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WELSH STATUTORY INSTRUMENTS

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**2008 No. 2439**

**The Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) Regulations 2008**

**PART 5**

Transfer and Conveyance

**Transfer from hospital to hospital or guardianship**

**23.**—(1) This regulation applies in respect of any patient to whom section 19(1)(a) as modified by Schedule 1 to the Act applies (“hospital patient”), 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 in the form set out in Part 1 of Form TC 1 is given by the managers of the hospital in which the patient is liable to be detained; and
- (b) those managers are satisfied that arrangements have been made for the admission of the patient to the hospital to which it is proposed that he or she is to be transferred.

(3) On the transfer of that patient, the managers of the hospital to which he or she is transferred must record the patient’s admission in the form set out in Part 2 of Form TC 1.

(4) A hospital patient may be transferred into the guardianship of a local social services authority, or of any person approved by a local social services authority, where—

- (a) an authority for transfer in the form set out in Part 1 of Form TC 2 is given by the managers of the hospital in which the patient is liable to be detained;
- (b) the transfer has been agreed by the local social services authority, which will be the responsible one if the proposed transfer takes effect;
- (c) that local social services authority has specified the date on which the transfer will take place; and
- (d) where the person named in the authority for transfer as guardian will be a private guardian, the agreement of that person has been obtained and recorded in the form set out in Part 2 of Form TC 2.

(5) On the transfer of that patient, the responsible local social services authority must record the patient’s transfer in the form set out in Part 3 of Form TC 2.

(6) Where a hospital patient is detained in a registered establishment—

- (a) he or she may be transferred from that establishment to another registered establishment where both establishments are under the management of the same managers, and paragraph (2) will not apply;
- (b) if he or she is maintained under a contract with a National Health Service Trust, Local Health Board, Strategic Health Authority, Primary Care Trust, NHS Foundation Trust,

Special Health Authority or the Welsh Ministers, any authority for transfer required under paragraph (2)(a) or, as the case may be, (4)(a) may be given by a duly authorised officer of that trust, board or authority instead of by the managers, or, as the case may be, by the Welsh Ministers instead of the managers.

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

(8) Where the conditions of paragraphs (2) or (4), as the case may be, are satisfied, the transfer of the patient must be effected within 28 days of the date of the authority as provided under sub-paragraph (a) of paragraphs (2) or (4), failing which the authority for the transfer will cease.

### **Transfer from guardianship to guardianship or hospital**

**24.**—(1) This regulation applies in respect of any patient who is for the time being subject to guardianship under the Act (“guardianship patient”).

(2) A guardianship patient may be transferred into the guardianship of another local social services authority or another person where—

- (a) an authority for transfer is given by the guardian in the form set out in Part 1 of Form TC 3;
- (b) the transfer has been agreed by the local social services authority, which will be the responsible one if the proposed transfer takes effect;
- (c) that local social services authority has specified the date on which the transfer will take place; and
- (d) where the person named in the authority for transfer as proposed guardian will be a private guardian, the agreement of that person has been obtained and recorded in the form set out in Part 2 of Form TC 3;

(3) On the transfer of that patient, the responsible local social services authority must record the patient’s transfer of guardianship in the form set out in Part 3 of Form TC 3.

(4) 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 TC 4 where—

- (a) an application for admission for treatment has been made by an approved mental health professional in the form set out in Form HO 6 and, for the purposes of that application, sections 11(4) (consultation with nearest relative) and 13 (duty of approved mental health professional) will apply as if the proposed transfer were an application for admission for treatment;
- (b) an application for admission for treatment has been made by the nearest relative in the form set out in Form HO 5;
- (c) the application is founded on medical recommendations given by two registered medical practitioners in accordance with section 12 and regulation 4(1)(d);
- (d) the responsible local social services authority is satisfied that arrangements have been made for the admission of the patient to that hospital.

(5) On the transfer of that patient to hospital, a record of admission must be made by the managers of the hospital to which the patient is transferred in the form set out in Part 2 of Form TC 4.

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

(7) Where the conditions of paragraph (2) are satisfied, the transfer of the patient must be effected within 28 days of the date of the authority as provided under sub-paragraph (a) of paragraph (2), failing which the patient will remain in the guardianship of the initial guardian.

(8) Where the conditions of paragraph (4) 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.

### **Assignment of responsibility for community patients**

**25.**—(1) This regulation applies in respect of any patient who is for the time being a community patient.

(2) Responsibility for a community patient may be assigned to another hospital under different management from the responsible hospital (“other hospital”) where—

- (a) an authority for assignment in the form set out in Part 1 of Form TC 5 is given by the managers of the assigning responsible hospital prior to assignment;
- (b) those managers are satisfied that arrangements have been made for the assignment of responsibility of the patient to the other hospital within a period of 28 days beginning with the date of the authority for assignment;
- (c) on assignment, the managers of the other hospital must record the assignment in the form set out in Part 2 of Form TC 5.

(3) Where the conditions of paragraph (2) are satisfied, the assignment of responsibility must be effected within 28 days of the date of the authority as provided under sub-paragraph (a) of that paragraph, failing which responsibility for the community treatment order will remain with the hospital so responsible prior to assignment.

(4) Responsibility for a community patient to whom this regulation applies may be assigned to another hospital managed by the same hospital managers, in which event the provisions of paragraphs (2) and (3) and regulation 32 (b) will not apply.

(5) Where responsibility for a patient is assigned from a responsible hospital which is a registered establishment to another hospital under different management from the assigning hospital and the patient is maintained under a contract with a National Health Service Trust, Local Health Board, Strategic Health Authority, Primary Care Trust, NHS Foundation Trust, Special Health Authority or the Welsh Ministers any authority for assignment required under paragraph (2)(a) may be given by an duly authorised officer of that trust, board or authority, or by the Welsh Ministers, instead of 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 of recalled patients to hospital**

**26.**—(1) This regulation applies in respect of any patient who is for the time being recalled from a community treatment order under section 17E.

(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 in paragraphs (3) to (5) are satisfied.

(3) Subject to paragraph (5), a patient referred to in paragraph (1) may be transferred to another hospital where—

- (a) an authority for transfer in the form set out in Part 1 of Form TC 6 is given by the managers of the hospital in which the patient is detained prior to transfer, and
- (b) those managers are satisfied that arrangements have been made for the admission of the patient to the hospital to which it is proposed that he or she is to be transferred.

(4) On the transfer of that patient, the managers of the hospital to which he or she is transferred must record the patient’s admission in the form set out in Part 2 of Form TC 6.

(5) The managers of the hospital from which the patient is being transferred must furnish the managers of the hospital to which the patient is being transferred with a copy of Form CP 6 (record of patient's detention in hospital after recall) before, or at the time of, the patient's transfer.

(6) Where—

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

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

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

### **Conveyance to hospital on transfer**

27.—(1) Where the conditions of regulation 23(2), 24(4) or 26(2), as the case may be, are satisfied, the authority for transfer given in accordance with those regulations will be sufficient authority for the following persons to take the patient and convey him or her to the hospital to which the patient is being transferred within the periods specified—

- (a) in a case to which regulation 23(2) applies, an officer of the managers of either hospital, or any person authorised by those managers, within the period of 28 days beginning with the date of the authority for transfer;
- (b) in a case to which regulation 24(4) applies, an officer of, or any person authorised by, a 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 24(4)(c).
- (c) in a case to which regulation 26 applies, an officer of, or any other 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.

(2) Paragraph (1) also applies 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 23(2);
- (b) is liable to be detained in a special hospital and who, pursuant to a direction given by the Welsh Ministers under section 123(1) or (2), is removed to another special hospital or transferred to another hospital, as if that direction were an authority for transfer given in accordance with regulation 23(2).

(3) In a case to which regulation 23(6)(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 he or she is being transferred.

### **Transfers from Wales to England and from England to Wales**

28.—(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 Wales to a hospital or guardianship in England, that transfer will be subject to such conditions as may be prescribed 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 England to a hospital or guardianship in Wales,

that transfer and the duty to record the admission of a patient so transferred will be subject to such conditions as may be prescribed in Regulations made by the Secretary of State to similar effect for England.

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

### **Removal of patients**

**29.**—(1) Paragraphs (2) and (3) apply to a patient who is removed from Scotland, Northern Ireland, any of the Channel Islands or the Isle of Man to Wales 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<sup>(1)</sup> (removal and return of patients within United Kingdom).

(2) Where a patient to whom this paragraph applies is liable to be detained in a hospital, the managers of the hospital must—

- (a) record in the form set out in Form TC 7 the date on which the patient is admitted to the hospital, and
- (b) take such steps as are reasonably practicable to inform the person (if any) appearing to be the patient's nearest relative or performing such functions as correspond to those performed by nearest relatives of the patient's admission.

(3) Where a patient to whom this paragraph applies is received into guardianship the guardian must—

- (a) record in the form set out in Form TC 7 the date on which the patient arrives at the place at which the patient is to reside on his or her reception into guardianship under the Act;
- (b) take such steps as are reasonably practicable to inform the person (if any) appearing to be the patient's nearest relative or performing such functions as correspond to those performed by nearest relatives that the patient has been received into guardianship under the Act; and
- (c) a private guardian must notify the responsible local social services authority of the date mentioned in sub-paragraph (a) and of the particulars mentioned in regulation 11(1)(b) and (e).

(4) Paragraph (5) applies to a patient who is removed from Scotland, any of the Channel Islands or the Isle of Man to Wales under—

- (a) section 289 of the Mental Health (Care and Treatment) (Scotland) Act 2003; or
- (b) section 85ZA (responsibility for community patients transferred from any of the Channel Islands or the Isle of Man)<sup>(2)</sup> in the case of any of the Channel Islands or the Isle of Man.

(5) Where a patient to whom this paragraph applies is to receive treatment in the community—

- (a) the conditions specified by the responsible clinician under section 80C(5) or 85ZA(4) for the purposes of section 17B(1) must be in the form set out in Part 1 of Form TC 8;
- (b) the agreement of the approved mental health professional required under section 80C(6) must be in the form set out in Part 2 of Form TC 8;
- (c) the managers of the responsible hospital in respect of which the patient is treated as having been admitted by virtue of section 80C(2) must record in the form set out in Part 3 of Form TC 8 the date on which the patient arrived at the place he or she is to reside in Wales (and

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(1) 2003 asp 13.

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

in consequence of which the patient is treated as if a community treatment order had been made discharging him or her from hospital).

#### **Provision of information – transfer**

**30.** In the event of the proposed or actual transfer of—

- (a) a hospital patient under regulation 23(2) to a hospital with different hospital managers from that from which the patient was transferred, the managers of the hospital to which the patient is to be or is transferred must notify the patient and, save where a patient requests otherwise, must take such steps as are reasonably practicable to notify the person (if any) appearing to be the patient's nearest relative, in writing, of the transfer and name and address of the hospital and the details of those hospital managers;
- (b) a hospital patient into guardianship under regulation 23(4) the responsible local social services authority must, save where the patient requests otherwise, take such steps as are reasonably practicable to notify the person (if any) appearing to be the patient's nearest relative of the date of the patient's transfer or, where it has not done so, record its reasons for not doing so;
- (c) a guardianship patient into the guardianship of another authority or person under regulation 24(2) the responsible local social services authority must, save where the patient requests otherwise, take such steps as are reasonably practicable to notify the person (if any) appearing to be the patient's nearest relative of the date of the patient's transfer or, where it has not done so, record its reasons for not doing so;
- (d) a guardianship patient to hospital under regulation 24(4), the hospital managers of the hospital to which the patient is to be or has been transferred must notify to the patient and, save where the patient requests otherwise, take such steps as are reasonably practicable to notify the person (if any) appearing to be the patient's nearest relative, in writing, of the name and address of the hospital and the details of the hospital managers.

#### **Provision of information – transfer in case of death, incapacity etc. of guardian**

**31.** Unless the patient requests otherwise, where 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 must take such steps as are reasonably practicable to cause the person (if any) appearing 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.

#### **Provision of information – assignment of responsibility for community patients**

**32.** In the event of the proposed or actual assignment of responsibility for a community patient, the hospital managers of the hospital to which responsibility has been assigned must—

- (a) notify the patient, in writing, of the name and address of the responsible hospital and the details of the hospital managers (irrespective of whether or not there are any changes in the hospital managers); and
- (b) unless the patient requests otherwise, where the assignment is made to a hospital under different management from the assigning hospital under regulation 25(2), take such steps as are reasonably practicable to notify the person (if any) appearing to be the patient's nearest relative, the name and address of responsible hospital and the details of the hospital managers of that hospital.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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