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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 1**

General

**Title, application and commencement**

1. The title of these Regulations is the Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) Regulations 2008, they apply in relation to Wales and come into force on 3 November 2008.

**Interpretation**

2.—(1) In these Regulations, unless the context otherwise requires —

“the Act” (“*y Ddeddf*”) means the Mental Health Act 1983;

“bank holiday” (“*gwyl banc*”) means a bank holiday under the Banking and Financial Dealings Act 1971(1);

“business day” (“*diwrnod busnes*”) means any day except Saturday, Sunday or a bank holiday;

“document” (“*dogfen*”) means any application, recommendation, record, report, order, notice or other document;

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

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

“served” (“*cyflwyno*”), in relation to a document, includes addressed, delivered, given, forwarded, furnished or sent;

“special hospital” (“*ysbyty arbennig*”) means a hospital at which high security psychiatric services are provided

“tribunal” (“*tribiwnlys*”) means the Mental Health Tribunal for Wales or the First-tier Tribunal established under the Tribunals, Courts and Enforcement Act 2007(3) as the case may be.

(2) Except insofar as the context otherwise requires, any reference in these Regulations to —

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

(b) a numbered regulation or Schedule is to the regulation in or Schedule to these regulations bearing that number;

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(1) 1971 c. 80.

(2) 2007 c. 7.

(3) 2007 c. 15.

- (c) any reference in a regulation to a numbered paragraph is a reference to the paragraph of that regulation bearing that number;
- (d) an alphanumeric form is a reference to the form in Schedule 1 bearing that designation.

### **Documents**

**3.**—(1) Except in a case to which paragraphs (2), (3) (4) or (5) apply, 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 and supervised community treatment) or these Regulations may be served –

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

(2) Any application for the admission of a patient to a hospital under Part 2 of the Act must be served by delivering the application to an officer of the managers of the hospital, to which it is proposed that the patient will be admitted, 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 under section 25(1), must be served by—
  - (i) delivering the order or notice at that hospital to an officer of the managers authorised by them to receive it, or
  - (ii) sending it by prepaid 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(1A) for the patient’s discharge, and
- (b) the notice of such order given under section 25(1A), must be served by—
  - (i) delivery of the order or notice at the patient’s responsible hospital to an officer of the managers authorised by them to receive it, or
  - (ii) by sending it by prepaid 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 section 5(2) (detention of patient already in hospital for 72 hours) must be served by—

- (a) delivery of the report to an officer of the managers of the hospital authorised by them 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 prepaid—

- (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 required or authorised by or under Part 2 of the Act or these Regulations and purporting to be signed by a person required or authorised by or under that Part or these Regulations to do so may be received in evidence and be deemed to be such a document without further proof, unless the contrary is shown.

(9) Any document required to be addressed to the managers of a hospital in accordance with the Act or these Regulations will be deemed to be properly addressed to such managers if addressed to the administrator of that hospital.

(10) 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.

(11) 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**

#### **Procedure for and record of hospital admissions**

- 4.—(1) For the purposes of admission to hospital under Part 2 of the Act —
- (a) any application for admission for assessment under section 2 must be in the form set out—
    - (i) where made by the nearest relative, in Form HO 1;
    - (ii) where made by an approved mental health professional, in Form HO 2;
  - (b) any medical recommendations for the purposes of section 2 must be in the form set out—
    - (i) in the case of joint recommendations, in Form HO 3,
    - (ii) in any other case, in Form HO 4;
  - (c) any application for admission for treatment under section 3 must be in the form set out—
    - (i) where made by the nearest relative, in Form HO 5,
    - (ii) where made by an approved mental health professional, in Form HO 6;
  - (d) any medical recommendations for the purposes of section 3 must be in the form set out—
    - (i) in the case of joint recommendations, in Form HO 7,
    - (ii) in any other case, in Form HO 8;
  - (e) any emergency application under section 4 must be in the form set out—
    - (i) where made by the nearest relative, in Form HO 9,
    - (ii) where made by an approved mental health professional, in Form HO 10;

- (f) any medical recommendation for the purposes of section 4 must be in the form set out in Form HO 11;
  - (g) any report made under subsection (2) of section 5 (detention of patient already in hospital for 72 hours) by—
    - (i) the registered medical practitioner or approved clinician in charge of the treatment of the patient, or
    - (ii) any such person nominated by the registered medical practitioner or approved clinician to act for them
 must be in the form set out in Part 1 of Form HO 12 and the hospital managers must 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(4) must be in the form set out in Form HO 13.
- (2) For the purposes of rectifying applications or recommendations under section 15, the managers of the hospital to which a patient has been admitted in pursuance of an application for assessment or for treatment may authorise in writing 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.
- (3) Where a patient has been admitted to a hospital pursuant to an application under section 2, 3 or 4, a record of the same must be made by the managers of that hospital in the form set out in Form HO 14 and be attached to the application or, as the case may be, recommendation.
- (4) For the purposes of any medical recommendation under sections 2, 3 and 4 (admission for assessment, admission for treatment and admission for assessment in cases of emergency respectively) in the case of—
- (a) a single recommendation made in respect of a patient whom a doctor has examined in England, the medical recommendation must be in the form required by Regulations made by the Secretary of State to similar effect for England;
  - (b) joint recommendations made in respect of a patient whom both doctors have examined in England, the medical recommendation must be in the form required by Regulations made by the Secretary of State to similar effect for England;
  - (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 must either be in the form required by these Regulations or in the form required by Regulations made by the Secretary of State to similar effect for England.

### **Renewal of authority to detain**

**5.** For the purposes of renewing authority to detain a patient admitted to hospital in pursuance of an application for treatment—

- (a) any report made by a responsible clinician for the purposes of section 20(3) (medical recommendation for renewal of authority to detain) must be in the form set out in Parts 1 and 3 of Form HO 15;

- (b) the statement made by a person who has been professionally concerned with the patient's medical treatment for the purposes of section 20(5A) (agreement with medical recommendation) must be in the form set out in Part 2 of Form HO 15;
- (c) the renewal of authority for detention under section 20(8) must 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 Form HO 15.

#### **Detention after absence without leave for more than 28 days**

6. In relation to a patient who is liable to be detained after being taken into custody or returning after absence without leave for more than 28 days—

- (a) any report made under section 21B(2) (authority for detention for patients who are taken into custody or return after more than 28 days) must be in the form set out in Part 1 of Form HO 16;
- (b) the receipt of that report must 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 Form HO 16.

#### **Discharge of patients liable to be detained by responsible clinicians or hospital managers**

7. Any order made by the responsible clinician or hospital managers under section 23(2)(a) (discharge of patients) for the discharge of a patient who is liable to be detained under the Act must be in the form set out in Form HO 17 and in the event of the order being made by the patient's responsible clinician must be served on the managers of the hospital in which the patient is liable to be detained.

#### **Provision of information – patients liable to be detained**

8. Unless the patient requests otherwise, where—

- (a) a patient's detention is renewed pursuant to a report furnished under section 20 (duration of authority), the managers of the responsible hospital must 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;
- (b) 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 must 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(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 must 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 receipt of that report.

## PART 3

### Procedures and Records relating to Guardianship

#### Procedure for and acceptance of guardianship applications

- 9.—(1) For the purposes of applying for guardianship under section 7—
- (a) an application for guardianship must be in the form set out—
    - (i) where made by the nearest relative, in Part 1 of Form GU 1,
    - (ii) where made by an approved mental health professional, in Part 1 of Form GU 2;
  - (b) where a person named as guardian will be a private guardian, the statement by that person that he or she is willing to act must be in the form set out in Part 2 of Form GU 1 or, as the case may be, Part 2 of Form GU 2;
  - (c) any medical recommendation must be in the form set out —
    - (i) in the case of a joint recommendation, in Form GU 3,
    - (ii) in any other case, in Form GU 4.
- (2) For the purposes of any medical recommendation under section 7 in the case of—
- (a) a single recommendation made in respect of a patient whom a doctor has examined in England, the medical recommendation must be in the form required by Regulations made by the Secretary of State to similar effect for England;
  - (b) joint recommendations made in respect of a patient whom both doctors have examined in England, the medical recommendation must be in the form required by Regulations made by the Secretary of State to similar effect for England;
  - (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 must either be in the form required by these Regulations or in the form required by Regulations made by the Secretary of State to similar effect for England.
- (3) Where an application made under section 7 is accepted by the responsible local social services authority it must record its acceptance of the application in the form set out in Form GU 5, which must be attached to the application.

#### Visits to patients subject to guardianship

10. The responsible local social services authority must 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 must be made by an approved clinician or a practitioner approved by the Welsh Ministers for the purposes of section 12 (general provisions as to medical recommendations).

#### Duties of private guardians

- 11.—(1) It is 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 conferred or imposed upon the private guardian by the Act and these Regulations, to comply with such directions as the responsible local social services authority may give;
- (d) to furnish that authority with all such reports or other information with regard to the patient as the responsible local social services authority may from time to time require;
- (e) to notify the responsible local social services authority—
  - (i) on the reception of the patient into guardianship, of his or her 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;
- (f) where on any permanent change of his or her address, the new address is in the area of a different local social services authority, to notify both that authority and the authority which was formerly responsible of—
  - (i) his or her address and that of the patient,
  - (ii) the particulars mentioned in paragraph (b); and
- (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 of the same 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.

### **Renewal of guardianship**

**12.** For the purposes of renewing guardianship—

- (a) any report made under section 20(6) (report renewing guardianship) must be in the form set out in Part 1 of Form GU 6;
- (b) any renewal of authority for guardianship under section 20(8) must be recorded by the responsible local social services authority in the form set out in Part 2 of Form GU 6.

### **Guardianship after absence without leave for more than 28 days**

**13.** In relation to the return of a patient subject to guardianship who is taken into custody or returns after absence without leave after more than 28 days—

- (a) any report made under section 21B(2) (authorisation for guardianship of patients who are taken into custody or return after more than 28 days) must be in the form set out in Part 1 of Form GU 7;
- (b) the receipt of that report must be recorded by the responsible local social services authority in the form set out in Part 2 of Form GU 7.

### **Discharge of patients subject to guardianship by responsible clinicians or responsible local social services authorities**

**14.** Any order made by the responsible clinician or responsible local social services authority of the patient under section 23(2)(b) for discharge of a patient subject to guardianship under the Act must be in the form set out in Form GU 8 and in the event of the order being made by the patient's responsible clinician must be served on the responsible local social services authority.

### **Provision of information – patients subject to guardianship**

**15.**—(1) Upon a patient becoming subject to guardianship under the Act, the responsible local social services authority must take such steps as are 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 (2).

(2) The rights are—

(a) the patient’s right to apply to a Tribunal under section 66 ;

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

(i) discharge the patient under section 23 , or

(ii) apply to a Tribunal under section 69 (where the patient is, or is treated as being, subject to guardianship under section 37 ).

(3) Where information referred to in paragraph (1)—

(a) is to be given to the patient, it must be given both orally and in writing;

(b) is to be given to the nearest relative it must be given in writing.

(4) Unless the patient requests otherwise, where—

(a) a patient’s guardianship is renewed pursuant to a report furnished under section 20, the responsible local social services authority must 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;

(b) by virtue of section 21B(7) a patient’s guardianship is renewed pursuant to a report furnished under section 21B(2), the responsible local social services authority must 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;

(c) by virtue of section 21B(5) and (6) a patient’s guardianship is renewed retrospectively pursuant to a report furnished under section 21B(2), the responsible local social services authority must 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 receipt by the responsible local social services authority of that report.

(5) Where paragraph (4)(b) or (c) applies, the responsible local social services authority must, as soon as practicable inform the private guardian (if any) of its receipt of a report furnished under section 21B.

## **PART 4**

### **Procedures and Records relating to Community Treatment**

#### **Procedures for and record of community treatment orders**

**16.**—(1) For the purposes of making community treatment orders under section 17A and attaching conditions to the same under section 17B—

(a) any order made by the responsible clinician under section 17A(1) must be in the form set out in Parts 1 and 3 of Form CP 1;



- (b) the conditions specified in the order under section 17B(3) and any other conditions under section 17B(2) must be in the applicable form set out in Part 1 of Form CP 1;
  - (c) any statement of an approved mental health professional made under section 17A(4) or, as the case may be, section 17B(2) must be in the applicable form set out in Part 2 of Form CP 1;
  - (d) any community treatment order must be furnished to the managers of the responsible hospital as soon as reasonably practicable.
- (2) Any variation to conditions specified in a community treatment order under section 17B(4) must be recorded in the form set out in Form CP 2 and the order so varying the conditions must be furnished to the managers of the responsible hospital as soon as reasonably practicable.

### **Extension of community treatment periods**

17. For the purposes of extending community treatment periods under section 20A—
- (a) any report by a responsible clinician made under section 20A(4) must be in the form set out in Parts 1 and 3 of Form CP 3;
  - (b) any statement of an approved mental health professional made under section 20A(8) must be in the form set out in Part 2 of Form CP 3;
  - (c) any extension of a community treatment period under section 20A(3) must be recorded by the managers of the responsible hospital in the form set out in Part 4 of Form CP 3.

### **Community treatment after absence without leave for more than 28 days**

18. In relation to the return of a community patient who is taken into custody or returns after absence without leave after more than 28 days—
- (a) any report made under section 21B(2) must be in the form set out in Part 1 of Form CP 4;
  - (b) the receipt of that report must be recorded by the managers of the responsible hospital in the form set out in Part 2 of Form CP 4.

### **Recall and release of community patients**

- 19.—(1) For the purpose of recalling a patient to hospital under section 17E(1)—
- (a) a responsible clinician's notice under section 17E(5) must be in the form set out in Form CP 5;
  - (b) the responsible clinician must furnish a copy of the notice to the managers of the responsible hospital as soon as reasonably practicable;
  - (c) where the patient is recalled to a hospital which is not the responsible hospital, the responsible clinician must—
    - (i) furnish the managers of that hospital with a copy of the notice, and
    - (ii) notify those managers of the name and address of the responsible hospital; and
  - (d) the managers of the hospital to which the patient is recalled must record the time and date of the patient's detention pursuant to that notice in the form set out in Part 1 of Form CP 6.
- (2) In relation to the release of a community patient recalled to hospital under section 17F(5), the responsible clinician must notify the managers of the responsible hospital of any such release and those managers must record the time and date of the patient's release in the form set out in Part 2 of Form CP 6.
- (3) Where the patient's responsible hospital is in England, the patient's recall must be effected in accordance with Regulations made by the Secretary of State to similar effect for England.

- (4) 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 CP 5 must 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.
- (5) Notice of recall in Form CP 5 is considered served—
- (a) in the case of paragraph 4(a), immediately on delivery of the notice to the patient;
  - (b) in the case of paragraph 4(b), on the day (which does not have to be a business day) after it is delivered;
  - (c) in the case of paragraph 4(c), on the second business day after it was posted.

#### **Revocation of community treatment orders**

**20.** For the purpose of revoking a community treatment order under section 17F(4) (powers in respect of recalled patients)—

- (a) a responsible clinician's order revoking a community treatment order must be in the form set out in Parts 1 and 3 of Form CP 7;
- (b) any statement of an approved mental health professional made under section 17F(4)(b) must be in the form set out in Part 2 of Form CP 7;
- (c) the responsible clinician must furnish the managers of the hospital to which the patient has been recalled with the revocation order;
- (d) where the patient has been recalled to a hospital which is not the responsible hospital, the responsible clinician must (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 that revocation order;
- (e) the managers of the hospital in which the patient is detained upon revocation of the community treatment order must record receipt of the copy of the revocation order and the time and date of the revocation in the form set out in Part 4 of Form CP 7.

#### **Discharge of community patients by responsible clinicians or hospital managers**

**21.** Any order made by the responsible clinician or hospital managers under section 23(2)(c) for the discharge of a community patient must be in the form set out in Form CP 8 and in the event of the order being made by the patient's responsible clinician must be served on the managers of the responsible hospital.

#### **Provision of information – community patients**

**22.—(1)** As soon as practicable following the recall of a patient under section 17E, the managers of the responsible hospital must 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).
- (2) Unless the patient requests otherwise, where—
- (a) 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 must

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;

- (b) 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 must 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;
- (c) 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 must 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 receipt of that report.

## 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 subparagraph (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>(5)</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>(6)</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—

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<sup>(5)</sup> 2003 asp 13.

<sup>(6)</sup> Section 85ZA was inserted by paragraph 12 of Schedule 5 to the Mental Health Act 2007.

- (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 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.

## PART 6

### Functions of Nearest Relatives

#### Performance of functions of nearest relative

**33.**—(1) Subject to paragraph (8) and the conditions in paragraph (7), the nearest relative of a patient may authorise in writing any person other than—

- (a) the patient; or
- (b) a person mentioned in section 26(5) (persons deemed not to be the nearest relative),

to act on his or her behalf in respect of the matters mentioned in paragraph (2).

(2) Those matters 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).

(3) Such an authority confers upon the person authorised all the rights of the nearest relative that are reasonably necessary for and incidental to the performance of the functions referred to in paragraph (2) or are reasonably necessary to carry those functions into full effect.

(4) Any such authority takes effect upon receipt of the authority by the person authorised.

(5) Subject to the conditions in sub-paragraph (7)(b), the nearest relative of a patient may revoke such authority.

(6) Any revocation of such authority takes effect upon the receipt of the notice by the person authorised.

(7) The conditions mentioned in paragraphs (1) and (5) are, as relevant, that—

- (a) the person to be authorised has given his or her consent; and
- (b) on making or revoking such authority, the nearest relative must give notice in writing of that fact to—
  - (i) the person authorised;
  - (ii) the patient;
  - (iii) in the case of a patient liable to be detained in a hospital, the managers of that hospital;
  - (iv) in the case of a patient subject to guardianship, the responsible local social services authority and the private guardian, if any;
  - (v) in the case of a community patient, the managers of the responsible hospital.

(8) A nearest relative of a patient may not authorise any person under paragraph (1) to perform functions on his or her behalf in the event of any person having made an application to the court for

displacement of that nearest relative under section 29 on the grounds listed in sub-paragraphs (b) to (e) of sub-section (3) of that section.

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

### **Restriction on discharge by nearest relative**

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

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

(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 7**

### **Delegation**

#### **Delegation of hospital managers' functions under the Act**

**35.** 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 person 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 hospital managers' functions under the Domestic Violence, Crime and Victims Act 2004**

**36.** 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.)<sup>(7)</sup> may be performed by any person authorised by them in that behalf.

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(7) As amended section 48 and Schedule 6 of the Mental Health Act 2007. 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).

### **Delegation by local social services authorities**

**37.**—(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 8**

### **Consent to Treatment**

#### **Forms of treatment under Part 4 of the Act**

**38.**—(1) For the purposes of section 57 (treatment requiring consent and a second opinion) the form of treatment to which that section applies, 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), is the surgical implantation of hormones for the purpose of reducing male sexual drive.

(2) For the purposes of section 58A (electro-convulsive therapy, etc.) the form of treatment to which that section applies, in addition to the administration of electro-convulsive therapy mentioned in subsection (1)(a) of that section, is the administration of medicines as part of that therapy.

(3) Section 58A does not apply to treatment by way of the administration of medicines as part of electro-convulsive therapy where that treatment falls within section 62(1)(a) or (b) of the Act (treatment immediately necessary to save the patient's life or to prevent a serious deterioration in his or her condition).

#### **Forms of treatment under Part 4A of the Act**

**39.** For the purposes of Part 4A of the Act (treatment of community patients not recalled to hospital) —

- (a) treatment of a patient to whom section 64B(3)(b) or section 64E(3)(b) (which set out when treatment under Part 4A of the Act may be given to adult and child community patients respectively) applies may include treatment by way of the administration of medicines as part of electro-convulsive therapy but only where that treatment falls within section 64C(5) (a) or (b);
- (b) treatment of a patient to whom section 64G (emergency treatment for community patients lacking capacity or competence) applies may include treatment by way of medicines used in connection with electro-convulsive therapy but only where that treatment falls within section 64C(5)(a) or (b).

#### **Certificates for administration of treatment**

**40.**—(1) The certificate required under sections 57(2)(a) and (b) (treatment requiring consent and a second opinion) must be in the form set out in Form CO 1.

(2) The certificates required under sections 58(3)(a) and (b) (treatment requiring consent or a second opinion) must be in the form set out in Forms CO 2 and CO 3 respectively.

(3) The certificates required under sections 58A(3)(c), (4)(c) and (5) (electro-convulsive therapy, etc.) must be in the form set out in Forms CO 4, CO 5 and CO 6 respectively.

(4) The certificate required under sections 64B(2)(b) or 64E(2)(b) (treatment of community patients) must be in the form set out in Form CO 7.

## **PART 9**

### **Correspondence of Patients**

#### **Inspection and opening of postal packets**

**41.**—(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), the person appointed must record in writing—

- (a) that the packet had been so inspected and opened;
- (b) that nothing in the packet has been withheld; and
- (c) his or her name and the name of the hospital,

and must, before resealing the packet, place the record in that packet and keep a copy of that record.

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

- (a) he or she must 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) his or her name and the name of the hospital; and
- (b) if anything contained in the packet is withheld, he or she must 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, and
  - (iv) his or her name and the name of the hospital,

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

(3) 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.

#### **Independent Advocacy Services**

**42.** For the purposes of section 134(3A)(b)(iii), the prescribed arrangements are arrangements in respect of independent mental capacity advocates made under sections 35 to 41 of the Mental Capacity Act 2005(9) (independent advocacy service).

## **PART 10**

### Revocations

#### **Revocations**

- 43.** The Regulations specified in Schedule 2 are revoked in relation to Wales.

15 September 2008

*Edwina Hart*  
Minister for Health and Social Services, one of  
the Welsh Ministers