shall be in the form set out in Part 2 of Form CTO7.

(7) The managers of the responsible hospital shall record the receipt of Form CTO7 in the form set out in Part 4 of that Form.

Detention, guardianship or community treatment after absence without leave for more than 28 days

14.—(1) In relation to a patient who is liable to be detained—

(a) any report for the purposes of section 21B(2) (authority for detention or guardianship of patients who are taken into custody or return after more than 28 days) shall be in the form set out in Part 1 of Form H6, and

(b) the receipt of that report shall be recorded by the managers of the hospital in which the patient is liable to be detained in the form set out in Part 2 of that Form.

(2) In relation to a patient who is subject to guardianship—

(a) any report for the purposes of section 21B(2) shall be in the form set out in Part 1 of Form G10, and

(b) the receipt of that report shall be recorded by the responsible local social services authority in the form set out in Part 2 of that Form.

(3) In relation to a community patient—

(a) any report for the purposes of section 21B(2) shall be in the form set out in Part 1 of Form CTO8, and

(b) the receipt of that report shall be recorded by the managers of the responsible hospital in the form set out in Part 2 of that Form.

Removal to England

15.—(1) This regulation shall apply to a patient who is removed from Scotland, Northern Ireland, any of the Channel Islands or the Isle of Man to England (“a removed patient”) under—

(a) section 82, 84 or 85 (as the case may be), or

- (b) regulations made under section 290 of the Mental Health (Care and Treatment) (Scotland) Act 2003⁽³⁾ (removal and return of patients within United Kingdom).
- (2) Where a removed patient is liable to be detained in a hospital, the managers of the hospital shall record the date on which the patient is admitted to the hospital in the form set out in Form M1.
- (3) The managers of the hospital shall take such steps as are reasonably practicable to inform the person (if any) appearing to them to be the patient's nearest relative as soon as practicable of the patient's admission to hospital.
- (4) Where a removed patient is received into guardianship—
 - (a) the guardian shall record the date on which the patient arrives at the place at which the patient is to reside on the patient's reception into guardianship under the Act in the form set out in Form M1;
 - (b) the guardian shall take such steps as are reasonably practicable to inform the person (if any) appearing to them to be the patient's nearest relative as soon as practicable that the patient has been received into guardianship under the Act;
 - (c) a private guardian shall notify the responsible local social services authority of the—
 - (i) date mentioned in sub-paragraph (a), and
 - (ii) particulars mentioned in regulation 22(1)(b) and (e).

Removal to England of patients subject to compulsion in the community

- 16.—(1) This regulation shall apply to a patient who is removed from Scotland, any of the Channel Islands or the Isle of Man to England under—
- (a) section 289(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (cross-border transfer: patients subject to requirement other than detention)⁽⁴⁾ in the case of Scotland; or
 - (b) section 85ZA (responsibility for community patients transferred from any of the Channel Islands or the Isle of Man)⁽⁵⁾ in the case of any of the Channel Islands or the Isle of Man.
- (2) The managers of the responsible hospital shall record the date on which the patient arrived at the place where the patient is to reside in the form set out in Form M1.
- (3) The managers of the hospital shall take such steps as are reasonably practicable to inform the person (if any) appearing to them to be the patient's nearest relative as soon as practicable that the patient is a community patient.
- (4) The conditions specified by the responsible clinician under section 80C⁽⁶⁾ (removal of patients subject to compulsion in the community from Scotland) or section 85ZA(4), shall be recorded by that responsible clinician in Part 1 of Form CTO9.
- (5) The approved mental health professional's agreement to the conditions referred to in paragraph (4) shall be recorded by that approved mental health professional in Part 2 of Form CTO9.

Assignment of responsibility for community patients

- 17.—(1) This regulation applies to a community patient whether or not the patient has been recalled to hospital in accordance with section 17E (power to recall to hospital).

(3) 2003 (asp.13).

(4) 2003 (asp.13).

(5) Section 85ZA was inserted by paragraph 12 of Schedule 5 to the Mental Health Act 2007 (c.12).

(6) Section 80C was inserted by paragraph 4(1) of Schedule 5 to the Mental Health Act 2007.

(2) Responsibility for a patient referred to in paragraph (1) may be assigned by the managers of the responsible hospital to any other hospital whether or not that other hospital is under the same management as the responsible hospital.

(3) Responsibility for a patient shall not be assigned to a hospital which is not under the same management as the responsible hospital unless—

- (a) an authority for the assignment is given by the managers of the assigning responsible hospital in the form set out in Part 1 of Form CTO10;
- (b) that transfer has been agreed by the managers of the hospital which will be the responsible hospital if the proposed transfer takes effect;
- (c) the managers of the hospital referred to in (b) have specified the date on which the transfer shall take place;
- (d) the managers of the assigning responsible hospital record—
 - (i) the agreement of the managers of the new responsible hospital to the assignment, and
 - (ii) the date on which the assignment is to take place,

in the form set out in that Form.

(4) The managers of the receiving hospital must notify the patient in writing of—

- (a) the assignment, either before it takes place or as soon as reasonably practicable thereafter; and
- (b) their name and address (irrespective of whether or not there are any changes in the managers).

(5) Where responsibility for a patient is assigned from a responsible registered establishment to another hospital which is not under the same management and the patient is maintained under a contract with a Strategic Health Authority, Local Health Board, Primary Care Trust, National Health Service trust, National Health Service foundation trust, a Special Health Authority or the Welsh Ministers, any authority for transfer required under paragraph (3)(a), and the record required under paragraph (3)(b), may be given by an officer of that authority, board or trust authorised by it in that behalf, or by those Ministers, instead of by the managers.

(6) Any hospital to which a patient has been assigned may, in accordance with the provisions of this regulation, assign the patient to another hospital.

(7) The functions of the managers referred to in this regulation may be performed by an officer authorised by them in that behalf.

Discharge of patients

18. For the purposes of section 23 (discharge of patients) a responsible clinician's order for the discharge of—

- (a) a patient liable to be detained under the Act, or a community patient, shall be sent to the managers of the hospital in which the patient is liable to be detained or the responsible hospital (as applicable) as soon as practicable after it is made;
- (b) a guardianship patient, shall be sent to the guardian as soon as practicable after it is made.

Delegation of hospital managers' functions under the Act

19. The functions of the managers of a hospital in respect of the following—

- (a) notifying local social services authorities under section 14 (social reports) of patients detained on the basis of applications by their nearest relatives;

- (b) authorising persons under section 17(3) (leave of absence from hospital) to keep in custody patients who are on leave of absence who are subject to a condition that they remain in custody;
- (c) authorising persons under sections 18(1) and (2A) (return and readmission of patients absent without leave) to take and return detained and community patients respectively who are absent without leave,

may be performed by any person authorised by them in that behalf.

Delegation of managers' functions under the Domestic Violence, Crime and Victims Act 2004

20. The functions of the managers of a hospital under sections 35 to 44B of the Domestic Violence, Crime and Victims Act 2004 (provision of information to victims of patients under the Act etc.)⁽⁷⁾ may be performed by any person authorised by them in that behalf.

Delegation by local social services authorities

21.—(1) Except as provided by paragraph (2), a local social services authority may delegate its functions under Parts 2 and 3 of the Act and these Regulations in the same way and to the same persons as its functions referred to in the Local Government Act 1972⁽⁸⁾ may be delegated in accordance with section 101 of that Act.

(2) The function of the local social services authority under section 23 (discharge of patients) may not be delegated otherwise than in accordance with that section.

PART 3

Functions of Guardians and Nearest Relatives

Duties of private guardians

22.—(1) It shall be the duty of a private guardian—

- (a) to appoint a registered medical practitioner to act as the nominated medical attendant of the patient;
- (b) to notify the responsible local social services authority of the name and address of the nominated medical attendant;
- (c) in exercising the powers and duties of a private guardian conferred or imposed by the Act and these Regulations, to comply with such directions as that authority may give;
- (d) to furnish that authority with all such reports or other information with regard to the patient as the authority may from time to time require;
- (e) to notify that authority—
 - (i) on the reception of the patient into guardianship, of the private guardian's address and the address of the patient,
 - (ii) except in a case to which paragraph (f) applies, of any permanent change of either address, before or not later than 7 days after the change takes place;

⁽⁷⁾ As amended section 48 and Schedule 6 of the Mental Health Act 2007 (c.12) . By virtue of section 45(4) of the Domestic Violence, crime and Victims Act 2004 a function conferred on the managers of a hospital under sections 35 to 44B of that Act is to be treated as a function of those managers under Part 3 of the Mental Health Act 1983 for the purposes of section 32(3) of the 1983 Act (regulations as to delegation of managers' functions, etc).

⁽⁸⁾ 1972 c.70.

- (f) on any permanent change of the private guardian's address, where the new address is in the area of a different local social services authority, to notify that authority—
 - (i) of that address and that of the patient,
 - (ii) of the particulars mentioned in paragraph (b),
 and to notify the authority which was formerly responsible of the permanent change in the private guardian's address;
- (g) in the event of the death of the patient, or the termination of the guardianship by discharge, transfer or otherwise, to notify the responsible local social services authority as soon as reasonably practicable.

(2) Any notice, reports or other information under this regulation may be given or furnished in any other way (in addition to the methods of serving documents provided for by regulation 3(1)) to which the relevant local social services authority agrees, including orally or by electronic communication.

Visits to patients subject to guardianship

23. The responsible local social services authority shall arrange for every patient received into guardianship under the Act to be visited at such intervals as the authority may decide, but—

- (a) in any case at intervals of not more than 3 months, and
- (b) at least one such visit in any year shall be made by an approved clinician or a practitioner approved by the Secretary of State for the purposes of section 12 (general provisions as to medical recommendations).

Performance of functions of nearest relative

24.—(1) Subject to the conditions of paragraph (7), any person other than—

- (a) the patient;
- (b) a person mentioned in section 26(5) (persons deemed not to be the nearest relative), or
- (c) a person in respect of whom the court has made an order on the grounds set out in section 29(3)(b) to (e) (which sets out the grounds on which an application to the court for the appointment of a person to exercise the functions of a nearest relative may be made) for so long as an order under that section is in effect,

may be authorised in accordance with paragraph (2) to act on behalf of the nearest relative in respect of the matters mentioned in paragraph (3).

(2) Subject to paragraph (8), the authorisation mentioned in paragraph (1) must be given in writing by the nearest relative.

(3) The matters referred to in paragraph (1) are the performance in respect of the patient of the functions conferred upon the nearest relative under—

- (a) Part 2 of the Act (as modified by Schedule 1 to the Act as the case may be), and
- (b) section 66 (applications to tribunals).

(4) An authorisation given under paragraph (1) shall take effect upon its receipt by the person authorised.

(5) Subject to the conditions of paragraph (7), the nearest relative of a patient may give notice in writing revoking that authorisation.

(6) Any revocation of such authorisation shall take effect upon the receipt of the notice by the person authorised.

(7) The conditions mentioned in paragraphs (1) and (5) are that the nearest relative shall immediately notify—

- (a) the patient;
 - (b) in the case of a patient liable to be detained in a hospital, the managers of that hospital;
 - (c) in the case of a patient subject to guardianship, the responsible local social services authority and the private guardian, if any;
 - (d) in the case of a community patient, the managers of the responsible hospital,
- of the authorisation or, as the case may be, its revocation.

(8) An authorisation or notification referred to in this regulation may be transmitted by means of electronic communication if the recipient agrees.

Discharge by nearest relative

25.—(1) Any report given by the responsible clinician for the purposes of section 25 (restrictions on discharge by nearest relative)—

- (a) shall be in the form set out in Part 1 of Form M2, and
- (b) the receipt of that report by—
 - (i) the managers of the hospital in which the patient is liable to be detained, or
 - (ii) the managers of the responsible hospital in the case of a community patient,shall be in the form set out in Part 2 of that Form.

(2) In addition to the methods of serving documents provided for by regulation 3(1), reports under this regulation may be furnished by—

- (a) transmission by facsimile, or
 - (b) the transmission in electronic form of a reproduction of the report,
- if the managers of the hospital agree.

PART 4

Provision of Information

26.—(1) Unless the patient requests otherwise, where —

- (a) a patient is to be or has been transferred from hospital to hospital pursuant to section 19 or section 123 (regulations as to transfer of patients and transfer to and from special hospitals respectively), the managers of the hospital to which the patient is to be or has been transferred shall take such steps as are reasonably practicable to cause the person (if any) appearing to them to be the patient's nearest relative to be informed of that transfer before it takes place or as soon as practicable thereafter;
- (b) a patient's detention is renewed pursuant to a report furnished under section 20 (duration of authority), the managers of the responsible hospital shall take such steps as are reasonably practicable to cause the person (if any) appearing to them to be the patient's nearest relative to be informed of that renewal as soon as practicable following their decision not to discharge the patient;
- (c) by virtue of section 21B(7) (patients who are taken into custody or return after more than 28 days) a patient's detention is renewed pursuant to a report furnished under section 21B(2), the managers of the responsible hospital in which the patient is liable to be detained shall take such steps as are reasonably practicable to cause the person (if any) appearing to them to be the patient's nearest relative to be informed of that renewal as soon as practicable following their decision not to discharge the patient;

- (d) by virtue of section 21B(5) and (6) (patients who are taken into custody or return after more than 28 days), a patient's detention is renewed retrospectively pursuant to a report furnished under section 21B(2), the managers of the hospital in which the patient is liable to be detained shall take such steps as are reasonably practicable to cause the patient and the person (if any) appearing to them to be the patient's nearest relative to be informed of that renewal as soon as practicable following their receipt of that report;
- (e) a patient's period of community treatment is extended pursuant to a report furnished under section 20A (community treatment period), the managers of the responsible hospital shall take such steps as are reasonably practicable to cause the person (if any) appearing to them to be the patient's nearest relative to be informed of that extension as soon as practicable following their decision not to discharge the patient;
- (f) by virtue of section 21B(7A) (patients who are taken into custody or return after more than 28 days) a patient's period of community treatment is extended pursuant to a report furnished under section 21B(2), the managers of the responsible hospital shall take such steps as are reasonably practicable to cause the person (if any) appearing to them to be the patient's nearest relative to be informed of that extension as soon as practicable following their decision not to discharge the patient;
- (g) by virtue of section 21B(6A) and (6B) (patients who are taken into custody or return after more than 28 days) a patient's period of community treatment is extended retrospectively pursuant to a report furnished under section 21B(2), the managers of the responsible hospital shall take such steps as are reasonably practicable to cause the patient and the person (if any) appearing to them to be the patient's nearest relative to be informed of that extension as soon as practicable following their receipt of that report;
- (h) a patient is to be or has been assigned to another hospital which assumes responsibility for that patient as a community patient, the managers of the hospital to which the patient is to be or has been assigned shall take such steps as are reasonably practicable to cause the person (if any) appearing to them to be the patient's nearest relative to be informed of that assignment before or as soon as practicable following it taking place;
- (i) a patient is to be or has been transferred from hospital to guardianship pursuant to section 19 (regulations as to transfer of patients), the responsible local social services authority shall take such steps as are reasonably practicable to cause the person appearing to it to be the patient's nearest relative to be informed of that transfer before it takes place or as soon as practicable thereafter;
- (j) a patient is to be or has been transferred from the guardianship of one person to the guardianship of another person pursuant to section 19 (regulations as to transfer of patients), the new responsible local social services authority shall take such steps as are reasonably practicable to cause the person (if any) appearing to it to be the patient's nearest relative to be informed of that transfer before it takes place or as soon as practicable thereafter;
- (k) a patient's guardianship becomes vested in the local social services authority or the functions of a guardian are, during the guardian's incapacity, transferred to the authority or a person approved by it under section 10 (transfer of guardianship in case of death, incapacity, etc of guardian), the responsible local social services authority shall take such steps as are reasonably practicable to cause the person (if any) appearing to it to be the patient's nearest relative to be informed of that vesting, or as the case may be, transfer before it takes place or as soon as practicable thereafter;
- (l) a patient's guardianship is renewed pursuant to a report furnished under section 20 (duration of authority), the responsible local social services authority shall take such steps as are reasonably practicable to cause the person (if any) appearing to it to be the patient's

nearest relative to be informed of that renewal as soon as practicable following the decision of the responsible local social services authority to discharge the patient;

(m) by virtue of section 21B(7) (patients who are taken into custody or return after more than 28 days) a patient's guardianship is renewed pursuant to a report furnished under section 21B(7), the responsible local social services authority shall take such steps as are reasonably practicable to cause the person (if any) appearing to it to be the patient's nearest relative to be informed of that renewal as soon as practicable following the decision of the responsible local social services authority not to discharge the patient;

(n) by virtue of section 21B(5) and (6) (patients who are taken into custody or return after more than 28 days) a patient's guardianship is renewed retrospectively pursuant to a report furnished under section 21B(2), the responsible local social services authority shall take such steps as are reasonably practicable to cause the patient and person (if any) appearing to it to be the patient's nearest relative to be informed of that renewal as soon as practicable following the receipt by the responsible local social services authority of that report.

(2) Where paragraph (1)(m) or (n) applies, the responsible local social services authority shall, as soon as practicable inform the private guardian (if any) of its receipt of a report furnished under section 21B (patients who are taken into custody or return after more than 28 days).

(3) Upon a patient becoming subject to guardianship under the Act, the responsible local social services authority shall take such steps as are reasonably practicable to cause to be informed both the patient and the person (if any) appearing to the authority to be the patient's nearest relative of the rights referred to in paragraph (4).

(4) Those rights are—

(a) the patient's rights under section 66 (applications to tribunals),

(b) the nearest relative's right, as the case may be, to—

(i) discharge the patient under section 23 (discharge of patients), or

(ii) make an application under section 69 (application to tribunals concerning patients subject to hospital and guardianship orders where the patient is, or is treated as being, subject to guardianship under section 37).

(5) Where information referred to in paragraph (1)(d), (g) or (n), or in paragraph (3) is to be given to the patient, it shall be given both orally and in writing.

(6) Where information referred to in paragraph (1) is to be given to the person appearing to be the patient's nearest relative, it shall be given in writing.

(7) Where information referred to in paragraph (2) is to be given to the private guardian, it shall be given in writing.

(8) Information that is to be given in writing under paragraphs (6) and (7) may be transmitted by means of electronic communication if the recipient agrees.

(9) The functions of the managers referred to in this regulation may be performed by an officer authorised by them in that behalf.

PART 5

Consent to Treatment

Consent to treatment

27.—(1) For the purposes of section 57 (treatment requiring consent and a second opinion)—

- (a) the form of treatment to which that section shall apply, in addition to the treatment mentioned in subsection (1)(a) of that section (any surgical operation for destroying brain tissue or for destroying the functioning of brain tissue), shall be the surgical implantation of hormones for the purpose of reducing male sexual drive, and
 - (b) the certificates required for the purposes of subsection (2)(a) and (b) of that section shall be in the form set out in Form T1.
- (2) For the purposes of section 58 (treatment requiring consent or a second opinion) the certificates required for the purposes of subsection (3)(a) and (b) of that section shall be in the form set out in Forms T2 and T3 respectively.
- (3) For the purposes of section 58A (electro-convulsive therapy, etc.)—
- (a) the form of treatment to which that section shall apply, in addition to the administration of electro-convulsive therapy mentioned in subsection (1)(a) of that section, shall be the administration of medicine as part of that therapy; and
 - (b) the certificates required for the purposes of subsections (3), (4) and (5) of that section shall be in the form set out in Forms T4, T5 and T6 respectively.
- (4) Section 58A does not apply to treatment by way of the administration of medicine as part of electro-convulsive therapy where that treatment falls within section 62(1)(a) or (b) (treatment immediately necessary to save the patient’s life or to prevent a serious deterioration in the patient’s condition).

PART 6

Treatment of Community Patients not Recalled to Hospital

- 28.**—(1) For the purposes of Part 4A of the Act (treatment of community patients not recalled to hospital), the certificates required for the purposes of sections 64B(2)(b) and 64E(2)(b) (which set out when treatment under Part 4A of the Act may be given to adult and child community patients respectively) shall be in the form set out in Form CTO11.
- (2) Treatment of a patient to whom section 64B(3)(b) or section 64E(3)(b) applies (adult and child patients for whom treatment is immediately necessary), may include treatment by way of administration of medicine as part of electro-convulsive therapy but only where that treatment falls within section 64C(5)(a) or (b) (treatment immediately necessary to save the patient’s life or to prevent a serious deterioration in the patient’s condition).
- (3) Treatment of a patient to whom section 64G (emergency treatment for patients lacking capacity or competence) applies may include treatment by way of the administration of medicine as part of electro-convulsive therapy but only where that treatment falls within section 64G(5)(a) or (b) (treatment immediately necessary to save the patient’s life or to prevent a serious deterioration in the patient’s condition).

PART 7

Correspondence of Patients

Inspection and opening of postal packets

- 29.**—(1) Where under section 134(4) (inspection and opening of postal packets addressed to or by patients in hospital) any postal packet is inspected and opened, but neither the packet nor

anything contained in it is withheld under section 134(1) or (2) the person appointed who inspected and opened it, shall record in writing—

- (a) that the packet had been so inspected and opened,
- (b) that nothing in the packet has been withheld, and
- (c) the name of the person appointed and the name of the hospital,

and shall, before resealing the packet, place the record in that packet.

(2) Where under section 134(1) or (2) any postal packet or anything contained in it is withheld by the person appointed—

- (a) that person shall record in a register kept for the purpose—
 - (i) that the packet or anything contained in it has been withheld,
 - (ii) the date on which it was so withheld,
 - (iii) the grounds on which it was so withheld,
 - (iv) a description of the contents of the packet withheld or of any item withheld, and
 - (v) the name of the person appointed; and
- (b) if anything contained in the packet is withheld, the person appointed shall record in writing—
 - (i) that the packet has been inspected and opened,
 - (ii) that an item or items contained in the packet have been withheld,
 - (iii) a description of any such item,
 - (iv) the name of the person appointed and the name of the hospital, and
 - (v) in any case to which section 134(1)(b) or (2) applies, the further particulars required for the purposes of section 134(6),

and shall, before resealing the packet, place the record in that packet.

(3) In a case to which section 134(1)(b) or (2) applies—

- (a) the notice required for the purposes of section 134(6) shall include—
 - (i) a statement of the grounds on which the packet in question or anything contained in it was withheld, and
 - (ii) the name of the person appointed who so decided to withhold that packet or anything contained in it and the name of the hospital; and
- (b) where anything contained in a packet is withheld the record required by paragraph (2)(b) shall, if the provisions of section 134(6) are otherwise satisfied, be sufficient notice to the person to whom the packet is addressed for the purposes of section 134(6).

(4) For the purposes of this regulation “the person appointed” means a person appointed under section 134(7) to perform the functions of the managers of the hospital under that section.

Review of decisions to withhold postal packets

30.—(1) Every application for review by the Commission under section 121(7) (review of any decision to withhold a postal packet, or anything contained in it, under section 134) shall be—

- (a) made in such manner as the Commission may accept as sufficient in the circumstances of any particular case or class of case and may be made otherwise than in writing, and
- (b) made, delivered or sent to an office of the Commission.

(2) Any person making such an application shall furnish to the Commission the notice of the withholding of the postal packet or anything contained in it, given under section 134(6), or a copy of that notice.

(3) For the purpose of determining any such application the Commission may direct the production of such documents, information and evidence as it may reasonably require.

Patient advocacy and liaison services and independent mental capacity advocate services

31.—(1) In section 134 (correspondence of patients), for the purposes of subsection (3)(ea) “patient advocacy and liaison service” means a service affording assistance in the form of advice and liaison for patients, their families and carers provided by—

- (a) an NHS trust⁽⁹⁾,
- (b) an NHS foundation trust⁽¹⁰⁾, or
- (c) a Primary Care Trust⁽¹¹⁾.

(2) For the purposes of section 134(3A)(b)(iii), the prescribed arrangements are arrangements in respect of independent mental capacity advocates made under section 35 to 41 of the Mental Capacity Act 2005⁽¹²⁾ (independent advocacy service).

PART 8

Revocations

Revocations

32. The Regulations specified in column 1 of Schedule 2 are hereby revoked to the extent mentioned in column 3 of that Schedule.

Signed by authority of the Secretary of State for Health.

Ivan Lewis
Parliamentary Under-Secretary of State
Department of Health

28th April 2008

(9) As provided for by Part 2, Chapter 3 of the National Health Service Act 2006 (c.41).

(10) As provided for by Part 2, Chapter 5 of the National Health Service Act 2006.

(11) As provided for by Part 2, Chapter 2 of the National Health Service Act 2006.

(12) 2005 c.9.