WELSH STATUTORY INSTRUMENTS

2008 No. 2439 (W.212)

MENTAL HEALTH, WALES

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

Made - - - -	*15 September 2008*
Laid before the National Assembly for Wales - -	*17 September 2008*
Coming into force - -	*3 November 2008*

The Welsh Ministers in exercise of the powers conferred by sections 9, 17F(2), 19(1) and (4), 19A, 32(1), (2) and (3), 57(1)(b), 58A(1)(b), 64(2), 64H(2) and 134(3A)(a) and (8) of the Mental Health Act 1983(**1**), after consultation with such bodies as appear to them to be concerned in accordance with section 57(4) and 58A(8), hereby make the following regulations—

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" ("*gŵyl banc*") means a bank holiday under the Banking and Financial Dealings Act 1971(**2**);

"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;

(**1**) 1983 c. 20, as amended by the Mental Health Act 2007 c. 12.
(**2**) 1971 c. 80.

"electronic communication" ("*cyfathrebiad electronig*") has the same meaning as in section 15(1) of the Electronic Communications Act 2000(**3**);

"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(**4**) 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;

(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.

(**3**) 2007 c. 7.
(**4**) 2007 c. 15.

(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(**5**) 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;

(**5**) See the Mental Health (Nurses) (Wales) Order 2008 (S.I. 2008/2441(W.214)).

(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