

EXPLANATORY MEMORANDUM TO
THE MENTAL HEALTH (HOSPITAL, GUARDIANSHIP AND TREATMENT)
(ENGLAND) (AMENDMENT) REGULATIONS 2020

2020 No. 1072

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care (the ‘Department’) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument allows for certain statutory forms used for the exercise of powers of admission, detention, assessment and treatment under the Mental Health Act 1983 (‘the Act’) to be served by electronic means. It provides that, with one exception, those bodies or authorities in receipt of these forms may agree to receive them by electronic means. Documents cannot be served on patients solely by electronic means.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to the negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this time.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The instrument is being made to allow for the electronic sending and receiving of statutory forms required when managing the admission, detention, assessment or treatment of a person under part 2 of the Act. This is part of the Government’s work to modernise the Act, which has been subject to a recent Independent Review, and reflects advances in information technology within the National Health Service (‘NHS’).

7. Policy background

What is being done and why?

- 7.1 The Act provides for the admission, detention, assessment and treatment in hospital of a person suffering from a mental disorder. A person may only be detained where their mental disorder is of a nature or degree which warrants it, and where detention is necessary for that person's health and safety, or the protection of others.
- 7.2 This instrument amends the Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008 (S.I. 2008/1184) (the '2008 Regulations') to allow for the use of electronic means of communication for the sending and receipt of documents under the Act. In particular the amendments to the 2008 Regulations allow for statutory forms to be served by email. The instrument also makes consequential amendments to these forms.
- 7.3 The 2008 Regulations, as amended, provide that the authority, body or person on whom the form is served must agree to receive the form electronically. An exception to this is where a person, usually an Approved Mental Health Professional ('AMHP'), wishes to serve an application for detention via electronic transmission. In such cases, electronic communication to the hospital managers is always permitted.
- 7.4 A further exception is that documentation given to patients under the Act, including through these statutory forms, must be provided in hard copy, although electronic versions may be given in addition to this. This is because patients may not have consistent and reliable access to the required technology. An example of a document which cannot be served on patients electronically is a form recalling to hospital a patient subject to a Community Treatment Order.
- 7.5 These changes are being made because developments in information technology allow for integrated and secure information systems in the NHS, which serve patients by keeping relevant clinical information about them so that services can respond to the needs of patients quickly and appropriately. Such systems have the potential in this case to help professionals follow the requirements of the Act in ways that do not use their time unnecessarily, for example by waiting to receive signed paper forms. This is supported by the consultation outlined in section 10 of this explanatory memorandum.
- 7.6 The need for these changes has been accelerated because of the current pandemic, and the need to support efforts to control infection by minimising unnecessary face to face contact. Even without these circumstances, the Government sees no continuing need to maintain restrictions on electronic service.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 This instrument does not consolidate any legislation.

10. Consultation outcome

- 10.1 This instrument has been made following consultation with hospital administrators, doctors, Approved Mental Health Professionals and information technology providers

with expertise in the field of the Mental Health Act 1983. There has been broad support for these changes, which also follow recommendations made in 2018 by the Independent Review of the Mental Health Act 1983, chaired by Sir Simon Wessely, for the Department and NHS England and Improvement ('NHS E/I') to look at steps we may make to use information technology to support the operation of the Act.

- 10.2 The Department and NHSE/I established a Digital Steering Group to look at the use of electronic forms and future steps that may be taken to use information technology to support other aspects of the Act's operation. The Group consists of service users and mental health staff. This policy position has also been discussed with, and reviewed by, 70 bodies or individuals (including Mental Health Trusts, professional groups, major mental health charities, service users and members of the mental health workforce who will be affected by these changes). Input from these discussions will be reflected in guidance.

11. Guidance

- 11.1 Guidance is not essential to understanding how this instrument will operate. Nevertheless, practical guidance to assist stakeholders in applying the changes made by this instrument will be published before the amendments come into force. This guidance will, among other topics, discuss common understandings, agreements and working protocols which organisations will need to establish locally.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because no significant impact on business, charities or the public sector is foreseen. This instrument allows for minor changes to how the work under the Act is administered. There may be opportunities for cost savings but these have not been estimated. These changes will not create any significant additional burdens.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that it falls within the responsibilities of the Care Quality Commission, which is responsible for regulating and reporting on the use and operation of the Mental Health Act 1983. The Department will also keep the 2008 Regulations, as amended, under review.

15. Contact

- 15.1 Hannah Coaker at the Department of Health and Social Care. Telephone: 0207 972 2702 or email: Hannah.Coaker@dhsc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Caroline Allnutt, Deputy Director for Mental Health Legislation, at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.

15.3 Nadine Dorries MP, Minister for Mental Health, Suicide Prevention and Patient Safety at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.